

# SECURITIES AND EXCHANGE COMMISSION

## FORM 8-K

Current report filing

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### FILER

#### **TSS, Inc.**

CIK: [1320760](#) | IRS No.: **202027651** | State of Incorp.: **DE** | Fiscal Year End: **1231**  
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SIC: **8742** Management consulting services

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ROUND ROCK TX 78664  
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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

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

**December 31, 2024**

Date of Report (Date of earliest event reported)

**TSS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation)

**000-33627**  
(Commission File Number)

**20-2027651**  
(I.R.S. Employer  
Identification No.)

**110 E. Old Settlers Road, Round Rock, Texas 78664**  
(Address of principal executive offices and zip code)

**(512) 310-1000**  
(Registrant's telephone number, including area code)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 Par Value	TSSI	The Nasdaq Stock Market LLC

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

Emerging growth company ☐

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

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

On December 31, 2024, VTC, L.L.C. (“VTC”), a wholly owned subsidiary of TSS, Inc. (the “Company”), entered into a Credit Agreement (the “Credit Agreement”) with Susser Bank (“Susser”). The Credit Agreement provides for a \$20,000,000 term loan facility and the option for additional uncommitted incremental term loans up to an aggregate amount of \$5,000,000.

In connection with the term loan, VTC entered into a promissory note with Susser in the original principal amount of \$20,000,000 (the “Note”). Interest accrues at a rate per annum equal to the lesser of (a) the maximum interest rate which may be charged under Texas law (the “Maximum Rate”) and (b) the greater of (i) the Adjusted Term SOFR (as defined in the Credit Agreement) plus 3.0% and (ii) 4.5% (the interest rate described in clause (b) the “Applicable Rate”). Upon an event of default, interest shall accrue at a rate equal to the Applicable Rate plus 2%, but in no event shall it exceed the Maximum Rate. Payments of principal and interest under the Note are due and payable monthly, with an interest-only period commencing on February 5, 2025 through the Term Loan Commitment Termination Date (as defined in the Credit Agreement), and principal and interest payments beginning with the monthly payment thereafter until the Maturity Date (as defined below). The “Maturity Date” means the earlier of (x) January 5, 2030 and (y) an event of default as described in the Credit Agreement.

Any incremental term loan requested by VTC must be a minimum amount of \$1,000,000 and must be requested in accordance with the terms of the Credit Agreement. Any incremental term loan shall be on the same terms as the Note, including the Maturity Date and payment terms.

VTC’s obligations under the Note and the Credit Agreement are guaranteed by the Company and are secured by a first priority lien on substantially all of VTC’s and the Company’s assets pursuant to the terms of a Security Agreement by and among VTC, the Company, and Susser (the “Security Agreement”).

The proceeds of the Term Loan will be used to fund improvements at VTC’s Georgetown, Texas leased location and for ordinary working capital purposes.

The foregoing description of the Credit Agreement, the Note and the Security Agreement, and the transactions contemplated thereby, do not purport to be complete and are subject to, and qualified in their entirety by reference to, the full text of the Credit Agreement, the Note and the Security Agreement, which are included in this Current Report as Exhibits 10.1, 10.2 and 10.3, respectively, and is incorporated herein by reference.

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

Reference is made to the disclosure set forth under Item 1.01 above, which disclosure is incorporated herein by reference.

### **Item 7.01. Regulation FD Disclosure.**

On January 7, 2025, the Company issued a press release announcing the transactions with Susser and the Registration Statement (defined below). A copy of the press release is being furnished herewith as Exhibit 99.1.

### **Item 8.01. Other Events.**

On January 7, 2025, the “Company filed a “universal shelf” registration statement on Form S-3 (the “Registration Statement”) with the Securities and Exchange Commission (the “SEC”). The Registration Statement would allow the Company to raise up to an aggregate of \$150 million through the issuance and sale of its common shares, preferred shares, debt securities, warrants and units in one or more offerings from time to time after the Registration Statement is declared effective by the SEC. If the Company decides to raise capital in a future offering using the Registration Statement, it will describe the specific details of that future offering in a prospectus supplement that is filed with the SEC. The Company believes that the Registration Statement is a prudent corporate housekeeping measure that will provide greater financial flexibility in the coming years.

### **Item 9.01. Financial Statements and Exhibits.**

[10.1 Credit Agreement, dated December 31, 2024\\*](#)

[10.2 Term Loan Note, dated December 31, 2024](#)

[10.3 Security Agreement, dated December 31, 2024](#)

[99.1 Press Release, dated January 7, 2025](#)

104 Cover Page Interactive Data File (embedded within the Inline XBRL document).

- \* Portions of this exhibit have been omitted in accordance with Item 601(b)(10) of Regulation S-K. The registrant agrees to furnish a supplemental copy of any omitted schedule (or similar attachment) to the Securities and Exchange Commission upon request

#### SIGNATURES

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

TSS, INC.

By: /s/ Daniel M. Chism

Daniel M. Chism  
Chief Financial Officer

Date: January 7, 2025

*Certain portions of this document have been omitted pursuant to Item 601(b)(10) of Regulation S-K and, where applicable, have been marked with “[\*]” to indicate where omissions have been made. The marked information has been omitted because it is (i) not material and (ii) is the type that the registrant treats as private or confidential.*

Loan No. 42088

## CREDIT AGREEMENT

among

VTC, L.L.C.,  
as Borrower

THE GUARANTORS FROM TIME TO TIME PARTY HERETO

THE LENDERS FROM TIME TO TIME PARTY HERETO

and

Susser Bank,  
as Administrative Agent and L/C Issuer

DATED AS OF DECEMBER 31, 2024

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#### CREDIT AGREEMENT

THIS CREDIT AGREEMENT (as the same may be amended, restated, supplemented or otherwise modified from time to time, this “**Agreement**”), dated as of December 31, 2024, is among VTC, L.L.C., a Maryland limited liability company (“**Borrower**”), TSS, INC., a Delaware corporation (“**Parent**”), each of the Guarantors party hereto, the lenders from time to time party hereto (collectively, the “**Lenders**” and each, individually, a “**Lender**”), and SUSSER BANK, a Texas state bank, as Administrative Agent and L/C Issuer.

## **RECITALS**

Borrower has requested that the Lenders extend credit to Borrower as described in this Agreement. The Lenders are willing to make such credit available to Borrower upon and subject to the provisions, terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

## **ARTICLE 1.**

### **DEFINITIONS**

Section 1.1 **Definitions.** As used in this Agreement, all exhibits, appendices and schedules hereto and in any note, certificate, report or other Loan Document made or delivered pursuant to this Agreement, the following terms will have the meanings given such terms in this Article 1 or in the provision, section or recital referred to below:

“**Account**” means an account, as defined in the UCC.

“**Account Control Agreement**” means a control agreement, in form and substance reasonably satisfactory to Administrative Agent, which grants Administrative Agent “control” (within the meaning of Section 8.106 or Section 9.104 of the UCC, as applicable, in the applicable jurisdiction) over any Deposit Account, Securities Account or Commodity Account maintained by any Loan Party, in each case, among Administrative Agent, the applicable Loan Party and the applicable financial institution at which such Deposit Account, Securities Account or Commodity Account is maintained.

“**Acquisition**” means the acquisition by any Person of (a) a majority of the Equity Interests of another Person, (b) all or substantially all of the assets of another Person or (c) all or substantially all of a business unit or line of business of another Person, in each case (i) whether or not involving a merger or consolidation with such other Person and (ii) whether in one (1) transaction or a series of related transactions.

“**Acquisition Consideration**” means the consideration given by Borrower or any of its Subsidiaries for an Acquisition, including but not limited to the sum of (without duplication) (a) the fair market value of any cash, Property (excluding Equity Interests) or services given, plus (b) the amount of any Debt assumed, incurred or guaranteed (to the extent not otherwise included) in connection with such Acquisition by Borrower or any of its Subsidiaries.

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“**Actual Completion Date**” shall mean the date that (a) Borrower has completed construction of the Improvements substantially in accordance with the Improvement Plans, the Budget, and the requirements of this Agreement, the AI Rack Integration Agreement, and the Lease, (b) all licenses and permits necessary for the occupancy, use or sale thereof have been issued (including, without limit, certificates of occupancy) and remain in effect.

“**Additional Guarantor**” has the meaning set forth in **Section 12.12**.

“**Adjusted Term SOFR**” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment.

“**Administrative Agent**” means Susser Bank, in its capacity as administrative agent under any of the Loan Documents, until the appointment of a successor administrative agent pursuant to the terms of this Agreement and, thereafter, shall mean such successor administrative agent.

“**Administrative Questionnaire**” means an administrative questionnaire in a form supplied by Administrative Agent.

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

**“Affidavit of Commencement”** means an affidavit to be executed by Borrower and General Contractor complying with the provisions of § 53.124 of the Texas Property Code.

**“Affidavit of Completion”** means an affidavit to be executed by Borrower complying with § 53.106 of the Texas Property Code.

**“Affiliate”** means, as to any Person, any other Person (a) that directly or indirectly, through one (1) or more intermediaries, Controls or is Controlled by, or is under common Control with, such Person; (b) that directly or indirectly beneficially owns or holds 10% or more of any class of voting stock of such Person; or (c) 10% or more of the voting stock of which is directly or indirectly beneficially owned or held by such Person.

**“Affiliated Debt”** has the meaning set forth in **Section 12.5**.

**“Agent Parties”** means, collectively, Administrative Agent and its Related Parties.

**“Agreement”** has the meaning set forth in the introductory paragraph hereto, and includes all schedules, exhibits and appendices attached or otherwise identified therewith.

**“AI Rack Integration Agreement”** means that certain Statement of Work, dated effective as of September 25, 2024, between Borrower and [\*], pursuant to that certain Master Relationship Agreement dated effective as of October 26, 2021, each as amended from time to time.

**“Anti-Corruption Laws”** means all state or federal Laws, rules, and regulations of any jurisdiction applicable to the Loan Parties or any of their Affiliates from time to time concerning or relating to bribery or corruption, including the FCPA and the Bank Secrecy Act, and other similar anti-corruption legislation in other jurisdictions.

**“Anti-Terrorism Laws”** has the meaning set forth in **Section 5.21**.

**“Applicable Margin”** means a rate per annum equal to 3.00%.

**“Applicable Percentage”** means (a) in respect of the Initial Term Loan Facility, with respect to any Term Loan Lender at any time, the percentage (carried out to the ninth decimal place) of the aggregate Initial Term Loan Commitments represented by such Term Loan Lender’s Initial Term Loan Commitment at such time (or, at any time after the Closing Date, the Outstanding Amount of such Term Loan Lender’s Initial Term Loans at such time), and (b) in respect of any Incremental Term Loan Facility, with respect to any Term Loan Lender at any time, the percentage (carried out to the ninth decimal place) of the aggregate Incremental Term Loan Commitments represented by such Term Loan Lender’s Incremental Term Loan Commitment at such time (or, at any time after the applicable Incremental Commitment Effective Date, the Outstanding Amount of such Term Loan Lender’s Incremental Term Loans at such time).

**“Applicable Rate”** means the greater of (a) Adjusted Term SOFR *plus* the Applicable Margin, and (b) the Floor.

**“Approved Change Order”** shall mean a Change Order permitted under **Section 7.15** hereof.

**“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 Susser Bank, a Texas state bank, in its capacity as sole lead arranger and sole book runner.

**“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 11.8**), and accepted by Administrative Agent, in substantially the form of **Exhibit A** or any other form approved by Administrative Agent.

**“Assignment of Account”** means that certain Assignment of Account dated as of the Closing Date executed by Borrower in favor of Administrative Agent, for the benefit of the Lenders, regarding the Required Reserve Account, and any other Assignment of Account executed by Borrower from time to time in favor of Administrative Agent, for the benefit of the Lenders, on a substantially similar form to that executed on the Closing Date, as requested by Administrative Agent upon any change in the type of account used for the Required Reserve.

**“Authorized Party”** has the meaning set forth in *Section 11.11(d)(iii)*.

**“Auto-Extension Letter of Credit”** means a Letter of Credit that has automatic extension provisions.

**“Available Tenor”** means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to *Section 3.3(b)(iv)*.

**“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).

**“Bank Product Agreements”** means those certain agreements entered into from time to time between any Loan Party or any of its Subsidiaries and a Bank Product Provider in connection with any of the Bank Products, including without limitation, Hedge Agreements.

**“Bank Product Obligations”** means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by any Loan Party or any of its Subsidiaries to any Bank Product Provider pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all such amounts that any Loan Party or such Subsidiary is obligated to reimburse to any Bank Product Provider as a result of such Bank Product Provider purchasing participations or executing indemnities or reimbursement obligations with respect to the Bank Products provided to any Loan Party or such Subsidiaries pursuant to the Bank Product Agreements. For the avoidance of doubt, the Bank Product Obligations arising under any Hedge Agreement shall be determined by the Hedge Termination Value thereof.

**“Bank Product Provider”** means any Person that is a party to a Bank Product Agreement with or provides Bank Products to any Loan Party or any of their Subsidiaries that entered into such Bank Product Agreement or provided such Bank Product while such Person was a Lender or an Affiliate of a Lender, whether or not such Person at any time cease to be a Lender or an Affiliate of a Lender, as the case may be.

**“Bank Products”** means any service provided to, facility extended to, or transaction entered into with, any Loan Party by any Person consisting of (a) Deposit Accounts, (b) cash management services, including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements maintained with such Person, (c) debit cards, stored value cards, and credit cards (including commercial credit cards (including so-called “procurement cards” or “P-cards”)) and debit card and credit card processing services or (d) Hedge Agreements.

**“Bankruptcy Code”** means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

**“Base Rate”** means, for any day, a rate of interest per annum equal to the highest of (a) the Prime Rate for such day; (b) the sum of the Federal Funds Rate for such day *plus* one-half of one percent (0.5%); and (c) Adjusted Term SOFR for such day *plus* one and one-half percent (1.50%); provided, however, if the Base Rate as determined pursuant to the foregoing shall be less than the Floor, such rate shall be deemed to be the Floor for purposes of this Agreement. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR shall be effective on the effective day of such change in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR, respectively.

**“Base Rate Borrowing”** means, as to any Borrowing, the Base Rate Loans comprising such Borrowing.

**“Base Rate Loan”** means a Loan bearing 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 3.3(b)(i)**.

**“Benchmark Rate Borrowing”** means, as to any Borrowing, the Benchmark Rate Loans comprising such Borrowing.

**“Benchmark Rate Loan”** means a Loan bearing interest based on the then existing Benchmark (initially, Adjusted Term SOFR).

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

(a) the sum of: (i) Daily Simple SOFR and (ii) the related Benchmark Replacement Adjustment;

(b) the Base Rate; or

(c) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark 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 for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a), (b) or (c) 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, (a) with respect to Daily Simple SOFR, 0.11448%, and (b) with respect to any other replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such 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 giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

**“Benchmark Replacement Date”** means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which all Available Tenors of such Benchmark (or the published component used in the calculation thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (b) 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 Board of Governors, 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 3.3(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 3.3(b)**.

**“Beneficial Ownership Certification”** means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

**“Beneficial Ownership Regulation”** means 31 C.F.R. §1010.230.



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

**“Board of Governors”** means the Board of Governors of the Federal Reserve System of the United States of America.

**“Borrower”** means the Person identified as such in the introductory paragraph hereto, and its successors and assigns to the extent permitted by **Section 11.8**.

**“Borrower Materials”** has the meaning set forth in **Section 11.11(e)**.

**“Borrowing”** means a Term Loan Borrowing.

**“Borrowing Request”** means a Term Loan Borrowing Request.

**“Budget”** shall mean the Budget for completion of the Improvements provided by Borrower to Administrative Agent and the Lenders prior to the Closing Date, as may be updated from time to time on account of Approved Change Orders and Permitted Budget Reallocations.

**“Business Day”** means for all purposes, a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Austin, Texas are authorized or required by Law to be closed. Unless otherwise provided, the term “days” when used herein means calendar days.

**“Capitalized Lease Obligation”** means, with respect to any Person, the amount of Debt under a lease of Property by such Person that would be shown as a liability on a balance sheet of such Person prepared for financial reporting purposes in accordance with GAAP.

**“Cash Collateralize”** means to pledge and deposit with or deliver to Administrative Agent, for the benefit of L/C Issuer, as collateral for L/C Obligations, cash or deposit account balances or, if Administrative Agent and L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to Administrative Agent and L/C Issuer. **“Cash Collateral”** shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support. Any Cash Collateral required pursuant to this Agreement shall be in addition to the Required Reserve.

**“Cash Equivalents”** means assets described in clauses (b), (c) and (d) of **Section 7.5**.

**“Cash Interest Expense”** means, for any Person for any Test Period, total interest expense in respect of all outstanding Debt actually paid or that is payable by such Person during such Test Period, including, without limitation, all commissions, discounts, and other fees and charges with respect to letters of credit and all net costs (excluding any Hedge Agreement termination costs and expenses) under Hedge Agreements in respect of interest rates to the extent such costs are allocable to such Test Period, but excluding interest expense not payable in cash, all as determined in accordance with GAAP.

**“Casualty Event”** means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of the Loan Parties or any of their Subsidiaries.

**“Change in Law”** means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Law, rule, regulation or treaty, (b) any change in any Law, rule, regulation or treaty or in the administration, interpretation,

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

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

(a) Parent shall cease for any reason to have record and beneficial ownership of 100% of the Equity Interests of Borrower or any other Loan Party; or

(b) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of 51% or more of the Equity Interests of Parent entitled to vote for members of the board of directors or equivalent governing body of Parent on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or

(c) a change in the composition of the board of directors of the Parent at any time during any consecutive twelve month period such that “continuing directors” cease for any reason to constitute at least 25% of the board of directors of the Parent. For purposes of this clause, “continuing director” means a member of the board of directors of the Parent on the Closing Date.

**“Change Orders”** shall mean any amendments or modifications to the Improvement Plans, General Construction Contract or any subcontract.

**“Closing Date”** means the first date all the conditions precedent in **Section 4.1** are satisfied or waived in accordance with **Section 11.10**.

**“Code”** means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute, together with the regulations promulgated thereunder.

**“Collateral”** means, collectively, all of the Property of Borrower and the other Loan Parties in which Liens are granted and/or purported to be granted pursuant to the Security Documents to secure the Obligations or any part thereof, including, among other things, 100% of the Equity Interests in Borrower owned by Parent or any other Person.

**“Collateral Access Agreement”** means a landlord waiver, mortgagee waiver, bailee letter or similar acknowledgment of any lessor, warehouseman, processor or other Person in form and substance reasonably satisfactory to Administrative Agent.

**“Commitment”** means a Term Loan Commitment or an Incremental Term Loan Commitment, as the context may require.

**“Commodity Account”** shall have the meaning set forth in Article 9 of the UCC.

**“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.

**“Communications”** means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of Borrower pursuant to any Loan Document or the transactions contemplated therein which is distributed to Administrative Agent, any Lender, or L/C Issuer by means of electronic communications pursuant to **Section 11.11(d)**, including through the Platform.



**“Completion”** means with respect to the Improvements, the date that all of the following have been delivered to Administrative Agent: (a) Borrower has completed construction of the Improvements substantially in accordance with the Improvement Plans, the Budget, and the requirements of this Agreement, the AI Rack Integration Agreement, and the Lease, (b) if applicable, a final certificate of occupancy (or its equivalent for shell construction), for all vertical improvements to be constructed by Borrower, from all appropriate Governmental Authorities; (c) if applicable, a Certificate of Substantial Completion in AIA form G704 or similar form approved by Administrative Agent, executed by each architect for the Improvements and verified by the Construction Inspector; (d) an all bills paid affidavit and final waiver and release of liens, in form and substance as required by applicable law and acceptable to Administrative Agent, from the General Contractor and, upon request by Administrative Agent, any other Contractor or subcontractor who performed work in connection with the construction of the Improvements at a cost in excess of \$25,000.00; and (e) evidence satisfactory to Administrative Agent that Borrower has met all other conditions precedent to the final Construction Borrowing, as detailed in **Section 4.2** of this Agreement, for the Improvements.

**“Compliance Certificate”** means a certificate, substantially in the form of **Exhibit B**, or in any other form agreed to by Borrower and Administrative Agent, prepared by and certified by a Responsible Officer of Borrower.

**“Conforming Changes”** means, with respect to the use, administration of or any conventions associated with Term SOFR or any Benchmark Replacement, as applicable, any technical, administrative or operational changes (including changes to the definitions of “Base Rate”, “Business Day”, “Interest Period” (or any similar or analogous definition), “U.S. Government Securities Business Day”, or the timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that 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).

**“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.

**“Constituent Documents”** means (a) in the case of a corporation, its articles or certificate of incorporation and bylaws; (b) in the case of a general partnership, its partnership agreement; (c) in the case of a limited partnership, its certificate of limited partnership or certificate of formation, as applicable, and partnership agreement; (d) in the case of a trust, its trust agreement; (e) in the case of a joint venture, its joint venture agreement; (f) in the case of a limited liability company, its articles of organization, operating agreement, regulations and/or other organizational and governance documents and agreements; and (g) in the case of any other entity, its organizational and governance documents and agreements.

**“Construction Borrowing”** means a Borrowing for construction of the Improvements, and to finance equipment and other costs associated with completion of the Improvements.

**“Construction Contract”** means any contract between Borrower and any Contractor for the construction of the Improvements, including the General Construction Contract.

**“Construction Inspector”** means the inspecting architects and/or engineers, if any, specified by Administrative Agent from time to time.

**“Contractor”** means the Person with whom Borrower makes a Construction Contract for the Improvements, including the General Contractor.

**“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.

**“Covered Entity”** means any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

**“Covered Party”** has the meaning set forth in **Section 11.30**.

**“Credit Extension”** means each of (a) a Borrowing and (b) an L/C Credit Extension.

**“Daily Simple SOFR”** means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if Administrative Agent decides that any such convention is not administratively feasible for Administrative Agent, then Administrative Agent may establish another convention in its reasonable discretion.

**“Debt”** means, of any Person as of any date of determination (without duplication): (a) all obligations of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, notes, debentures, or other similar instruments; (c) all obligations of such Person to pay the deferred purchase price of Property or services, except trade accounts payable of such Person arising in the ordinary course of business that are not past due by more than ninety (90) days; (d) all Capitalized Lease Obligations of such Person; (e) all Debt or other obligations of others Guaranteed by such Person; (f) all obligations secured by a Lien existing on Property owned by such Person, whether or not the obligations secured thereby have been assumed by such Person or are non-recourse to the credit of such Person; (g) any other financial accommodations which in accordance with GAAP would be shown as a liability on the balance sheet of such Person; (h) any repurchase obligation or liability of a Person with respect to Accounts, chattel paper or notes receivable sold by such Person; (i) any liability under a sale and leaseback transaction that is not a Capitalized Lease Obligation; (j) any obligation under any so called “synthetic leases;” (k) any obligation arising with respect to any other transaction that is the functional equivalent of borrowing but which does not constitute a liability on the balance sheet of a Person; (l) all payment and reimbursement obligations of such Person (whether contingent or otherwise) in respect of letters of credit, bankers’ acceptances, surety or other bonds and similar instruments; (m) all liabilities of such Person in respect of unfunded vested benefits under any Plan; (n) all net Hedge Obligations of such Person, valued at the Hedge Termination Value thereof; and (o) all obligations of such Person in respect of Bank Products.

For all purposes, the Debt of any Person shall include the Debt 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, unless such Debt is expressly made non-recourse to such Person.

**“Debt Service”** means, for any Person for any period, the sum of (a) all regularly scheduled principal payments, (b) all Cash Interest Expense that are paid or payable during such period in respect of all Debt of such Person, and (c) all current maturities of long-term debt of such Person.

**“Debtor Relief Laws”** means the Bankruptcy Code, or any other applicable Law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, assignment for the benefit of creditors, moratorium, arrangement or composition, extension or adjustment of debts, or similar Laws affecting the rights of creditors.

**“Default”** means an Event of Default or the occurrence of an event or condition which with notice or lapse of time or both would become an Event of Default.

**“Default Interest Rate”** means (a) the Applicable Rate *plus* (b) two percent (2%) per annum; *provided, however*, in no event shall the Default Interest Rate exceed the Maximum Rate.

**“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.

**“Defaulting Lender”** means, subject to **Section 11.22(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, or (ii) pay to Administrative Agent, L/C Issuer or any Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two (2) Business Days of the date when due, (b) has notified Borrower, Administrative Agent or L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (c) has failed, within three (3) Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this **clause (c)** upon receipt of such written confirmation by Administrative Agent and Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of **clauses (a)** through **(d)** above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 11.22(b)**) upon delivery of written notice of such determination to Borrower and each Lender.

**“Deposit Account”** shall have the meaning set forth in Article 9 of the UCC.

**“Disposition”** means any sale, lease, sub-lease, license, transfer, assignment, conveyance, release, loss or other disposition, or the entry into any contract the performance of which would result in any of the foregoing, of any interest in Property, or of any interest in a Subsidiary that owns Property, in any transaction or event or series of transactions or events (including pursuant to a division), and **“Dispose”** has the correlative meaning thereto.

**“Dollars”** and **“\$”** mean lawful money of the United States of America.

**“Domestic Subsidiary”** means any Subsidiary that is organized under the Laws of any political subdivision of the U.S.

**“EBITDA”** means, for any Person for any Test Period, an amount, determined on a consolidated basis for such Person and its subsidiaries, equal to (a) Net Income plus (b) without duplication, the sum of the following to the extent deducted in the calculation of Net Income: (i) interest expense; (ii) income Taxes; (iii) depreciation; (iv) amortization; (v) unusual and non-recurring losses determined in accordance with GAAP, as approved by Administrative Agent in Administrative Agent’s discretion; (vi) other non-recurring expenses reducing such Net Income which do not represent a cash item in such Test Period or any future period; (vii) non-cash stock compensation and (viii) non-recurring cash transaction costs and expenses incurred on or prior to the Closing Date in connection with the Loan Documents, the Transactions and all matters related to the foregoing, not to exceed \$500,000 in the aggregate; minus (c) without duplication, the sum of the following to the extent included in the calculation of Net Income: (i) income Tax credits; (ii) extraordinary gains determined in accordance with GAAP; (iii) all non-recurring, non cash items increasing Net Income; and (iv) all losses associated with Hedge Agreements in respect of interest rates.

**“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”** has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

**“Electronic Signature”** has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

**“Eligible Assignee”** means any Person that meets the requirements to be an assignee under **Section 11.8(b)(iii), (v) and (vi)** (subject to such consents, if any, as may be required under **Section 11.8(b)(iii)**).

**“Environmental Laws”** means any and all federal, state, and local Laws, regulations, judicial decisions, orders, decrees, plans, rules, permits, licenses, and other governmental restrictions and requirements pertaining to health, safety, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., the Oil Pollution Act of 1990, 33 U.S.C. §2701 et seq., the Safe Drinking Water Act, 42 U.S.C. §300f et seq., the Occupational Safety and Health Act, 29 U.S.C. §651 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq., the Endangered Species Act, 16 U.S.C. §1531 et seq., the National Environmental Policy Act, 42 U.S.C. §4321 et seq., the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. §407, all similar state statutes and local ordinances, and all regulations promulgated under any of those statutes, and all administrative and judicial actions respecting such legislation, all as amended from time to time.

**“Environmental Liabilities”** means, as to any Person, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs, and expenses (including, without limitation, all reasonable fees, disbursements and expenses of counsel, expert and consulting fees and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, including any Environmental Law, permit, order or agreement with any Governmental Authority or other Person, arising from environmental, health or safety conditions or the Release or threatened Release of a Hazardous Material into the environment, resulting from the past, present, or future operations of such Person or its Affiliates.

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

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time, together with the rules and regulations promulgated thereunder.

**“ERISA Affiliate”** means any corporation or trade or business which is a member of the same controlled group of corporations (within the meaning of **Section 414(b)** of the Code) as a Loan Party, is under common control (within the meaning of **Section 414(c)** of the Code) with a Loan Party, or is otherwise considered a single employer with a Loan Party pursuant to **Sections 414(m) or (o)** of the Code, for purposes of the provisions relating to **Section 412** of the Code or **Section 303** of ERISA.

**“ERISA Event”** means (a) a Reportable Event with respect to a Plan, (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Plan subject to **Section 4063** of ERISA during a plan year in which it was a substantial employer (as defined in **Section 4001(a)(2)** of ERISA) or a cessation of operations which 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, (d) the filing of a notice of intent to terminate a Plan, the treatment of a Plan or Multiemployer Plan amendment as a termination under **Section 4041** or **4041A** of ERISA, or the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan, (e) the occurrence of an event or condition which might reasonably be expected to constitute grounds under **Section 4042** of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan, (f) the imposition of any liability to the PBGC 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, (g) the failure of any Loan Party or ERISA Affiliate to meet any funding obligations with respect to any Plan or Multiemployer Plan, or (h) a

Plan becomes subject to the at-risk requirements in *Section 303* of ERISA or *Section 430* of the Code or is in endangered or critical status under *Section 305* of ERISA or *Section 432* of the Code.

**“Erroneous Payment”** has the meaning set forth in *Section 10.15(a)*.

**“Erroneous Payment Deficiency Assignment”** has the meaning set forth in *Section 10.15(d)*.

**“Erroneous Payment Impacted Class”** has the meaning set forth in *Section 10.15(d)*.

**“Erroneous Payment Return Deficiency”** has the meaning set forth in *Section 10.15(d)*.

**“Erroneous Payment Subrogation Rights”** has the meaning set forth in *Section 10.15(d)*.

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

**“Event of Default”** has the meaning set forth in *Section 9.1*.

**“Excluded Deposit Accounts”** means any Deposit Account (a) established and used solely as (i) a payroll account or (ii) a zero-balance disbursement account through which disbursements are made and settled on a daily basis with no uninvested balance remaining overnight, (b) held in a fiduciary capacity and established in connection with employee benefit plans in the ordinary course of business or pursuant to applicable legal requirements, or (c) any trust or escrow account.

**“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 (determined after giving effect to any “keepwell, support or other agreement” for the benefit of such Loan Party and any and all Guarantees of such Loan Party’s Swap Obligations by Borrower or any other Loan Party) at the time the Guarantee of such Loan Party, or a grant by such Loan Party of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one (1) 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 excluded in accordance with the first sentence of this definition.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the Laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which (i) such Lender acquires such interest in such Loan or Commitment (other than pursuant to an assignment request by Borrower under *Section 3.6(b)*) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to *Section 3.4*, 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 3.4(g)* and (d) any U.S. federal withholding Taxes imposed under FATCA.

**“Existing Credit Agreement”** means the Business Loan Agreement (Asset Based) dated May 5, 2024, among Parent, as borrower, and Susser Bank, as lender, as amended.



**“Extraordinary Receipt”** means any cash received by or paid to or for the account of any Loan Party or any Subsidiary of a Loan Party not in the ordinary course of business, including in connection with Casualty Events, pension plan reversions, proceeds of insurance (including, but not limited to proceeds of business interruption insurance), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments.

**“Facility”** means the Initial Term Loan Facility or an Incremental Term Loan Facility, as the context may require.

**“Factoring Agreement”** means that certain Supplier Agreement dated September 17, 2014, between Borrower and the purchaser party thereto, and its branches, subsidiaries and affiliates, as the same may be amended as permitted pursuant to this Agreement, or any successor thereto and any other purchaser and agreement(s) as approved by the Administrative Agent in its reasonable discretion prior to entering into any successor agreement.

**“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), any current or future regulations or official interpretations thereof and any agreement 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.

**“FCPA”** means the Foreign Corrupt Practices Act of 1977, as amended.

**“Federal Funds Rate”** means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) 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 the day for which such rate is to be determined 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 such rate is not so published for any day, the Federal Funds Rate for such day shall be the average rate charged to Administrative Agent on such day on such transactions as determined by Administrative Agent; *provided, however*, if the Federal Funds Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

**“Fee Letter”** means the separate fee letter dated as of the Closing Date, between Borrower and Susser Bank and any other fee letter among Borrower and Administrative Agent, and/or Susser Bank concerning fees to be paid by Borrower in connection with this Agreement, including any amendments, restatements, supplements or modifications thereof. By its execution of this Agreement, each Lender acknowledges and agrees that Administrative Agent and/or Susser Bank may elect to treat as confidential and not share with Lenders any Fee Letters executed from time to time in connection with this Agreement.

**“Flood Insurance Regulations”** means (a) the National Flood Insurance Act of 1968, (b) the Flood Disaster Protection Act of 1973, (c) the National Flood Insurance Reform Act of 1994 (amending 42 USC 4001 *et seq.*), (d) the Flood Insurance Reform Act of 2004 and (e) the Biggert-Waters Flood Insurance Reform Act of 2012, in each case as now or hereafter in effect or any successor statute thereto and including any regulations promulgated thereunder.

**“Floor”** means a rate of interest equal to 4.5% per annum.

**“Foreign Lender”** means (a) if Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if 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 Borrower is resident for Tax purposes.

**“Fraudulent Transfer Laws”** has the meaning set forth in *Section 12.14*.

**“Fronting Exposure”** means, at any time there is a Lender that is a Defaulting Lender, with respect to L/C Issuer, such Defaulting Lender’s Applicable Percentage of the Outstanding Amount of the L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

**“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.

**“Funded Debt”** means all outstanding liabilities for borrowed money and other interest-bearing liabilities, including current and long term Debt, but specifically excluding Capitalized Lease Obligations with respect to Real Property.

**“Funding Account”** has the meaning set forth in **Section 4.1(w)** and after the Closing Date shall refer to any Deposit Account designated by the Borrower to the Administrative Agent in writing as the “Funding Account”; provided that the “Funding Account” must at all times be a Deposit Account maintained with the Administrative Agent and subject to an Account Control Agreement.

**“GAAP”** means generally accepted accounting principles, applied on a consistent basis, as set forth in opinions of the Accounting Standards Codification promulgated by the Financial Accounting Standards Board and/or their respective successors and which are applicable in the circumstances as of the date in question.

**“General Construction Contract”** shall mean the contract between Borrower and General Contractor for construction of the Improvements which shall be a guaranteed maximum price contract.

**“General Contractor”** shall mean David E. Harvey Builders, Inc., doing business as Harvey-Cleary Builders.

**“Governmental Authority”** means the government of the United States of America or any other nation, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, tribal body 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), and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

**“Guarantee”** by any Person means any obligation or liability, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person as well as any obligation or liability, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation or liability (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to operate Property, to take-or-pay, or to maintain net worth or working capital or other financial statement conditions or otherwise) or (b) entered into for the purpose of indemnifying or assuring in any other manner the obligee of such Debt or other obligation or liability of the payment thereof or to protect the obligee against loss in respect thereof (in whole or in part); *provided* that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business. The terms **“Guarantee”** and **“Guaranteed”** used as a verb have a corresponding meaning.

**“Guarantor Joinder Agreement”** means a Guarantor Joinder Agreement in the form and substance reasonably satisfactory to the Administrative Agent.

**“Guarantors”** means, collectively, Parent, each direct or indirect Subsidiary of Parent, and each direct or indirect Subsidiary of Borrower that Guarantees the Obligations pursuant to a Guaranty, and each Person who from time to time Guarantees all or any part of the Obligations under the Loan Documents, including any Person who becomes a party to this Agreement pursuant to a Guarantor Joinder Agreement, and including with respect to Obligations under any Bank Product Agreement to which a Loan Party (other than Borrower) is a party, Borrower, and **“Guarantor”** means any one of the Guarantors. , and including with respect to Obligations under any Bank Product Agreement to which a Loan Party (other than Borrower) is a party, Borrower.

**“Guaranty”** means, collectively, the guaranty made by the Loan Parties party to this Agreement pursuant to **Article 12** and each other written guaranty executed by one or more of the Guarantors in favor of Administrative Agent, for the benefit of the Secured Parties, in form and substance satisfactory to Administrative Agent.

**“Hazardous Material”** means any substance, product, waste, pollutant, material, chemical, contaminant, constituent, or other material which is or becomes listed, regulated, or addressed under any Environmental Law, including, without limitation, any petroleum and petroleum byproducts, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel (or mixture of natural gas and such synthetic gas), polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, flammables and explosives, and mold. “Hazardous Material” shall include, without limitation, any hazardous or toxic substance, material or waste or any chemical, element, compound or mixture which is: (i) asbestos and asbestos-containing materials; (ii) designated as a “pollutant” or “toxic pollutant” pursuant to the Federal Water Pollution Control Act (33 U.S.C. *Paragraph 1251 et seq.*); (iii) defined as a “solid or hazardous waste” pursuant to the Federal Resource Conservation and Recovery Act (42 U.S.C. *Paragraph 6901 et seq.*); (iv) defined as “hazardous substances” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. *Paragraph 9601 et seq.*); (v) listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR part 302); (vi) chemicals, elements, compounds, mixtures, substances, materials or wastes otherwise regulated under any applicable federal, state or local Environmental Laws; (vii) polychlorinated biphenyls; (viii) “pesticides” as defined in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*; (ix) “contaminant” as defined in the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*; (x) “extremely hazardous substances” as defined in the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001 *et seq.*; (xi) “hazardous materials” as defined in the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 *et seq.*; (xii) “hazardous air pollutants” as defined in the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; and (xiii) “oil” as defined in the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.*

**“Hedge Agreement”** or **“Hedging Agreement”** means (a) any and all interest 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, (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 (any such master agreement, together with any related schedules and annexes, a **“Master Agreement”**), (c) any and all Master Agreements and any and all related confirmations and (d) any other agreement, contract or transaction that constitutes a “swap” within the meaning of *Section 1a(47)* of the Commodity Exchange Act.

**“Hedge Obligations”** means, at any time with respect to any Person, all indebtedness, liabilities, and obligations of such Person under or in connection with any Hedge Agreement, whether actual or contingent, due or to become due and existing or arising from time to time.

**“Hedge Termination Value”** means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and settlement amounts, early termination amounts or termination value(s) determined in accordance therewith, such settlement amounts, early termination amounts or 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 Hedge Agreements, as determined based upon one or more commercially reasonable mid-market or other readily available quotations provided by any dealer which is a party to such Hedge Agreement or any other recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

**“Historical Financial Statements”** has the meaning set forth in **Section 4.1(y)**.

**“Honor Date”** has the meaning set forth in **Section 2.2(c)(i)**.

**“Improvement Plans”** shall mean the final plans and specifications for the construction of the Improvements prepared by the architect and engineers, and approved to the extent required herein and all amendments and modifications thereof made by Approved Change Orders.



**“Improvements”** shall mean the improvements consisting of the Tenant Work and installation of Borrower’s trade fixtures on the leased premises located at 1800 Aviation Drive, Building #1, Suite 100, Georgetown, Texas 78628, to be constructed substantially in accordance with the Improvement Plans.

**“Incremental Term Loan Amendment”** has the meaning set forth in **Section 2.10(f)**.

**“Incremental Commitment Effective Date”** has the meaning set forth in **Section 2.10(c)**.

**“Incremental Term Loan”** means a loan under an Incremental Term Loan Facility.

**“Incremental Term Loan Commitment”** has the meaning set forth in **Section 2.10(a)**.

**“Incremental Term Loan Facility”** means any facility consisting of Incremental Term Loan Commitments and all Borrowings thereunder.

**“Incremental Term Loan Lender”** has the meaning set forth in **Section 2.10(b)**.

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

**“Information”** has the meaning set forth in **Section 11.26**.

**“Initial Term Loan”** means an advance made by any Initial Term Loan Lender to the Borrower under **Section 2.1(b)(i)**.

**“Initial Term Loan Availability”** means, as of any date, the difference between (a) the aggregate amount of Initial Term Loan Commitments on such date less (b) the total amount of the Initial Term Loans.

**“Initial Term Loan Commitment”** means with respect to each Initial Term Loan Lender, the commitment of such Initial Term Loan Lender to make Initial Term Loans in accordance with **Section 2.1(b)** in the amount of such Lender’s Initial Term Loan Commitment set forth on **Schedule 2.1**.

**“Initial Term Loan Facility”** means the term loan facility comprised of the Initial Term Loan Commitments and the Initial Term Loans made pursuant to **Section 2.1(b)(i)**.

**“Initial Term Loan Lenders”** means the Persons listed on **Schedule 2.1** holding an Initial Term Loan Commitment or Initial Term Loans and any other Person that shall have become party hereto holding Initial Term Loans pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto holding Initial Term Loans pursuant to an Assignment and Assumption.

**“Intellectual Property”** means all copyrights, copyrightable works, patents, patent applications, trademarks, service marks, trade names, brand names, trade dress, slogans, logos and internet domain names and uniform resource locators, and the goodwill associated with any of the foregoing, and other types of intellectual or industrial property rights and foreign equivalent or counterpart rights and forms of protection of a similar or analogous nature to any of the foregoing or having similar effect in any jurisdiction throughout the world, and registrations and applications for registration of any of the foregoing, and all documentation and embodiments of the foregoing, in whatever form, now owned or hereafter acquired.

**“Interest Period”** means with respect to any Term SOFR Loan, the one (1) month period commencing on the most recent Interest Rate Change Date and ending on the day prior to the next Interest Rate Change Date.

**“Interest Rate”** means the rate equal to the lesser of (a) the Maximum Rate and (b) the Applicable Rate.

**“Interest Rate Change Date”** means the fifth (5th) day of each month.

“**IRS**” means the United States Internal Revenue Service.

“**ISDA Definitions**” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“**ISP**” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“**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 L/C Issuer and Borrower (or any Subsidiary) or in favor of L/C Issuer and relating to such Letter of Credit.

“**L/C Advance**” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed by Borrower on the date when made or refinanced as a Term Loan Borrowing.

“**L/C Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“**L/C Issuer**” means Susser Bank, in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“**L/C Obligations**” means, as of any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. 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 1.4**. 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.

“**Laws**” means, collectively, all international, foreign, federal, state, provincial and local statutes, treaties, rules, guidelines, 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.

“**Lease (Georgetown)**” means that certain Standard Commercial Lease dated December 2, 2024, between SL6 Georgetown, LP, a Texas limited partnership, and Borrower.

“**Lender**” and “**Lenders**” have the meanings set forth in the introductory paragraph hereto, and shall include L/C Issuer, and their respective successors and assigns permitted hereunder, as the context may require.

“**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 Borrower and Administrative Agent.

**“Letter of Credit”** means any standby letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder.

**“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 L/C Issuer.

**“Letter of Credit Expiration Date”** means the day that is five (5) Business Days prior to the Maturity Date.

**“Letter of Credit Fee”** means the fees and processing charges set forth in **Section 2.2(h)**.

**“Leverage Ratio”** means, as of any date of determination, the ratio of (a) all Funded Debt of Parent and its Subsidiaries, on a consolidated basis in accordance with GAAP, as of such date to (b) EBITDA of Parent and its Subsidiaries, on a consolidated basis in accordance with GAAP, for the most recently ended Test Period.

**“Lien”** means, as to any Property of any Person, (a) any lien, mortgage, security interest, Tax lien, pledge, charge, hypothecation, collateral assignment, preference, priority, or other encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or title retention agreement), whether arising by contract, operation of law, or otherwise, affecting such Property and (b) the signing or filing of a financing statement which names the Person as debtor or the signing of any security agreement or the signing of any document authorizing a secured party to file any financing statement which names such Person as debtor.

**“Loan”** means an extension of credit by a Lender to Borrower under **Article 2** in the form of a Term Loan.

**“Loan Documents”** means this Agreement, each Guaranty, the Security Documents, the Notes, the Issuer Documents, each Fee Letter, and all other promissory notes, security agreements, intercreditor agreements, mortgages, deeds of trust, assignments, letters of credit, guaranties, and other instruments, documents, certificates and agreements executed and delivered pursuant to or in connection with this Agreement or the Security Documents; *provided* that the term “Loan Documents” shall not include any Bank Product Agreement.

**“Loan Party”** means Borrower and each Guarantor.

**“Material Adverse Effect”** means any act, event, condition, or circumstance which could materially and adversely affect (a) the operations, business, Properties, liabilities (actual or contingent), or condition (financial or otherwise) of Borrower or Borrower and its Subsidiaries, taken as a whole; (b) the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; (c) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party; or (d) the rights, remedies and benefits available to, or conferred upon, Administrative Agent or any other Secured Party under any Loan Document.

**“Material Agreement”** means any contract or agreement of any Loan Party or any of its Subsidiaries (a) involving a monetary liability of or payable to any such Person in an aggregate amount in excess of \$3,000,000 in any twelve-month period, (b) governing any Material Debt or pursuant to which any Material Debt was incurred, or (c) the failure to renew, the breach, non-performance, or cancellation of which could reasonably be expected to have a Material Adverse Effect.

**“Material Debt”** means Debt (other than the Loans and Letters of Credit) of any one or more of the Loan Parties and their Subsidiaries in an aggregate principal amount exceeding \$500,000.

**“Maturity Date”** means with respect to the Term Loan Facility (including any Incremental Term Loan Facility, if applicable), the earlier of (a) January 5, 2030, and (b) the date the Obligations become due and payable pursuant to **Section 9.2**; *provided, however*, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next succeeding Business Day.

**“Maximum Rate”** means, at all times, the maximum rate of interest which may be charged, contracted for, taken, received or reserved by Lenders in accordance with applicable Texas Law (or applicable United States federal Law to the extent that such Law permits Lenders to charge, contract for, receive or reserve a greater amount of interest than under Texas Law). The Maximum Rate shall be calculated in a manner that takes into account any and all fees, payments, and other charges in respect of the Loan Documents that constitute interest under applicable Law. Each change in any interest rate provided for herein based upon the Maximum Rate resulting from a change in the Maximum Rate shall take effect without notice to Borrower at the time of such change in the Maximum Rate.

**“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 time that a Defaulting Lender exists, an amount equal to 105% of the Fronting Exposure of L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of **Section 2.6(a)(i), (a)(ii) or (a)(iii)**, an amount equal to 105% of the Outstanding Amount of all L/C Obligations, and (c) otherwise, an amount determined by Administrative Agent and L/C Issuer in their sole discretion.

**“MIRE Event”** means the increase, extension or renewal of any Commitments or Loans (but excluding (x) any continuation or conversion of Borrowings or (y) the making of any Credit Extension) at any time that the Obligations may be secured by one or more Mortgages.

**“Moody’s”** means Moody’s Investors Service, Inc. and any successor thereto that is a nationally-recognized rating agency.

**“Mortgages”** means, collectively, the mortgages or deeds of trust now or hereafter encumbering Borrower’s or any other Loan Party’s fee or leasehold estates in the Property as described therein in favor of Administrative Agent, for the benefit of the Secured Parties as security for the Obligations, in form and substance satisfactory to Administrative Agent.

**“Multiemployer Plan”** means a multiemployer plan defined as such in *Section 3(37)* of ERISA to which contributions are being made or have been made by, or for which there is an obligation to make contributions by or there is any liability, contingent or otherwise, with respect to a Loan Party or any ERISA Affiliate and which is covered by *Title IV* of ERISA.

**“Net Cash Proceeds”** means:

(a) with respect to any Disposition by any Loan Party or any of its Subsidiaries, or any Extraordinary Receipt (other than in respect of a Casualty Event) received or paid to the account of any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents 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 Debt that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Debt under the Loan Documents) and any reserves for adjustment in respect of the price relating to a Disposition, established in accordance with GAAP, (B) the reasonable out-of-pocket expenses incurred by such Loan Party or such Subsidiary in connection with such transaction including legal, accounting, investment banking and other professional fees directly related thereto and (C) Taxes paid or reasonably estimated to be payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith (after taking into account any available tax credits or deductions and any tax sharing arrangement); *provided* that, if (1) reserves established pursuant to **subclause (A)** exceed the actual purchase price adjustment required to be paid in connection with such transactions, or (2) the amount of any estimated Taxes pursuant to **subclause (C)** exceeds the amount of Taxes actually required to be paid in cash in respect of such Disposition, in each case, the aggregate amount of such excess shall constitute Net Cash Proceeds;

(b) with respect to the sale or issuance of any Equity Interests by any Loan Party or any Subsidiary of a Loan Party, or the incurrence or issuance of any Debt other than Debt permitted to be incurred pursuant to **Section 7.1**, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred and paid by the applicable Loan Party or Subsidiary to non-Affiliates in connection therewith; and

(c) with respect to any Casualty Event, an amount equal to: (a) any cash payments or proceeds received by any Loan Party or any of its Subsidiaries (i) under any casualty, business interruption or “key man” insurance policies in respect of any covered loss thereunder, or (ii) as a result of the taking of any assets of any Loan Party or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (b) (i) any actual and reasonable costs incurred by such Loan Party or any of its Subsidiaries in connection with the adjustment or settlement of any claims of such Loan Party or such Subsidiary in respect thereof, and (ii) any bona fide direct costs incurred in connection with any sale of such assets as referred to in **clause (b)(i)** of this definition to the extent paid or payable to non-Affiliates, including income or gains taxes payable by such Loan Party or any

of its Subsidiaries as a result of any gain recognized in connection therewith during the tax period the cash payments or proceeds are received.

**“Net Income”** means, for any Person for any Test Period, the net income (or loss) of such Person and its Subsidiaries on a consolidated basis as determined in accordance with GAAP; *provided* that Net Income shall exclude (a) the net income of any Subsidiary of such Person during such Test Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Constituent Documents or any agreement, instrument or Law applicable to such Subsidiary during such Test Period, except that such Person’s equity in any net loss of any such Subsidiary for such Test Period shall be included in determining Net Income, and (b) any income (or loss) for such Test Period of any other Person if such other Person is not a Subsidiary, except that Borrower’s equity in the net income of any such Person for such Test Period shall be included in Net Income up to the aggregate amount of cash actually distributed by such Person during such Test Period to Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to Borrower as described in clause (a) of this proviso).

**“Non-Consenting Lender”** means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all or all affected Lenders in accordance with the terms of **Section 11.10** and (b) has been approved by the Required Lenders.

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

**“Notes”** means, collectively, the Term Loan Notes, and **“Note”** means any one of the Notes.

**“Notice Period”** has the meaning set forth in **Section 2.11**.

**“Obligations”** means all obligations, indebtedness, and liabilities of Borrower and each other Loan Party to Administrative Agent, L/C Issuer, each Lender and each other Secured Party now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several, arising under or pursuant to this Agreement, any Bank Product Agreements or the other Loan Documents, and all interest accruing thereon (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether a claim for post-filing or post-petition interest is allowed in any bankruptcy, insolvency, reorganization or similar proceeding), and all attorneys’ fees and other expenses incurred in the enforcement or collection thereof as provided in **Section 11.1** and Erroneous Payment Subrogation Rights; *provided* that, as to any Loan Party, the “Obligations” shall exclude any Excluded Swap Obligations of such Loan Party.

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

**“Other Connection Taxes”** means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

**“Other Guaranties”** has the meaning set forth in **Section 12.11**.

**“Other Guarantors”** has the meaning set forth in **Section 12.11**.

**“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 3.6**).

**“Outstanding Amount”** means (a) with respect to the Term Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of the Term Loans, as the case may be, occurring on such date, and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by Borrower of Unreimbursed Amounts.

**“Owned Real Estate Support Documents”** means, with respect to any real Property which is owned by any Loan Party in fee simple, such mortgagee title insurance policies (in amounts and with endorsements acceptable to Administrative Agent), surveys, environmental assessment reports, environmental questionnaires, flood hazard certifications, evidence of flood insurance, if required, and other mortgage-related documents as Administrative Agent may reasonably request, in each case in form and substance reasonably satisfactory to Administrative Agent.

**“Paid in Full”** or **“Payment in Full”** means, (a) the indefeasible payment in full in cash of all outstanding Loans and L/C Obligations, together with accrued and unpaid interest thereon, (b) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to Administrative Agent of a cash deposit, or at the discretion of Administrative Agent a backup standby letter of credit satisfactory to Administrative Agent and L/C Issuer, in an amount equal to 105% of the outstanding L/C Obligations as of the date of such payment), (c) the indefeasible payment in full in cash of the accrued and unpaid fees owing under the Loan Documents, (d) the indefeasible payment in full in cash of all reimbursable expenses and other Obligations (other than contingent obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon, (e) the termination of all Commitments, and (f) the termination of all Bank Product Agreements with all amounts then due and payable thereunder having been paid in full in cash or entering into other arrangements satisfactory to the Secured Parties counterparty thereto.

**“Parent”** has the meaning set forth in the introductory paragraph to this Agreement.

**“Participant”** means any Person (other than (a) a natural Person, (b) a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, (c) a Defaulting Lender, or (d) Borrower or any of Borrower’s Affiliates or Subsidiaries or any other Loan Party) to which a participation is sold by any Lender in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it).

**“Participant Register”** means a register in the United States on which each Lender that sells a participation 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.

**“PATRIOT Act”** means the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act of 2001 (*Title III of Pub. L. 107-56*, signed into law October 26, 2001).

**“Payment Date”** means in respect of each Loan, (a) the fifth (5<sup>th</sup>) day of each and every calendar month during the term of this Agreement commencing on February 5, 2025, (b) upon prepayment of such Loan, and (c) the Maturity Date.

**“Payment Recipient”** has the meaning assigned to it in **Section 10.15(a)**.

**“PBGC”** means the Pension Benefit Guaranty Corporation or any entity succeeding to all or any of its functions under ERISA.

**“Periodic Term SOFR Determination Day”** has the meaning set forth in the definition of “Term SOFR”.

**“Permitted Budget Reallocations”** means any modification to the Budget that reallocates costs or demonstrated cost savings between budgeted items included in the Budget by less than \$25,000.00, in the singular, and by less than \$250,000.00, in the aggregate with all prior reallocations and changes in the Budget, and so long as Borrower notifies Administrative Agent in writing of the reallocation or change as allowed by this definition in the Budget promptly upon making the reallocation or change.

**“Permitted Liens”** means those Liens permitted by **Section 7.2**.



**“Permitted Tax Distributions”** means, with respect to Borrower and any other Subsidiary of Parent, for any taxable period after the Closing Date during which time Borrower or such Subsidiary is a pass-through entity for income Tax purposes, any Restricted Payment to any holder of Borrower’s or such Subsidiary’s stock or other Equity Interests to permit such holders to pay federal income Taxes and all relevant state and local income Taxes at a rate equal to the highest marginal applicable Tax rate for the applicable Tax year, however denominated (together with any interest, penalties, additions to Tax, or additional amounts with respect thereto) imposed as a result of taxable income attributed to such holder as a partner, member or shareholder of Borrower or such Subsidiary under federal, state, and local income Tax Laws, determined on a basis that combines those liabilities arising out of the net effect of the income, gains, deductions, losses, and credits of Borrower or such Subsidiary and attributable to it in proportion and to the extent in which such holders hold stock or other Equity Interests of Borrower or such Subsidiary; *provided, however*, the computation of Tax distributions under this definition shall take into account the carryovers of items of loss, deduction and expense previously allocated by Borrower or such Subsidiary to holders of its Equity Interests, such that the excess, if any, of the aggregate items of losses from the prior taxable year over aggregate items of income from the prior taxable year will be deducted from the current taxable year’s income before applying the appropriate Tax rate.

**“Person”** means any natural person, corporation, limited liability company, trust, association, company, partnership, joint venture, Governmental Authority, or other entity, and shall include such Person’s heirs, administrators, personal representatives, executors, successors and assigns.

**“Plan”** means any employee benefit or other plan, other than a Multiemployer Plan, established or maintained by, or for which there is an obligation to make contributions by or there is any liability, contingent or otherwise with respect to Borrower or any ERISA Affiliate and which is covered by *Title IV* of ERISA or subject to *Section 412* of the Code.

**“Plan Asset Regulations”** means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

**“Platform”** means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

**“Prime Rate”** means the rate of interest published by *The Wall Street Journal*, from time to time, as the “U.S. Prime Rate”.

**“Principal Office”** means the principal office of Administrative Agent, presently located at the address set forth on *Schedule 11.11*.

**“Prohibited Transaction”** means any transaction set forth in *Section 406* of ERISA or *Section 4975* of the Code.

**“Property”** of a Person means any and all property, whether real, personal, tangible, intangible or mixed, of such Person, or any other assets owned, operated or leased by such Person, including Equity Interests and contract rights.

**“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 set forth in *Section 11.11(e)*.

**“Purchase Money Debt”** means Debt, the proceeds of which are used to finance the acquisition, lease, completion of construction, repair of, replacement, improvement to or installation of any Property; provided, however, that such Debt is incurred no later than ninety (90) days after such acquisition, leasing, completion, construction, repairment, replacement, improvement or installation.

**“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)*.

**“QFC Credit Support”** has the meaning set forth in **Section 11.30**.

**“Qualified ECP Guarantor”** means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act or any regulation promulgated thereunder and can cause another Person to qualify as an “eligible contract participant” at such time under **Section 1a(18)(A)(v)(II)** of the Commodity Exchange Act.

**“Recipient”** means Administrative Agent, L/C Issuer, or any Lender, as applicable.

**“Register”** means a register for the recordation of the names and addresses of Lenders, and the Commitments of, and principal amounts of and stated interest on the Loans owing to, each Lender pursuant to the terms hereof from time to time.

**“Related Indebtedness”** means any and all indebtedness paid or payable by Borrower or any other Loan Party to Administrative Agent or any Lender pursuant to any Loan Document other than any Note.

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

**“Release”** means, as to any Person, any release, spill, emission, leaking, pumping, injection, deposit, disposal, disbursement, leaching, or migration of Hazardous Materials into the indoor or outdoor environment or into or out of Property owned by such Person, including, without limitation, the movement of Hazardous Materials through or in the air, soil, surface water, ground water, or Property.

**“Release Date”** means the last to occur of the dates on which Liens securing the Obligations may be released pursuant to **Section 10.9(a)(i)(A)**.

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

**“Remedial Action”** means all actions required to (a) clean up, remove, treat, or otherwise address Hazardous Materials in the indoor or outdoor environment, (b) prevent the Release or threat of Release or minimize the further Release of Hazardous Materials so that they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

**“Reportable Event”** means any of the events set forth in **Section 4043** of ERISA.

**“Required Completion Date”** means July 5, 2025.

**“Required Lenders”** means, at any time, Lenders having Total Credit Exposures representing more than 66 2/3% of the Total Credit Exposures of all Lenders; *provided* that, if one (1) Lender holds more than 66 2/3% but less than 100% of the Total Credit Exposures at such time, subject to the last sentence of **Section 11.10**, the Required Lenders shall be at least two Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining the Required Lenders at any time.

**“Required Reserve”** means an amount of at least \$5,000,000 of unencumbered cash or cash equivalents, free of all liens except liens in favor of Administrative Agent, deposited into the Required Reserve Account.

**“Required Reserve Account”** means a segregated, blocked Deposit Account, that is not an Excluded Deposit Account, in the name of the Borrower established with the Administrative Agent for the purpose of maintaining the Required Reserve, which account shall be an interest-bearing account (which may be a certificate of deposit or other type of Deposit Account) with interest on such account payable to Borrower from time to time as permitted pursuant to the type of account so long as no Default or Event of Default exists before or after giving effect to such interest payment and provided that Borrower maintains the Required Reserve in such Required Reserve Account at all times (except for any Required Reserve funds used to prepay the Term Loan(s) in accordance with this Agreement).

**“Resignation Effective Date”** has the meaning set forth in **Section 10.6(a)**.



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

**“Responsible Officer”** means the chief executive officer, president, chief financial officer, or treasurer of a Loan Party (or the chief executive officer, president, chief financial officer, or treasurer of the general partner or managing member of a Loan Party, as applicable); solely for purposes of the delivery of incumbency certificates pursuant to **Section 4.1**, the secretary or assistant secretary of a Loan Party (or the secretary or any assistant secretary of the general partner or managing member of a Loan Party, as applicable) or any Person designated by a Responsible Officer to act on behalf of a Responsible Officer; *provided* that such designated Person may not designate any other Person to be a Responsible Officer. 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 Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

**“Restricted Payment”** means, collectively, (a) any dividend or other distribution (whether in cash, securities or other Property) with respect to any capital stock or other Equity Interest of Parent, Borrower or any Subsidiary, and (b) 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 capital stock or other Equity Interest or on account of any return of capital to Parent’s, Borrower’s or any Subsidiary’s stockholders, partners or members (or the equivalent Person thereof).

**“RICO”** means the Racketeer Influenced and Corrupt Organization Act of 1970.

**“S&P”** means S&P Global Ratings, a S&P Global Inc. business and any successor thereto that is a nationally-recognized rating agency.

**“Sanctioned Country”** means, at any time, a country, region or territory which is itself (or whose government is) the subject or target of any Sanctions (including, as of the Closing Date, the so-called Donetsk People’s Republic and the so-called Luhansk People’s Republic regions of Ukraine, Cuba, Iran, North Korea, Syria and Crimea).

**“Sanctioned Person”** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including OFAC’s Specially Designated Nationals and Blocked Persons List and OFAC’s Consolidated Non-SDN List), the U.S. Department of State or by the United Nations Security Council, the European Union, any European Union member state or His Majesty’s Treasury of the United Kingdom, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons, in each case, to the extent dealings are prohibited or restricted with such Person under Sanctions or (d) any Person otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

**“Sanctions”** means economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European Union member state or His Majesty’s Treasury of the United Kingdom, or other relevant sanctions authority in which (a) any Loan Party or any of their Subsidiaries or Affiliates is located or conducts business, (b) in which any of the proceeds of the Credit Extensions will be used, or (c) from which repayment of the Obligations will be derived.

**“SEC”** means the U.S. Securities and Exchange Commission, or any successor agency.

**“Secured Parties”** means the collective reference to Administrative Agent, each Lender, L/C Issuer, each Bank Product Provider, and any other Person the Obligations owing to which are, or are purported to be, secured by the Collateral under the terms of the Security Documents.

**“Securities Account”** shall have the meaning set forth in Article 8 of the UCC.

**“Security Documents”** means each and every, security agreement, pledge agreement, mortgage, deed of trust, Mortgage, Account Control Agreement, Assignment of Account or other collateral security agreement required by or delivered to Administrative Agent from time to time that purport to create a Lien in favor of any of the Secured Parties to secure payment or performance of the Obligations or any portion thereof.

“**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, with respect to any Person, as of any date of determination, that the fair value of the assets of such Person (at fair valuation) is, on the date of determination, greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person as of such date, that the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the probable liability of such Person on its debts as such debts become absolute and matured, and that, as of such date, such Person will be able to pay all liabilities of such Person as such liabilities mature and such Person does not have unreasonably small capital with which to carry on its business. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability discounted to present value at rates believed to be reasonable by such Person acting in good faith.

“**Subordinated Debt**” means any Debt of Borrower (other than the Obligations) that has been subordinated to the Obligations under the Loan Documents by written agreement, in form and content satisfactory to Administrative Agent, and which has been approved in writing by Administrative Agent as constituting Subordinated Debt for purposes of this Agreement.

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity 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 any Loan Party.

“**Supported QFC**” has the meaning set forth in **Section 11.30**.

“**Susser Bank**” means Susser Bank and its successors and assigns.

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

“**Tax Return**” means any return (including any information report), report, statement, schedule, notice, form, or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority in connection with the determination, assessment, collection, or payment of any Tax or in connection with the administration, implementation, or enforcement of any Tax.

“**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.

“**Tenant Work**” shall have the meaning set forth for such term in the Lease (Georgetown).

“**Term Loan**” means an Initial Term Loan and/or an Incremental Term Loan, as the context may require.

“**Term Loan Borrowing**” means a borrowing consisting of simultaneous Term Loans made by each of the Term Loan Lenders pursuant to **Section 2.1(b)**.

**“Term Loan Borrowing Request”** means a writing, substantially in the form of *Exhibit C*, properly completed and signed by Borrower, requesting a Term Loan Borrowing.

**“Term Loan Commitment”** means an Initial Term Loan Commitment and/or an Incremental Term Loan Commitment, as the context may require.

**“Term Loan Commitment Termination Date”** means the earliest to occur of (a) the Actual Completion Date of the Improvements, (b) July 5, 2025, and (c) the date on which the Commitments are terminated pursuant to *Section 9.2*.

**“Term Loan Facility”** means the Initial Term Loan Facility and/or an Incremental Term Loan Facility, as the context may require.

**“Term Loan Lender”** means any Lender that has a Term Loan Commitment and/or that holds a Term Loan.

**“Term Loan Note”** means a promissory note of Borrower payable to the order of a Term Loan Lender evidencing the Term Loan made by such Term Loan Lender, in substantially the form of *Exhibit D*.

**“Term SOFR”** means for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period as determined on the fifth (5<sup>th</sup>) day of each calendar month (such day, a **“Periodic Term SOFR Determination 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 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.

**“Term SOFR Adjustment”** means, for any calculation with respect to a Term SOFR Loan, a percentage per annum equal to 0.00% for such Term SOFR Loan.

**“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 Borrowing”** means, as to any Borrowing, the Term SOFR Loans comprising such Borrowing.

**“Term SOFR Loan”** means a Loan bearing interest based on Adjusted Term SOFR.

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

**“Test Period”** means, at any time, the four (4) consecutive fiscal quarters of Borrower then last ended (in each case taken as one (1) accounting period) for which financial statements have been or are required to be delivered pursuant to this Agreement.

**“Total Credit Exposure”** means, as to any Lender at any time, the unused Commitments, and Outstanding Amount of the Term Loans of such Lender at such time.

**“Transactions”** means, collectively, the execution, delivery and performance by the Loan Parties of this Agreement, the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof and the issuance of Letters of Credit hereunder, and the payment of all fees and expenses payable in connection with the foregoing.

**“UCC”** means *Chapters 1 through 11* of the Texas Business and Commerce Code as in effect from time to time or the Uniform Commercial Code of any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

**“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.

**“Unfunded Pension Liability”** means the excess, if any, of (a) the funding target as defined under *Section 430(d)* of the Code without regard to the special at-risk rules of *Section 430(i)* of the Code, over (b) the value of plan assets as defined under *Section 430(g)(3)(A)* of the Code determined as of the last day of each plan year, without regard to the averaging which may be allowed under *Section 430(g)(3)(B)* of the Code and reduced for any prefunding balance or funding standard carryover balance as defined and provided for in *Section 430(f)* of the Code.

**“Unreimbursed Amount”** has the meaning set forth in *Section 2.2(c)(i)*.

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

**“U.S. Government Securities Business Day”** means any day except for (a) a Saturday, (b) a Sunday or (c) 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.

**“U.S. Special Resolution Regimes”** has the meaning set forth in *Section 11.30*.

**“U.S. Tax Compliance Certificate”** has the meaning specified in *Section 3.4(g)(ii)(B)(3)*.

**“Wholly-Owned”** means, with respect to a Subsidiary, that all of the Equity Interests of such Subsidiary are, directly or indirectly, owned or controlled by Parent, Borrower and/or one or more of its Wholly-Owned Subsidiaries (except for directors’ qualifying shares or other shares required by applicable Law to be owned by a Person other than Parent, Borrower and/or one or more of its Wholly-Owned Subsidiaries).

**“Withholding Agent”** means each of the Loan Parties and Administrative Agent.

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

## Section 1.2 Accounting Matters.

(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 from time to time, applied in a manner consistent with that used in preparing the audited financial statements described in *Section 5.2*, except 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, Debt of Parent and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 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 herein, and either Borrower or the Required Lenders shall so request, Administrative Agent, Lenders and Borrower 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) Borrower shall provide to Administrative Agent and 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. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the audited financial statements described in **Section 5.2** for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

**Section 1.3 ERISA Matters.** If, after the date hereof, there shall occur, with respect to ERISA, the adoption of any applicable Law, rule, or regulation, or any change therein, or any change in the interpretation or administration thereof by the PBGC or any other Governmental Authority, then either Borrower or the Required Lenders may request a modification to this Agreement solely to preserve the original intent of this Agreement with respect to the provisions hereof applicable to ERISA, and the parties to this Agreement shall negotiate in good faith to complete such modification.

**Section 1.4 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.

**Section 1.5 Other Definitional Provisions.** All definitions contained in this Agreement are equally applicable to the singular and plural forms of the terms defined. The words “hereof”, “herein”, and “hereunder” and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, 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. Terms used herein that are defined in the UCC, unless otherwise defined herein, shall have the meanings specified in the UCC. Any definition of or reference to any agreement, instrument or other 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). 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. Words denoting gender shall be construed to include the masculine, feminine and neuter, when such construction is appropriate; specific enumeration shall not exclude the general but shall be construed as cumulative; the word “*or*” is not exclusive; the word “*including*” (in its various forms) means “*including, without limitation*”; in the computation of periods of time, the word “*from*” means “*from and including*” and the words “*to*” and “*until*” mean “*to but excluding*”; and all references to money refer to the legal currency of the United States of America.

**Section 1.6 Interpretative Provision.** For purposes of **Section 9.1**, a breach of a Financial Covenant shall be deemed to have occurred as of any date of determination thereof by Borrower, the Required Lenders or as of the last date of any specified measurement period, regardless of when the financial statements or the Compliance Certificate reflecting such breach are delivered to Administrative Agent. Unless otherwise expressly stated, if a Person may not take an action under this Agreement, then it may not take that action indirectly, or take any action assisting or supporting any other Person in taking that action directly or indirectly.

Section 1.7 **Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to central time (daylight or standard, as applicable).

Section 1.8 **Other Loan Documents.** The other Loan Documents, including the Security Documents, contain representations, warranties, covenants, defaults and other provisions that are in addition to and not limited by, or a limitation of, similar provisions of this Agreement. Such provisions in such other Loan Documents may be different or more expansive than similar provisions of this Agreement and neither such differences nor such more expansive provisions shall be construed as a conflict.

Section 1.9 **Divisions.** For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware Law (or any comparable event under a different jurisdiction's Laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.10 **Rates.** The Administrative Agent does not warrant or accept any 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 Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, or Daily Simple SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including the selection of such rate and any related spread or other adjustment or 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 Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, Daily Simple SOFR or any other Benchmark prior to its discontinuance or unavailability or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, Daily Simple SOFR, or any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Loan Parties. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, Daily Simple SOFR or any other Benchmark, or any component definition thereof or rates referred to in the definition thereof, in each case, pursuant to the terms of this Agreement, and shall have no liability to any Loan Party, 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.

Section 1.11 **Rounding.** Any financial ratios required to be maintained by any Loan Party 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).

## ARTICLE 2.

### THE COMMITMENTS AND CREDIT EXTENSIONS

#### Section 2.1 **The Loans.**

(a) **[Reserved.]**

(b) **Term Loan Borrowings.**

(i) Subject to the terms and conditions of this Agreement, each Initial Term Loan Lender severally agrees to make, on the Closing Date until the Term Loan Commitment Termination Date, one or more Initial Term Loans to Borrower in an amount not to exceed the aggregate amount of such Initial Term Loan Lender's Initial Term Loan Commitment. The Initial Term Loan Commitment of each Initial Term Loan Lender shall automatically terminate immediately on the Term Loan Commitment Termination Date.



(ii) Subject to the terms and conditions set forth herein and in the applicable Incremental Term Loan Amendment with respect to the applicable Incremental Term Loan Facility, each Incremental Term Loan Lender under the applicable Incremental Term Loan Facility severally agrees to make an Incremental Term Loan to the Borrower on such applicable Incremental Commitment Effective Date in an aggregate principal amount equal to such Incremental Term Loan Lender's Incremental Term Loan Commitment under such Incremental Term Loan Facility.

(iii) Borrower may not borrow, repay, and reborrow the Term Loans.

(c) **Borrowing Procedure.** Each Borrowing shall be made upon Borrower's irrevocable notice to Administrative Agent, which may be given by telephone and confirmed in writing as set forth herein, following Borrower's satisfaction of the requirements of this **Section 2.1** and **Article 4**, and Administrative Agent's determination of the approved Borrowing amount based upon the Administrative Agent's receipt and review of the items required by **Section 4.2**. Each such notice must be received by Administrative Agent not later than 3:00 p.m. at least (i) two (2) Business Days prior to the requested date of any Borrowing that is not a Construction Borrowing, and (ii) seven (7) Business Days prior to the requested date of any Construction Borrowing (or such shorter period as Administrative Agent and the Lenders may determine in their sole discretion). Each telephonic notice by Borrower pursuant to this **Section 2.1(c)** must be confirmed promptly by delivery to Administrative Agent of a written Borrowing Request, appropriately completed and signed by a Responsible Officer of Borrower. Each Borrowing shall be in a principal amount of at least \$500,000; provided that a Borrowing may be in an amount equal to the remaining Initial Term Loan Availability. Each Borrowing Request (whether telephonic or written) shall specify (i) the requested date of the Borrowing (which shall be a Business Day), and (ii) the requested principal amount of the Borrowing, and shall be accompanied by the applicable items required by **Section 4.2**.

(d) **Funding.** Following receipt of a Borrowing Request and satisfaction of the requirements of **Section 4.2** (and, if such Borrowing is the initial Credit Extension, **Section 4.1**), Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Borrowings. In the case of a Borrowing, each Lender shall make the amount of its Loan available to Administrative Agent in immediately available funds at Administrative Agent's Principal Office not later than 1:00 p.m. on the Business Day specified in the applicable Borrowing Request. Upon satisfaction of the applicable conditions set forth in **Section 4.2** (and, if such Borrowing is the initial Credit Extension, **Section 4.1**), Administrative Agent shall make all funds so received available to Borrower in like funds as received by Administrative Agent either by (i) crediting the Funding Account 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) Administrative Agent by Borrower; *provided, however*, that if, on the date the Borrowing Request with respect to such Borrowing is given by Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, *first*, shall be applied to the payment in full of any such L/C Borrowings, and *second*, shall be made available to Borrower as provided above.

(e) **Retainage.** Administrative Agent reserves the absolute right to retain from the Construction Borrowings an amount equal to 10% of the contract price under the applicable Construction Contract, or the portion being requested in connection with a particular Construction Borrowing. Administrative Agent may also retain any additional funds as Administrative Agent is required to retain by applicable law or which Administrative Agent determines in its reasonable judgment are necessary to satisfy itself that there will be no unpaid claims for labor or materials (including, without limitation, any additional retainage required because of any subcontractor's notice that General Contractor or any other Contractor has not paid any bill when due) in connection with the Improvements. Administrative Agent shall have no duty to Borrower or to anyone else to retain any funds for any period, and all such acts by Administrative Agent shall be solely for its own benefit and satisfaction. If Administrative Agent has held retainage in connection with payment to a particular Contractor, then, after the portion of the Improvements described in the Construction Contract between Borrower and such Contractor is complete, such retainage will be disbursed 41 days after the date that the fully executed Affidavit of Completion with respect to the subject Construction Contract, on a form that substantially complies with Texas Property Code § 53.106, was recorded in the real property records for each county in which the Property is situated, so long as no claim notices for the retainage have been received. Additionally, if Administrative Agent has held retainage in connection with payment to a particular Contractor, such retainage shall not be disbursed, notwithstanding compliance with any other requirement set forth in this paragraph, unless the statutory limitations period for contractor and subcontractor claims under such Construction Contract has passed, as determined by Administrative Agent in its sole discretion.

## Section 2.2 Letters of Credit.

### (a) Discretionary Issuance of Letters of Credit.

(i) Subject to the terms and conditions set forth herein, L/C Issuer may, in its sole discretion, in reliance upon the agreements set forth in this Agreement, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, issue Letters of Credit for the account of Borrower, and to amend or extend Letters of Credit previously issued by it, in accordance with **subsection (b)** below, and (2) honor drawings under the Letters of Credit. Each request by Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by Borrower that the L/C 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, Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly Borrower may, during the period from the Closing Date until the Letter of Credit Expiration Date, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) L/C Issuer shall not be under any obligation to issue, amend or extend any Letter of Credit.

(iii) L/C Issuer shall have all of the benefits and immunities (A) provided to Administrative Agent in **Article 10** with respect to any acts taken or omissions suffered by L/C 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 10** included L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to L/C Issuer.

### (b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit may be issued or amended, as the case may be, upon the request of Borrower delivered to L/C Issuer (with a copy to Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by L/C Issuer, by personal delivery or by any other means acceptable to L/C Issuer. Such Letter of Credit Application must be received by L/C Issuer and Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as Administrative Agent and L/C Issuer may agree in a particular instance in their 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 L/C 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 thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as L/C 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 L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as L/C Issuer may require. Additionally, Borrower shall furnish to L/C Issuer and Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as L/C Issuer or Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, L/C Issuer will confirm with Administrative Agent (by telephone or in writing) and Borrower whether L/C Issuer agrees to issue or amend such Letter of Credit as requested in the Letter of Credit Application. Subject to the terms and conditions hereof, L/C Issuer may, in its sole discretion, on the requested date, issue a Letter of Credit for the account of Borrower or enter into the applicable



amendment, as the case may be, in each case in accordance with L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) If Borrower so requests in any applicable Letter of Credit Application, L/C Issuer may, in its sole discretion, agree to issue an Auto-Extension Letter of Credit; *provided* that any such Auto-Extension Letter of Credit must permit L/C Issuer to prevent any such extension at least once in each 12-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 12-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by L/C Issuer, Borrower shall not be required to make a specific request to L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) L/C 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 L/C Issuer shall not permit any such extension (and the terms of the Auto-Extension Letter of Credit may permit L/C Issuer to refuse to extend such Letter of Credit) if (A) L/C 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 of **clause (ii) of Section 2.2(a)** or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (1) from Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from Administrative Agent, any Lender or Borrower that one or more of the applicable conditions specified in **Section 4.2** is not then satisfied, and in each such case directing L/C 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, L/C Issuer will also deliver to Borrower and 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 under such Letter of Credit, L/C Issuer shall notify Borrower and Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by L/C Issuer under a Letter of Credit (each such date, an "**Honor Date**"), Borrower shall reimburse L/C Issuer in an amount equal to the amount of such drawing. If Borrower fails to so reimburse L/C Issuer by such time, Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "**Unreimbursed Amount**"), and the amount of such Lender's Applicable Percentage thereof. In such event, Borrower shall be deemed to have requested a Borrowing to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, subject to availability of such amount of the Term Loan Facility and the conditions set forth in **Section 4.2** (other than the delivery of a Borrowing Request). Any notice given by L/C Issuer or Administrative Agent pursuant to this **Section 2.2(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 Lender shall upon any notice pursuant to **Section 2.2(c)(i)** make funds available (and Administrative Agent may apply Cash Collateral provided for this purpose) for the account of L/C Issuer at Administrative Agent's Principal Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by Administrative Agent, whereupon, subject to the provisions of **Section 2.2(c)(iii)**, each Lender that so makes funds available shall be deemed to have made a Loan (or, if the conditions set forth in **Section 4.2** are not satisfied, an L/C Borrowing as further described in **clause (iii)** below) to Borrower in such amount. Administrative Agent shall remit the funds so received to L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing because the conditions set forth in **Section 4.2** cannot be satisfied or for any other reason, Borrower shall be deemed to have incurred from L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Interest Rate. In such event, each Lender's payment to Administrative Agent for the account of L/C Issuer pursuant to **Section 2.2(c)(ii)** shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this **Section 2.2**.

(iv) Until each Lender funds its Loan or L/C Advance pursuant to this **Section 2.2(c)** to reimburse L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of L/C Issuer.

(v) Each Lender's obligation to make Loans or L/C Advances to reimburse L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this **Section 2.2(c)**, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against L/C Issuer, 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; *provided, however*, that each Lender's obligation to make Loans (but not its obligation to fund its Applicable Percentage of L/C Advances) pursuant to this **Section 2.2(c)** is subject to the conditions set forth in **Section 4.2** (other than delivery by Borrower of a Borrowing Request). No such making of an L/C Advance shall relieve or otherwise impair the obligation of Borrower to reimburse L/C Issuer for the amount of any payment made by L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to Administrative Agent for the account of L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this **Section 2.2(c)** by the time specified in **Section 2.2(c)(ii)**, then, without limiting the other provisions of this Agreement, L/C Issuer shall be entitled to recover from such Lender (acting through 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 L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of L/C Issuer submitted to any Lender (through Administrative Agent) with respect to any amounts owing under this **clause (vi)** shall be conclusive absent manifest error.

#### **(d) Repayment of Participations.**

(i) At any time after L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with **Section 2.2(c)**, if Administrative Agent receives for the account of L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrower or otherwise, including proceeds of Cash Collateral applied thereto by Administrative Agent), Administrative Agent will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by Administrative Agent.

(ii) If any payment received by Administrative Agent for the account of L/C Issuer pursuant to **Section 2.2(c)(i)** is required to be returned under any of the circumstances described in **Section 11.24** (including pursuant to any settlement entered into by L/C Issuer in its discretion), each Lender shall pay to Administrative Agent for the account of L/C Issuer its Applicable Percentage thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of Lenders under this **clause (ii)** shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Obligations Absolute.** The obligation of Borrower to reimburse L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be 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 Loan Document;
  - (ii) the existence of any claim, counterclaim, setoff, defense or other right that 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), L/C 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 presented under 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) waiver by L/C Issuer of any requirement that exists for L/C Issuer's protection and not the protection of Borrower or any waiver by L/C Issuer which does not in fact materially prejudice Borrower;
  - (v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;
  - (vi) any payment made by L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC or the ISP, as applicable;
  - (vii) any payment by L/C 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 L/C 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
  - (viii) 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, Borrower or any Subsidiary.

Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify L/C Issuer. Borrower shall be conclusively deemed to have waived any such claim against L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) **Role of L/C Issuer.** Each Lender and Borrower agree that, in paying any drawing under a Letter of Credit, L/C 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 L/C Issuer, Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of L/C 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 Required Lenders; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct on the part of such Person as found in a final and non-appealable

decision of a court of competent jurisdiction; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Borrower hereby assumes all risks of, and none of L/C Issuer, Administrative Agent, or any Lender or any of their respective Related Parties shall have any liability for, the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of L/C Issuer, Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of L/C Issuer shall be liable or responsible for any of the matters described in **clauses (i) through (viii) of Section 2.2(e)**; *provided, however*, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against L/C Issuer, and L/C Issuer may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were directly caused by L/C Issuer's willful misconduct or gross negligence or L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit as found in a final and non-appealable decision of a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, L/C 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 L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to 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. L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

**(g) Applicability of ISP; Limitation of Liability.** Unless otherwise expressly agreed by L/C Issuer and Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, L/C Issuer shall not be responsible to Borrower for, and L/C Issuer's rights and remedies against Borrower shall not be impaired by, any action or inaction of L/C Issuer required or permitted under any Law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where L/C Issuer or the beneficiary is located, the practice stated in the ISP or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit or other Issuer Document chooses such Law or practice.

**(h) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer.** Borrower shall pay directly to L/C Issuer for its own account a fronting fee with respect to each standby Letter of Credit, at the rate per annum separately agreed between Borrower and L/C Issuer, computed on the daily amount available to be drawn under such Letter of Credit and payable on a quarterly basis in arrears. Such fronting fee shall be due and payable on the first Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. 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 1.4**. In addition, Borrower shall pay directly to L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of L/C Issuer relating to letters of credit 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.

### Section 2.3 Fees.

Borrower agrees to pay to Administrative Agent, for the account of Administrative Agent and each Lender, as applicable, fees, in the amounts and on the dates set forth in the Fee Letter.

In addition, Borrower will pay to each Lender, on demand, a processing fee in the amount of \$30.00 for each check or electronic item which is provided to such Lender by Borrower in payment for an obligation owing to such Lender under any Loan Document, but returned or dishonored for any reason.

## Section 2.4 Payments Generally; Administrative Agent's Clawback.

(a) **General.** All payments of principal, interest, and other amounts to be made by Borrower under this Agreement and the other Loan Documents shall be made to Administrative Agent for the account of Administrative Agent or L/C Issuer or the pro rata accounts of the applicable Lenders, as applicable, at the Principal Office in Dollars and immediately available funds, without setoff, deduction, or counterclaim, and free and clear of all Taxes at the time and in the manner provided herein. Payments by check or draft shall not constitute payment in immediately available funds until the required amount is actually received by Administrative Agent in full. Payments in immediately available funds received by Administrative Agent in the place designated for payment on a Business Day prior to 11:00 a.m. at such place of payment shall be credited prior to the close of business on the Business Day received, while payments received by Administrative Agent on a day other than a Business Day or after 11:00 a.m. on a Business Day shall not be credited until the next succeeding Business Day. If any payment of principal or interest required under the Loan Documents shall become due and payable on a day other than a Business Day, then such payment shall be made on the next succeeding Business Day. Any such extension of time for payment shall be included in computing interest which has accrued and shall be payable in connection with such payment. Administrative Agent is hereby authorized upon notice to Borrower to charge the account of Borrower maintained with Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder.

(b) **Funding by Lenders; Presumption by Administrative Agent.** Unless Administrative Agent shall have received notice from a Lender that such Lender will not make available to Administrative Agent such Lender's share of a Borrowing, Administrative Agent may assume that such Lender has made such share available on such date in accordance with this Agreement and may, in reliance upon such assumption, make available to Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to Administrative Agent, then the applicable Lender and Borrower severally agree to pay to Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by Borrower, the interest rate applicable to the applicable Borrowing. If Borrower and such Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Borrowing to Administrative Agent, then the amount so paid shall constitute such Lender's Loan. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent.

(c) **Payments by Borrower; Presumption by Administrative Agent.** Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of L/C Issuer or the applicable Lenders hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to L/C Issuer or the applicable Lenders the amount due. In such event, if Borrower has not in fact made such payment, then each of L/C Issuer and the applicable Lenders, as applicable, severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to L/C Issuer or such Lender, 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 Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

## Section 2.5 Evidence of Debt.

(a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by Administrative Agent in the ordinary course of business; *provided* that such Lender or Administrative Agent may, in addition, request that such Loans be evidenced by the Notes. The Credit Extensions made by L/C Issuer shall be evidenced by one or more accounts or records maintained by L/C Issuer and by Administrative Agent in the ordinary course of business. The accounts or records maintained by Administrative Agent, L/C Issuer, and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made to Borrower 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 Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by L/C Issuer



or any Lender and the accounts and records of Administrative Agent in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error.

## Section 2.6 Cash Collateral.

(a) **Certain Credit Support Events.** If (i) L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) Borrower shall be required to provide Cash Collateral pursuant to **Section 9.2**, or (iv) there shall exist a Lender that is a Defaulting Lender, Borrower shall immediately (in the case of **clause (iii)** above) or within one (1) Business Day (in all other cases) following any request by Administrative Agent or L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to **clause (iv)** above, after giving effect to **Section 11.22(a)(iv)** and any Cash Collateral provided by the Defaulting Lender).

(b) **Grant of Security Interest.** Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) Administrative Agent, for the benefit of Administrative Agent, L/C Issuer and Lenders, and agrees to maintain, a first priority security interest (except for Permitted Liens) in all such Cash Collateral and each Deposit Account in which such Cash Collateral is deposited, and all other Property so provided as Collateral pursuant hereto, and in all proceeds of the foregoing (including all interest accruing thereon, if any), all as security for the obligations to which such Cash Collateral may be applied pursuant to **Section 2.6(c)**. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent or L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to 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 Susser Bank. Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) **Application.** Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this **Section 2.6** or **Sections 2.2, 9.2** or **11.22** in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (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 otherwise 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 Lender (or, as appropriate, its assignee following compliance with **Section 11.8(b)(vii)**) or (ii) the determination by Administrative Agent and L/C Issuer that there exists excess Cash Collateral; *provided, however*, (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (y) the Person providing Cash Collateral and L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

## Section 2.7 Interest; Payment Terms.

(a) [Reserved]

(b) **Term Loan – Payment of Principal and Interest.**



(i) The unpaid principal amount of the Term Loans shall, subject to the following sentence and **Section 2.7(f)**, bear interest at the applicable Interest Rate. If at any time such rate of interest shall exceed the Maximum Rate but for the provisions thereof limiting interest to the Maximum Rate, then any subsequent reduction shall not reduce the rate of interest on the Term Loans below the Maximum Rate until the aggregate amount of interest accrued on the Term Loans equals the aggregate amount of interest which would have accrued on the Term Loans if the interest rate had not been limited by the Maximum Rate. All accrued but unpaid interest on the principal balance of the Term Loans shall be payable by Borrower on each Payment Date and on the Maturity Date for the Term Loan Facility, *provided* that interest accruing at the Default Interest Rate pursuant to **Section 2.7(f)** shall be payable on demand. In addition, the principal balance of the Outstanding Amount of the Term Loans shall be due and payable in equal monthly installments, each in an amount sufficient to fully amortize the Term Loans over the remaining term with the final such payment occurring on the Maturity Date based on a mortgage-style amortization and an interest rate equal to the Applicable Rate, commencing on the first Payment Date after the Term Loan Commitment Termination Date and continuing each month thereafter until the Maturity Date. Upon each change in the Applicable Rate and upon any permitted re-amortization requested after a prepayment made in accordance with **Section 2.8(b)**, Administrative Agent will determine the amount of the monthly installment which would be sufficient to continue to fully amortize the then Outstanding Amount of the Term Loans over the remaining term until the Maturity Date in substantially equal payments. The result of this calculation will be Borrower's new monthly payment until the next change in the Applicable Rate. Administrative Agent will provide Borrower with written notice of any change in the Applicable Rate and monthly payments.

(c) **Computation Period.** Interest on the Loans and all other amounts payable by Borrower hereunder on a per annum basis shall be computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) unless such calculation would result in a usurious rate or to the extent such Loan bears interest based upon the Base Rate, in which case interest shall be calculated on the basis of a 365-day year or 366-day year, as the case may be. In computing the number of days during which interest accrues, the day on which funds are initially advanced shall be included regardless of the time of day such advance is made, and the day on which funds are repaid shall be included unless repayment is credited prior to the close of business on the Business Day received. Each determination by Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(d) **Unconditional Payment.** Borrower is and shall be obligated to pay all principal, interest and any and all other amounts which become payable under any of the Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction whatsoever and without any reduction for counterclaim or setoff whatsoever. If at any time any payment received by Administrative Agent hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any Debtor Relief Law, then the obligation to make such payment shall survive any cancellation or satisfaction of the Obligations under the Loan Documents and shall not be discharged or satisfied with any prior payment thereof or cancellation of such Obligations, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand.

(e) **Partial or Incomplete Payments.** Subject to **Section 9.3**, if at any time insufficient funds are received by and available to Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest, fees and other amounts then due hereunder, such funds shall be applied (i) first, to pay interest, fees and other amounts then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest, fees and other amounts then due to such parties, and (ii) second, to pay principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal or L/C Borrowings, as applicable, then due to such parties. Remittances in payment of any part of the Obligations under the Loan Documents other than in the required amount in immediately available funds at the place where such Obligations are payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Administrative Agent in full in accordance herewith and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Administrative Agent of any payment in an amount less than the full amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

(f) **Default Interest Rate.** For so long as any Event of Default exists, regardless of whether or not there has been an acceleration of the Loans, and at all times after the maturity of the Loans (whether by acceleration or otherwise), and in addition to all other rights and remedies of Administrative Agent or Lenders hereunder, interest shall accrue on the Outstanding Amount of the Loans at the Default Interest Rate, and, in each case, such accrued interest shall be immediately due and payable. All such interest shall continue to accrue on the Obligations after the filing by or against the Borrower of any petition seeking any relief in bankruptcy or under any Debtor Relief Law. Borrower acknowledges that it would be extremely difficult or impracticable to determine Administrative Agent's or Lenders' actual damages resulting from any late payment or Event of Default, and such accrued interest are reasonable estimates of those damages and do not constitute a penalty.

(g) **Term SOFR Conforming Changes.** In connection with the use or administration of Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

## Section 2.8 Voluntary Termination or Reduction of Commitments; Prepayments.

(a) **Voluntary Termination or Reduction of Commitments.** Borrower may, upon written notice to Administrative Agent, terminate the Commitments, or from time to time permanently reduce the Commitments; *provided* that (i) any such notice shall be received by Administrative Agent not later than 11:00 a.m. three (3) Business Days prior to the date of termination or reduction, and (ii) any such partial reduction shall be in an aggregate amount of \$500,000 or any whole multiple of \$100,000 in excess thereof. Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Commitments. Any reduction of the Commitments shall be applied to the Commitment of each Lender according to its Applicable Percentage.

(b) **Voluntary Prepayments.** Subject to the conditions set forth below, Borrower shall have the right, at any time and from time to time upon at least three (3) Business Days' prior written notice to Administrative Agent, to prepay the principal of the Term Loans in full or in part without premium or penalty.

Beginning upon the later of one hundred eighty (180) days following Completion (or such shorter time frame as Administrative Agent and the Lenders may agree in their sole discretion) and Borrower's satisfaction of all of the requirements in **Section 6.16**, so long as no Default or Event of Default has occurred and is continuing, Borrower shall have the option, at any time and from time to time upon at least ten (10) Business Days' prior written notice to Administrative Agent, to use all or a portion of the funds in the Required Reserve Account to prepay the principal of the Term Loans in full or in part without premium or penalty.

All prepayments of Term Loans under this **Section 2.8(b)** shall be applied to the remaining scheduled amortization payments of the Term Loans in inverse order of maturity, unless Borrower, at its option, requests in writing in the applicable prepayment notice that the Term Loans be re-amortized in accordance with **Section 2.7(b)** using the lower resulting principal balance.

(c) [Reserved]

(d) **Mandatory Prepayment of Term Loans.**

(i) If any Loan Party or any of its Subsidiaries Disposes of any Property (other than any Disposition permitted by **Section 7.8(a) through (k)**) which results in the realization by such Person of Net Cash Proceeds, Borrower shall prepay an aggregate principal amount of Term Loans equal to 100% of such Net Cash Proceeds within one (1) Business Day of receipt thereof by such Person (such prepayments to be applied as set forth in **clause (vi) below**); *provided, however*, that with respect to any Net Cash Proceeds realized under a Disposition described in this **Section 2.8(d)(i)**, at the election of Borrower (as notified by Borrower to Administrative Agent on or prior to the date of such Disposition), and so long as no Event of 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 so long as within 60 days after the receipt of such Net Cash Proceeds, such reinvestment shall have been consummated (as certified by Borrower in writing to Administrative Agent); and *provided further, however*, that (A) any Net Cash Proceeds not so reinvested within such 60 day period shall be immediately applied to the prepayment of the Term Loans as set forth in this **Section 2.8(d)(i)**, and (B) if an Event of Default has occurred and is continuing at any time that any Loan Party or any of its Subsidiaries receives or is holding any Net Cash Proceeds which have not yet been reinvested, such Net Cash Proceeds shall be immediately applied to the prepayment of the Term Loans as set forth in this **Section 2.8(d)(i)**.

(ii) [Reserved].

(iii) Concurrently with the issuance by any Loan Party of any of its stock or other Equity Interests (other than issuances of Equity Interests by Parent, issuance of Equity Interests to another Loan Party, and issuances of stock or Equity Interests to directors, officers or employees in connection with their past, present or future service to Parent or any Subsidiary), Borrower shall prepay the Term Loans in the amount equal to one hundred percent (100%) of the Net Cash Proceeds thereof, which prepayment shall be applied as set forth in **clause (vi)** below.

(iv) Concurrently with the incurrence or issuance by any Loan Party of any Debt (other than Debt permitted to be incurred or issued pursuant to **Section 7.1**), Borrower shall prepay the Term Loans in an amount equal to one hundred percent (100%) of the Net Cash Proceeds thereof, which prepayment shall be applied as set forth in **clause (vi)** below.

(v) Upon any Extraordinary Receipt in excess of \$100,000 in the aggregate received by or paid to or for the account of any Loan Party or any of its Subsidiaries, and not otherwise included in **clause (i)** of this **Section 2.8(d)** (but excluding any insurance proceeds received by a Loan Party or any of its Subsidiaries for loss of property not constituting Collateral where such property is owned by a third-party consignor and such insurance proceeds have been or will be paid out to such third-party consignor by such Loan Party), Borrower shall prepay an aggregate principal amount of Term Loans equal to 100% of all Net Cash Proceeds received therefrom within one (1) Business Day of receipt thereof by such Loan Party or such Subsidiary (such prepayments to be applied as set forth in **clause (vi)** below); *provided, however*, that with respect to any proceeds of insurance, condemnation awards (or payments in lieu thereof) or indemnity payments, at the election of Borrower (as notified by Borrower to Administrative Agent on or prior to the date of receipt of such insurance proceeds, condemnation awards or indemnity payments), and so long as no Event of Default shall have occurred and be continuing, such Loan Party or such Subsidiary may apply within 60 days after the receipt of such cash proceeds to replace or repair the equipment, fixed assets or real Property in respect of which such cash proceeds were received; and *provided further, however*, that (A) any cash proceeds not so applied within such 60 day period shall be immediately applied to the prepayment of the Term Loans as set forth in this **Section 2.8(d)(v)**, and (B) if an Event of Default has occurred and is continuing at any time that any Loan Party or any of its Subsidiaries receives or is holding any Net Cash Proceeds which have not yet been applied to replace or repair the equipment, fixed assets or real Property in respect of which such cash proceeds were received, such cash proceeds shall be immediately applied to the prepayment of the Term Loans as set forth in this **Section 2.8(d)(v)**.

(vi) Upon the occurrence of any event triggering the prepayment requirement under clauses (i) through (v) above, the Borrower shall deliver written notice thereof to the Administrative Agent and upon receipt of such notice, the Administrative Agent shall promptly so notify the Lenders. Each prepayment of the Loans under this **Section 2.8(d)** shall be applied ratably between the Initial Term Loans and any Incremental Term Loans to the remaining scheduled amortization payments of the Term Loans in inverse order of maturity.

(e) **Payment of Interest.** If there is a prepayment of all or any portion of the principal of the Term Loans on or before the Maturity Date for such Loans, whether voluntary or mandatory or because of acceleration or otherwise, such prepayment shall also include any and all accrued but unpaid interest on the amount of principal being so prepaid through and including the date of prepayment, plus any other sums which have become due to Lenders under the other Loan Documents on or before the date of prepayment, but which have not been fully paid.

Section 2.9 [Reserved].

Section 2.10 **Incremental Term Loans.**

(a) **Request for an Incremental Term Loan Facility.** The Borrower may, by notice to the Administrative Agent (who shall promptly notify the applicable Lenders), request the establishment of one or more new term loan commitments (each, an “**Incremental Term Loan Commitment**”) pursuant to an Incremental Term Loan Facility, for an aggregate amount (for all such requests under this **Section 2.10**) not exceeding \$5,000,000.00; provided that (A) any such request for an Incremental Term Loan Facility shall be in a minimum amount of \$1,000,000 and (B) the Borrower shall make no more than a total of two (2) requests in the aggregate for an Incremental Term Loan Facility under this Section.

(b) **Incremental Term Loan Lenders.** An Incremental Term Loan Commitment may be provided by any existing Lender or other Person that is an Eligible Assignee (each such existing Lender or other Person that agrees to provide an Incremental Term Loan Commitment, an “**Incremental Term Loan Lender**”); provided that each Incremental Term Loan Lender shall be subject to the consent (not to be unreasonably withheld or delayed) of the Administrative Agent. Notwithstanding anything herein to the contrary, no Lender shall have any obligation to agree to provide an Incremental Term Loan Commitment pursuant to this Section and any election to do so shall be in the sole discretion of such Lender.

(c) Effectiveness of Incremental Term Loan Commitments.

(i) The Administrative Agent and the Borrower shall determine the effective date for an Incremental Term Loan Facility pursuant to this Section (an “**Incremental Commitment Effective Date**”) and, if applicable, the final allocation of such Incremental Term Loan Commitments among the Persons providing such Incremental Term Loan Facility; provided that such date shall be a Business Day at least ten Business Days after delivery of the request for such Incremental Term Loan Facility (unless otherwise approved by the Administrative Agent) and at least 30 days prior to the Term Loan Commitment Termination Date. The Administrative Agent shall promptly notify the Lenders of the details of the final allocation of such Incremental Term Loan Facility and the applicable Incremental Commitment Effective Date.

(ii) Effective as of the applicable Incremental Commitment Effective Date, subject to the terms and conditions set forth in this Section, each Incremental Term Loan Commitment shall be a Term Loan Commitment (and a separate facility hereunder) and **Schedule 2.1** shall be updated accordingly to reflect such Incremental Term Loan Commitment, each Incremental Term Loan Lender providing such Incremental Term Loan Commitment shall be, and have all the rights of, a Lender and a Term Loan Lender, and the Credit Extensions made by it in respect of such Incremental Term Loan Commitment shall be Term Loans and Loans for all purposes of this Agreement.

(d) **Terms of Incremental Term Loan Commitments.** The terms of any Incremental Term Loan Commitments and Incremental Term Loans (which shall be set forth in the relevant Incremental Term Loan Amendment) shall be the same as for the Initial Term Loans, specifically:

(i) the maturity of any such Incremental Term Loans shall the Maturity Date;

(ii) any payments of each Incremental Term Loan shall be made on same basis with all then existing Term Loans; and

(iii) all other terms and conditions applicable to any Incremental Term Loans shall be consistent with the terms and conditions applicable to the Initial Term Loans.

(e) **Conditions to Effectiveness of Increase.** As a condition precedent to the establishment of an Incremental Term Loan Facility in accordance with this Section, Borrower shall deliver to Administrative Agent (i) a certificate of each Loan Party dated as of the Incremental Commitment Effective Date signed by a Responsible Officer of such Loan Party, in each case in form and substance satisfactory to Administrative Agent, (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such Incremental Term Loan Facility, and (B) in the case of Borrower, certifying that, before and after giving pro forma effect to such Incremental Term Loan Facility and the making of Incremental Term Loans thereunder, (1) the representations and warranties contained in *Article 5* and the other Loan Documents are true and correct on and as of the Incremental Commitment 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 2.10*, the representations and warranties contained in *Section 4.2* shall be deemed to refer to the most recent statements furnished pursuant to *subsections (a) and (b)*, respectively, of *Section 6.1*, and (2) no Default exists, (ii) evidence that all fees required to be paid to Administrative Agent and the Lender with respect to such Incremental Term Loan Facility have been paid, and (iii) such other certificates and legal opinions as may be reasonably requested by the Administrative Agent or any Incremental Term Loan Lender in connection with such Incremental Term Loan Facility.

(f) **Incremental Term Loan Amendments.** Each establishment of Incremental Term Loan Commitments pursuant to this *Section 2.10* shall be effected pursuant to an amendment (an “**Incremental Term Loan Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Loan Parties, the Administrative Agent and the applicable Incremental Term Loan Lenders, which Incremental Term Loan Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this *Section 2.10*.

(g) **Conflicting Provisions.** This Section shall supersede any provisions in *Section 11.10* or *11.23* to the contrary.

**Section 2.11 MIRE Event.** Notwithstanding anything to the contrary herein, if the Obligations are secured by any real Property located in a “special flood hazard area”, no MIRE Event may be closed until the date that is thirty (30) days (in each case, the “**Notice Period**”), after Administrative Agent has delivered to the Lenders the following documents in respect of such real Property: (i) a completed flood hazard determination from a third-party vendor; (ii) if such real Property is located in a “special flood hazard area”, (A) a notification to the applicable Loan Parties of that fact and (if applicable) notification to the applicable Loan Parties that flood insurance coverage is not available and (B) evidence of the receipt by the applicable Loan Parties of such notice; and (iii) if required by applicable Flood Insurance Regulations, evidence of required flood insurance; *provided* that any such MIRE Event may be closed prior to the Notice Period if Administrative Agent shall have received confirmation from each Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction.

## ARTICLE 3.

### TAXES, YIELD PROTECTION AND INDEMNITY

#### Section 3.1 Increased Costs.

(a) **Increased Costs Generally.** If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender or L/C Issuer (except any reserve requirement reflected in Term SOFR);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in *clauses (b)* through *(d)* of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or L/C Issuer any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation in any such Loan or Letter of Credit;



and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, L/C Issuer or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit) or to reduce the amount of any sum received or receivable by such Lender, L/C Issuer or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, L/C Issuer or other Recipient, Borrower will pay to such Lender, L/C Issuer or other Recipient, as the case may be, without duplication of any indemnity paid pursuant to **Section 3.4(d)**, such additional amount or amounts as will compensate such Lender, L/C Issuer or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) **Capital or Liquidity Requirements.** If any Lender or L/C Issuer determines that any Change in Law affecting such Lender or L/C Issuer or any Lending Office of such Lender or such Lender's or L/C 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 L/C Issuer's capital or on the capital of such Lender's or L/C Issuer's holding company, if any, as a consequence of this Agreement, the 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 L/C Issuer, to a level below that which such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or L/C Issuer's policies and the policies of such Lender's or L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time Borrower will pay to such Lender or L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender or L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or L/C Issuer or its holding company, as the case may be, as specified in **Sections 3.1(a)** or **(b)** and delivered to Borrower, shall be conclusive absent manifest error. Borrower shall pay such Lender or L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender or L/C Issuer to demand compensation pursuant to this **Section 3.1** shall not constitute a waiver of such Lender's or L/C Issuer's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender or L/C Issuer pursuant to this **Section 3.1** for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or L/C Issuer, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or L/C 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 (9)-month period referred to above shall be extended to include the period of retroactive effect thereof).

**Section 3.2 Illegality.** If any Lender determines that any Law or regulation has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its 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 rates based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, then, on notice thereof by such Lender to Borrower through Administrative Agent, (a) any obligation of such Lender to make or continue Term SOFR Loans shall be suspended, in each case until such Lender notifies Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, Borrower shall, if necessary to avoid such illegality, upon demand from such Lender (with a copy to Administrative Agent), prepay or, if applicable, convert all Term SOFR Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Loans. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted.

### Section 3.3 Changed Circumstances; Benchmark Replacement.

(a) **Changed Circumstances.** Subject to *clause (b)* below, if prior to the commencement of any Interest Period for any Benchmark Rate Borrowing,



(i) Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) in connection with any request for a Benchmark Rate Loan or otherwise, that for any reason adequate and reasonable means do not exist for determining the applicable Benchmark for any proposed Benchmark Rate Loan or in connection with an existing or proposed Borrowing (provided that no Benchmark Transition Event shall have occurred at such time); or

(ii) Administrative Agent is advised by the Required Lenders that the applicable Benchmark for any requested Interest Period with respect to a proposed Benchmark Rate Loan will not adequately and fairly reflect the cost to such Lenders of funding or maintaining their Benchmark Rate Loans included in such Borrowing for such Interest Period,

then Administrative Agent will promptly so notify Borrower and each Lender. Thereafter, (x) the obligation of Lenders to make or maintain Benchmark Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Benchmark Rate component of the Base Rate, the utilization of the Benchmark Rate component in determining the Base Rate shall be suspended, in each case until Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of Benchmark Rate Borrowings or, failing that, will be deemed to have converted such request into a request for a Base Rate Borrowing in the amount specified therein.

**(b) Benchmark Replacement Setting.**

(i) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (A) if a Benchmark Replacement is determined in accordance with **clause (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. 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 Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(ii) **Benchmark Replacement Conforming Changes.** In connection with the use, administration, adoption or implementation of a Benchmark Replacement, 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) **Notices; Standards for Decisions and Determinations.** Administrative Agent will promptly notify Borrower and the Lenders of (A) the implementation of any Benchmark Replacement, (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement, (C) the removal or reinstatement of any tenor of a Benchmark pursuant to **clause (iv)** below and (D) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this **Section 3.3(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 3.3(b)**.

(iv) **Unavailability of Tenor of Benchmark.** Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (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 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 Administrative Agent may modify the definition of “Interest Period” 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 (i) 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 Administrative Agent may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) **Benchmark Unavailability Period.** Upon Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, Borrower may revoke any pending request for a Benchmark Rate Borrowing and, failing that, Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans.

#### Section 3.4 Taxes.

(a) **Defined Terms.** For purposes of this Section, the term “applicable Law” includes FATCA.

(b) **Payment Free of Taxes.** Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 3.4**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) **Payment of Other Taxes by the Loan Parties.** The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) **Indemnification by the Loan Parties.** The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 3.4**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, provided such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) **Indemnification by Lenders.** Each Lender shall severally indemnify Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of **Section 11.8** relating to the

maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Administrative Agent to such Lender from any other source against any amount due to Administrative Agent under this **Section 3.4(e)**.

(f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this **Section 3.4**, such Loan Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(g) **Status of Lenders.**

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two (2) sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 3.4(g)(ii)(A)**, **(ii)(B)** and **(ii)(D)** below) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income Tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN (or IRS Form W-8BEN-E, if applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such Tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN (or IRS Form W-8BEN-E, if applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such Tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit E-1** to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A)

of the Code, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “*controlled foreign corporation*” described in Section 881(c)(3)(C) of the Code (a “**U.S. Tax Compliance Certificate**”) and (y) executed copies of IRS Form W-8BEN (or IRS Form W-8BEN-E, if applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN (or IRS Form W-8BEN-E, if applicable), a U.S. Tax Compliance Certificate substantially in the form of **Exhibit E-2** or **Exhibit E-3**, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit E-4** on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by Law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this **clause (D)**, “**FATCA**” shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

(h) **Treatment of Certain Refunds.** If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 3.4** (including by the payment of additional amounts pursuant to this **Section 3.4**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 3.4** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this **Section 3.4(h)** (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 3.4(h)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 3.4(h)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **Section 3.4(h)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) **Survival.** Each party's obligations under this **Section 3.4** shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

**Section 3.5 Compensation for Losses.** Upon demand of any Lender (with a copy to Administrative Agent) from time to time, Borrower shall promptly compensate such Lender for and hold such Lender harmless from any actual loss, cost or expense incurred by it as a result of:

(a) any payment or prepayment of any Loan other than a Base Rate 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 Borrower (for a reason other than the failure of such Lender to lend any Loan other than a Base Rate Loan) to prepay or borrow any Loan other than a Base Rate Loan on the date or in the amount notified by Borrower (regardless of whether such notice may be revoked by Borrower under the terms of this Agreement and is revoked in accordance herewith); or

(c) any assignment of a Loan other than a Base Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by Borrower pursuant to **Section 3.6(b)**;

including any actual 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. A certificate of any Lender setting forth any actual amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof. Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

#### **Section 3.6 Mitigation of Obligations; Replacement of Lenders.**

(a) **Designation of a Different Lending Office.** If any Lender requests compensation under **Section 3.1**, or requires Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 3.4**, then such Lender shall (at the request of Borrower) use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable by Borrower pursuant to **Section 3.1** or **Section 3.4**, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under **Section 3.1**, or if Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 3.4** and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with **Section 3.6(a)**, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then Borrower may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 11.8**), all of its interests, rights (other than its existing rights to payments pursuant to **Section 3.1** or **Section 3.4**) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided that*:

(i) Borrower shall have paid to Administrative Agent the assignment fee (if any) specified in **Section 11.8**;



(ii) such Lender shall have received payment of an amount equal to the Outstanding Amount of its Loans and L/C 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 3.5**) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under **Section 3.1** or payments required to be made pursuant to **Section 3.4**, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A 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 Borrower to require such assignment and delegation cease to apply.

Each party hereto agrees that (x) an assignment required pursuant to this **Section 3.6** may be effected pursuant to an Assignment and Assumption executed by Borrower, Administrative Agent and the assignee and (y) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender or Administrative Agent, provided, further that any such documents shall be without recourse to or warranty by the parties thereto.

Notwithstanding anything in this **Section 3.6** to the contrary, (i) any Lender that acts as L/C Issuer may not be replaced hereunder at any time it has any Letters of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to L/C Issuer) have been made with respect to such outstanding Letters of Credit and (ii) the Lender that acts as Administrative Agent may not be replaced hereunder except in accordance with the terms of **Section 10.6**.

**Section 3.7 Survival.** All of the obligations under this **Article 3** shall survive termination of the Commitments, repayment of all other Obligations hereunder, and resignation of Administrative Agent.

## ARTICLE 4.

### CONDITIONS PRECEDENT

**Section 4.1 Initial Extension of Credit.** The obligation of the Lenders and L/C Issuer to make the initial Credit Extension hereunder is subject to the condition precedent that Administrative Agent shall have received all of the following, each dated (unless otherwise indicated or otherwise specified by Administrative Agent) the Closing Date, in form and substance satisfactory to Administrative Agent:

(a) **Credit Agreement.** Counterparts of this Agreement executed by each party hereto;

(b) **Resolutions.** Resolutions of the board of directors (or other governing body) of Borrower and each other Loan Party that is not a natural Person certified by the secretary or an assistant secretary (or a Responsible Officer or other custodian of records) of such Person which authorize the execution, delivery, and performance by such Person of this Agreement and the other Loan Documents to which such Person is or is to be a party;



(c) **Incumbency Certificate.** A certificate of incumbency certified by a Responsible Officer of each Loan Party that is not a natural Person certifying the names of the individuals or other Persons authorized to sign this Agreement and each of the other Loan Documents to which Borrower and each other Loan Party is or is to be a party (including the certificates contemplated herein) on behalf of such Person together with specimen signatures of such individual Persons;

(d) **Certificate Regarding Consents, Licenses and Approvals.** A certificate of a Responsible Officer of each Loan Party either (i) attaching copies of all consents, licenses and approvals required as of the Closing Date in connection with the execution and delivery by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (ii) stating that no such consents, licenses or approvals are so required;

(e) **Closing Certificate.** A certificate signed by a Responsible Officer of Borrower certifying that the conditions specified in **Sections 4.2(b), (c) and (d)** have been satisfied;

(f) **Solvency Certificate.** A solvency certificate signed by the chief financial officer of Borrower (or another Responsible Officer of Borrower acceptable to Administrative Agent);

(g) **Constituent Documents.** The Constituent Documents and all amendments thereto for each Loan Party that is not a natural Person, with the formation documents included in the Constituent Documents being certified as of a date acceptable to Administrative Agent by the appropriate government officials of the state of incorporation or organization of each Loan Party, and all such Constituent Documents being accompanied by certificates that such copies are complete and correct, given by an authorized representative acceptable to Administrative Agent;

(h) **Governmental Certificates.** Certificates of the appropriate government officials of the state of incorporation or organization of each Loan Party that is not a natural Person as to the existence and good standing of each Loan Party that is not a natural Person;

(i) **Notes.** The Notes executed by Borrower in favor of each Lender;

(j) **Security Documents.** The Security Documents executed by Borrower and the other Loan Parties;

(k) **Pledged Equity Interests; Stock Powers; Pledged Notes.** (i) The certificates representing any Equity Interests pledged pursuant to the Security Documents, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof and (ii) each promissory note (if any) pledged to Administrative Agent pursuant to the Security Documents endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof;

(l) **Account Control Agreements.** Account Control Agreements with respect to each Deposit Account, Securities Account and Commodity Account of any Loan Party in existence on the Closing Date (other than any Excluded Account and any Deposit Account, Securities Account and Commodity Account maintained at Administrative Agent);

(m) **Financing Statements, etc.** Each document (including any UCC financing statements reflecting the Loan Parties, as debtors, and Administrative Agent, as secured party) required by the Security Documents or under applicable Law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than Permitted Liens that have priority over the Liens in favor of the Administrative Agent under applicable Law), each of which shall, if applicable be in proper form for filing, registration or recordation;

(n) **Guaranty.** A Guaranty executed by each Guarantor;

(o) **Insurance Matters.** Copies of insurance certificates describing all insurance policies required by **Section 6.5**, together with endorsements providing that Administrative Agent is lender's loss payable with respect to each insurance policy covering Collateral and additional insured with respect to each insurance policy covering liabilities;

(p) **Lien Searches.** The results of UCC and Tax lien searches showing all financing statements and other documents or instruments on file against Borrower and each other Loan Party in the appropriate filing offices, such search to be as of a date no more than thirty (30) days prior to the Closing Date, and reflecting no Liens against any of the intended Collateral other than Liens being released or assigned to Administrative Agent on or prior to the Closing Date and Permitted Liens;

(q) **Opinions of Counsel.** A favorable opinion of Miles & Stockbridge, legal counsel to Borrower and each other Loan Party, addressed to Administrative Agent, the Lenders and L/C Issuer and dated the Closing Date, in form and substance satisfactory to Administrative Agent, with respect to such matters as Administrative Agent may reasonably request, and a favorable opinion of Porter Hedges LLP, local counsel to the Loan Parties, addressed to Administrative Agent, the Lenders and L/C Issuer and dated the Closing Date, in form and substance satisfactory to Administrative Agent, with respect to as to such matters as Administrative Agent may reasonably request;

(r) **Attorneys' Fees and Expenses.** Evidence that the costs and expenses (including reasonable documented and out-of-pocket attorneys' fees) referred to in **Section 11.1**, to the extent invoiced, shall have been paid in full by Borrower;

(s) **Legal Due Diligence.** Administrative Agent and its counsel shall have completed all business, legal and regulatory due diligence (including review of Material Agreements), the results of which shall be satisfactory to Administrative Agent in its sole discretion;

(t) **Material Agreements.** True and correct copies of all Material Agreements described on **Schedule 5.27**;

(u) **KYC Information; Beneficial Ownership Information.** Borrower and each of the other Loan Parties shall have provided to Administrative Agent and the Lenders (i) the documentation and other information requested by Administrative Agent as it deems necessary in order to comply with requirements of any Anti-Corruption Laws and Anti-Terrorism Laws, including, without limitation, the PATRIOT Act and any applicable "know your customer" rules and regulations and (ii) to the extent Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to Borrower;

(v) **Closing Fees.** Evidence that all fees required to be paid to Administrative Agent and the Lender, on or before the Closing Date have been paid;

(w) **Funding Account.** A notice setting forth the Deposit Account of the Borrower (the "**Funding Account**") to which the Administrative Agent is authorized by the Borrower to transfer the proceeds of any Borrowing requested or authorized pursuant to this Agreement;

(x) **Corporate Structure.** The corporate structure, capital structure and other material debt instruments, material accounts and governing documents of Parent and its Subsidiaries shall be acceptable to the Administrative Agent in its reasonable discretion;

(y) **Financial Statements.** (A) the audited consolidated balance sheet of the Parent and its Subsidiaries as of December 31, 2023, and the related audited statements of income and retained earnings and cash flows for the fiscal years ended 2020, 2021 and 2022 and (B) unaudited consolidated balance sheet of the Parent and its Subsidiaries as of September 30, 2024 and related unaudited interim statements of income and retained earnings (collectively, the "**Historical Financial Statements**");

(z) [Reserved];

(aa) **Payoff of Existing Indebtedness; Release of Liens.** Evidence that all commitments under the Existing Credit Agreement have been or concurrently with the Closing Date are being terminated, and all outstanding amounts thereunder paid in full and all Liens securing obligations under the Existing Credit Agreement have been or concurrently with the Closing Date

are being released pursuant to lien releases or other termination documents or assigned to Administrative Agent pursuant to assignment documents, in either case, satisfactory to Administrative Agent;

(bb) **Collateral Access Agreements.** With respect to the Lease (Georgetown), a Collateral Access Agreement executed by the landlord of such Property, Borrower and Administrative Agent;

(cc) **Required Reserve.** Deposit of the Required Reserve into the Required Reserve Account (which may be funded in whole or in part with proceeds from an Initial Term Loan on the Closing Date);

(dd) **Leverage Ratio.** Evidence that the *pro forma* Leverage Ratio, after giving effect to the initial Credit Extension, is not more than 3.75 to 1.00; and

(ee) **Additional Documentation.** Such additional approvals, opinions, or documents as Administrative Agent or its legal counsel may reasonably request.

For purposes of determining compliance with the conditions set forth in this **Section 4.1**, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or be satisfied with, each document or other matter required thereunder to be consented to or approved by or be acceptable or satisfactory to a Lender unless Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**Section 4.2 All Extensions of Credit.** The obligation of the Lenders (including L/C Issuer) to make any Credit Extension hereunder (including the initial Credit Extension) is subject to the following additional conditions precedent:

(a) **Request for Credit Extension.** Administrative Agent shall have received in accordance with this Agreement, as the case may be, a Term Loan Borrowing Request, or Letter of Credit Application, as applicable, pursuant to Administrative Agent's requirements and executed by a Responsible Officer of Borrower;

(b) **No Default.** No Default shall have occurred and be continuing, or would result from or after giving effect to such Credit Extension;

(c) **Representations and Warranties.** All of the representations and warranties of Borrower and each other Loan Party contained in **Article 5** and in the other Loan Documents shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct in all respects on and as of the date of such Borrowing, and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects on and as of the date of such Borrowing, in each case with the same force and effect as if such representations and warranties had been made on and as of such 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 such representations and warranties that contain a materiality qualification, in all respects) as of such earlier date, and except that for purposes of this **Section 4.2**, the representations and warranties contained in **Section 5.2** shall be deemed to refer to the most recent statements furnished pursuant to **Section 6.1(a)** and **(b)**, respectively; and

(d) **Availability.** With respect to any request for a Credit Extension under the Commitments, after giving effect to the Credit Extension so requested, the total Credit Exposure of the Lenders shall not exceed the aggregate Commitments of the Lenders in effect as of the date of such Credit Extension.

(e) **Construction Documents prior to first Construction Borrowing and Subsequent Construction Borrowing.** Before the first Construction Borrowing, Administrative Agent shall have received and approved the General Construction Contract and the Budget. Before any Construction Borrowing following the first Construction Borrowing, Administrative Agent shall have received and approved the Improvement Plans and building permits for the applicable phase of work covered by the requested Construction Borrowing.

(f) **Documents for each Construction Borrowing.** For each Construction Borrowing, Borrower shall have delivered to Administrative Agent (i) a written application submitted by Borrower to Administrative Agent, on American Institute of Architects Form G702/703, or other form approved by Administrative Agent, and accompanied by all documents and information as Administrative Agent may reasonably request, and (ii) invoices for amounts to be covered by such Borrowing, and with regard to contract amounts in excess of \$25,000.00, releases, contract subordinations, or waivers of mechanic's and materialmen's liens, or receipts or other proof of payment showing payment of all amounts due to all parties who have furnished materials or services or performed labor in connection with the Improvements, each in form and substance satisfactory to Administrative Agent.

(g) **Construction Inspection.** Before each Construction Borrowing, if requested by Administrative Agent, the Construction Inspector shall have inspected and approved the status of the Improvements.

(h) **Final Construction Borrowing.** The final Construction Borrowing will not be made until Administrative is satisfied that no mechanic's liens will be recorded after the final Construction Borrowing is made, and has received the following, all in form and substance satisfactory to and approved by Administrative Agent in its reasonable discretion: (i) a recorded copy of the Affidavit of Completion; (ii) if requested by Administrative Agent, a final inspection and completion certificate from the Construction Inspector; (iii) final lien releases or waivers by each contractor, subcontractors, suppliers, laborers, materialmen and other Persons who have performed work, rendered services, or furnished labor or material to the Property, on a form that substantially complies with Texas Property Code § 53.284(d) or § 53.284(e), as applicable; (iv) an all bills paid affidavit from each Contractor (if more than one); and (v) any other items, evidence or information concerning the completion of the Improvements and Property that Lender may reasonably require.

Each Credit Extension hereunder shall be deemed to be a representation and warranty by Borrower that the conditions specified in this **Section 4.2** have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE 5.

### REPRESENTATIONS AND WARRANTIES

To induce Administrative Agent, L/C Issuer and the Lenders to enter into this Agreement, and to make Credit Extensions hereunder, Borrower and each other Loan Party represents and warrants to Administrative Agent, L/C Issuer and the Lenders that:

**Section 5.1 Entity Existence.** Each Loan Party and each Subsidiary thereof (a) is duly incorporated or organized, as the case may be, validly existing, and in good standing under the Laws of the jurisdiction of its incorporation or organization; (b) has all requisite power and authority to own its assets and carry on its business as now being or as proposed to be conducted; and (c) is qualified to do business in all jurisdictions in which the nature of its business makes such qualification necessary or where failure to so qualify could reasonably be expected to have a Material Adverse Effect. Each Loan Party has the power and authority to execute, deliver, and perform its obligations under this Agreement and the other Loan Documents to which it is or may become a party.

**Section 5.2 Financial Statements; Etc.** The Loan Parties have delivered the Historical Financial Statements to the Administrative Agent. Such financial statements are true and correct in all material respects, have been prepared in accordance with GAAP, and fairly and accurately present, on a consolidated basis, the financial condition of Parent and its Subsidiaries as of the respective dates indicated therein and the results of operations for the respective periods indicated therein, on a consolidated basis. Neither Parent nor any of its Subsidiaries has any material contingent liabilities, liabilities for Taxes, unusual forward or long-term commitments, or unrealized or anticipated losses from any unfavorable commitments except as referred to or reflected in such financial statements. No Material Adverse Effect and no circumstance which could reasonably be expected to have a Material Adverse Effect has occurred since the date of the financial statements referred to in this **Section 5.2**. All projections delivered by the Loan Parties to Administrative Agent and the Lenders have been prepared in good faith, with care and diligence and using assumptions that are reasonable under the circumstances at the time such projections were prepared and delivered to Administrative Agent and the Lenders and all such material assumptions are disclosed in the projections (it being recognized by Administrative Agent and the Lenders that projections as to future events are not to be viewed as facts and that results during the period(s) covered by such projections may differ from the projected results

and that such differences may be material and that the Loan Parties make no representation that such projections will be realized). Other than the Debt listed on **Schedule 7.1** and Debt otherwise permitted by **Section 7.1**, the Loan Parties have no Debt.

**Section 5.3 Action; No Breach.** The execution, delivery, and performance by each Loan Party of this Agreement and the other Loan Documents to which such Person is or may become a party and compliance with the terms and provisions hereof and thereof have been duly authorized by all requisite action on the part of such Person and do not and will not (a) violate or conflict with, or result in a breach of, or require any consent under (i) the Constituent Documents of such Person (if such Person is not a natural Person), (ii) any applicable Law, rule, or regulation or any order, writ, injunction, or decree of any Governmental Authority or arbitrator, or (iii) any Material Agreement to which such Person is a party or by which it or any of its Properties is bound or subject, or (b) constitute a default under any such Material Agreement, or result in the creation or imposition of any Lien upon any of the revenues or assets of such Person.

**Section 5.4 Operation of Business.** Each Loan Party and its Subsidiaries possesses all material licenses, permits, consents, authorizations, franchises, patents, copyrights, trademarks, and trade names, or rights thereto, necessary to conduct its respective businesses substantially as now conducted and as presently proposed to be conducted, and neither any Loan Party nor any of its Subsidiaries is in violation of any valid rights of others with respect to any of the foregoing.

**Section 5.5 Litigation and Judgments.** Except as specifically disclosed in Schedule 5.5 as of the Closing Date, there is no action, suit, investigation, or proceeding before or by any Governmental Authority or arbitrator pending, or to the knowledge of any Loan Party after a reasonable investigation, threatened against or affecting any Loan Party or any of its Subsidiaries or against any of their Properties that could, if adversely determined, reasonably be expected to have a Material Adverse Effect. There are no outstanding judgments against any Loan Party or any of its Subsidiaries.

**Section 5.6 Rights in Properties; Liens.** Each Loan Party and its Subsidiaries has good and indefeasible title to or valid leasehold interests in its respective Properties, including the Properties reflected in the financial statements described in **Section 5.2**, and none of the Properties of any Loan Party or any of its Subsidiaries is subject to any Lien, in each case except for Permitted Liens.

**Section 5.7 Enforceability.** 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 the other Loan Documents to which any Loan Party is a party, when delivered, shall constitute legal, valid, and binding obligations of such Person, enforceable against such Person in accordance with their respective terms, except as limited by Debtor Relief Laws and general principles of equity.

**Section 5.8 Approvals.** No authorization, approval, or consent of, and no filing or registration with, any Governmental Authority or third party is or will be necessary for the execution, delivery, or performance by any Loan Party of this Agreement and the other Loan Documents to which such Person is or may become a party or the validity or enforceability thereof other than the recording and filing of the Security Documents and financing statements in connection therewith.

**Section 5.9 Taxes.** Each of the Loan Parties and each of their Subsidiaries has filed on a timely basis all material Tax Returns required to be filed, including all material income, franchise, employment, Property, and sales Tax Returns. Each such Tax Return is true, correct and complete in all material respects. Each of the Loan Parties and each of their Subsidiaries has paid all of its respective liabilities for Taxes, assessments, governmental charges, and other levies that are due and payable (whether or not shown on any Tax Return), other than Taxes, if any, the payment of which is being contested in good faith and by appropriate proceedings and reserves for the payment of which are being maintained in accordance with GAAP. No Loan Party knows of any pending investigation of any Loan Party or any of their Subsidiaries by any taxing authority or of any pending but unassessed material Tax liability of any Loan Party or any of its Subsidiaries. No claim has ever been made in writing, or to the knowledge of any Loan Party is expected to be made, by any Governmental Authority in a jurisdiction where any Loan Party or its Subsidiaries does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. No Loan Party nor any of their Subsidiaries has given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of Taxes of a Loan Party or its Subsidiaries or for which any Loan Party or its Subsidiaries may be liable. Except as set forth on **Schedule 5.9**, no Loan Party nor any Subsidiary thereof is, or has been party to any Tax sharing agreement, Tax allocation agreement, Tax indemnity obligation or similar written or unwritten agreement, arrangement, understanding or practice with respect to Taxes.



**Section 5.10 Use of Proceeds; Margin Securities.** The proceeds of the Borrowings shall be used by Borrower for working capital in the ordinary course of business, to finance the Improvements, equipment, and other costs associated with completion of the Improvements, and for other general corporate purposes. For the avoidance of doubt, the proceeds of the Borrowings may be used by Borrower for payment to the City of Georgetown as a contribution in connection with supplying power to the leased premises at 1800 Aviation Drive, Building #1, Suite 100, Georgetown, Texas 78628. Neither any Loan Party nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T, U, or X of the Board of Governors), and no part of the proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock. No part of the proceeds of any Loan will be used directly or indirectly to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person, or in any other manner that will result in any violation by any Person (including any Lender, any Arranger or Administrative Agent) of any Anti-Terrorism Laws, Anti-Corruption Laws or any Sanctions.

**Section 5.11 ERISA.** Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable advisory, opinion, or determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of any Loan Party, nothing has occurred which would prevent, or cause the loss of, such qualification. No application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan. 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 or Multiemployer Plan. There has been no non-exempt Prohibited Transaction or violation of the fiduciary responsibility rules with respect to any Plan or, to the knowledge of any Loan Party, any Multiemployer Plan. No ERISA Event has occurred or is reasonably expected to occur. No Plan has any Unfunded Pension Liability. No Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA. No Loan Party or ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA). No Loan Party or ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 of ERISA with respect to a Multiemployer Plan. No Loan Party or ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA. No Loan Party or any of its Subsidiaries is an entity deemed to hold “plan assets” (within the meaning of the Plan Asset Regulations), and neither the execution, delivery nor performance of the transactions contemplated under this Agreement, including the making of any Loan and the issuance of any Letter of Credit hereunder, will give rise to a non-exempt Prohibited Transaction.

**Section 5.12 Disclosure.** No statement, information, report, representation, or warranty made by Borrower or any other Loan Party in this Agreement, in any other Loan Document or furnished to Administrative Agent or any Lender in connection with this Agreement or any of the transactions contemplated hereby contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not misleading. There is no fact known to any Loan Party which could reasonably be expected to have a Material Adverse Effect, or which could in the future reasonably be expected to have a Material Adverse Effect that has not been disclosed in writing to Administrative Agent and each Lender. As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

**Section 5.13 Subsidiaries.** As of the Closing Date, no Loan Party has any Subsidiaries other than those listed on *Schedule 5.13* (and, if subsequent to the Closing Date, such additional Subsidiaries as have been formed or acquired in compliance with *Section 6.13*) and *Schedule 5.13* sets forth the jurisdiction of incorporation or organization of each Subsidiary and the percentage of the applicable Loan Party’s ownership interest in such Subsidiary. All of the outstanding capital stock or other Equity Interests of each Subsidiary described on *Schedule 5.13* have been validly issued, are fully paid, and are nonassessable. There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock or similar options granted to employees or directors and directors’ qualifying shares) of any nature relating to any Equity Interests of any Loan Party or any Subsidiary.

**Section 5.14 Agreements; No Default.** Neither any Loan Party nor any of its Subsidiaries is a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or corporate or other organizational restriction, in each case which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither any Loan Party nor any of its Subsidiaries is in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in (a) any Material Agreement or (b) any judgment, decree or order to which any Loan Party or any Subsidiary thereof is a party or by which any Loan Party or any Subsidiary thereof or any of their respective properties may be



bound, which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing.

**Section 5.15 Compliance with Laws.** No Loan Party nor any of their Subsidiaries is in violation in any material respect of any Law, rule, regulation, order, or decree of any Governmental Authority or arbitrator.

**Section 5.16 Inventory.** All inventory of the Loan Parties and their Subsidiaries has been and will hereafter be produced and maintained in compliance with all applicable Laws, rules, regulations, and governmental standards, including, without limitation, the minimum wage and overtime provisions of the Fair Labor Standards Act (29 U.S.C. §§ 201-219).

**Section 5.17 Regulated Entities.** No Loan Party nor any of their Subsidiaries is (a) an “*investment company*” or a company “controlled” by an “*investment company*” within the meaning of the Investment Company Act of 1940 or (b) subject to regulation under any other federal or state statute, rule or regulation limiting its ability to incur Debt, pledge its assets or perform its obligations under the Loan Documents. No Loan Party is an Affected Financial Institution.

#### **Section 5.18 Environmental Matters**

(a) Each Loan Party and its Subsidiaries, and all of their respective Properties, assets, and operations, are in compliance with all Environmental Laws. No Loan Party is aware of, nor has any Loan Party received notice of, any past, present, or future conditions, events, activities, practices, or incidents which may interfere with or prevent the compliance or continued compliance of each Loan Party and its Subsidiaries with all Environmental Laws;

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(b) Each Loan Party and its Subsidiaries has obtained all permits, licenses, and authorizations that are required under applicable Environmental Laws, and all such permits are in good standing and each Loan Party and its Subsidiaries are in compliance with all of the terms and conditions of such permits;

(c) No Hazardous Materials exist on, about, or within, or have been used, generated, stored, transported, disposed of on, or Released from, any of the Properties or assets of any Loan Party or any of its Subsidiaries in violation of, or in a manner or to a location that could give rise to liability under, any applicable Environmental Laws. The use which each Loan Party and its Subsidiaries make and intend to make of their respective Properties and assets will not result in the use, generation, storage, transportation, accumulation, disposal, or Release of any Hazardous Material on, in, or from any of their Properties or assets in violation of, or in a manner that could give rise to liability under, any applicable Environmental Laws;

(d) Neither any Loan Party nor any of its Subsidiaries nor any of their respective currently or previously owned or leased Properties or operations is subject to any outstanding or threatened order from or agreement with any Governmental Authority or other Person or subject to any judicial or docketed administrative proceeding with respect to (i) any failure to comply with Environmental Laws, (ii) any Remedial Action, or (iii) any Environmental Liabilities arising from a Release or threatened Release;

(e) There are no conditions or circumstances associated with the currently or previously owned or leased Properties or operations of any Loan Party or any of its Subsidiaries that could reasonably be expected to give rise to any Environmental Liabilities;

(f) Neither any Loan Party nor any of its Subsidiaries is a treatment, storage, or disposal facility requiring a permit under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, regulations thereunder or any comparable provision of state Law. Each Loan Party and its Subsidiaries are in compliance with all applicable financial responsibility requirements of all Environmental Laws;

(g) Neither any Loan Party nor any of its Subsidiaries has filed or failed to file any notice required under applicable Environmental Law reporting a Release; and

(h) No Lien arising under any Environmental Law has attached to any Property or revenues of any Loan Party or any of its Subsidiaries.

Section 5.19 **Intellectual Property.** Each Loan Party and each of its Subsidiaries owns, or is licensed to use, all Intellectual Property necessary to conduct its business as currently conducted, except for such Intellectual Property the failure of which to own or license could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and the use thereof does not infringe in any material respect upon the rights of any other Person.

Section 5.20 **Anti-Corruption Laws; Sanctions; Etc.**

(a) No Loan Party or Subsidiary of any Loan Party or, to the knowledge of any Loan Party, any director, officer, employee, agent, or Affiliate of a Loan Party or any of its Subsidiaries is an individual or entity ("person") that is, or is owned 50 percent or more, individually or in the aggregate, directly or indirectly, or controlled by any person that: (i) is a Sanctioned Person or is currently the subject or target of any Sanctions, or (ii) is located, organized or resident, or has assets, in a Sanctioned Country.

(b) The Loan Parties, their Subsidiaries and their respective directors, officers and employees and, to the knowledge of the Loan Parties, agents, are in compliance with all applicable Sanctions and with the FCPA and any other applicable Anti-Corruption Law. Borrower and its Subsidiaries have instituted and maintain policies and procedures designed to ensure continued compliance with applicable Sanctions, the FCPA and any other applicable Anti-Corruption Laws.

Section 5.21 **PATRIOT Act.** The Loan Parties, each of their Subsidiaries, and each of their Affiliates are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (*31 CFR, Subtitle B Chapter V*, as amended), and all other enabling legislation or executive order relating thereto, (b) the PATRIOT Act, and (c) all other federal or state Laws relating to "know your customer" (collectively, the "**Anti-Terrorism Laws**").

Section 5.22 **Insurance.** The Properties of each Loan Party and their Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of any Loan Party, in such amounts, with such deductibles and covering such risks as are customarily carried in conformity with prudent industry practice by companies engaged in similar businesses and owning similar Properties in localities where such Loan Party or the applicable Subsidiary operates.

Section 5.23 **Solvency.** After giving effect to the Transactions and each Credit Extension made hereunder, Borrower and the other Loan Parties on a consolidated basis are Solvent and have not entered into any transaction with the intent to hinder, delay or defraud a creditor.

Section 5.24 **Security Documents.** The provisions of the Security Documents are effective to create in favor of Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable Lien (subject to Permitted Liens) on all right, title and interest of the respective Loan Parties party thereto in the Collateral. Except for filings completed on or prior to the Closing Date and as contemplated hereby and by the Security Documents, no filing or other action will be necessary to perfect such Liens in Collateral.

Section 5.25 **Businesses.** Borrower is presently engaged directly or through its Subsidiaries in the business of providing integration and technology services that enable enterprises and users to successfully implement, operate and maintain their information technology systems.

Section 5.26 **Labor Matters.** There are no strikes, work stoppages or other labor controversies pending, or to the knowledge of any Loan Party, threatened against any Loan Party or any of its Subsidiaries, which could reasonably be expected to have a Material Adverse Effect. To the knowledge of any Loan Party, the hours worked by and payments made to employees of the Loan Parties and their Subsidiaries have not been in material violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters. All payments due from any Loan Party or any Subsidiary, or for which any claim may be made against any Loan Party or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Loan Party or such Subsidiary.

Section 5.27 **Material Agreements**. *Schedule 5.27* sets forth a complete and correct list of all Material Agreements of each Loan Party and each Subsidiary thereof in effect as of the Closing Date and on the date of each update thereof required hereunder. No Loan Party nor any Subsidiary thereof (nor, to its knowledge, any other party thereto) is in breach of or in default under any Material Agreement in any material respect.

Section 5.28 **Affiliate Transactions**. Except as set forth on *Schedule 5.28* or permitted pursuant to *Section 7.7*, as of the Closing Date, there are no existing or proposed agreements, arrangements, understandings or transactions between any Loan Party and any of the officers, members, managers, directors, stockholders, parents, holders of other Equity Interests, employees or Affiliates of any Loan Party or any members of their respective immediate families.

## ARTICLE 6.

### AFFIRMATIVE COVENANTS

Each Loan Party covenants and agrees that until the Obligations have been Paid in Full and no Lender has any Commitment hereunder:

Section 6.1 **Reporting Requirements**. Borrower will furnish, or cause to be furnished, to Administrative Agent (with copies for each Lender upon Administrative Agent's request):

(a) **Annual Financial Statements**. As soon as available, and in any event within ninety (90) days after the last day of each fiscal year of Parent, beginning with the fiscal year ending December 31, 2024, a copy of the annual audit report of Parent and its Subsidiaries for such fiscal year containing, on a consolidated basis, balance sheets and statements of income, retained earnings, and cash flow as of the end of such fiscal year and for the 12-month period then ended, in each case setting forth in comparative form the figures for the preceding fiscal year, all in reasonable detail and audited and certified by Weaver and Tidwell, L.L.P., or other independent certified public accountants of recognized standing reasonably acceptable to Administrative Agent, to the effect that such report has been prepared in accordance with GAAP and containing no material qualifications or limitations on scope. Notwithstanding the foregoing, a continuing discussion or explanatory paragraph regarding going concern shall not be interpreted as a violation hereunder, unless such audit opinion discussion concludes that the auditor has determined that a substantial doubt exists as to Borrower's ability to continue as a going concern;

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(b) **Quarterly Financial Statements**. As soon as available, and in any event within forty-five (45) days after the last day of each fiscal quarter of each fiscal year of Parent, beginning with the fiscal quarter ending December 31, 2024, a copy of an unaudited financial report of Parent and its Subsidiaries as of the end of such fiscal quarter and for the portion of the fiscal year then ended, containing, on a consolidated basis, balance sheets and statements of income, retained earnings, and cash flow, in each case setting forth in comparative form the figures for the corresponding period of the preceding fiscal year, all in reasonable detail certified by a Responsible Officer of Borrower to have been prepared in accordance with GAAP and to fairly and accurately present (subject to year-end audit adjustments) the financial condition and results of operations of Parent and its Subsidiaries, on a consolidated basis, as of the dates and for the periods indicated therein;

(c) **Compliance Certificate**. Concurrently with the delivery of each of the financial statements referred to in *Sections 6.1(a)* and *6.1(b)*, a Compliance Certificate (i) stating that to the best of the knowledge of the Responsible Officer executing the same, no Default has occurred and is continuing, or if a Default has occurred and is continuing, a statement as to the nature thereof and the action which is proposed to be taken with respect thereto, (ii) showing in reasonable detail the calculations demonstrating compliance with the covenants set forth in *Article 8*, (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements most recently delivered pursuant to *Section 6.1(a)* above and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate, and (iv) containing such other certifications set forth therein. For any financial statements delivered electronically by a Responsible Officer in satisfaction of the reporting requirements set forth in *clause (a)* or *(b)* preceding that are not accompanied by the required Compliance Certificate, that Responsible Officer shall nevertheless be deemed to have certified the factual matters described in this *clause (c)* with respect to such financial statements; however, such deemed certification shall not excuse or be construed as a waiver of Borrower's obligation to deliver the required Compliance Certificate;

(d) **Projections.** As soon as practicable and in any event not later than 30 days following the end of each fiscal year, projections or budget for the Parent and its Subsidiaries for the following fiscal year, such projections or budget to be prepared in accordance with and/or based on GAAP and to include, on a quarterly basis, an operating and capital budget and a projected income statement, statement of cash flows and balance sheet;

(e) **Management Letters.** Promptly upon receipt thereof, a copy of any management letter or written report submitted to Parent or any of its Subsidiaries by independent certified public accountants with respect to the business, condition (financial or otherwise), operations, prospects, or Properties of Parent or any of its Subsidiaries;

(f) **Notice of Litigation.** Promptly (but in no event later than five (5) Business Days) after (i) the commencement thereof, notice of all actions, suits, and proceedings before any Governmental Authority or arbitrator affecting any Loan Party or any of its Subsidiaries which, if determined adversely to such Loan Party or such Subsidiary, could reasonably be expected to (A) result in liabilities of such Loan Party or such Subsidiary in excess of \$750,000.00 or (B) have a Material Adverse Effect, or (ii) any adverse change in the status of any actions, suits, and proceedings before any Governmental Authority or arbitrator that, taking into account the availability of any appeals, could reasonably be expected to result in a Material Adverse Effect;

(g) **Notice of Default.** As soon as possible and in any event within five (5) Business Days after the occurrence of any Default, a written notice setting forth the details of such Default and the action that the applicable Loan Party has taken and proposes to take with respect thereto;

(h) **ERISA Reports.** Promptly after the filing or receipt thereof, copies of all reports, including annual reports, and notices which any Loan Party or ERISA Affiliate files with or receives from the PBGC, the IRS, or the U.S. Department of Labor under ERISA; as soon as possible and in any event within five (5) Business Days after any Loan Party or any ERISA Affiliate knows or has reason to know that any ERISA Event or non-exempt Prohibited Transaction has occurred with respect to any Plan or Multiemployer Plan, a certificate of the chief financial officer of the applicable Loan Party setting forth the details as to such ERISA Event or non-exempt Prohibited Transaction and the action that the applicable Loan Party proposes to take with respect thereto; annually, a copy of the notice described in *Section 101(f)* of ERISA that any Loan Party or ERISA Affiliate files or receives with respect to a Plan or Multiemployer Plan;

(i) **Reports to Other Creditors.** Promptly after the furnishing thereof, copies of any statement or report furnished to any other party pursuant to the terms of any indenture, loan, or credit or similar agreement and not otherwise required to be furnished to Administrative Agent pursuant to any other clause of this **Section 6.1**;

(j) **Updates to Security Document Schedules.** Concurrently with the delivery of the Compliance Certificate delivered in connection with the financial statements pursuant to **Sections 6.1(a) and (b)**, updates to all Schedules to the Security Documents to the extent that information contained in such Schedules has become inaccurate or incomplete since delivery thereof and such Schedules are required to be updated from time to time pursuant to the terms of the applicable Security Document;

(k) [Reserved];

(l) **Insurance.** (i) Concurrently with the delivery of the Compliance Certificate delivered in connection with the annual financial statements pursuant to **Section 6.1(a)**, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and containing such additional information as Administrative Agent, or any Lender through Administrative Agent, may reasonably specify; and (ii) within ten (10) Business Days after any material change in insurance coverage by Borrower or any other Loan Party from that previously disclosed to Administrative Agent, a report describing such change, and, within thirty (30) days after each request by Administrative Agent, certificates of insurance from the insurance companies insuring Borrower or the other Loan Parties, describing such insurance coverage;

(m) **Notice of Material Adverse Effect and Change in Beneficial Owners.** As soon as possible and in any event within five (5) Business Days after the occurrence thereof, written notice of (i) any event or circumstance that could reasonably be expected to have a Material Adverse Effect and (ii) any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification;

(n) **Material Agreements or Material Indebtedness.** Promptly, and in any event within five (5) Business Days after (i)(A) any Material Agreement of any Loan Party or any of its Subsidiaries is terminated or amended (other than amendments or additions of statements of work to the AI Rack Integration Agreement that update certain costs of artificial intelligence rack configurations provided such amendments or additions do not reduce the fixed component of amounts payable to Borrower (including but not limited to the Management Fee (as defined in the AI Rack Integration Agreement), and inclusive of (without redundancy), rent, triple nets, debt service, and indirect labor), and further provided that Borrower shall provide to Administrative Agent a copy of all such amendments or additions of statements of work to the AI Rack Integration Agreement once per quarter together with delivery of each Compliance Certificate), or (B) any new Material Agreement is entered into; or (ii) any officer of any Loan Party or any of its Subsidiaries obtaining actual knowledge (1) of any condition or event that constitutes a breach, default or an event of default under any Material Agreement or Material Debt, (2) that any event, circumstance, or condition exists or has occurred that gives any counterparty to such Material Agreement a termination or assignment right thereunder, or (3) that notice has been given to or by any Loan Party or any of its Subsidiaries asserting that any such condition or event has occurred; or (ii) any Loan Party receives any notice pursuant to any subordination, non-disturbance and attornment agreement to which such Loan Party is party with respect to any leased location of such Loan Party, a certificate of a Responsible Officer of the applicable Loan Party specifying the nature and period of existence of such condition or event and, in the case of clauses (i), (ii) and (iii), including copies of such material amendments, new contracts or notices, delivered to Administrative Agent (to the extent such delivery is permitted by the terms of any such Material Agreement, provided, no such prohibition on delivery shall be effective if it were bargained for by a Loan Party or its applicable Subsidiary with the intent of avoiding compliance with this Section 6.1(n)) and, in the case of clause (ii), as applicable, explaining the nature of such claimed breach, default or event of default, and including an explanation of any actions being taken or proposed to be taken by such Loan Party with respect thereto.

(o) **Notice of Casualty Events.** Prompt written notice, and in any event within three (3) Business Days, of the occurrence of any Casualty Event or the commencement of any action or proceeding that could reasonably be expected to result in a Casualty Event, in each case with respect to Property of any Loan Party;

(p) **Environmental Matters.** Prompt written notice, and in any event within three Business Days, of any action, investigation or inquiry by any Governmental Authority threatened in writing or any demand or lawsuit threatened in writing by any Person against any Loan Party or its Subsidiaries or their Properties, in each case, in connection with any Environmental Laws if such Loan Party could reasonably anticipate that such action will result in liability (whether individually or in the aggregate) in excess of the \$250,000.00, not fully covered by insurance, subject to normal deductible;

(q) **Notice of Certain Changes.** Promptly, (i) notice of any change in the business conducted by any Loan Party or any of its Subsidiaries, and (ii) copies of any amendment, restatement, supplement or other modification to any of the Constituent Documents of any Loan Party or any of its Subsidiaries;

(r) **Acquisition of Real Property, Fee or Leasehold.** Concurrently with the delivery of the Compliance Certificate delivered in connection with the annual financial statements pursuant to Section 6.1(a), a list and description (including the street address, county or other relevant jurisdiction, state, record owner, book value thereof and, in the case of leases of Property, lessor, lessee, expiration date and annual rental cost thereof) of all real Property acquired or leased by any Loan Party during such fiscal year;

(s) **Proxy Statements etc.** As soon as available, one (1) copy of each financial statement, report, notice or proxy statement sent by Parent or any of its Subsidiaries to its stockholders generally and one (1) copy of each regular, periodic or special report, registration statement, or prospectus filed by Parent or any of its Subsidiaries with any securities exchange or the SEC;

(t) **SEC Investigations.** Promptly after receipt thereof by Parent or any of its Subsidiaries, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any



investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of Parent or any of its Subsidiaries;

(u) **Mandatory Prepayment Events.** Promptly, and in any event within five (5) Business Days a report describing in reasonable detail the (A) occurrence of any disposition of Property or assets for which Borrower is required to make a mandatory prepayment pursuant to **Section 2.8(d)(i)** and, if applicable, whether the Borrower intends to exercise the reinvestment right set forth therein, (B) occurrence of the issuance by any Loan Party of any of its stock or other Equity Interests for which Borrower is required to make a mandatory prepayment pursuant to **Section 2.8(d)(iii)**, (C) occurrence of the incurrence or issuance by any Loan Party of any Debt for which Borrower is required to make a mandatory prepayment pursuant to **Section 2.8(d)(iv)**, (D) receipt of any Extraordinary Receipt for which Borrower is required to make a mandatory prepayment pursuant to **Section 2.8(d)(v)** and, if applicable, whether the Borrower intends to exercise the reinvestment right set forth therein, in each case together with the amount of the corresponding mandatory prepayment required to be made pursuant to **Section 2.8(d)(i), (iii), (iv) or (v)**, as applicable.

(v) **General Information.** Promptly, such other information concerning any Loan Party or any of its Subsidiaries as Administrative Agent, or any Lender through Administrative Agent, may from time to time reasonably request, including, without limitation, any certification or other evidence Administrative Agent requests in order for it to (i) comply with any applicable federal or state Laws or regulations (including, but not limited to, information about the ownership and management of Borrower or any other Loan Party), (ii) confirm compliance by Borrower or any other Loan Party with all Anti-Terrorism Laws, and (iii) confirm that neither Borrower nor any other Loan Party (nor any Person owning any interest of any nature whatsoever in Borrower or any other Loan Party) is a Sanctioned Person.

All representations and warranties set forth in the Loan Documents with respect to any financial information concerning any Loan Party shall apply to all financial information delivered to Administrative Agent by such Loan Party or any Person purporting to be a Responsible Officer of such Loan Party or other representative of such Loan Party regardless of the method of such transmission to Administrative Agent or whether or not signed by such Loan Party or such Responsible Officer or other representative, as applicable.

**Section 6.2 Maintenance of Existence; Conduct of Business.** Each Loan Party shall, and shall cause each of its Subsidiaries to, preserve and maintain its existence and all of its leases, privileges, licenses, permits, franchises, qualifications, and rights that are necessary or desirable in the ordinary conduct of its business, except to the extent a failure to so preserve and maintain could not reasonably be expected to have a Material Adverse Effect. Each Loan Party shall, and shall cause each of its Subsidiaries to, conduct its business in an orderly and efficient manner in accordance with good business practices.

**Section 6.3 Maintenance of Properties.** Each Loan Party shall, and shall cause each of its Subsidiaries to, maintain, keep, and preserve all of its Properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition (ordinary wear and tear excepted).

**Section 6.4 Taxes and Claims.** Each Loan Party shall, and shall cause each of its Subsidiaries to, pay or discharge at or before maturity or before becoming delinquent (a) all Taxes, levies, assessments, and governmental charges imposed on it or its income or profits or any of its Property, and (b) all lawful claims for labor, material, and supplies, which, if unpaid, might become a Lien upon any of its Property; provided, however, that neither any Loan Party nor any of its Subsidiaries shall be required to pay or discharge any Tax, levy, assessment, governmental charge or claim which is being contested in good faith by appropriate proceedings diligently pursued, and for which adequate reserves in accordance with GAAP have been established.

#### **Section 6.5 Insurance.**

(a) Each Loan Party shall, and shall cause each of its Subsidiaries to, maintain insurance with financially sound and reputable insurance companies satisfactory to Administrative Agent in such amounts and covering such risks as is customarily maintained in conformity with prudent industry practice by companies engaged in similar businesses and owning similar Properties in the same general areas in which the Loan Parties and their Subsidiaries operate, *provided* that in any event the Loan Parties will maintain and cause each of their Subsidiaries to maintain workmen's compensation insurance, property insurance, comprehensive general liability insurance, and business interruption insurance with coverage amounts and deductibles reasonably satisfactory to Administrative Agent. Each insurance policy covering Collateral shall name Administrative Agent as lender's loss payable and each insurance policy covering liabilities shall name Administrative Agent



as additional insured, and each such insurance policy shall provide that such policy will not be cancelled or reduced without thirty (30) days' prior written notice to Administrative Agent and no other Person shall be named as a loss payee or additional insured, as applicable, with respect to such policies. Each Loan Party shall execute and deliver to Administrative Agent a collateral assignment, in form and substance satisfactory to Administrative Agent, of each business interruption insurance policy maintained by such Loan Party. For the avoidance of doubt, this **Section 6.5(a)** shall not apply to separate insurance policies held by certain Loan Parties for the benefit of landlords and in accordance with certain lease obligations with landlords thereto.

(b) If at any time any Building or Manufactured (Mobile) Home (as defined in applicable Flood Insurance Regulations) is included in the Collateral and is or has become located in an area designated as a "special flood hazard area" under applicable Flood Insurance Regulations, each Loan Party shall, and shall cause each of its Subsidiaries to, (i) provide Administrative Agent with a description of such Building or Manufactured (Mobile) Home, including the address and legal description thereof and such other information as may be requested by Administrative Agent to obtain a flood determination or otherwise satisfy its obligations under applicable Flood Insurance Regulations, (ii) obtain flood insurance in such amounts as required by applicable Flood Insurance Regulations and (iii) provide evidence in form and substance satisfactory to Administrative Agent of such flood insurance to Administrative Agent.

**Section 6.6 Inspection Rights.** At any reasonable time and from time to time during Borrower's normal business hours, upon reasonable notice, each Loan Party shall, and shall cause each of its Subsidiaries to, permit representatives and independent contractors of Administrative Agent and each Lender, including but not limited to any Construction Inspector, (a) to examine, inspect, review, evaluate and make physical verifications, and conduct appraisals and audits, of such Loan Party's assets and properties (both real and personal, including accounts, inventory and equipment) in any manner and through any medium that Administrative Agent or such Lender considers advisable, (b) to visit and inspect its Properties, (c) to examine its corporate, financial and operating books and records, and make copies thereof or abstracts therefrom and (d) to discuss its affairs, business, operations, financial condition and accounts with its directors, officers, employees, and independent certified public accountants, all at the sole cost and expense of Borrower and at such reasonable times during normal business hours and as often as may be reasonably requested; *provided* that, other than with respect to such visits and inspections made by any Construction Inspector, and visits and inspections during the continuance of an Event of Default, (i) only Administrative Agent on behalf of the Lenders may exercise rights under this **Section 6.6(a)**, (ii) Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year and (iii) such costs and expenses paid by Borrower for such visits and inspections shall not exceed \$25,000 per occurrence and \$50,000 in the aggregate in any calendar year; provided, further, that when an Event of Default exists Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing under this Section at the sole cost and expense of Borrower (and not subject to the limits in **clause (iii)** above), and at any time during normal business hours and without advance notice.

**Section 6.7 Keeping Books and Records.** Each Loan Party shall, and shall cause each of its Subsidiaries to, maintain proper books of record and account in which full, true, and correct entries in conformity with GAAP shall be made of all dealings and transactions in relation to its business and activities.

**Section 6.8 Compliance with Laws.** Each Loan Party shall, and shall cause each of its Subsidiaries to, (a) comply in all respects with all Anti-Terrorism Laws, Anti-Corruption Laws and applicable Sanctions and (b) comply in all material respects with all other applicable Laws (including, without limitation, all Environmental Laws) and decrees of any Governmental Authority or arbitrator.

**Section 6.9 Compliance with Agreements.** Each Loan Party shall, and shall cause each of its Subsidiaries to, comply in all material respects with (a) all Material Agreements and (b) all other agreements, contracts, and instruments binding on it or affecting its Properties or business, except with respect to this clause (b) to the extent a failure to so comply could not reasonably be expected to have a Material Adverse Effect.

**Section 6.10 Further Assurances.** Each Loan Party shall, and shall cause each of its Subsidiaries and each other Loan Party to, execute and deliver such further agreements and instruments and take such further action as may be reasonably requested by

Administrative Agent or any Lender to carry out the provisions and purposes of this Agreement and the other Loan Documents and to create, preserve, and perfect the Liens of Administrative Agent in the Collateral.

Section 6.11 **ERISA**. Each Loan Party shall, and shall cause each of its Subsidiaries to, comply with all minimum funding requirements, and all other material requirements, of ERISA and the Code, if applicable, so as not to give rise to any liability thereunder.

#### Section 6.12 **Account Control Agreements**.

(a) Unless otherwise waived by Administrative Agent, each Loan Party shall, and shall cause each of its Subsidiaries to, (i) use the financial institution serving as Administrative Agent as its principal depository bank, including for the maintenance of business, cash management, operating and administrative Deposit Accounts and (ii) cause all Commodity Accounts, Deposit Accounts and Securities Accounts held with financial institutions other than the Administrative Agent (in each case, excluding those accounts which are Excluded Deposit Accounts) held by the Loan Parties as of the Closing Date to be subject to an Account Control Agreement in favor of Administrative Agent, in form and substance reasonably satisfactory to Administrative Agent, which provides that Administrative Agent shall have exclusive “control” (within the meaning of Section 8.106 or Section 9.104 of the UCC, as applicable) of such account. For the avoidance of doubt, the Loan Parties shall be permitted to maintain a deposit account with Comerica Bank or other provider of company credit cards, for the purpose of deposits in connection with credit cards permitted under this Agreement, not to exceed \$500,000 in the aggregate at any time, and such account shall not require an Account Control Agreement.

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(b) Each Loan Party shall, with respect to each Deposit Account, Securities Account and Commodity Account (in each case, excluding those accounts which are Excluded Deposit Accounts and accounts maintained with Administrative Agent) that such Loan Party at any time opens, maintains or acquires after the Closing Date, substantially contemporaneously with the opening or acquisition of such Deposit Account, Securities Account or Commodity Account (in each case, excluding those accounts which are Excluded Deposit Accounts and accounts maintained with Administrative Agent) and prior to the depositing any funds therein or transferring any assets thereto, enter into an Account Control Agreement that is effective for the Administrative Agent to obtain “control” (within the meaning of Chapter 8 or Chapter 9 of the UCC, as applicable) and otherwise in form and substance reasonably satisfactory to the Administrative Agent, and pursuant to which the depository bank that maintains such Deposit Account, securities intermediary that maintains such Securities Account, or commodities intermediary that maintains such Commodity Account, as applicable, agrees to comply at any time with instructions from the Administrative Agent to such depository bank, securities intermediary or commodities intermediary directing the disposition of funds from time to time credited to such Deposit Account, Securities Account or Commodity Account, without further consent of such Loan Party. No Loan Party shall permit any Deposit Account excluded from the requirements of this **Section 6.12** as a result of such Deposit Account constituting an Excluded Deposit Account to cease to qualify as an Excluded Deposit Account unless and until such account is subject to an Account Control Agreement. To manage and reduce its exposure to Federal Deposit Insurance Corporation limitations and potential catastrophic company impacts if all its funds were deposited in a single institution, Loan Parties may deposit funds with other banks, subject to Administrative Agent receiving an Account Control Agreement pursuant to the terms of this Agreement and provided further that the Loan Parties maintain at Administrative Agent a minimum of \$10,000,000 in the aggregate in Deposit Accounts that are not Excluded Deposit Accounts.

Section 6.13 **Additional Guarantors**. Borrower shall notify Administrative Agent at the time that any Person becomes a Subsidiary of a Loan Party (whether by formation, acquisition, merger or otherwise), and promptly thereafter (and in any event within fifteen (15) Business Days, subject to any extensions granted by Administrative Agent in its sole discretion), (a) execute and deliver or cause to be executed and delivered to Administrative Agent all Security Documents, stock certificates, stock powers and other agreements and instruments as may be requested by Administrative Agent to ensure that Administrative Agent has a perfected Lien on all Equity Interests held by any Loan Party in such Subsidiary, and (b) cause such new Subsidiary to (i) become a Guarantor by executing and delivering to Administrative Agent a Guaranty or a Guarantor Joinder Agreement, (ii) execute and deliver all Security Documents requested by Administrative Agent pledging to Administrative Agent for the benefit of the Secured Parties all of its Property constituting Collateral (subject to such exceptions as Administrative Agent may permit in its sole discretion) and take all actions required by Administrative Agent to grant to Administrative Agent for the benefit of Secured Parties a perfected first priority security interest in such Property, subject to Permitted Liens, including the execution and delivery of Account Control Agreements to the extent required pursuant to Section 6.12 and the filing of UCC financing statements in such jurisdictions as may be requested by Administrative Agent, (iii) within thirty (30) days of such Person becoming a Subsidiary, with respect to real Property owned in fee simple by such Subsidiary: (A) execute, acknowledge and deliver to Administrative Agent a Mortgage and (B) the Owned Real Estate Support Documents with respect

to such real Property; provided that, if such real Property is located in a “special flood hazard area”, such Mortgage shall not be executed and delivered to Administrative Agent until the date that is thirty (30) days after Administrative Agent has delivered to the Lenders the following documents in respect of such real Property: (I) a completed flood hazard determination from a third-party vendor, (II) if such real Property is located in a “special flood hazard area”, (1) a notification to the applicable Loan Parties of that fact and (if applicable) notification to the applicable Loan Parties that flood insurance coverage is not available and (2) evidence of receipt by the applicable Loan Parties of such notice; and (III) if required by applicable Flood Insurance Regulations, evidence of required flood insurance; and (iv) deliver to Administrative Agent such other documents and instruments as Administrative Agent may reasonably require, including appropriate favorable opinions of counsel to such Person in form, content and scope reasonably satisfactory to Administrative Agent.

Section 6.14 **Sanctions; Anti-Corruption Laws.** The Loan Parties will maintain in effect policies and procedures designed to promote compliance by the Loan Parties, their Subsidiaries, and their respective directors, officers, employees, and agents with applicable Sanctions and with the FCPA and any other applicable Anti-Corruption Laws.

Section 6.15 **[Reserved].**

Section 6.16 **Construction Requirements.**

- (a) Borrower shall Complete the Improvements on or before the Required Completion Date.
- (b) Within thirty (30) days after commencement of construction of the Improvements, but not before construction has actually begun, Borrower must file, or cause to be filed, in the appropriate records of the county in which the Property is situated, an Affidavit of Commencement, duly executed by Borrower and General Contractor.
- (c) Within ten (10) days after the Actual Completion Date, Borrower must file an Affidavit of Completion in the appropriate county records.

Section 6.17 **Real Property.** In the event that any Loan Party shall acquire any real Property, such Loan Party shall promptly thereafter (and in any event within thirty (30) days (or such longer period acceptable to Administrative Agent in its sole discretion)): (a) execute, acknowledge and deliver to Administrative Agent a Mortgage and (b) the Owned Real Estate Support Documents with respect to such real Property; provided that, if such real Property is located in a “special flood hazard area”, such Mortgage shall not be executed and delivered to Administrative Agent until the date that is thirty (30) days, after Administrative Agent has delivered to the Lenders the following documents in respect of such real Property: (i) a completed flood hazard determination from a third-party vendor, (ii) if such real Property is located in a “special flood hazard area”, (A) a notification to the applicable Loan Parties of that fact and (if applicable) notification to the applicable Loan Parties that flood insurance coverage is not available and (B) evidence of receipt by the applicable Loan Parties of such notice; and (iii) if required by applicable Flood Insurance Regulations, evidence of required flood insurance.

Section 6.18 **Post-Closing Covenant.** The Loan Parties shall execute and deliver the documents and take each action set forth on Schedule 6.18, in each case within the applicable corresponding time limits specified on such schedule. (or such later date as Administrative Agent may agree in its sole discretion).

## ARTICLE 7.

### NEGATIVE COVENANTS

Each Loan Party covenants and agrees that until the Obligations have been Paid in Full and no Lender has any Commitment hereunder:

Section 7.1 **Debt.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, incur, create, assume, or permit to exist any Debt, except:

- (a) the Obligations (other than Hedge Obligations);
- (b) existing Debt described on **Schedule 7.1**;
- (c) Purchase Money Debt and Capitalized Lease Obligations not to exceed \$2,500,000.00 in the aggregate at any time outstanding;
- (d) Hedge Obligations existing or arising under Hedging Agreements permitted by **Section 7.16**;
- (e) Debt associated with bonds or other surety obligations required by Governmental Authorities in connection with the operation of the businesses of the Loan Parties;
- (f) unsecured intercompany Debt (i) owed by any Loan Party to another Loan Party, (ii) owed by any Loan Party to a Subsidiary that is not a Loan Party; provided that such Debt (A) shall be subordinated to the Obligations in a manner reasonably satisfactory to the Administrative Agent and (B) does not require the payment of cash interest by any Loan Party to a non-Loan Party, and (iii) owed by a Subsidiary that is not a Loan Party to a Loan Party; *provided* that such Debt (A) is permitted under **Section 7.5** and (B) shall be evidenced by a promissory note pledged and delivered to Administrative Agent pursuant to the Security Documents;
- (g) Guarantees by any Loan Party of Debt of any other Loan Party not otherwise prohibited pursuant to this **Section 7.1**;
- (h) endorsements of negotiable instruments for collection in the ordinary course of business;
- (i) Subordinated Debt;

- (j) Debt owed to any Person providing property, casualty, liability, or other insurance to a Loan Party or any of its Subsidiaries, so long as the amount of such Debt is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Debt is incurred and such Debt is outstanding only during such year;
- (k) Unsecured Debt in connection with purchase cards and corporate credit cards, treasury obligations and similar obligations incurred by the Loan Parties not to exceed \$500,000 in the aggregate at any time;
- (l) Capitalized Lease Obligations with regard to the Lease (Georgetown) and real property located at 110 E. Old Settlers Blvd., Suite 100, Round Rock, Texas;
- (m) other Debt not to exceed \$1,000,000.00 in the aggregate at any time outstanding; provided that such Debt is unsecured; and
- (n) other Debt approved in writing by the Administrative Agent and Required Lenders in their sole discretion.

**Section 7.2 Limitation on Liens.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, incur, create, assume, or permit to exist any Lien upon any of its Property, assets, or revenues, whether now owned or hereafter acquired, except:

- (a) existing Liens disclosed on **Schedule 7.2**;
- (b) Liens in favor of Administrative Agent for the benefit of the Secured Parties;
- (c) encumbrances consisting of minor easements, zoning restrictions, or other restrictions on the use of real Property that do not (individually or in the aggregate) materially affect the value of the assets encumbered thereby or materially impair the ability of any Loan Party or its Subsidiaries to use or operate such assets in their respective businesses, and none of which is violated in any material respect by existing or proposed structures or land use or operation;

(d) Liens for Taxes, assessments, or other governmental charges which are not delinquent or which are being contested in good faith by appropriate proceedings diligently pursued and for which adequate reserves in accordance with GAAP have been established and for which such contest operates to suspend the enforcement of any foreclosure or levy on any Property of any Loan Party or any of its Subsidiaries;

(e) Liens of mechanics, materialmen, warehousemen, carriers, or other similar statutory Liens securing obligations incurred in the ordinary course of business that are not yet due or which are being contested in good faith by appropriate proceedings diligently pursued and for which adequate reserves in accordance with GAAP have been established and for which such contest operates to suspend the enforcement of any foreclosure or levy on any Property of any Loan Party or any of its Subsidiaries;

(f) Liens resulting from good faith deposits to secure payments of workmen's compensation, unemployment insurance or other social security programs (other than Liens imposed by ERISA) or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, contracts (other than for payment of Debt), or leases or subleases made in the ordinary course of business;

(g) Liens on specific Property to secure Purchase Money Debt used to acquire such Property and Liens securing Capitalized Lease Obligations with respect to specific leased Property, in each case to the extent permitted in **Section 7.1(c)**;

(h) easements, rights-of-way, restrictions and other similar encumbrances 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 minor defects in title, in each case, which do not materially interfere with the conduct of such Loan Party's business or the utilization thereof in the business of such Loan Party; and

(i) Liens in connection with factoring and/or sale of trade receivables permitted pursuant to **Section 7.8(f)**.

**Section 7.3 Mergers, Etc.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become a party to a merger or consolidation, or purchase or otherwise acquire all or substantially all of the assets of any Person or any shares or other evidence of beneficial ownership of any Person, or wind-up, dissolve, divide or liquidate, except that:

(a) any Subsidiary may merge or consolidate with Borrower so long as Borrower is the surviving entity;

(b) any Subsidiary may merge or consolidate with another Subsidiary so long as if a Subsidiary that is a Guarantor is involved in such merger or consolidation, such Guarantor is the surviving entity;

(c) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Subsidiary that is a Wholly-Owned Subsidiary; *provided* that if the transferor in such transaction is a Loan Party, then the transferee must be a Loan Party; and

(d) any Wholly-Owned Subsidiary of the Borrower may merge with or into the Person such Wholly-Owned Subsidiary was formed to acquire in connection with any acquisition permitted hereunder; provided that in the case of any merger involving a Wholly-Owned Subsidiary, (i) a Guarantor shall be the continuing or surviving entity or (ii) simultaneously with such transaction, the continuing or surviving entity shall become a Guarantor and the Loan Parties shall comply with **Section 6.13** in connection therewith.

**Section 7.4 Restricted Payments.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

(a) Subsidiaries may declare and pay dividends and other Restricted Payments to Borrower and any other Subsidiary of Borrower that is a Loan Party;

(b) Parent may make Restricted Payments pursuant to and in accordance with customary equity incentive plans or other benefit plans for directors, management or employees of the Parent and its Subsidiaries in the ordinary course of business; and

(c) so long as no Event of Default exists or would result therefrom, Borrower and any other Subsidiary may make Permitted Tax Distributions.

**Section 7.5 Loans and Investments.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make, hold or maintain, any advance, loan, extension of credit, or capital contribution to or investment in, Guarantee any obligations of, or purchase any stock, bonds, notes, debentures, or other securities of, any Person, or consummate any Acquisition, except:

(a) existing investments described on **Schedule 7.5**;

(b) readily marketable direct obligations of the United States of America or any agency thereof with maturities of one (1) year or less from the date of acquisition;

(c) fully insured certificates of deposit with maturities of one (1) year or less from the date of acquisition issued by either (i) any commercial bank operating in the United States of America having capital and surplus in excess of \$50,000,000.00 or (ii) any Lender;

(d) commercial paper of a domestic issuer if at the time of purchase such paper is rated in one (1) of the two (2) highest rating categories of S&P or Moody's;

(e) investments (other than Acquisitions) in Wholly-Owned Subsidiaries or Subsidiaries that are, or substantially contemporaneously with the making of such investment will become, Guarantors;

(f) investments consisting of Hedge Agreements permitted under **Section 7.16**;

(g) advances or extensions of credit in the form of accounts receivable incurred in the ordinary course of business and upon terms common in the industry for such accounts receivable which are not more than sixty (60) days past due and are paid in cash;

(h) advances to employees for the payment of expenses in the ordinary course of business, including but not limited to, for the avoidance of doubt, legal fees for reporting obligations of officers and directors;

(i) investments consisting of cash;

(j) investments comprised of (i) accounts receivable owing to such Loan Party or its Subsidiary if created or acquired in the ordinary course of business, (ii) endorsements of negotiable instruments held for deposit or collection or similar transactions in the ordinary course of business or (iii) lease, utility and other similar deposits made in the ordinary course of business; and

(k) deposits of cash made in the ordinary course of business to secure performance of operating leases, taxes and insurance.

**Section 7.6 Limitation on Issuance of Equity.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, issue, sell, assign, or otherwise Dispose of (a) any of its stock or other Equity Interests, (b) any securities exchangeable for or convertible into or carrying any rights to acquire any of its stock or other Equity Interests, or (c) any option, warrant, or other right to acquire any of its stock or other Equity Interests in each case, other than to any Loan Party or to the extent otherwise constituting a Restricted Payment permitted pursuant to **Section 7.4(a)** or **(b)**. Notwithstanding the forgoing, Loan Parties are permitted, and no prepayment shall be required hereunder, to issue shares of common stock in Parent to the extent such net proceeds are used for (i) operating in the ordinary course or (ii) acquisitions.



**Section 7.7 Transactions With Affiliates.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into any transaction, including, without limitation, the purchase, sale, or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate of any Loan Party or such Subsidiary, except:

(a) transactions entered into in the ordinary course of and pursuant to the reasonable requirements of such Loan Party's or such Subsidiary's business, pursuant to a transaction which is otherwise expressly permitted under this Agreement, and upon fair and reasonable terms no less favorable to such Loan Party or such Subsidiary than would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of a Loan Party or such Subsidiary;

(b) transactions solely among Loan Parties;

(c) the issuance or incurrence of intercompany Debt permitted under **Section 7.1(f)**;

(d) Restricted Payments permitted by **Section 7.4**; and

(e) investments permitted under **Sections 7.5(e)** and **(h)**.

**Section 7.8 Disposition of Assets.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly make any Disposition, except:

(a) Dispositions of inventory in the ordinary course of business;

(b) Dispositions of obsolete, damaged, uneconomic or worn-out machinery, equipment or other assets, or machinery, equipment or other assets no longer used or useful in the conduct of such Loan Party's business;

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(c) Dispositions from any Loan Party or any of its Subsidiaries to Borrower or any other Loan Party;

(d) Dispositions of cash and Cash Equivalents in connection with any transaction not prohibited under this Agreement;

(e) the write-off, discount, sale or other Disposition of defaulted or past-due receivables and similar obligations in the ordinary course of business;

(f) any factoring and/or sale of trade receivables on a non-recourse basis to the Loan Parties pursuant to the Factoring Agreement;

(g) Dispositions of equipment to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(h) non-exclusive licenses and sublicenses of intellectual property rights in the ordinary course of business not interfering in any material respect with the ordinary conduct of or materially detracting from the value of the business of the Loan Parties and their Subsidiaries;

(i) the abandonment or Disposition of intellectual property rights that are no longer used or useful in the business of the Loan Parties and their Subsidiaries;

(j) Dispositions constituting Restricted Payments permitted under **Section 7.4** or investments permitted under **Section 7.5**;

(k) the disposition, termination or unwinding of any Hedge Agreement;

(l) Dispositions not otherwise permitted under this **Section 7.8**; *provided* that:

(i) no Default shall have occurred and be continuing or would result therefrom, both before and after giving effect thereto;

(ii) 100% of the consideration received in respect to any such Disposition shall be cash;

(iii) the consideration received shall be equal to or greater than the fair market value thereof (as reasonably determined by a Responsible Officer of Borrower and if requested by Administrative Agent, Borrower shall deliver a certificate of a Responsible Officer of Borrower certifying to that effect); and

(iv) the aggregate fair market value of all Property Disposed of pursuant to this **clause (l)** in any twelve month period shall not exceed \$1,000,000.00;

*provided that in the case of any Disposition permitted under clause (l) of this **Section 7.8**, Borrower shall make the mandatory prepayment of Term Loans to the extent required pursuant to **Section 2.8(d)**.*

**Section 7.9 Sale and Leaseback.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into any arrangement with any Person pursuant to which it leases from such Person real or personal Property that has been or is to be sold or transferred, directly or indirectly, by it to such Person.

**Section 7.10 Nature of Business.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than the businesses in which they are engaged as of the date hereof or businesses substantially related thereto. No Loan Party shall, nor shall it permit any of its Subsidiaries to, make any material change in its credit collection policies if such change would materially impair the collectability of any Account, nor will it rescind, cancel or modify any Account except in the ordinary course of business.

**Section 7.11 Environmental Protection.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly (a) use (or permit any tenant to use) any of their respective Properties or assets for the handling, processing, storage, transportation, or disposal of any Hazardous Material in violation of, or in a manner or to a location that could give rise to liability under, any applicable Environmental Laws, (b) generate any Hazardous Material in violation of any applicable Environmental Laws, (c) conduct any activity that is likely to cause a Release or threatened Release of any Hazardous Material in violation of any applicable Environmental Laws, or (d) otherwise conduct any activity or use any of their respective Properties or assets in any manner that is likely to violate any Environmental Law or create any Environmental Liabilities for which any Loan Party or any of its Subsidiaries would be responsible.

**Section 7.12 Accounting.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, change its fiscal year or make any change (a) in accounting treatment or reporting practices, except as required by GAAP and disclosed to Administrative Agent and Lenders, or (b) in Tax reporting treatment, except as required by Law and disclosed to Administrative Agent and Lenders.

**Section 7.13 Burdensome Agreements.** Each Loan Party shall not, and shall not permit any of its Subsidiaries or any other Loan Party to, enter into or permit to exist any arrangement or agreement, other than pursuant to this Agreement or any other Loan Document, which (a) directly or indirectly prohibits Borrower, any of its Subsidiaries or any other Loan Party from creating or incurring a Lien on the Collateral (other than Permitted Liens), whether now owned or hereafter acquired, (b) directly or indirectly prohibits any of its Subsidiaries or any other Loan Party to make any payments, directly or indirectly, to any other Loan Party by way of dividends, distributions, advances, repayments of loans, repayments of expenses, accruals, or otherwise or (c) in any way would be contravened by such Person's performance of its obligations hereunder or under the other Loan Documents. Notwithstanding the foregoing, Administrative Agent and Lenders acknowledge and approve certain exceptions hereto as provided in the Lease (Georgetown).

**Section 7.14 Subsidiaries.** Neither Borrower nor any other Loan Party shall, directly or indirectly, form or acquire any Subsidiary unless (a) such Subsidiary is a Wholly-Owned Domestic Subsidiary and (b) Borrower or such other Loan Party complies with the requirements of Section 6.13 with respect to such Subsidiary and its Equity Interests.

**Section 7.15 Amendments of Certain Documents.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, amend, restate, supplement or otherwise modify any of the terms or provisions of, or waive any of its rights under, (a) their respective Constituent Documents in a manner that would be adverse to Administrative Agent or Lenders or (b) any Material Agreement, without the prior written consent of Administrative Agent. Notwithstanding the foregoing, Borrower may make amendments or additions of statements of work to the AI Rack Integration Agreement that update certain costs of artificial intelligence rack configurations without the prior written consent of Administrative Agent provided that such amendments or additions do not reduce fixed component of amounts payable to Borrower (including but not limited to the Management Fee (as defined in the AI Rack Integration Agreement), and inclusive of (without redundancy), rent, triple nets, debt service, and indirect labor). Borrower shall not make or permit any Change Orders or allow any extras to the Improvement Plans, General Contract or any subcontract (other than Permitted Budget Reallocations), if such Change Order or extra would, by itself or when taken together with all previous Change Orders, (i) result in the aggregate cost of construction of the Improvements to exceed the total budget set forth in the Budget, or (ii) result in a cost in excess of \$250,000 in the aggregate when taken with together with all previous Change Orders, or (iii) adversely affect the value of the Improvements, in each case without the prior written consent of the Administrative Agent. Administrative Agent may take a reasonable period of time to evaluate any requests for proposed Change Orders (but in no event longer than three (3) Business Days following Administrative Agent's receipt of such request), and may, at Borrower's cost, (x) obtain an update of the Budget to take into account the proposed Change Order and (y) require that all other approvals required from other parties be obtained prior to review of the proposed Change Order. Borrower acknowledges that delays may result, and agrees that so long as the delays are not unreasonable in duration, they shall not affect Borrower's obligation to complete the Improvements on or before the Required Completion Date.

**Section 7.16 Hedge Agreements.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, enter into any Hedge Agreement, except Hedge Agreements entered into in the ordinary course of business to hedge or mitigate risks to which such Loan Party or any Subsidiary thereof has actual exposure and not for speculative purposes and which have terms and conditions reasonably acceptable to Administrative Agent.

**Section 7.17 Anti-Corruption Laws; Sanctions; Anti-Terrorism Laws.** No Loan Party will, directly or indirectly, use the proceeds of the Loans or Letters of Credit, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (a) 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 the FCPA or any other applicable Anti-Corruption Law, or (b) (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans or Letters of Credit, whether as Administrative Agent, Arranger, Lender, underwriter, advisor, investor, or otherwise).

**Section 7.18 Prepayment of Debt.** No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make any optional or voluntary payment, prepayment, repurchase or redemption of any Debt for borrowed money, except the Obligations under the Loan Documents and Debt permitted under *Section 7.1(k)*.

## ARTICLE 8.

### FINANCIAL COVENANTS

Each Loan Party covenants and agrees that until the Obligations have been Paid in Full and no Lender has any Commitment hereunder:

**Section 8.1 Leverage Ratio.** The Loan Parties shall not permit, as of the last day of any fiscal quarter for the Test Period then ended, commencing with the fiscal quarter ending December 31, 2024, the Leverage Ratio to be greater than the ratio set forth opposite such period below:

Period	Maximum Ratio
Closing Date to September 30, 2025	3.75 to 1.00
December 31, 2025 to September 30, 2026	2.75 to 1.00
From and after December 31, 2026	2.00 to 1.00

Section 8.2 **Debt Service Coverage Ratio.** The Loan Parties shall not permit, as of the last day of any fiscal quarter, commencing with the fiscal quarter ending December 31, 2025, the ratio of (a) EBITDA, to (b) Debt Service, in each case for Parent and its Subsidiaries, on a consolidated basis in accordance with GAAP, to be less than 1.25 to 1.00.

Section 8.3 **Required Reserve.** Borrower shall maintain at all times the Required Reserve in the Required Reserve Account until such time as the Borrower uses all of the funds in the Required Reserve Account to make a prepayment of the Term Loans permitted pursuant to *Section 2.8(b)*. The Required Reserve shall not be available to Borrower for disbursements or other payments except as set forth in this Agreement or in the Assignment of Account. The Required Reserve Account and all funds maintained therein shall serve as additional Collateral for the payment of the Obligations.

## ARTICLE 9.

### DEFAULT

Section 9.1 **Events of Default.** Each of the following shall be deemed an “*Event of Default*”:

(a) Borrower shall fail to pay the Obligations under the Loan Documents or any part thereof shall not be paid when due or declared due;

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(b) Any Loan Party shall breach any provision of *Sections 6.1, 6.2, 6.5, 6.6, 6.13, 6.16, 6.18, or Article 7 or Article 8* of this Agreement;

(c) Any representation or warranty made or deemed made by or on behalf of any Loan Party in any Loan Document or in any certificate, report, notice, or financial statement furnished at any time in connection with this Agreement or any other Loan Document shall be false, misleading, or erroneous in any material respect (without duplication of any materiality qualifier contained therein) when made or deemed to have been made;

(d) Any Loan Party or any Subsidiary of any Loan Party shall fail to perform, observe, or comply with any covenant, agreement, or term contained in this Agreement or any other Loan Document (other than as covered by *Sections 9.1(a)* and *(b)*), and such failure continues for more than thirty (30) days following the earlier of (x) notice of such failure from Administrative Agent to Borrower and (y) the date a Responsible Officer of Borrower first knows of such failure;

(e) Any Loan Party or any Subsidiary of any Loan Party shall commence a voluntary proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar Law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or a substantial part of its Property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or shall make a general assignment for the benefit of creditors or shall generally fail to pay its debts as they become due or shall take any corporate action to authorize any of the foregoing;

(f) An involuntary proceeding shall be commenced against any Loan Party or any Subsidiary of any Loan Party seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar Law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its Property, and such involuntary proceeding shall remain undismissed and unstayed for a period of sixty (60) days;

(g) Any Loan Party or any Subsidiary of any Loan Party shall fail to pay when due any principal of or interest on any Material Debt (other than the Obligations under the Loan Documents), or the maturity of any such Material Debt shall have been accelerated, or any such Material Debt shall have been required to be prepaid, repurchased, defeased or redeemed prior to the stated maturity thereof or any cash collateral in respect thereof to be demanded, or any event shall have occurred that permits (or, with the giving of notice or lapse of time or both, after any applicable cure periods, would permit) any holder or holders of such Material Debt or any Person acting on behalf of such holder or holders to accelerate the maturity thereof or require any such prepayment, repurchase, defeasance or redemption or any cash collateral in respect thereof to be demanded;

(h) There shall occur an Early Termination Date (as defined in a Hedge Agreement) under any Hedge Agreement to which any Loan Party or Subsidiary of a Loan Party is a party resulting from (1) any event of default under such Hedge Agreement to which any Loan Party or any Subsidiary of any Loan Party is the Defaulting Party (as defined in such Hedge Agreement), or (2) any Termination Event (as so defined) under such Hedge Agreement as to which any Loan Party or any Subsidiary of any Loan Party is an Affected Party (as so defined) and, in either event, the Hedge Termination Value, if any, owed by any Loan Party or any Subsidiary of any Loan Party as a result thereof exceeds \$1,000,000.00;

(i) This Agreement or any other Loan Document shall cease to be in full force and effect or shall be declared null and void or the validity or enforceability thereof shall be contested or challenged by any Loan Party or any Subsidiary of any Loan Party or any of their respective equity holders, or Borrower or any other Loan Party shall deny that it has any further liability or obligation under any of the Loan Documents, or any Lien created by the Loan Documents shall for any reason cease to be a valid, first priority perfected Lien (subject to Permitted Liens that have priority over the Liens in favor of the Administrative Agent under applicable Law or that are expressly permitted to have priority over such Liens pursuant to the terms of the Loan Documents) upon any of the Collateral purported to be covered thereby;

(j) Any of the following events shall occur or exist with respect to any Loan Party or any ERISA Affiliate: (i) any ERISA Event occurs with respect to a Plan or Multiemployer Plan, or (ii) any non-exempt Prohibited Transaction involving any Plan or Multiemployer Plan; and in each case above, such event or condition, together with all other events or conditions, if any, have subjected or could in the reasonable opinion of Administrative Agent subject any Loan Party or any ERISA Affiliate to any Tax, penalty, or other liability to a Plan, a Multiemployer Plan, the PBGC, the IRS, the U. S. Department of Labor, or otherwise (or any combination thereof) which individually or in the aggregate could reasonably be expected to have a Material Adverse Effect;

(k) A Change of Control shall occur;

(l) Any Loan Party or any Subsidiary of any Loan Party, or any of their Properties, revenues, or assets, shall become subject to an order of forfeiture, seizure, or divestiture (whether under RICO or otherwise) and the same shall not have been discharged within thirty (30) days from the date of entry thereof;

(m) Any Loan Party or any Subsidiary of any Loan Party shall fail to discharge within a period of thirty (30) days after the commencement thereof any attachment, sequestration, or similar proceeding or proceedings involving an aggregate amount in excess of \$100,000.00 against any of its assets or Properties;

(n) A final judgment or judgments for the payment of money in excess of \$100,000.00 in the aggregate shall be rendered by a court or courts against any Loan Party or any Subsidiary of any Loan Party and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within thirty (30) days from the date of entry thereof and such Loan Party or such Subsidiary of such Loan Party shall not, within such period of thirty (30) days, or such longer period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal;

(o) Any breach, default, or event of default occurs under the AI Rack Integration Agreement and such breach, default or event of default would reasonably be expected to result in a Material Adverse Effect, or the AI Rack Integration Agreement is terminated, or the AI Rack Integration Agreement shall cease to be in full force and effect or shall be declared null and void or the validity or enforceability thereof shall be contested or challenged by any party thereto;

(p) Any breach, default, or event of default occurs under the Lease (Georgetown), and such breach, default or event of default would reasonably be expected to result in a Material Adverse Effect, or the Lease (Georgetown) is terminated, or the Lease (Georgetown) shall cease to be in full force and effect or shall be declared null and void or the validity or enforceability thereof shall be contested or challenged by any party thereto; or

(q) The subordination provisions related to any Subordinated Debt or any other agreement, document or instrument governing any Subordinated Debt shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, or any Person shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations under the Loan Documents, for any reason shall not have the priority contemplated by this Agreement or any such subordination provisions.

**Section 9.2 Remedies Upon Default.** If any Event of Default shall occur and be continuing, then Administrative Agent may, with the consent of the Required Lenders, or shall, at the direction of the Required Lenders, without notice do any or all of the following: (a) terminate the Commitments of the Lenders, (b) terminate the obligations of L/C Issuer to make L/C Credit Extensions, (c) require that Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto), and/or (d) declare the Obligations or any part thereof to be immediately due and payable, and the same shall thereupon become immediately due and payable, without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by Borrower and each other Loan Party; *provided, however*, that upon the occurrence of an Event of Default under **Section 9.1(e)** or **(f)**, the Commitments of the Lenders shall automatically terminate (except for funding obligations of outstanding Letters of Credit), the obligations of L/C Issuer to make L/C Credit Extensions shall automatically terminate, the obligation of Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, and the Obligations (other than the Obligations arising out of Bank Product Agreements) shall become immediately due and payable, in each case without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by Borrower and each other Loan Party. In addition to the foregoing, if any Event of Default shall occur and be continuing, Administrative Agent may, with the consent of the Required Lenders, or shall, at the direction of the Required Lenders, exercise all rights and remedies available to it, Lenders and L/C Issuer in law or in equity, under the Loan Documents, or otherwise.

**Section 9.3 Application of Funds.** After, or in connection with, the exercise of remedies provided for in **Section 9.2** (or if an Event of Default exists and the written notice thereof, if any, to Borrower from Administrative Agent expressly provides that this **Section 9.3** shall thereafter apply to any amounts received on account of the Obligations or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by Administrative Agent in the following order:

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to Administrative Agent) payable to Administrative Agent in its capacity as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, and Letter of Credit Fees) payable to Lenders and L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and L/C Issuer) arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this **clause Second** payable to them;

*Third*, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among Lenders and L/C Issuer in proportion to the respective amounts described in this **clause Third** payable to them;

*Fourth*, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings and constituting unpaid Bank Product Obligations, ratably among Lenders and Bank Product Providers in proportion to the respective amounts described in this **clause Fourth** held by them;

*Fifth*, to Administrative Agent for the account of L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by Borrower pursuant to **Sections 2.2** and **2.6**;

*Sixth*, to payment of that remaining portion of the Obligations, ratably among the Lenders and Bank Product Providers in proportion to the respective amounts described in this **clause Sixth** held by them; and



*Last*, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Borrower or as otherwise required by Law.

Notwithstanding anything to the contrary herein or in any other Loan Document, no amount received from any Loan Party shall be applied to any Excluded Swap Obligation of such Loan Party, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve allocation to Obligations otherwise set forth in this Section.

Further notwithstanding, Bank Product Obligations shall be excluded from the application described above if Administrative Agent has not received written notice thereof, together with supporting documentation as Administrative Agent may request from the applicable Bank Product Provider, *provided* that no such notice shall be required for any Bank Product Agreement for which Administrative Agent or any Affiliate of Administrative Agent is the applicable Bank Product Provider. Each Bank Product Provider that is not a party to this Agreement that has given notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of Administrative Agent pursuant to the terms of **Article 10** hereof for itself and its Affiliates as if a “Lender” party hereto.

**Section 9.4 Performance by Administrative Agent.** If any Loan Party shall fail to perform any covenant or agreement contained in any of the Loan Documents, then Administrative Agent may (but shall have no obligation to) perform or attempt to perform such covenant or agreement on behalf of such Loan Party. In such event, Borrower shall, at the request of Administrative Agent, promptly pay to Administrative Agent any amount expended by Administrative Agent in connection with such performance or attempted performance, together with interest thereon at the Default Interest Rate from and including the date of such expenditure to but excluding the date such expenditure is paid in full. Notwithstanding the foregoing, it is expressly agreed that Administrative Agent shall not have any liability or responsibility for the performance of any covenant, agreement, or other obligation of Borrower or any other Loan Party under this Agreement or any other Loan Document.

## **ARTICLE 10.**

### **AGENCY**

#### **Section 10.1 Appointment and Authority.**

(a) Each Lender (in its capacity as a Lender and in its capacity as a Bank Product Provider or a potential Bank Product Provider), including each person that becomes a Lender hereunder after the Closing Date, and L/C Issuer hereby irrevocably appoints Susser Bank to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and irrevocably authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this **Article 10** are solely for the benefit of Administrative Agent, Lenders, and L/C Issuer, and neither Borrower nor any other Loan Party shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including, for itself and its Affiliates, in their capacities as potential Bank Product Providers) and L/C Issuer hereby irrevocably appoints and authorizes Administrative Agent to act as the agent of such Lender and L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by Administrative Agent pursuant to **Section 10.5** for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security

Documents, or for exercising any rights and remedies thereunder at the direction of Administrative Agent, shall be entitled to the benefits of all provisions of this **Article 10** and **Article 11** (including **Section 11.1(b)**), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

(c) Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the guarantees of the Obligations provided under the Loan Documents, to have agreed to the provisions of this **Article 10**.

**Section 10.2 Rights as a Lender.** The Person serving as 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 Administrative Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, Borrower or any other Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to Lenders or to provide notice to or obtain the consent of the Lenders with respect thereto.

### **Section 10.3 Exculpatory Provisions.**

(a) Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, Administrative Agent:

(i) shall not be subject to any agency, trust, fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) 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 Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of Lenders as shall be expressly provided for herein or in the other Loan Documents) or is required to exercise as directed in writing by any other party to any intercreditor agreement, as applicable; *provided* that Administrative Agent shall not be required to take any action that, in its opinion or upon the advice of its counsel, may expose Administrative Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of Property of a Defaulting Lender in violation of any Debtor Relief Law;

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(iii) 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 Borrower or any other Loan Party or any of their respective Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity;

(iv) shall be fully justified in failing or refusing to take any action hereunder or under any other Loan Document unless it shall first be indemnified to its satisfaction by Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action; and

(v) does not warrant or accept responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the rates in the definition of “Term SOFR”, “Adjusted Term SOFR”, “BSBY Rate” or with respect to any Benchmark Replacement or other rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate.

(b) Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 9.2** and **10.9**), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appellable judgment. **SUCH LIMITATION OF LIABILITY SHALL APPLY REGARDLESS OF WHETHER THE**

**LIABILITY ARISES FROM THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF ADMINISTRATIVE AGENT.** Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to Administrative Agent in writing by Borrower or any other Loan Party, a Lender, or L/C Issuer.

(c) Neither Administrative Agent nor any Related Party thereof shall 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, or (v) the satisfaction of any condition set forth in **Article 4** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

**Section 10.4 Reliance by Administrative Agent.** Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, 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, including any certificate delivered by a Loan Party pursuant to *Section 10.9(a)*. 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 Credit Extension, that by its terms must be fulfilled to the satisfaction of a Lender or L/C Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or L/C Issuer unless Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Credit Extension. Administrative Agent may consult with legal counsel (who may be counsel for Borrower or any other Loan Party), 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.

**Section 10.5 Delegation of Duties.** 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 Administrative Agent. 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 10* shall apply to any such sub agent and to the Related Parties of Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the Facilities as well as activities as Administrative Agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

**Section 10.6 Resignation of Administrative Agent.**

(a) Administrative Agent may at any time give notice of its resignation to Lenders, L/C Issuer and Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with Borrower (so long as no Event of Default has occurred and is continuing), 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 thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “**Resignation Effective Date**”), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of Lenders and L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that in no event shall any successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date. After the Resignation Effective Date, the provisions of this **Article 10** relating to or indemnifying or releasing Administrative Agent shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

(b) With effect from the Resignation Effective Date (i) 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 Administrative Agent on behalf of Secured Parties 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 (ii) except for any indemnity, fee or expense payments owed to the retiring Administrative Agent, all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender or L/C Issuer, as applicable, directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent (other than any rights to indemnity payments owed to the retiring Administrative Agent), and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this **Article 10, Section 11.1**, and **Section 11.2** 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 Administrative Agent.

(c) Any resignation by Susser Bank as Administrative Agent pursuant to this **Section 10.6** shall also constitute its resignation as L/C Issuer unless the notice thereof otherwise provides. If Susser Bank resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require Lenders to make Loans or fund risk participations in Unreimbursed Amounts pursuant to **Section 2.2(c)**. Upon the appointment by Borrower of a successor L/C Issuer hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (ii) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C 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 Susser Bank to effectively assume the obligations of Susser Bank with respect to such Letters of Credit.

**Section 10.7 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender and L/C Issuer expressly acknowledges that neither Administrative Agent nor L/C Issuer, the Arranger, any other Lender nor any Related Party thereto has made any representation or warranty to such Person and that no act by Administrative Agent, L/C Issuer, the Arranger or any other Lender hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of Borrower or any other Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by Administrative Agent, L/C Issuer, the Arranger or any Lender to any other Lender as to any matter, including whether the Administrative Agent or the Arranger have disclosed material information in their (or their Related Parties') possession. Each Lender and L/C Issuer acknowledges that it has, independently and without reliance upon Administrative Agent, L/C Issuer, the Arranger 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 of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and its Subsidiaries, and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and L/C Issuer also acknowledges that it will, independently and without reliance upon Administrative Agent, L/C Issuer, the Arranger 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 credit analysis, appraisals and 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, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower. Except for notices, reports and other documents expressly required to be furnished to L/C Issuer or the Lenders by Administrative Agent hereunder, Administrative Agent shall not have any duty or responsibility to provide L/C Issuer or any Lender with any credit or other information concerning the business, operations, Property, condition (financial or otherwise), or creditworthiness of Borrower or any other Loan Party or the value of the Collateral or other Properties of Borrower or any other Loan Party or any other Person which may come into the possession of Administrative Agent or any of its Related Parties. Each Lender and L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and certain other facilities set forth herein and (ii) it is engaged in making, acquiring or holding commercial loans, issuing or participating in letters of credit or providing other similar facilities in the ordinary course and is entering into this Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans, issuing or participating in letters of credit and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire or hold commercial loans, issue or participate in letters of credit and to provide other facilities set

forth herein, as may be applicable to such Lender or L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire or hold such commercial loans, issue or participate in letters of credit or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans, issue or participate in letters of credit or providing such other facilities.

**Section 10.8 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower or any other Loan Party) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations under the Loan Documents that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders, L/C Issuer, and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, L/C Issuer, and Administrative Agent and their respective agents and counsel and all other amounts due Lenders, L/C Issuer, and Administrative Agent under **Section 11.1** or **Section 11.2**) 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 L/C Issuer to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders and L/C Issuer, as applicable, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under **Section 11.1** or **Section 11.2**.

**Section 10.9 Collateral and Guaranty Matters.**

(a) The Secured Parties irrevocably authorize Administrative Agent, at its option and in its discretion:

(i) to release any Lien on any Property granted to or held by Administrative Agent under any Loan Document (A) upon Payment in Full, (B) that is Disposed of or to be Disposed of as part of or in connection with any Disposition permitted under the Loan Documents, or (C) if approved, authorized or ratified in writing by the Required Lenders or all Lenders, as applicable, under **Section 11.10**;

(ii) to subordinate any Lien on any Property granted to or held by Administrative Agent under any Loan Document to the holder of any Lien on such Property that is permitted by **Section 7.2**;

(iii) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents; and

(iv) to take any other action with respect to the Collateral that is permitted or required under any intercreditor agreement.

Upon request by Administrative Agent at any time, the Required Lenders will confirm in writing Administrative Agent's authority to release or subordinate its interest in particular types or items of Property, or to release any Guarantor from its obligations under the Guaranty pursuant to this **Section 10.9**. Upon the occurrence of any of the events specified in **Section 10.9(a)(i)(A)**, **(B)** or **(C)** or **Section 10.9(a)(iii)**, at Borrower's sole cost and expense, Administrative Agent shall execute and deliver to Borrower such documentation as Borrower may reasonably request in writing to release the applicable Collateral from the Liens created by the Loan Documents and/or release the applicable Guarantor from its obligations under its Guaranty,



as the case may be. In connection with any such request by Borrower, Administrative Agent may request, and if requested by Administrative Agent, Borrower shall deliver a written certificate of a Responsible Officer of Borrower certifying that the applicable transaction is permitted under the Loan Documents (and Administrative Agent may rely conclusively on any such certificate without further inquiry and shall have no liability to any Secured Party for any inaccuracy or misrepresentation contained therein).

(b) Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall Administrative Agent be responsible or liable to Lenders for any failure to monitor or maintain any portion of the Collateral.

**Section 10.10 Bank Product Agreements.** No Bank Product Provider who obtains the benefits of **Section 9.3**, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Security Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this *Article 10* to the contrary, Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Bank Product Obligations unless Administrative Agent has received written notice of such Bank Product Obligations, together with such supporting documentation as Administrative Agent may request, from the applicable Bank Product Provider. Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Bank Product Obligations arising under Bank Product Agreements upon termination of all Commitments and payment in full of all Obligations under the Loan Documents (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to Administrative Agent and L/C Issuer shall have been made).

#### **Section 10.11 Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of 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 the Plan Asset Regulations) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(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 *subsections (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 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 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 their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, the Arranger or any other arranger of this Agreement or any amendment thereto, or any of their respective Affiliates is a fiduciary with respect to the Collateral or 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 hereto or thereto).

(c) The Administrative Agent and the Arranger hereby informs the Lenders that each such Person is not undertaking to provide 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, this Agreement and any other Loan Documents, (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.

**Section 10.12 Credit Bidding.** The Secured Parties hereby irrevocably authorize Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid by Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof, shall be governed, directly or indirectly, by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in **Section 11.10** of this Agreement), (iii) Administrative Agent shall be authorized to assign the relevant Obligations of the Secured Parties to be credit bid to any such acquisition vehicle on a pro rata basis, as a result of which each of the Secured Parties shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Parties pro rata with their original interest in such Obligations and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 10.13 **No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Arranger or the syndication agents, documentation agents, co-agents, or bookrunners listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as Administrative Agent, a Lender or a L/C Issuer hereunder.

Section 10.14 **Flood Laws.** Each Lender and each participant is responsible for assuring its own compliance with any applicable Flood Insurance Regulations and Administrative Agent shall have no responsibility therefor.

Section 10.15 **Erroneous Payments.**

(a) If the Administrative Agent notifies a Lender, L/C Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, L/C Issuer or Secured Party (any such Lender, L/C Issuer, Secured Party or other recipient, a “**Payment Recipient**”) that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding **clause (b)**) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, L/C Issuer, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**”) and demands the return of such Erroneous Payment (or a portion thereof) (*provided*, that, without limiting any other rights or remedies (whether at law or in equity), the Administrative Agent may not make any such demand under this **clause (a)** with respect to an Erroneous Payment unless such demand is made within ten (10) Business Days of the date of receipt of such Erroneous Payment by the applicable Payment Recipient), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Lender, L/C Issuer or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds 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 from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this **clause (a)** shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding **clause (a)**, each Lender, L/C Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, L/C Issuer or Secured Party, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, L/C Issuer or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case.

(i) (A) in the case of immediately preceding **clauses (x)** or **(y)**, an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding **clause (z)**), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, L/C Issuer or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify

the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this **Section 10.15(b)**.

(c) Each Lender, L/C Issuer or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, L/C Issuer or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, L/C Issuer or Secured Party from any source, against any amount due to the Administrative Agent under immediately preceding **clause (a)** or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding **clause (a)**, from any Lender or L/C Issuer that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “**Erroneous Payment Return Deficiency**”), upon the Administrative Agent’s notice to such Lender or L/C Issuer at any time, (i) such Lender or L/C Issuer shall be deemed to have assigned its Loans (but not its Commitments) of the relevant class with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Class**”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “**Erroneous Payment Deficiency Assignment**”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender or L/C Issuer shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender or L/C Issuer, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender or assigning L/C Issuer shall cease to be a Lender or L/C Issuer, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender or assigning L/C Issuer and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender or L/C Issuer shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender or L/C Issuer (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender or L/C Issuer and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender, L/C Issuer or Secured Party under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the “**Erroneous Payment Subrogation Rights**”).

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations, agreements and waivers under this **Section 10.15** shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or L/C 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 11.**  
**MISCELLANEOUS**

**Section 11.1 Expenses.**

(a) Borrower and each of the other Loan Parties hereby, jointly and severally, agrees to pay on demand: (i) all reasonable and documented (in summary form) out-of-pocket costs and expenses of Administrative Agent, the Arranger, L/C Issuer, and their Related Parties in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents and any and all amendments, modifications, renewals, extensions, supplements, waivers, consents and ratifications thereof and thereto, including, without limitation, the reasonable and documented out-of-pocket fees and expenses of legal counsel, advisors, consultants, and auditors for Administrative Agent, L/C Issuer, and their Related Parties, including but not limited to each Construction Inspector; (ii) all costs and expenses of Administrative Agent, L/C Issuer, and each Lender in connection with any Default and the enforcement of this Agreement or any other Loan Document, including, without limitation, court costs and the fees and expenses of legal counsel, advisors, consultants, experts witnesses, and auditors for Administrative Agent, L/C Issuer, and each Lender; (iii) all costs and expenses incurred by L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; (iv) all transfer, stamp, documentary, or other similar Taxes, assessments, or charges levied by any Governmental Authority in respect of this Agreement or any of the other Loan Documents; (v) all costs, expenses, assessments, and other charges incurred in connection with any filing, registration, recording, or perfection of any Lien contemplated by this Agreement or any other Loan Document; and (vi) all other costs and expenses incurred by Administrative Agent, L/C Issuer, and any Lender in connection with the enforcement or protection of its rights under this Agreement or any other Loan Document, any workout or restructuring (including the negotiations thereof), any litigation, dispute, suit, proceeding or action, the enforcement of its rights and remedies, and the protection of its interests in bankruptcy, insolvency or other legal proceedings, including, without limitation, all costs, expenses, and other charges (including Administrative Agent's and such Lender's, and L/C Issuer's internal charges) incurred in connection with evaluating, observing, collecting, examining, auditing, appraising, selling, liquidating, or otherwise disposing of the Collateral or other assets of the Loan Parties. The Loan Parties shall be responsible for all expenses described in this **clause (a)** whether or not any Credit Extension is ever made. Any amount to be paid under this **Section 11.1** shall be a demand obligation owing by the Loan Parties and if not paid within ten (10) days of demand shall bear interest, to the extent not prohibited by and not in violation of applicable Law, from the date of expenditure until paid at a rate per annum equal to the Default Interest Rate. The obligations of the Loan Parties under this **Section 11.1** shall survive payment of the Notes and other obligations hereunder and the assignment of any right hereunder.

(b) To the extent that Borrower for any reason fails to indefeasibly pay any amount required under **Section 11.1(a)** or **Section 11.2** to be paid by it to Administrative Agent, L/C Issuer (or any sub-agent thereof) or any Related Party of Administrative Agent or L/C Issuer (or any sub-agent thereof), each Lender severally agrees to pay to Administrative Agent or L/C Issuer (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's pro rata share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against Administrative Agent or L/C Issuer (or any such sub-agent) or against any Related Party of Administrative Agent or L/C Issuer (or any sub-agent thereof) acting for Administrative Agent or L/C Issuer (or any such sub-agent) in connection with such capacity. **EACH LENDER ACKNOWLEDGES THAT SUCH PAYMENTS MAY BE IN RESPECT OF LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES ARISING OUT OF OR RESULTING FROM THE SOLE, CONTRIBUTORY, COMPARATIVE, CONCURRENT OR ORDINARY NEGLIGENCE OF THE PERSON (OR THE REPRESENTATIVES OF THE PERSON) TO WHOM SUCH PAYMENTS ARE TO BE MADE.**

Section 11.2 **INDEMNIFICATION.** BORROWER AND THE OTHER LOAN PARTIES SHALL, JOINTLY AND SEVERALLY, INDEMNIFY ADMINISTRATIVE AGENT, L/C ISSUER, THE ARRANGER, EACH LENDER AND EACH RELATED PARTY OF EACH OF THE FOREGOING (EACH, AN “INDEMNITEE”) FROM, AND HOLD EACH OF THEM HARMLESS AGAINST, ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND EXPENSES (INCLUDING ATTORNEYS’ FEES) TO WHICH ANY OF THEM MAY BECOME SUBJECT WHICH DIRECTLY OR INDIRECTLY ARISE FROM OR RELATE TO (A) THE NEGOTIATION, EXECUTION, DELIVERY, PERFORMANCE, ADMINISTRATION, OR ENFORCEMENT OF ANY OF THE LOAN DOCUMENTS, (B) ANY OF THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS, (C) ANY BREACH BY ANY LOAN PARTY OF ANY REPRESENTATION, WARRANTY, COVENANT, OR OTHER AGREEMENT CONTAINED IN ANY OF THE LOAN DOCUMENTS, (D) THE PRESENCE, RELEASE, THREATENED RELEASE, DISPOSAL, REMOVAL, OR CLEANUP OF ANY HAZARDOUS MATERIAL LOCATED ON, ABOUT, WITHIN, OR AFFECTING ANY OF THE PROPERTIES OR ASSETS OF ANY LOAN PARTY OR ANY OF THEIR SUBSIDIARIES, (E) ANY LOAN OR LETTER OF CREDIT OR USE OR PROPOSED USE OF THE PROCEEDS THEREFROM (INCLUDING ANY REFUSAL BY L/C 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) OR (F) ANY INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY THREATENED OR PROSPECTIVE INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, RELATING TO ANY OF THE FOREGOING, WHETHER BROUGHT BY A THIRD PARTY OR BY BORROWER OR ANY OTHER LOAN PARTY. WITHOUT LIMITING ANY PROVISION OF THIS AGREEMENT OR OF ANY OTHER LOAN DOCUMENT, **IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT EACH INDEMNITEE SHALL BE INDEMNIFIED FROM AND HELD HARMLESS AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND EXPENSES (INCLUDING ATTORNEYS’ FEES) ARISING OUT OF OR RESULTING FROM THE SOLE, CONTRIBUTORY, COMPARATIVE, CONCURRENT OR ORDINARY NEGLIGENCE OF SUCH INDEMNITEE (OR THE REPRESENTATIVES OF SUCH PERSON);** *provided that such indemnity shall not, as to any Indemnitee, be available to the extent such losses, liabilities, claims, damages, penalties, judgments, disbursements, costs and expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee.* Any amount to be paid under this **Section 11.2** shall be a demand obligation owing by Borrower and the other Loan Parties and if not paid within ten (10) days of demand shall bear interest, to the extent not prohibited by and not in violation of applicable Law, from the date of expenditure until paid at a rate per annum equal to the Default Interest Rate. The obligations of Borrower and the other Loan Parties under this **Section 11.2** shall survive payment of the Notes and other obligations hereunder and the assignment of any right hereunder. This **Section 11.2** shall not apply with respect to Taxes other than any Taxes that represent losses, claims, or damages arising from any non-Tax claim.

Section 11.3 **Limitation of Liability.** None of Administrative Agent, the Arranger, L/C Issuer, or any Lender, or any of their Related Parties, shall have any liability with respect to, and each Loan Party hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages (whether in contract, tort or otherwise) suffered or incurred by any Loan Party in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents. Each Loan Party hereby waives, releases, and agrees not to sue Administrative Agent, the Arranger, L/C Issuer, or any Lender, or any of their Related Parties, for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents.

Section 11.4 **No Duty.** All attorneys, accountants, appraisers, and other professional Persons and consultants retained by the Arranger, Administrative Agent, any Lender, or L/C Issuer shall have the right to act exclusively in the interest of the Arranger, Administrative Agent, such Lender, or L/C Issuer and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to any Loan Party or any Loan Party’s equity holders, Affiliates, officers, employees, attorneys, agents, or any other Person.

Section 11.5 **Lenders Not Fiduciary.** The relationship between Borrower and each other Loan Party on the one hand, and Administrative Agent, Arranger, each Lender, and L/C Issuer, on the other hand, is solely that of debtor and creditor, and none of Administrative Agent, Arranger, any Lender, or L/C Issuer has any fiduciary or other special relationship with Borrower or any other Loan Party, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and each other Loan Party on the one hand, and Administrative Agent, Arranger, each Lender, and L/C Issuer, on the other hand, to be other than that of debtor and creditor. The Borrower and each other Loan Party acknowledges and agrees that (a) (i) no fiduciary,



advisory or agency relationship between the Loan Parties and their Subsidiaries and any Arranger, the Administrative Agent, the L/C Issuer or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether the Arranger, the Administrative Agent, the L/C Issuer or any Lender has advised or is advising any Loan Party or any Subsidiary on other matters, (ii) the arranging and other services regarding this Agreement provided by the Arranger, the Administrative Agent, the L/C Issuer and the Lenders are arm's-length commercial transactions between the Loan Parties and their Affiliates, on the one hand, and the Arranger, the Administrative Agent, the L/C Issuer and the Lenders, on the other hand, (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate and (iv) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) the Arranger, the Administrative Agent, the L/C Issuer and the Lenders each 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 the Borrower or any of its Affiliates, or any other Person; (ii) none of the Arranger, the Administrative Agent, the L/C Issuer or the Lenders has any obligation to the Borrower 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; and (iii) the Arranger, the Administrative Agent, the L/C Issuers and the Lenders and their respective branches and Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and none of the Arranger, the Administrative Agent, the L/C Issuer or the Lenders has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by Law, the Borrower and each other Loan Party hereby waives and releases any claims that it may have against any of the Arranger, Administrative Agent, the L/C Issuer, and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**Section 11.6 Equitable Relief.** Each Loan Party recognizes that in the event Borrower or any other Loan Party fails to pay, perform, observe, or discharge any or all of the Obligations, any remedy at law may prove to be inadequate relief to Administrative Agent, Lenders, or L/C Issuer. Each Loan Party therefore agrees that Administrative Agent, any Lender, or L/C Issuer, if Administrative Agent, such Lender, or L/C Issuer so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

**Section 11.7 No Waiver; Cumulative Remedies.** No failure on the part of Administrative Agent, any Lender, or L/C Issuer to exercise and no delay in exercising, and no course of dealing with respect to, any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. The rights and remedies provided for in this Agreement and the other Loan Documents are cumulative and not exclusive of any rights and remedies 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 Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Administrative Agent in accordance with **Section 9.2** for the benefit of all the Secured Parties and each Lender hereby agrees, on behalf of itself and each of its Affiliates that is a Secured Party, that, except with the written consent of Administrative Agent, it will not take any enforcement action or exercise any right that it might otherwise have under applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral; *provided, however*, that the foregoing shall not prohibit (a) 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) any Lender from exercising setoff rights in accordance with **Section 11.25** (subject to the terms of **Section 11.23**), or (c) 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 Loan Party under any Debtor Relief Law; 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 Administrative Agent pursuant to **Section 9.2** and (ii) in addition to the matters set forth in **clauses (b) and (c)** of the preceding proviso and subject to **Section 11.23**, 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.

#### **Section 11.8 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 neither Borrower nor any other Loan Party may assign or otherwise transfer any of its rights, duties, or obligations under this Agreement or the other Loan



Documents without the prior written consent of Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of **Section 11.8(b)**, (ii) by way of participation in accordance with the provisions of **Section 11.8(d)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 11.8(e)** (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 **Section 11.8(d)** and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent and Lenders) 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 at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts.** (A) In the case of an assignment of the entire remaining amount of the assigning Lender's Commitment(s) and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in **Section 11.8(b)(i)(B)** in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and (B) in any case not described in **Section 11.8(b)(i)(A)**, the aggregate amount of the Commitment(s) (which for this purpose includes Loans outstanding hereunder) or, if the applicable Commitment is not then in effect, the Outstanding Amount 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 Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$1,000,000.00 in the case of any assignment Commitments, or \$1,000,000.00 in the case of any assignment in respect of Term Loans, unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(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 Loan or the Commitment(s) assigned, except that this *clause (ii)* shall not prohibit any Lender from assigning 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 except to the extent required by **Section 11.8(b)(i)(B)** and, in addition: (A) the consent of Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within five (5) Business Days after having received notice thereof; and *provided further*, that Borrower's consent shall not be required during the primary syndication of the Facilities; (B) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Commitment Loans if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) **Assignment and Assumption.** The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; *provided* that Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment; and *provided further* that Borrower shall not be obligated to pay for such processing and recording fee except in the case of any assignment made pursuant to **Section 3.6(b)**. The assignee, if it is not a Lender, shall deliver to Administrative Agent an Administrative Questionnaire.

(v) **No Assignment to Certain Persons.** No such assignment shall be made to (A) any Loan Party or any of their respective Affiliates or Subsidiaries, (B) any competitor of any Loan Party (other than any party to the AI Rack Integration Agreement) or (C) any Defaulting Lender or any of its Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this *clause (C)*.

(vi) **No Assignment to Natural Persons.** No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) **Certain Additional Payments.** In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to such assignment shall make such additional payments to 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 Borrower and Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by such Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to: (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit 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.

Subject to acceptance and recording thereof by Administrative Agent pursuant to **Section 11.8(c)**, 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 **Section 3.1**, **Section 3.2**, **Section 11.1** and **Section 11.2** with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided* that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. 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 11.8(d)**. Upon the consummation of any assignment pursuant to this **Section 11.8(b)**, if requested by the transferor or transferee Lender, the transferor Lender, Administrative Agent and Borrower shall make appropriate arrangements so that replacement Notes are issued to such transferor Lender (if applicable) and new Notes or, as appropriate, replacement Notes, are issued to the assignee.

(c) **Register.** Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Borrower, shall maintain at one of its offices in Dallas, Texas a copy of each Assignment and Assumption delivered to it and a Register. The entries in the Register shall be conclusive absent manifest error, and Borrower, Administrative Agent and 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. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, Borrower or any other Loan Party, sell participations to 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 Commitment(s) and/or the 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) Borrower, each other Loan Party, Administrative Agent, and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 11.1(b)** without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in **Section 11.10** which requires the consent of all Lenders and affects such Participant. Borrower agrees that each Participant shall be entitled to the benefits of **Sections 3.1, 3.4** and **3.5** (subject to the requirements and limitations therein, including the requirements under **Section 3.4(g)** (it being understood that the documentation required under **Section 3.4(g)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; *provided* that such Participant (A) agrees to be subject to the provisions of **Section 3.6** as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under **Sections 3.1** or **3.4**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at Borrower's request and expense, to use reasonable efforts to cooperate with Borrower to effectuate the provisions of **Section 3.6** with respect to any Participant. To the extent permitted by Law, each Participant also shall be entitled to the benefits of **Section 11.25** as though it were a Lender; *provided* that such Participant agrees to pay to Administrative Agent any amount set-off for application to the Obligations under the Loan Documents as required pursuant to **Section 11.25**; *provided further* that such Participant agrees to be subject to **Section 11.23** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a Participant Register; *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (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) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under **Section 5f.103-1(c)** of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of 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.

(f) **Dissemination of Information.** Borrower and each other Loan Party authorizes Administrative Agent and each Lender to disclose to any actual or prospective purchaser, assignee or other recipient of a Lender's Commitment, any and all information in Administrative Agent's or such Lender's possession concerning Borrower, the other Loan Parties and their respective Affiliates.

**Section 11.9 Survival.** All representations and warranties made in this Agreement, any other Loan Document or in any document, statement, or certificate furnished in connection with this Agreement shall survive the execution and delivery of this Agreement and the other Loan Documents, and no investigation by Administrative Agent or any Lender or any closing shall affect the representations and warranties or the right of Administrative Agent or any Lender to rely upon them. Without prejudice to the survival of any other obligation of any Loan Party hereunder, the obligations of the Loan Parties under **Sections 11.1** and **11.2** shall survive repayment of the Obligations and termination of the Commitments.

**Section 11.10 Amendment.** Subject to **Section 2.7(g)** and **Section 3.3(b)**, the provisions of this Agreement and the other Loan Documents to which Borrower or any other Loan Party is a party (other than the Issuer Documents) may be amended or waived only by an instrument in writing signed by the Required Lenders (or by Administrative Agent with the consent of the Required Lenders) and each Loan Party party thereto and acknowledged by Administrative Agent; *provided, however*, that no such amendment or waiver shall:

- (a) waive any condition set forth in **Section 4.1**, without the written consent of each Lender;
- (b) extend or increase any Commitment of any Lender (or reinstate any Commitment terminated pursuant to **Section 9.2**) without the written consent of such Lender;
- (c) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayment) of principal, interest, fees or other amounts due to Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;
- (d) reduce the principal of, or the rate of interest specified herein on, any Loan, or 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 to adjust the Default Interest Rate or to waive any obligation of Borrower to pay interest at such rate;
- (e) change any provision of this **Section 11.10** 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 Lender;
- (f) change **Section 9.3** or **Section 11.23** in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;
- (g) release any Guaranty or release all or substantially all of the Collateral (in each case, except as provided herein) without the written consent of each Lender; or
- (h) (i) subordinate any of the Obligations to any other Debt or (ii) subordinate the Lien securing any of the Obligations on all or substantially all of the Collateral to any other Lien securing any other Debt (except as provided in **Section 10.9**), in each case, without the consent of each Lender affected thereby;

and, *provided further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by L/C Issuer in addition to the Lenders required above, affect the rights or duties of L/C 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 Administrative Agent in addition to Lenders required above, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Document; (iii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; (iv) Borrower and Administrative Agent may amend this Agreement or any other Loan Document without the consent of Lenders (unless the Required Lenders object in writing within five (5) Business Days of notice by Administrative Agent of such amendment) in order to (A) correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document, (B) comply with local Law or advice of local counsel in any jurisdiction the Laws of which govern any Security Document or that are relevant to the creation, perfection, protection and/or priority of any Lien in favor of Administrative Agent, (C) effect the granting, perfection, protection, expansion or enhancement of any security interest or Lien in any Collateral or additional Property to become Collateral for the benefit of the Secured Parties, (D) make administrative or operational changes not adverse to any Lender or (E) add a Guarantor or Collateral or otherwise enhance the rights and benefits of the Lenders; and (v) Borrower and Administrative Agent may, without the input or consent of the Lenders, effect amendments to this Agreement and the other Loan Documents as may be necessary in the opinion of Administrative Agent to effect the provisions of **Section 2.10** (including as applicable, (1) to permit Incremental Term Loans and Incremental Term Loan Commitments, as applicable, to share ratably in the benefits of this Agreement and the other Loan Documents and (2) to include Incremental Term Loans and Incremental Term Loan Commitments, as applicable, in any determination of (i) Required Lenders or (ii) any similar required lender terms applicable thereto).

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 Commitment(s) 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 disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

## Section 11.11 Notices.

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in **Section 11.11(b)**), 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 facsimile as set forth on **Schedule 11.11**. 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 facsimile 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 **Section 11.11(b)** shall be effective as provided in **Section 11.11(b)**.

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(b) **Electronic Communications.** Notices and other communications to Lenders and hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to **Article 2** if such Lender has notified Administrative Agent that it is incapable of receiving notices under **Article 2** by electronic communication. Administrative Agent or any Loan Party 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 Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing **clause (i)**, of notification that such notice or communication is available and identifying the website address therefor; *provided* that, for both **clauses (i)** and **(ii)** above, if such facsimile, email or other electronic communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) **Change of Address, etc.** Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto, **Schedule 11.11** shall be deemed to be amended by each such change, and Administrative Agent is authorized, in its discretion, from time to time to reflect each such change in an amended **Schedule 11.11** provided by Administrative Agent to each party hereto.

(d) **Platform.**

(i) Borrower, each other Loan Party, each Lender, and L/C Issuer agrees that Administrative Agent may, but shall not be obligated to, make the Communications available to the Lenders or L/C Issuer by posting the Communications on the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties do not warrant the accuracy or completeness of the Communications or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. Although the Platform is secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time, each of the Lenders, L/C Issuer, and the Borrower acknowledges and agrees that (x) the distribution of material through an electronic medium is not necessarily secure and (y) the Agent Parties not responsible for approving or vetting the representatives, designees or contacts of any Lender or L/C Issuer that are provided access to the Platform and that there may be confidentiality and other risks associated with such form of distribution, and each Lender, L/C Issuer, and Borrower understands and accepts such risks. In no event shall the Agent Parties have any liability to any Loan Party, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or Administrative Agent's transmission of Communications through the Platform.



(iii) Each Loan Party (by its, his or her execution of a Loan Document) hereby authorizes Administrative Agent, each Lender, and their respective counsel and agents and Related Parties (each, an “**Authorized Party**”) to communicate and transfer documents and other information (including confidential information) concerning this transaction or Borrower or any other Loan Party and the business affairs of Borrower and such other Loan Parties via the internet or other electronic communication method. IN NO EVENT SHALL ANY AUTHORIZED PARTY HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY SUCH COMMUNICATIONS OR TRANSMISSIONS, EXCEPT TO THE EXTENT THAT SUCH DAMAGES ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL AND NONAPPEALABLE JUDGMENT TO HAVE DIRECTLY RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH AUTHORIZED PARTY; *PROVIDED, HOWEVER*, THAT IN NO EVENT SHALL ANY AUTHORIZED PARTY HAVE ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES).

(e) **Public Information.** Each Loan Party hereby acknowledges that certain of the Lenders (each, a “**Public Lender**”) may have personnel who do not wish to receive material non-public information with respect to any Loan Party or its 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 securities. Each Loan Party hereby agrees that it will use commercially reasonable efforts to identify that portion of the materials and information provided by or on behalf of any Loan Party hereunder and under the other Loan Documents (collectively, “**Borrower Materials**”) that may be distributed to the Public Lenders and that (i) all such Borrower Materials 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; (ii) by marking Borrower Materials “PUBLIC,” each Loan Party shall be deemed to have authorized Administrative Agent and the other 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 U.S. federal and state securities Laws (*provided, however*, that to the extent that such Borrower Materials constitute Information, they shall be subject to **Section 11.26**); (iii) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (iv) Administrative Agent 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 Side Information”. Each Public Lender will designate one or more representatives that shall be permitted to receive information that is not designated as being available for Public Lenders, in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and under applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to any Loan Party or its Subsidiaries and its securities for the purposes of United States federal or state securities Laws.

## Section 11.12 Governing Law; Venue; Service of Process.

(a) **Governing Law.** This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the Laws of the State of Texas (without reference to applicable rules of conflicts of Laws), except to the extent the Laws of any jurisdiction where Collateral is located require application of such Laws with respect to such Collateral.

(b) **Jurisdiction.** Each Loan Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against Administrative Agent, any Lender, L/C Issuer, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of



Texas sitting in Tarrant County, and of the United States District Court of the Northern District of Texas, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such Texas 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, litigation 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 Administrative Agent, any Lender, or L/C Issuer may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against Borrower or any of the other Loan Parties or their Properties in the courts of any jurisdiction.

(c) **Waiver of Venue.** 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.

(d) **Service of Process.** Each party hereto irrevocably consents to service of process by the mailing thereof in the manner provided for the mailing of notices in **Section 11.11**. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

**Section 11.13 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Except as provided in **Section 4.1**, this Agreement shall become effective when it shall have been executed by Administrative Agent and when Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

**Section 11.14 Severability.** Any provision of this Agreement or any other Loan Document held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision held to be invalid or illegal. Furthermore, in lieu of such invalid or unenforceable provision there shall be added as a part of this Agreement or the other Loan Documents a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

**Section 11.15 Headings.** The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**Section 11.16 Construction.** Each Loan Party, Administrative Agent and each Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel and that this Agreement and the other Loan Documents shall be construed as if jointly drafted by Borrower, Administrative Agent, each Lender and each other Person party thereto.

**Section 11.17 Independence of Covenants.** All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default if such action is taken or such condition exists.

**Section 11.18 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

Section 11.19 **Additional Interest Provision.** It is expressly stipulated and agreed to be the intent of Borrower, Administrative Agent and each Lender at all times to comply strictly with the applicable Law governing the maximum rate or amount of interest payable on the indebtedness evidenced by any Note, any other Loan Document, and the Related Indebtedness (or applicable United States federal Law to the extent that it permits any Lender to contract for, charge, take, reserve or receive a greater amount of interest than under applicable Law). If the applicable Law is ever judicially interpreted so as to render usurious any amount (a) contracted for, charged, taken, reserved or received pursuant to any Note, any of the other Loan Documents or any other communication or writing by or between Borrower or any other Loan Party and any Lender related to the transaction or transactions that are the subject matter of the Loan Documents, (b) contracted for, charged, taken, reserved or received by reason of Administrative Agent's or any Lender's exercise of the option to accelerate the maturity of any Note and/or the Related Indebtedness, or (c) Borrower or any other Loan Party will have paid or Administrative Agent or any Lender will have received by reason of any voluntary prepayment by Borrower or any other Loan Party of any Note and/or the Related Indebtedness, then it is Borrower's, each other Loan Party's, Administrative Agent's and Lenders' express intent that all amounts charged in excess of the Maximum Rate shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Rate theretofore collected by Administrative Agent or any Lender shall be credited on the principal balance of any Note and/or the Related Indebtedness (or, if any Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower or such other Loan Party, as applicable), and the provisions of any Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; *provided, however*, if any Note or Related Indebtedness has been paid in full before the end of the stated term thereof, then Borrower, each other Loan Party, Administrative Agent and each Lender agree that Administrative Agent or any Lender, as applicable, shall, with reasonable promptness after Administrative Agent or such Lender discovers or is advised by Borrower or any other Loan Party that interest was received in an amount in excess of the Maximum Rate, either refund such excess interest to Borrower or such other Loan Party, as applicable, and/or credit such excess interest against such Note and/or any Related Indebtedness then owing by Borrower and the other Loan Parties to Administrative Agent or such Lender. Borrower and each other Loan Party hereby agrees that as a condition precedent to any claim seeking usury penalties against Administrative Agent or such Lender, Borrower will provide written notice to Administrative Agent or any Lender, advising Administrative Agent or such Lender in reasonable detail of the nature and amount of the violation, and Administrative Agent or such Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or such other Loan Parties, as applicable, or crediting such excess interest against the Note to which the alleged violation relates and/or the Related Indebtedness then owing by Borrower and the other Loan Parties to Administrative Agent or such Lender. All sums contracted for, charged, taken, reserved or received by Administrative Agent or any Lender for the use, forbearance or detention of any debt evidenced by any Note and/or the Related Indebtedness shall, to the extent permitted by applicable Law, be amortized or spread, using the actuarial method, throughout the stated term of such Note and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of any Note and/or the Related Indebtedness does not exceed the Maximum Rate from time to time in effect and applicable to such Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Notes and/or any of the Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Administrative Agent or any Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

Section 11.20 **Ceiling Election.** To the extent that any Lender is relying on *Chapter 303* of the Texas Finance Code to determine the Maximum Rate payable on any Note and/or any other portion of the Obligations under the Loan Documents, such Lender will utilize the weekly ceiling from time to time in effect as provided in such *Chapter 303*. To the extent United States federal Law permits any Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas Law, such Lender will rely on United States federal Law instead of such *Chapter 303* for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable Law now or hereafter in effect, any Lender may, at its option and from time to time, utilize any other method of establishing

the Maximum Rate under such *Chapter 303* or under other applicable Law by giving notice, if required, to Borrower as provided by applicable Law now or hereafter in effect.

**Section 11.21 USA PATRIOT Act Notice.** Administrative Agent and each Lender hereby notifies Borrower and each other Loan Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies Borrower and each other Loan Party, which information includes the name and address of Borrower and each other Loan Party and other information that will allow Administrative Agent and such Lender to identify Borrower and each other Loan Party in accordance with the PATRIOT Act. In addition, Borrower and each other Loan Party agrees to (a) ensure that no Person who owns a controlling interest in or otherwise controls Borrower or any other Loan Party or any Subsidiary of Borrower or any other Loan Party is or shall be a Sanctioned Person, (b) not to use or permit the use of proceeds of the Obligations to violate any Anti-Corruption Laws, Anti-Terrorism Laws or any applicable Sanctions, and (c) comply, or cause its Subsidiaries to comply, with the applicable Anti-Corruption Laws, Anti-Terrorism Laws and Sanctions.

#### Section 11.22 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:

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(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*" and in **Section 11.10**.

(ii) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Article 9** or otherwise) or received by Administrative Agent from a Defaulting Lender shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to L/C Issuer hereunder; *third*, to Cash Collateralize L/C Issuer's Fronting Exposure, if any, with respect to such Defaulting Lender in accordance with **Section 2.6**; *fourth*, with respect to a Defaulting Lender that is a Lender with any Commitment, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *fifth*, with respect to a Defaulting Lender that is a Lender with any Commitment, if so determined by Administrative Agent and Borrower, to be held in a Deposit Account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) to Cash Collateralize L/C Issuer's future Fronting Exposure, if any, with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with **Section 2.6**; *sixth*, to the payment of any amounts owing to Lenders or L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or L/C Issuer 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 Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower 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 L/C Borrowings in respect of which such 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 4.2** were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by Lenders pro rata in accordance with the Commitments under the applicable Facility without giving effect to **Section 11.22(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 11.22(a)(ii)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) **Certain Fees.**

(A) No Defaulting Lender shall be entitled to receive any fee payable under **Section 2.3** for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive 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 2.6**.

(C) With respect to any fee payable under **Section 2.3** or to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to **clause (A)** or **(B)** above, Borrower shall (x) pay to each Lender that is a Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to **clause (iv)** below, (y) pay to L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to L/C 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 L/C Obligations shall be reallocated among the Lenders that are Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to **Section 11.28**, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) **Cash Collateral.** If the reallocation described in **clause (a)(iv)** above cannot, or can only partially, be effected, Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, Cash Collateralize L/C Issuers' Fronting Exposure in accordance with the procedures set forth in **Section 2.6**.

(b) **Defaulting Lender Cure.** If Borrower, Administrative Agent, and L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by Lenders in accordance with their Applicable Percentages (without giving effect to **Section 11.22(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 Borrower 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.

**Section 11.23 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it or other obligations hereunder, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall:

(a) notify Administrative Agent of such fact; and

(b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, *provided* that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this **Section 11.23** shall not be construed to apply to: (A) any payment made by or on behalf of Borrower pursuant to and in accordance with the express terms of this Agreement (including (x) the application of funds arising from the existence of a Defaulting Lender and (y) payments made in accordance with **Sections 3.1, 3.4 and 3.5**); (B) the application of Cash Collateral provided for in **Section 2.6**; 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 L/C Obligations to any assignee or participant, other than an assignment to Borrower or any Affiliate thereof (as to which the provisions of this **Section 11.23** shall apply).

Borrower and each other 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 Borrower or such other Loan Party, as applicable, rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower or such other Loan Party in the amount of such participation.

**Section 11.24 Payments Set Aside.** To the extent that any payment by or on behalf of Borrower or any other Loan Party is made to Administrative Agent, L/C Issuer or any Lender, or Administrative Agent, L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Administrative Agent, L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (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 L/C Issuer severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by 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 greater of the Federal Funds Rate from time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. The obligations of Lenders and L/C Issuer under **clause (b)** of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**Section 11.25 Setoff.** If an Event of Default has occurred and is continuing, Administrative Agent and each Lender shall have the right to set off against the Obligations under the Loan Documents, at any time and without notice to any Loan Party, any and all deposits (general or special, time or demand, provisional or final) or other sums at any time credited by or owing from Administrative Agent or such Lender to such Loan Party whether or not the Obligations under the Loan Documents are then due; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff: (a) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of **Section 11.22** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent and Lenders; and (b) such Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations under the Loan Documents owing to such Defaulting Lender as to which it exercised such right of setoff. Each amount set off shall be paid to Administrative Agent for application to the Obligations under the Loan Documents in the order set forth in **Section 9.3**. As further security for the Obligations, each Loan Party hereby grants to Administrative Agent and each Lender a security interest in all money, instruments, and other Property of such Loan Party, as applicable, now or hereafter held by Administrative Agent or such Lender, including, without limitation, Property held in safekeeping. In addition to Administrative Agent's and each Lender's right of setoff and as further security for the Obligations, each Loan Party hereby grants to Administrative Agent and each Lender a security interest in all deposits (general or special, time or demand, provisional or final) and other accounts of such Loan Party now or hereafter on deposit with or held by Administrative Agent or such Lender and all other sums at any time credited by or owing from Administrative Agent or such



Lender to such Loan Party. The rights and remedies of Administrative Agent and each Lender hereunder are in addition to other rights and remedies (including, without limitation, other rights of setoff) which Administrative Agent or such Lender may have.

**Section 11.26 Confidentiality.** Each of Administrative Agent, L/C Issuer, and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its 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 or shall otherwise be subject to confidentiality provisions generally), (b) to any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners) or any Governmental Authority, quasi-Governmental Authority or legislative committee or in accordance with the Administrative Agent's, such L/C Issuer's or any Lender's regulatory compliance policy if the Administrative Agent, such L/C Issuer or such Lender, as applicable, deems such disclosure to be necessary for the mitigation of claims by those authorities against the Administrative Agent, L/C Issuer or such Lender, as applicable, or any of its Related Parties (in which case, the Administrative Agent, L/C Issuer or such Lender, as applicable, shall use commercially reasonable efforts to, except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority, promptly notify the Borrower, in advance, to the extent practicable and otherwise permitted by applicable Law), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement or any other Loan Document, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to its being under a duty of confidentiality no less restrictive than this **Section 11.26**, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any actual or prospective counterparty (or its Related Parties) to any Hedging Agreement relating to Borrower or any other Loan Party and its obligations, (iii) any actual or prospective purchaser of a Lender or its holding company or (iv) any Lender's financing sources; *provided* that prior to any disclosure such financing source is informed of the confidential nature of the Information, (g) on a confidential basis to (i) any rating agency or any similar organization in connection with the rating of Borrower or any other Loan Party or the Facilities or (ii) the CUSIP Service Bureau or any similar organization in connection with the issuance and monitoring of CUSIP numbers with respect to the Facilities, (h) with the consent of Borrower or such other applicable Loan Parties, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this **Section 11.26**, (ii) becomes available to Administrative Agent, L/C Issuer, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Borrower that is not known to be subject to a confidentiality obligation to the Borrower or (iii) is independently discovered or developed by a party hereto without utilizing any Information received from the Borrower or violating the terms of this **Section 11.26**; 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. In addition, Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. For purposes of this **Section 11.26**, "**Information**" means all information received from Borrower or any other Loan Party or any Subsidiary thereof relating to Borrower or any other Loan Party or any Subsidiary thereof or any of their respective businesses which is clearly identified as confidential, other than any such information that is available to Administrative Agent, L/C Issuer, or any Lender on a nonconfidential basis prior to disclosure by Borrower or any other Loan Party or any Subsidiary or Affiliate thereof; *provided* that, in the case of information received from Borrower or any other Loan Party or any Subsidiary or Affiliate thereof after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this **Section 11.26** 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 Loan Party party hereto agrees and confirms that, as between such Loan Party and Susser Bank, the obligations of Susser Bank under this **Section 11.26** supersede and replace in their respective entireties all confidentiality, non-disclosure and similar obligations of Susser Bank, if any, set forth in any previous agreement between such Loan Party and Susser Bank notwithstanding anything to the contrary contained therein.

Each Loan Party hereby authorizes Administrative Agent, at its sole expense, but without any prior approval by any Loan Party, to include any Loan Party's name, logo and the aggregate amount of the Facilities in tombstones and client marketing materials, and to



give such other publicity to the Facilities as it may from time to time determine in its sole discretion. In any such public statement or disclosure, Administrative Agent shall not reference any individual customer of any Loan Party. The foregoing authorization shall remain in effect unless the Borrower notifies Susser Bank in writing that such authorization is revoked. Each Loan Party understands and acknowledges that Susser Bank may provide to market data collectors, such as league table, or other service providers to the lending industry, information regarding the closing date, size, type, purpose of, and parties to, the Facilities.

**Section 11.27 Electronic Execution of Assignments and Certain Other Documents.** The words “execute”, “execution”, “signed”, “signature”, and words of like import in or related to this Agreement, any other Loan Document or any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include Electronic Signatures or execution in the form of an Electronic Record, the electronic matching of assignment terms and contract formations on electronic platforms approved by Administrative Agent, or the keeping of records in electronic form, 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 state Laws based on the Uniform Electronic Transactions Act. Each party hereto agrees that any Electronic Signature or execution in the form of an Electronic Record shall be valid and binding on itself and each of the other parties hereto to the same extent as a manual, original signature. Notwithstanding anything contained herein to the contrary, Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by Administrative Agent pursuant to procedures approved by it; provided that without limiting the foregoing, (a) to the extent Administrative Agent has agreed to accept such Electronic Signature from any party hereto, Administrative Agent and the other parties hereto shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the executing party without further verification and (b) upon the request of Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by an original manually executed counterpart thereof.

**Section 11.28 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 Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender 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 entity, 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 the applicable Resolution Authority.

**Section 11.29 Keepwell.** Each Qualified ECP Guarantor party 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 such other Loan Party's (a) Swap Obligations and (b) obligations under its Guaranty including those with respect to Swap Obligations (*provided, however*, that each Qualified ECP Guarantor shall only be liable under this Section for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section, or otherwise under this Agreement or any other Loan Document, voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Obligations (other than contingent indemnification obligations that survive the termination of this Agreement) have been paid in full and the Commitments have expired or terminated. Each Qualified ECP Guarantor intends that this Section constitute, and this Section 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.

**Section 11.30 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**” and each such QFC a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the Laws of the State of Texas and/or of the United States or any other state of the United States):

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 Regimes 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 Regimes 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.

**Section 11.31 NOTICE OF FINAL AGREEMENT.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

## ARTICLE 12.

### GUARANTY

**Section 12.1 Guaranty.** In consideration of the Loans, advances and other credit heretofore or hereafter granted by the Secured Parties to Borrower pursuant to this Agreement and the other Loan Documents and in further consideration of any Bank Product Agreements, Guarantors hereby, jointly and severally, unconditionally, absolutely and irrevocably, guarantee to the Secured Parties, the due and punctual payment when and as due, including at stated maturity, by acceleration or otherwise, and at all times thereafter, and the due fulfillment and performance of the Obligations. Each Guarantor is jointly and severally liable for the full payment and performance of the Obligations as a primary obligor.

**Section 12.2 Payment.** If any of the Obligations is not punctually paid when such indebtedness becomes due and payable, either by its terms or as a result of the exercise of any power to accelerate, Guarantors shall, immediately on demand and without presentment, protest, notice of protest, notice of nonpayment, notice of intent to accelerate, notice of acceleration or any other notice whatsoever (all of which are expressly waived in accordance with *Section 12.3* hereof), pay the amount due and payable thereon to Administrative Agent, at its Principal Office. It is not necessary for Administrative Agent, in order to enforce such payment by Guarantors, first to institute suit or exhaust its remedies against Borrower or others liable on the Obligations, or to enforce its rights against any security given to secure such Obligations. Administrative Agent is not required to mitigate damages or take any other action to reduce, collect or enforce the Obligations. No setoff, counterclaim, reduction or diminution of any obligation, or any defense of any kind which any Guarantor

has or may have against Borrower or any Secured Party shall be available hereunder to Guarantors. No payment by any Guarantor shall discharge the liability of Guarantors hereunder until the Obligations have been fully satisfied and the Release Date shall have occurred. If Administrative Agent must rescind or restore any payment, or any part thereof, received by Administrative Agent on any part of the Obligations, any prior release or discharge from the terms of this Guaranty given Guarantors by Administrative Agent or any reduction of any Guarantor's liability hereunder shall be without effect, and this Guaranty shall remain in full force and effect.

### Section 12.3 Agreements and Waivers. Each Guarantor

(a) [reserved];

(b) agrees that Administrative Agent may without impairing its rights or the obligations of such Guarantor hereunder (i) waive or delay the exercise of any of its rights or remedies against or release Borrower or any other Person, including, without limitation, any other party who is or whose Property is liable with respect to the Obligations or any part thereof (Guarantors and any such other Person or Persons are hereafter collectively called the "*Sureties*" and individually called a "*Surety*"); (ii) take or accept any other security, collateral or guaranty, or other assurance of the payment of all or any part of the Obligations; (iii) release, surrender, exchange, subordinate or permit or suffer to exist any deterioration, waste, loss or impairment (including without limitation negligent, willful, unreasonable or unjustified impairment) of any collateral, Property or security, at any time existing in connection with, or assuring or securing payment of, all or any part of the Obligations or the liability of such Guarantor or any other Surety; (iv) increase, renew, extend, or modify the terms of any of the Obligations or any instrument or agreement evidencing the same; (v) apply payments by Borrower, any Surety, or any other Person, to any of the Obligations; (vi) bring suit against any one or more Sureties without joining any other Surety or Borrower in such proceeding; (vii) compromise or settle with any one or more Sureties in whole or in part for such consideration or no consideration as Administrative Agent may deem appropriate; or (viii) partially or fully release any Guarantor or any other Surety from liability hereunder;

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(c) agrees that the obligations of such Guarantor under this Guaranty shall not be released, diminished, or adversely affected by any of the following: (i) the insolvency, bankruptcy, rearrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of Borrower or any Surety; (ii) the invalidity, illegality or unenforceability of all or any part of the Obligations or any document or agreement executed in connection with the Obligations, for any reason, or the fact that any debt included in the Obligations exceeds the amount permitted by Law; (iii) the failure of Administrative Agent or any other party to exercise diligence or reasonable care or to act in a commercially reasonable manner in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral, Property or security; (iv) the fact that any collateral, security or Lien contemplated or intended to be given, created or granted as security for the repayment of the Obligations is not properly perfected or created, or proves to be unenforceable or subordinate to any other Lien; (v) the fact that Borrower has any defense to the payment of all or any part of the Obligations; (vi) any payment by Borrower or any Surety to Administrative Agent and/or any other Secured Party is a preference under applicable Debtor Relief Laws, or for any reason Administrative Agent and/or any other Secured Party is required to refund such payment or pay such amounts to Borrower, any such Surety, or someone else; (vii) any defenses which Borrower could assert on the Obligations, including but not limited to failure of consideration, breach of warranty, fraud, payment, accord and satisfaction, strict foreclosure, statute of frauds, bankruptcy, statute of limitations, lender liability and usury; or (viii) any other action taken or omitted to be taken with respect to this Agreement, the Loan Documents, the Obligations, the security and collateral therefor whether or not such action or omission prejudices such Guarantor or any Surety, or increases the likelihood that such Guarantor will be required to pay the Obligations pursuant to the terms hereof;

(d) agrees that such Guarantor is obligated to pay the Obligations when due, notwithstanding any occurrence, circumstance, event, action or omission whatsoever, whether or not particularly described herein, except for the full and final payment and satisfaction of the Obligations;

(e) to the extent allowed by applicable Law, waives all rights and remedies now or hereafter accorded by applicable Law to guarantors or sureties, including without limitation any defense, right of offset or other claim which such Guarantor may have against Borrower or which Borrower may have against Administrative Agent and/or the Lenders;

(f) waives all notices whatsoever with respect to this Guaranty or with respect to the Obligations, including, but without limitation, notice of (i) Administrative Agent's and/or any other Secured Party's acceptance hereof or its intention to act, or its action, in reliance hereon; (ii) the present existence, future incurring, or any amendment of the provisions of any of the

Obligations or any terms or amounts thereof or any change therein in the rate of interest thereon; (iii) any default by Borrower or any Surety; or (iv) the obtaining, enforcing, or releasing of any guaranty or surety agreement (in addition hereto), pledge, assignment or other security for any of the Obligations;

(g) waives notice of presentment for payment, notice of protest, protest, demand, notice of intent to accelerate, notice of acceleration and notice of nonpayment, protest in relation to any instrument evidencing any of the Obligations, and any demands and notices required by Law, except as such waiver may be expressly prohibited by Law, and diligence in bringing suits against any Surety;

(h) waives each right to which it may be entitled by virtue of the Laws of the State of Texas governing or relating to suretyship and guaranties, including, without limitation, any rights under *Rule 31*, Texas Rules of Civil Procedure, *Chapter 51* of the Texas Property Code, *Section 17.001* of the Texas Civil Practice and Remedies Code, *Section 3.605* of the Uniform Commercial Code, and *Chapter 43* of the Texas Civil Practice and Remedies Code, as any or all of the same may be amended or construed from time to time, or the common law of the State of Texas at all relevant times; and

(i) represents and warrants to the Administrative Agent and the Lenders that such Guarantor (a) has received, or will receive, direct or indirect benefit from the making of the Guaranty and the Obligations, (b) is familiar with, and has independently reviewed the books and records regarding, the financial condition of Borrower and is familiar with the value of any and all Collateral intended to be created as security for the payment of the Obligations, but such Guarantor is not relying on such financial condition, such Collateral, or the agreement of any other party as an inducement to enter into this Agreement and provide the Guaranty. Each Guarantor confirms that neither Administrative Agent, any Lender, any other Guarantor, nor any other party has made any representation, warranty or statement to such Guarantor in order to induce such Guarantor to execute this Agreement and provide the Guaranty, and (c) is a Qualified ECP Guarantor.

**Section 12.4 Liability.** The liability of each Guarantor under this Guaranty is irrevocable, absolute and unconditional, without regard to the liability of any other Person, and shall not in any manner be affected by reason of any action taken or not taken by Administrative Agent and/or any other Secured Party, which action or inaction is herein consented and agreed to, nor by the partial or complete unenforceability or invalidity of any other guaranty or surety agreement, pledge, assignment or other security for any of the Obligations. No delay in making demand on Sureties or any of them for satisfaction of the liability hereunder shall prejudice Administrative Agent's right to enforce such satisfaction. All of Administrative Agent's rights and remedies shall be cumulative and any failure of Administrative Agent to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other right at any time, and from time to time, thereafter. This is a continuing guaranty of payment, not a guaranty of collection, and this Guaranty shall be binding upon Guarantors regardless of how long before or after the date hereof any of the Obligations were or are incurred.

**Section 12.5 Subordination.** If Borrower or any other Loan Party is now or hereafter becomes indebted to one or more Guarantors (such indebtedness and all interest thereon is referred to as the "***Affiliated Debt***"), such Affiliated Debt shall be subordinate in all respects to the full payment and performance of the Obligations, and no Guarantor shall be entitled to enforce or receive payment with respect to any Affiliated Debt until the Release Date. Each Guarantor agrees that any Liens, mortgages, deeds of trust, security interests, judgment liens, charges or other encumbrances upon any Loan Party's assets securing the payment of the Affiliated Debt shall be and remain subordinate and inferior to any Liens, mortgages, deeds of trust, security interests, judgment liens, charges or other encumbrances upon any Loan Party's assets securing the payment of the Obligations, and without the prior written consent of Administrative Agent, no Guarantor shall exercise or enforce any creditor's rights of any nature against any Loan Party to collect the Affiliated Debt (other than demand payment therefor). In the event of the receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceedings involving Borrower or any applicable Loan Party as a debtor, Administrative Agent has the right and authority, either in its own name or as attorney-in-fact for any applicable Guarantor, to file such proof of debt, claim, petition or other documents and to take such other steps as are necessary to prove its rights hereunder and receive directly from the receiver, trustee or other court custodian, payments, distributions or other dividends which would otherwise be payable upon the Affiliated Debt. Each Guarantor hereby assigns such payments, distributions and dividends to Administrative Agent, and irrevocably appoints Administrative Agent as its true and lawful attorney-in-fact with authority to make and file in the name of such Guarantor any proof of debt, amendment of proof of debt, claim, petition or other document in such proceedings and to receive payment of any sums becoming distributable on account of the Affiliated Debt, and to execute such other documents and to give acquittances therefor and to do and perform all such other acts and things for and on behalf of such Guarantor as may be necessary in the opinion of Administrative Agent in order to have the Affiliated Debt allowed in any such proceeding and to receive payments, distributions or dividends of or on account of the Affiliated Debt.

**Section 12.6 Subrogation.** No Guarantor waives or releases any rights of subrogation, reimbursement or contribution which such Guarantor may have, after full and final payment of the Obligations, against others liable on the Obligations. Each Guarantor's rights of subrogation and reimbursement are subordinate in all respects to the rights and claims of Administrative Agent and the other Secured Parties, and no Guarantor may exercise any rights it may acquire by way of subrogation under this Guaranty, by payment made hereunder or otherwise, until the Release Date. If any amount is paid to any Guarantor on account of such subrogation rights prior to the Release Date, such amount shall be held in trust for the benefit of Administrative Agent and/or the other Secured Parties to be credited and applied on the Obligations, whether matured or unmatured.

**Section 12.7 Other Indebtedness or Obligations of Guarantors.** If any Guarantor is or becomes liable for any indebtedness owed by any Loan Party to the Lenders by endorsement or otherwise than under this Guaranty, such liability shall not be affected by this Guaranty, and the rights of Administrative Agent and the Lenders hereunder shall be cumulative of all other rights that Administrative Agent and the Lenders may have against such Guarantor. The exercise by Administrative Agent of any right or remedy hereunder or under any other instrument or at law or in equity shall not preclude the concurrent or subsequent exercise of any other instrument or remedy at law or in equity and shall not preclude the concurrent or subsequent exercise of any other right or remedy. Further, without limiting the generality of the foregoing, this Guaranty is given by Guarantors as an additional guaranty to all guaranties heretofore or hereafter executed and delivered to Administrative Agent and/or the Lenders by Guarantors in favor of Administrative Agent and/or the Lenders relating to the indebtedness of Borrower and the other Loan Parties to the Secured Parties, and nothing herein shall be deemed to replace or be in lieu of any other of such previous or subsequent guaranties.

**Section 12.8 Costs and Expenses.** Guarantors jointly and severally agree to pay to Administrative Agent and the Lenders, upon demand, all losses and costs and expenses, including attorneys' fees, that may be incurred by Administrative Agent and the Lenders in attempting to cause the Obligations to be satisfied or in attempting to cause satisfaction of Guarantors' liability under this Guaranty.

**Section 12.9 Exercising Rights, Etc.** No notice to or demand upon any Guarantor in any case shall, of itself, entitle such Guarantor or any other Guarantor to any other or further notice or demand in similar or other circumstances. No delay or omission by Administrative Agent in exercising any power or right hereunder shall impair such right or power or be construed as a waiver thereof or any acquiescence therein, nor shall any single or partial exercise of any such power preclude other or further exercise thereof, or the exercise of any other right or power hereunder.

**Section 12.10 Benefit; Binding Effect.** This Guaranty shall inure to the benefit of Administrative Agent and each other Secured Party and their respective successors and assigns, and to any interest in any of the Obligations. All of the obligations of Guarantors arising hereunder shall be jointly and severally binding on each of the Persons signing this Guaranty, and their respective successors and assigns (*provided, however*, that no Guarantor may, without the prior written consent of Administrative Agent in each instance, assign or delegate any of its rights, powers, duties or obligations hereunder, and any attempted assignment or delegation made without Administrative Agent's prior written consent shall be void ab initio and of no force or effect).

**Section 12.11 Multiple Guarantors.** It is specifically agreed that Administrative Agent may enforce the provisions hereof with respect to one or more Guarantors without seeking to enforce the same as to all or any Guarantors. If one or more additional guaranty agreements ("**Other Guaranties**") are executed by one or more additional guarantors ("**Other Guarantors**"), which guarantee, in whole or in part, any of the Obligations, it is specifically agreed that Administrative Agent may enforce the provisions of this Guaranty or of Other Guaranties with respect to one or more of Guarantors or any one or more of Other Guarantors under the Other Guaranties without seeking to enforce the provisions of this Guaranty or the Other Guaranties as to all or any of Guarantors or Other Guarantors. Each Guarantor hereby waives any requirement of joinder of all or any other Guarantor or all or any of the Other Guarantors in any suit or proceeding to enforce the provisions of this Guaranty or of the Other Guaranties. The liability hereunder of all Guarantors hereunder shall be joint and several.

**Section 12.12 Additional Guarantors.** From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Guarantors (each, an "**Additional Guarantor**"), by executing a Guarantor Joinder Agreement. Upon delivery of any



such Guarantor Joinder Agreement to Administrative Agent, notice of which is hereby waived by Guarantors, each Additional Guarantor shall be a Guarantor and shall be as fully a party hereto as if Additional Guarantor were an original signatory hereto. Each Guarantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Guarantor hereunder, nor by any election of Administrative Agent not to cause any Subsidiary or Affiliate of Borrower to become an Additional Guarantor hereunder. This Guaranty shall be fully effective as to any Guarantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Guarantor hereunder.

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Section 12.13 **Reinstatement.** Notwithstanding anything contained in this Agreement or the other Loan Documents, the obligations of each Guarantor under this *Article 12* shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify each Secured Party on demand for all reasonable costs and expenses (including, without limitation, reasonable and documented fees of counsel) incurred by such Person in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law.

Section 12.14 **Maximum Liability.** Anything in this Guaranty to the contrary notwithstanding, the obligations of each Guarantor hereunder shall be limited to a maximum aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under *Section 548 of Title 11* of the United States Code or any applicable provisions of comparable Law (collectively, the “**Fraudulent Transfer Laws**”), in each case after giving effect to all other liabilities of such Guarantor, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Guarantor in respect of intercompany indebtedness to other Loan Parties or Affiliates of other Loan Parties to the extent that such indebtedness would be discharged in an amount equal to the amount paid or Property conveyed by such Guarantor under the Loan Documents) and after giving effect as assets, subject to *Section 12.6*, to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation or contribution of such Guarantor pursuant to (a) applicable Law or (b) any agreement providing for an equitable allocation among such Guarantor and other Loan Parties of obligations arising under the Loan Documents and Bank Product Agreements.

*[Remainder of Page Intentionally Left Blank; Signature Pages Follow]*

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EXECUTED to be effective as of the date first written above.

BORROWER:

**VTC, L.L.C.,**  
a Maryland limited liability company

By: /s/ Daniel M. Chism  
Name: Daniel M. Chism  
Title: Vice President and Treasurer

PARENT and GUARANTOR:

**TSS, INC.,**  
a Delaware corporation

By: /s/ Daniel M. Chism  
Name: Daniel M. Chism  
Title: Chief Financial Officer



SIGNATURE PAGE TO CREDIT AGREEMENT – VTC, L.L.C.

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ADMINISTRATIVE AGENT:

**SUSSER BANK,**  
a Texas state bank

By: /s/ Mark Metcalfe

Name: Mark Metcalfe

Title: Executive Vice President

SIGNATURE PAGE TO CREDIT AGREEMENT – VTC, L.L.C.

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LENDERS:

**SUSSER BANK,**  
a Texas state bank

By: /s/ Mark Metcalfe

Name: Mark Metcalfe

Title: Executive Vice President

SIGNATURE PAGE TO CREDIT AGREEMENT – VTC, L.L.C.

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L/C ISSUER:

**SUSSER BANK,**  
a Texas state bank

By: /s/ Mark Metcalfe

Name: Mark Metcalfe

Title: Executive Vice President

SIGNATURE PAGE TO CREDIT AGREEMENT – VTC, L.L.C.

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## Term Loan Note

\$20,000,000.00

December 31, 2024

FOR VALUE RECEIVED, VTC, L.L.C., a Maryland limited liability company ("**Borrower**"), hereby promises to pay to the order of **SUSSER BANK**, a Texas state bank, and its successors and assigns ("**Lender**"), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal sum of TWENTY MILLION AND 00/100 DOLLARS (\$20,000,000.00) advanced by Lender to or for the benefit or account of Borrower, or such lesser amount as may be advanced to or for the benefit or account of Borrower, pursuant to the terms of that certain Credit Agreement, dated as of December 31, 2024 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**," the terms defined therein being used herein as therein defined), among Borrower, TSS, Inc., a Delaware corporation ("**Parent**") the lenders from time to time party thereto, and Susser Bank, a Texas state bank, as Administrative Agent ("**Administrative Agent**") and L/C Issuer.

Borrower promises to pay interest on the unpaid principal amount of this Note from the date hereof until the Initial Term Loans made by Lender are paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made to Administrative Agent for the account of Lender in Dollars in immediately available funds at Administrative Agent's Principal Office. If any amount is not paid in full when due hereunder, then such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Note is one of the Term Loan Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Note is also entitled to the benefits of the Guaranty. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. The Initial Term Loans made by Lender shall be evidenced by an account maintained by Lender in the ordinary course of business. Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Initial Term Loans and payments with respect thereto.

Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

**THIS NOTE, AND ANY CLAIM, CONTROVERSY, OR DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS NOTE, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.**

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Signature Page Follows]

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note as of the day and year first written above.

**BORROWER:**

**VTC, L.L.C.,**  
a Maryland limited liability company

By: /s/ Daniel M. Chism

Name: Daniel M. Chism

Title: Vice President and Treasurer



**SECURITY AGREEMENT**

THIS **SECURITY AGREEMENT** (as it may be amended, restated, supplemented or modified from time to time, this “**Security Agreement**”) is entered into as of December 31, 2024, by and among **VTC, L.L.C.**, a Maryland limited liability company (“**Borrower**”), each of the Guarantors set forth on the signature pages hereof (collectively with Borrower, “**Grantors**”), and **SUSSER BANK**, a Texas state bank, as Administrative Agent, on behalf of itself and the Lenders (in such capacity, together with its successors and assigns, “**Secured Party**”).

**RECITALS**

**WHEREAS**, Borrower, Grantors, Administrative Agent, and the Lenders are entering into a Credit Agreement dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”).

**WHEREAS**, Grantors are entering into this Security Agreement in order to, among other things, induce Lender to enter into and extend credit to Borrower under the Credit Agreement.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

**1. DEFINITIONS**

**1.1 Reference to Security Agreement.** Unless otherwise specified, all references herein to Articles, Sections, Recitals, and Schedules refer to Articles and Sections of, and Recitals and Schedules to, this Security Agreement. All Schedules include amendments and supplements thereto from time to time.

**1.2 Principles of Construction.** Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neutral, as the context indicates is appropriate. Whenever the words “*include*,” “*includes*” or “*including*” are used in this Security Agreement, they shall be deemed to be followed by the words “*without limitation*”. All references to agreements and other contractual Instruments shall be deemed to include subsequent amendments, permitted assignments and other modifications thereto, but only to the extent such amendments, assignments and other modifications are not prohibited by the terms of any Loan Document. Furthermore, 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.

**1.3 Definitions.** Unless otherwise defined herein, or the context hereof otherwise requires, each term defined in either the Credit Agreement or the UCC is used in this Security Agreement with the same meaning; *provided that*, if the definition given to such term in the Credit Agreement conflicts with the definition given to such term in the UCC, the Credit Agreement definition shall control to the extent legally allowable; and if any definition given to such term in *Article 9* of the UCC conflicts with the definition given to such term in any other chapter of the UCC, the *Article 9* definition shall prevail. As used herein, the following terms have the meanings indicated:

“**Account**” means any “*account*,” as such term is defined in *Section 9.102(a)(2)* of the UCC.

“**Account Debtor**” means any person who is obligated on a Receivable.

“**Cash Collateral Account**” has the meaning set forth in *Section 5.5*.

“**Chattel Paper**” means any “*chattel paper*”, as such term is defined in *Section 9.102(a)(11)* of the UCC, including all Electronic Chattel Paper and Tangible Chattel Paper.

“**Collateral**” has the meaning set forth in **Section 2.1**.

“**Collateral Note Security**” means all rights, titles, interests, and Liens any Grantor may have, be, or become entitled to under all present and future loan agreements, security agreements, pledge agreements, deeds of trust, mortgages, guarantees, or other Documents assuring or securing payment of or otherwise evidencing the Collateral Notes, including those set forth on **Schedule 3.10**.

“**Collateral Notes**” means all rights, titles, and interests of any Grantor in and to all promissory notes and other Instruments payable to such Grantor, including all inter-company notes from the subsidiaries of such Grantor and those set forth on **Schedule 3.10**.

“**Collateral Records**” means books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

“**Collateral Support**” means all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a Lien or security interest in such real or personal property.

“**Commercial Tort Claims**” means any “commercial tort claim”, as such term is defined in *Section 9.102(a)(13)* of the UCC, including all commercial tort claims listed on **Schedule 3.10**.

“**Commodity Account**” means any “commodity account”, as such term is defined in *Section 9.102(a)(14)* of the UCC, and all sub-accounts thereof.

“**Contractual Obligations**” means, as to any Person, any provision of any security issued by such Person or of any agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument, document or agreement to which such Person is a party or by which it or any of its Property is bound.

“**Control**” has the meaning set forth in *Sections 7.106, 8.106, 9.104, 9.105, 9.106, or 9.107* of the UCC, as applicable.

“**Controlled Foreign Corporation**” means “controlled foreign corporation” as defined in the Internal Revenue Code of 1986.

“**Copyright Licenses**” means any and all agreements providing for the granting of any right in or to Copyrights (whether a Grantor is licensee or licensor thereunder), including each agreement referred to on **Schedule 3.17**.

“**Copyrights**” means all United States and foreign copyrights (including Community designs), including copyrights in software and databases, and all Mask Works (as defined under 17 U.S.C. § 901 of the U.S. Copyright Act), whether registered or unregistered, and, with respect to any and all of the foregoing: (a) all registrations and applications therefor, including the registrations and applications referred to on **Schedule 3.17**; (b) all extensions and renewals thereof; (c) all rights corresponding thereto throughout the world; (d) all rights to sue for past, present and future infringements thereof; and (e) all products and Proceeds of the foregoing, including any income, royalties, and awards and any claim by any Grantor against third parties for past, present, or future infringement of any Copyright or any Copyright licensed under any Copyright License.

“**Deposit Accounts**” means any “deposit account”, as such term is defined in *Section 9.102(a)(29)* of the UCC, including those deposit accounts identified on **Schedule 3.10**, and any account which is a replacement or substitute for any of such accounts, together with all monies, Instruments, certificates, checks, drafts, wire transfer receipts, and other property deposited therein and all balances therein.

“**Documents**” means any “document”, as such term is defined in *Section 9.102(a)(30)* of the UCC.

“**Electronic Chattel Paper**” means any “electronic chattel paper”, as such term is defined in *Section 9.102(a)(31)* of the UCC.

“**Equipment**” means: (a) any “equipment”, as such term is defined in *Section 9.102(a)(33)* of the UCC; (b) all machinery, equipment, furnishings, Fixtures, and Vehicles; and (c) any and all additions, substitutions, and replacements of any of the foregoing,



wherever located, together with all attachments, components, parts, equipment, and accessories installed thereon or affixed thereto (in each case, regardless of whether characterized as equipment under the UCC).

**“Excluded Equity”** means any voting stock in excess of sixty-five percent (65%) of the outstanding voting stock of any Controlled Foreign Corporation, which, pursuant to the terms of the Credit Agreement, is not required to guaranty the Secured Obligations. For the purposes of this definition, **“voting stock”** means, with respect to any issuer, the issued and outstanding shares of each class of stock of such issuer entitled to vote (within the meaning of *Treasury Regulations §1.956-2(c)(2)*).

**“Excluded Property”** means, collectively, (a) Excluded Equity, (b) any Property owned by any Grantor that is subject to a purchase money Lien or a capital lease permitted under the Credit Agreement if the Contractual Obligation pursuant to which such Lien is granted (or in the document providing for such capital lease) prohibits or requires the consent of any Person other than Borrower and its Affiliates which has not been obtained as a condition to the creation of any other Lien on such equipment, (c) any “intent to use” Trademark applications for which a statement of use has not been filed (but only until such statement is filed), (d) any leased real property, (e) any rights under any lease, contract or agreement and any Property expressly subject thereto (which shall, for the avoidance of doubt, include (i) the Grantor’s leasehold interest, security deposit and certain building fixtures subject to the Lease (Georgetown) and the Collateral Access Agreement related thereto and (ii) the Grantor’s interests in Receivables subject to the Factoring Agreement) to the extent that (and only for so long as) the granting of a security interest therein (i) is specifically prohibited in writing by, or would constitute an event of default under or would grant a party a termination right under, any agreement governing such Property or right unless such prohibition is not enforceable or is otherwise ineffective under any applicable Requirement of Law or (ii) requires a consent, approval, license or authorization not obtained from a governmental authority or third party, except, in each case under this clause (ii), to the extent that such breach or default is ineffective under the UCC or other applicable law or principles of equity (for the avoidance of doubt, upon obtaining any such consent, approval, license or authorization, any such leases, license, contract or other agreement shall no longer be “Excluded Property”), (f) any rights under any federal or state governmental license or permit to the extent that (and only for so long as) the granting of a security interest therein is specifically prohibited by any applicable Requirement of Law, (g) any personal Property in respect of which perfection or notice of a Lien is not either (i) governed by the UCC or (ii) effected by appropriate evidence of the Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office, and (h) Property for which the Secured Party and Grantor have determined in their reasonable judgment and agree in writing that the cost of creating or perfecting such pledges or security interests therein would be excessive in view of the benefits to be obtained by the Lenders therefrom; *provided, however*, **“Excluded Property”** shall not include any proceeds, products, substitutions, or replacements of Excluded Property (unless such proceeds, products, substitutions, or replacements would otherwise constitute Excluded Property).

**“Fixtures”** means any “*fixtures*”, as such term is defined in *Section 9.102(a)(41)* of the UCC.

**“General Intangibles”** means: (a) any “*general intangibles*”, as such term is defined in *Section 9.102(a)(42)* of the UCC; and (b) all interest rate or currency protection or hedging arrangements, computer software, computer programs, all tax refunds and tax refund claims, all licenses, permits, concessions and authorizations, all contract rights, all joint venture interests, partnership interests, or membership interests that do not constitute a Security, all Material Agreements, and all Intellectual Property (in each case, regardless of whether characterized as general intangibles under the UCC).

**“Goods”** means: (a) “*goods*”, as that term is defined in *Section 9.102(a)(44)* of the UCC; (b) all Inventory; and (c) all Equipment (in each case, regardless of whether characterized as goods under the UCC).

**“Grantors”** has the meaning set forth in the introductory paragraph, and **“Grantor”** means any one of the Grantors.

**“Hedge Agreement”** has the meaning set forth in the Credit Agreement.

**“Instrument”** means any “*instrument*”, as such term is defined in *Section 9.102(a)(47)* of the UCC, including the Collateral Notes.

**“Intellectual Property”** means, collectively, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets, and the Trade Secret Licenses.

**“Inventory”** means: (a) any “*inventory*”, as such term is defined in *Section 9.102(a)(48)* of the UCC; (b) all wrapping, packaging, advertising, and shipping materials; (c) all goods that have been returned, repossessed, or stopped in transit; (d) all Documents evidencing

any of the foregoing; and (e) all computer programs embedded in any goods and all accessions thereto and products thereof (in each case, regardless of whether characterized as inventory under the UCC).

**“Investment Related Property”** means: (a) any “investment property”, as such term is defined in *Section 9.102(a)(49)* of the UCC; and (b) all Pledged Equity Interests (regardless of whether such interest is classified as investment property under the UCC).

**“Letter-of-Credit Right”** means any “letter-of-credit right”, as such term is defined in *Section 9.102(a)(51)* of the UCC.

**“Material Agreements”** has the meaning set forth in the Credit Agreement.

**“Maximum Liability”** has the meaning set forth in *Section 6.2(a)*.

**“Money”** means “money” as defined in *Section 1.201(b)(24)* of the UCC.

**“Patent Licenses”** means all agreements providing for the granting of any right in or to Patents (whether a Grantor is licensee or licensor thereunder), including each agreement referred to on *Schedule 3.17*.

**“Patents”** means all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including: (a) each patent and patent application referred to on *Schedule 3.17*; (b) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof; (c) all rights corresponding thereto throughout the world; (d) all inventions and improvements described therein; (e) all rights to sue for past, present and future infringements thereof; (f) all licenses, claims, damages, and Proceeds of suit arising therefrom; and (g) all products and Proceeds of the foregoing, including any income, royalties, and awards and any claim by any Grantor against third parties for past, present, or future infringement of any Patent or any Patent licensed under any Patent License.

**“Permitted Liens”** means Liens permitted under *Section 4.2(f)*.

**“Pledged Equity Interests”** means all Pledged Stock, Pledged LLC Interests, and Pledged Partnership Interests. Pledged Equity Interests shall specifically exclude any Excluded Property.

**“Pledged LLC Interests”** means all membership interests owned by a Grantor in any limited liability company, including all membership interests listed on *Schedule 3.10* and the certificates, if any, representing such membership interests as such interest may be increased or otherwise adjusted from time to time, including (a) all of such Grantor’s right, title, and interest in any and all distributions, issues, profits, and shares (including rights in the nature of warrants, purchase options, or options to acquire any property or further interest in such limited liability company) payable or distributable by such limited liability company, whether in cash or otherwise, whether for capital or income or surplus or otherwise, including distributions upon liquidation, dissolution, revision, reclassification, split-up, or other change or transaction affecting such limited liability company, or as a sale, refinancing, or other capital transaction affecting any assets or property of such limited liability company; (b) all of Grantor’s right, title, and interest as a member with respect to such limited liability company and the regulations, operating agreement or limited liability company agreement; (c) all of Grantor’s rights under the regulations, operating agreement or limited liability company agreement; (d) all of Grantor’s right to vote upon, approve, or consent to (or withhold consent or approval to) any matter pursuant to the regulations, operating agreement or limited liability company agreement, or otherwise to control, manage, or direct the affairs of such limited liability company; and (e) all of Grantor’s right to terminate, amend, supplement, modify or waive performance under, the regulations, operating agreement or limited liability company agreement, or perform thereunder, and to compel performance and otherwise to exercise all remedies thereunder; and (f) all Proceeds therefrom.

**“Pledged Partnership Interests”** means all partnership interests owned by a Grantor in any general partnership, limited partnership, limited liability partnership or other partnership, including all partnership interests listed on *Schedule 3.10* and the certificates, if any, representing such partnership interests as such interest may be increased or otherwise adjusted from time to time, including (a) all of such Grantor’s right, title, and interest in any and all distributions, issues, profits, and shares (including rights in the nature of warrants, purchase options, or options to acquire any property or further interest in such partnership) payable or distributable by such partnership, whether in cash or otherwise, whether for capital or income or surplus or otherwise, including distributions upon liquidation, dissolution, revision, reclassification, split-up, or other change or transaction affecting such partnership, or as a sale, refinancing, or other capital transaction affecting any assets or property of such partnership; (b) all of Grantor’s right, title, and interest

as a partner with respect to such partnership and the general partnership agreement or limited partnership agreement; (c) all of Grantor's rights under the general partnership agreement or limited partnership agreement; (d) all of Grantor's right to vote upon, approve, or consent to (or withhold consent or approval to) any matter pursuant to the general partnership agreement or limited partnership agreement, or otherwise to control, manage, or direct the affairs of such partnership; and (e) all of Grantor's right to terminate, amend, supplement, modify or waive performance under, the general partnership agreement or limited partnership agreement, or perform thereunder, and to compel performance and otherwise to exercise all remedies thereunder; and (f) all Proceeds therefrom.

**"Pledged Stock"** means all shares of capital stock owned by a Grantor, including all shares of capital stock described on *Schedule 3.10*, and the certificates, if any, representing such shares and any interest of such Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, including all voting rights with respect to such Pledged Stock and all dividends, distributions, cash, warrants, rights, options, Instruments, securities, and other property or Proceeds from time to time received, receivable, or otherwise distributed in respect of or in exchange for any or all of such shares.

**"Proceeds"** means any "*proceeds*," as such term is defined in *Section 9.102(a)(65)* of the UCC and, in any event, shall include, but not be limited to, (a) any and all proceeds of any insurance, indemnity, warranty, or guaranty payable to a Grantor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to a Grantor from time to time in connection with any requisition, confiscation, condemnation, seizure, or forfeiture of all or any part of the Collateral by any Governmental Authority (or any Person acting under color of Governmental Authority), and (c) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

**"Receivables"** means the Accounts, Chattel Paper, Documents, Investment Related Property, Instruments, or Commercial Tort Claims, and any other rights or claims to receive Money which are General Intangibles or which are otherwise included as Collateral, together with all of the applicable Grantor's rights, if any, in all Collateral Support and Supporting Obligations related thereto.

**"Requirement of Law"** means, as to any Person, any law (statutory or common), ordinance, treaty, rule, regulation, order, policy, other legal requirement or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

**"Secured Obligations"** means:

(a) all Obligations;

(b) all costs and expenses, including all attorneys' fees and legal expenses, incurred by Lender or its Affiliates to preserve and maintain the Collateral, collect the obligations herein described, and enforce this Security Agreement or any rights under the other Loan Documents;

(c) the obligation to reimburse any amount that Secured Party (in its sole and absolute discretion) elects to pay or advance on behalf of any Grantor following the occurrence of any Event of Default;

(d) all amounts owed under any extension, renewal, or modification of any of the foregoing;

(e) any of the foregoing that arises after the filing of a petition by or against any Grantor under the Bankruptcy Code, even if the obligations due do not accrue because of the automatic stay under Bankruptcy Code § 362 or otherwise; and

(f) all court costs and additional fees and expenses as may be directed by any court;

in each case with respect to clauses (a) through (f) above, whether or not (i) such Secured Obligations arise or accrue before or after the filing by or against any Grantor of a petition under the Bankruptcy Code, or any similar filing by or against any Grantor under the laws of any jurisdiction, or any bankruptcy, insolvency, receivership or other similar proceeding, (ii) such Secured Obligations

are allowable under Section 502(b)(2) of the Bankruptcy Code or under any other insolvency proceedings, (iii) the right of payment in respect of such Secured Obligations is reduced to judgment, or (iv) such Secured Obligations are liquidated, unliquidated, similar, dissimilar, related, unrelated, direct, indirect, fixed, contingent, primary, secondary, joint, several, or joint and several, matured, disputed, undisputed, legal, equitable, secured, or unsecured.

**“Securities Account”** means any “*securities account*”, as such term is defined in *Section 8.501(a)* of the UCC, and all sub-accounts thereof.

**“Security”** has the meaning set forth in *Section 8.102(a)(15)* of the UCC.

**“Security Agreement Supplement”** has the meaning set forth in *Section 4.21*.

**“Supporting Obligation”** means all “*supporting obligations*” as defined in *Section 9.102(a)(78)* of the UCC.

**“Tangible Chattel Paper”** means any “*tangible chattel paper*”, as such term is defined in *Section 9.102(a)(79)* of the UCC.

**“Trademark Licenses”** means any and all agreements providing for the granting of any right in or to Trademarks (whether a Grantor is licensee or licensor thereunder), including each agreement referred to on *Schedule 3.17*.

**“Trademarks”** means all United States and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, all registrations and applications for any of the foregoing, including: (a) the registrations and applications referred to on *Schedule 3.17*; (b) all extensions or renewals of any of the foregoing; (c) all of the goodwill of the business connected with the use of and symbolized by the foregoing; (d) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill; and (e) all products and Proceeds of the foregoing, including any income, royalties, and awards and any claim by any Grantor against third parties for past, present, or future infringement of any Trademark or any Trademark licensed under any Trademark License.

**“Trade Secret Licenses”** means any and all agreements providing for the granting of any right in or to Trade Secrets (whether a Grantor is licensee or licensor thereunder), including each agreement referred to on *Schedule 3.17*.

**“Trade Secrets”** means all trade secrets and all other confidential or proprietary information and know-how, whether or not such Trade Secret has been reduced to a writing or other tangible form, including all Documents and things embodying, incorporating, or referring in any way to such Trade Secret, including: (a) the right to sue for past, present and future misappropriation or other violation of any Trade Secret; and (b) all products and Proceeds of the foregoing, including any income, royalties, and awards and any claim by any Grantor against third parties for past, present, or future infringement of any Trade Secrets or any Trade Secrets licensed under any Trade Secret License.

**“Vehicles”** means all present and future automobiles, trucks, truck tractors, trailers, semi-trailers, or other motor vehicles or rolling stock, now owned or hereafter acquired by a Grantor.

## 2. GRANT OF SECURITY INTEREST.

**2.1 Security Interest.** To secure the prompt and complete payment and performance of the Secured Obligations when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under *Section 362(a)* of the Bankruptcy Code or any similar provisions of other applicable laws), each Grantor hereby grants to Secured Party a continuing security interest in, a Lien upon, and a right of set off against, and hereby assigns to Secured Party as security, all personal property and assets of such Grantor, whether now owned or hereafter acquired or existing, and wherever located (together with all other collateral security for the Secured Obligations at any time granted to or held or acquired by Secured Party, collectively, the “*Collateral*”), including:

(a) Accounts;

(b) Chattel Paper;

- (c) Commercial Tort Claims;
- (d) Deposit Accounts, Securities Accounts, and Commodity Accounts;
- (e) Documents;
- (f) General Intangibles;
- (g) Goods;
- (h) Instruments;
- (i) Investment Related Property;
- (j) Letter of Credit Rights;
- (k) Money;
- (l) Fixtures;
- (m) Intellectual Property;
- (n) Material Agreements;
- (o) Vehicles;

(p) to the extent not otherwise included above, all Collateral Records, Collateral Support, and Supporting Obligations relating to any of the foregoing; and

(q) to the extent not otherwise included above, all accessions to, substitutions for, and all replacements, products, Proceeds of the foregoing, including Proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage, or destruction of any Collateral.

If the security interest granted hereby in any rights of any Grantor under any contract included in the Collateral is expressly prohibited by such contract, then the security interest hereby granted therein nonetheless remains effective to the extent allowed by *Article 9* of the UCC or other applicable law but is otherwise limited by that prohibition. Notwithstanding the foregoing, no Lien or security interest is hereby granted on any Excluded Property; *provided that* (i) if and when any Property shall cease to be Excluded Property, a Lien on and security in such Property shall be deemed granted therein and (ii) immediately upon the amendment of the Internal Revenue Code to allow the pledge of a greater percentage of the voting power of capital stock in a Controlled Foreign Corporation without adverse tax consequences, the Collateral shall include, and the security interest granted by each Grantor shall attach to, such greater percentage of capital stock of each Controlled Foreign Corporation. Furthermore, notwithstanding any contrary provision, each Grantor agrees that, if, but for the application of this paragraph, granting a security interest in the Collateral would constitute a fraudulent conveyance under 11 U.S.C. § 548 or a fraudulent conveyance or transfer under any state fraudulent conveyance, fraudulent transfer, or similar law in effect from time to time (each a “*fraudulent conveyance*”), then the security interest remains enforceable to the maximum extent possible without causing such security interest to be a fraudulent conveyance, and this Security Agreement is automatically amended to carry out the intent of this sentence.

**2.2 Grantors Remain Liable.** Notwithstanding anything to the contrary contained herein, (a) each Grantor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its respective duties and Secured Obligations thereunder to the same extent as if this Security Agreement had not been executed, (b) the exercise by Secured Party of any of its rights hereunder shall not release any Grantor from any of its duties or Secured Obligations under the contracts and agreements included in the Collateral, and (c) Secured Party shall not have any obligation or liability under any of the contracts and agreements included in the Collateral by reason of this Security Agreement, nor shall Secured Party be obligated to perform any of the



Secured Obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

**2.3 Authorization to File Financing Statements.** Each Grantor hereby irrevocably authorizes Secured Party at any time and from time to time to file in any UCC jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of such Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of *Article 9* of the UCC, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by Subchapter E of *Article 9* of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether such Grantor is an organization, the type of organization and any organization identification number issued to such Grantor and (B) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Each Grantor agrees to furnish any such information to Secured Party promptly upon request.

**3. REPRESENTATIONS AND WARRANTIES.** Each Grantor represents and warrants to Secured Party that:

**3.1 Credit Agreement.** Certain representations and warranties in the Credit Agreement are applicable to such Grantor or its assets or operations, and each such representation and warranty is true and correct.

**3.2 Title; Authorization; Enforceability; Perfection.** (a) Each Grantor has good and valid rights in and title to the Collateral with respect to which it has purported to grant a security interest hereunder, free and clear of all Liens except for Permitted Liens, and has full power and authority to grant to Secured Party the security interest in such Collateral; (b) the execution and delivery by each Grantor of this Security Agreement has been duly authorized, and this Security Agreement constitutes a legal, valid and binding obligation of such Grantor and creates a security interest enforceable against such Grantor in all now owned and hereafter acquired Collateral; (c)(i) upon the filing of all UCC financing statements naming each Grantor as “debtor” and Secured Party as “secured party” and describing the Collateral in the filing offices set forth opposite such Grantor’s name on Schedule 3.5 hereof, (ii) if required pursuant to the terms of this Agreement, upon delivery of all Instruments, Chattel Paper, certificated Pledged Equity Interests, and Collateral Notes, (iii) if required pursuant to the terms of this Agreement, upon sufficient identification of Commercial Tort Claims, and filing of a financing statement specifically identifying such Commercial Tort Claims in the applicable filing office identified pursuant to clause (i) above, (iv) upon Secured Party obtain Control with respect to any Deposit Account, Securities Account, or Commodity Account, pursuant to the UCC by being the depository bank, securities intermediary, or commodity intermediary, as applicable, or if required pursuant to the Loan Documents, upon execution of a control agreement establishing Secured Party’s Control with respect to any Deposit Account, Securities Account, or Commodity Account, (v) upon consent of the issuer or any nominated person with respect to Letter of Credit Rights, and (vi) to the extent not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in Intellectual Property in the applicable intellectual property registries, including the United States Patent and Trademark Office and the United States Copyright Office, the security interests granted to Secured Party hereunder constitute valid and perfected first priority Liens (subject in the case of priority only to (1) Permitted Liens, and (2) the rights of the United States government (including any agency or department thereof) with respect to United States government Receivables on all of the Collateral).

**3.3 Conflicting Legal Requirements and Contracts.** Neither the execution and delivery by any Grantor of this Security Agreement, the creation and perfection of the security interest in the Collateral granted hereunder, nor compliance with the terms and provisions hereof will (a) violate (i) any legal requirement binding on such Grantor, (ii) such Grantor's organizational documents, or (iii) the provisions of any indenture, Instrument or agreement to which such Grantor is a party or is subject, or by which it, or its property, is bound; or (b) conflict with or constitute a default under, or result in the creation or imposition of any Lien pursuant to, the terms of any such indenture, Instrument or agreement (other than any Lien of Secured Party).

**3.4 Governmental Authority.** No authorization, approval, or other action by, and no notice to or filing with, any Governmental Authority is required either (a) for the pledge by any Grantor of the Collateral pursuant to this Security Agreement or for the execution, delivery, or performance of this Security Agreement by any Grantor, except for certain actions with respect to perfection of the Lien in the Collateral as described in *Section 3.2*, or (b) for the exercise by Secured Party of the voting or other rights provided for in this Security Agreement or the remedies in respect of the Collateral pursuant to this Security Agreement (except as may be required in connection with the disposition of the Pledged Equity Interests by legal requirements affecting the offering and sale of securities generally).



**3.5 Grantor Information.** Each Grantor's exact legal name, jurisdiction of organization, type of entity, state issued organizational identification number and the location of its principal place of business, or chief executive office (or the principal residence if such Grantor is a natural person) and of the books and records relating to the Receivables, are disclosed on **Schedule 3.5**; no Grantor has any other places of business except those set forth on **Schedule 3.5**. Except as noted on **Schedule 3.5** hereto, all such books, records, and Collateral are in such Grantor's possession. No Grantor has done in the last five (5) years, and does, business under any other name (including any trade-name or fictitious business name) except for those names set forth on **Schedule 3.5**. Except as provided on **Schedule 3.5**, no Grantor has changed its name, jurisdiction of organization, principal place of business, or chief executive office (or principal residence if such Grantor is a natural person) or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) within the past five (5) years.

**3.6 Property Locations.** The Inventory, Equipment, and Fixtures are located solely at the locations described on **Schedule 3.6**. All of such locations are owned by a Grantor except for locations (a) which are leased by a Grantor as lessee and designated in *Part B* of **Schedule 3.6**, and (b) at which Inventory is held in a public warehouse or is otherwise held by a bailee or on consignment as designated in *Part C* of **Schedule 3.6**, with respect to which Inventory such Grantor has delivered bailment agreements, warehouse receipts, financing statements or other Documents satisfactory to Secured Party to protect Secured Party's security interest in such Inventory.

**3.7 [Reserved].**

**3.8 No Financing Statements or Control Agreements.** Other than the financing statements and control agreements with respect to this Security Agreement, there are no other financing statements or control agreements covering any Collateral, other than those evidencing Permitted Liens.

**3.9 Maintenance of Collateral.** All tangible Collateral which is necessary to any Grantor's business is in good repair and condition, ordinary wear and tear excepted, and none thereof is a Fixture except as specifically referred to herein on **Schedule 3.6**.

**3.10 Collateral.** **Schedule 3.10** accurately lists all Pledged Equity Interests, Securities Accounts, Commodity Accounts, Deposit Accounts, Collateral Notes, Collateral Note Security, Commercial Tort Claims, Material Agreements, and all letters of credit, in which any Grantor has any right, title, or interest. All information supplied by any Grantor to Secured Party with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is true, correct, and complete in all material respects.

**3.11 Deposit, Commodity, and Securities Accounts.** **Schedule 3.10** correctly identifies all Deposit Accounts, Commodity Accounts, and Securities Accounts in which a Grantor has an interest and the institutions holding such accounts. Each Grantor is the sole account holder of each such account, and such Grantor has not consented to, and is not otherwise aware of, any person (other than Secured Party) having Control over, or any other interest in, any such account or the property credited thereto.

**3.12 Receivables.**

(a) Each Receivable (i) is and will be the legal, valid and binding obligation of the Account Debtor in respect thereof, representing an unsatisfied obligation of such Account Debtor, (ii) is and will be enforceable in accordance with its terms, (iii) is not and will not be subject to any setoffs, defenses, taxes, counterclaims (except with respect to refunds, returns and allowances in the ordinary course of business or as permitted under the Credit Agreement), and (iv) is and will be in compliance with all material applicable laws, whether federal, state, local or foreign.

(b) None of the Account Debtors in respect of any Receivable is the government of the United States, any agency or instrumentality thereof, any state or municipality or any foreign sovereign. No Receivable requires the consent of the Account Debtor in respect thereof in connection with the pledge hereunder, except any consent which has been obtained.

(c) The names of the Account Debtors, amounts owing, due dates and other information with respect to each Account or Chattel Paper are and will be correctly stated in all records of each Grantor relating thereto and in all invoices and reports with respect thereto furnished to Secured Party by each Grantor from time to time. As of the time when each Account or each item of Chattel Paper arises, the applicable Grantor shall be deemed to have represented and warranted that such Account or Chattel Paper, as the case may be, and all records relating thereto, are genuine and in all respects what they purport to be.

**3.13 Letter of Credit Rights.** All letters of credit to which any Grantor has rights is listed on ***Schedule 3.10***, and such Grantor has obtained the consent of each issuer or the nominated person of any letter of credit to the assignment of the Proceeds of the letter of credit to Secured Party.

**3.14 Instruments; Chattel Paper; Collateral Notes; and Collateral Note Security.** All Instruments and Chattel Paper, including the Collateral Notes, have been delivered to Secured Party, together with corresponding endorsements duly executed by the applicable Grantor in favor of Secured Party, and such endorsements have been duly and validly executed and are binding and enforceable against such Grantor in accordance with their terms. Each Collateral Note and the Documents evidencing the Collateral Note Security are in full force and effect; there have been no renewals or extensions of, or amendments, modifications, or supplements to, any thereof about which Secured Party has not been advised in writing; and no “*default*” or “*potential default*” has occurred and is continuing under any such Collateral Note or Documents evidencing the Collateral Note Security, except as disclosed on ***Schedule 3.10***.

**3.15 Material Agreements.** All Material Agreements to which any Grantor is a party are set forth on ***Schedule 5.27*** to the Credit Agreement. True and correct copies of all such Material Agreements have been furnished to Secured Party. Each Material Agreement is in full force and effect; there have been no amendments, modifications, or supplements to any Material Agreement of which Secured Party has not been advised in writing; and no default, breach, or potential default or breach has occurred and is continuing under any Material Agreement, except as disclosed to Secured Party in accordance with the Credit Agreement.

**3.16 Investment Related Property.**

(a) ***Schedule 3.10*** sets forth all of the Pledged Stock, Pledged LLC Interests, and Pledged Partnership Interests owned by any Grantor and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such Schedule.

(b) Except as set forth on ***Schedule 3.10***, no Grantor has acquired any equity interests of another entity or substantially all the assets of another entity within the past five (5) years.

(c) Each Grantor is the record and beneficial owner of the Pledged Equity Interests owned by it free of all Liens, rights or claims of other persons other than Permitted Liens, and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests.

(d) No consent of any person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary or desirable in connection with the creation, perfection or first priority status of the security interest of Secured Party in any Pledged Equity Interests or the exercise by Secured Party of the voting or other rights provided for in this Security Agreement or the exercise of remedies in respect thereof.

(e) None of the Pledged LLC Interests or Pledged Partnership Interests are or represent interests in issuers that (i) are registered as investment companies or (ii) are dealt in or traded on securities exchanges or markets.

(f) Except as otherwise set forth on ***Schedule 3.10***, all of the Pledged LLC Interests and Pledged Partnership Interests are or represent interests in issuers that have not opted to be treated as securities under the UCC of any jurisdiction.

(g) (i) Each Grantor has delivered to Secured Party all stock certificates, or other Instruments or Documents representing or evidencing the Pledged Equity Interests, *together with* corresponding assignment or transfer powers duly executed in blank by such Grantor, and such powers have been duly and validly executed and are binding and enforceable against such Grantor in accordance with their terms and (ii) to the extent such Pledged Equity Interests are uncertificated, each Grantor has taken all actions necessary or desirable to establish Secured Party’s Control over such Pledged Equity Interests.

### 3.17 Intellectual Property.

(a) All of the Intellectual Property is subsisting, valid, and enforceable. The information contained on **Schedule 3.17** is true, correct, and complete. All issued Patents, Patent Licenses, Trademarks, Trademark Licenses, Copyrights, Copyright Licenses, Trade Secret, and Trade Secret Licenses of each Grantor are identified on **Schedule 3.17**.

(b) Each Grantor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to the Intellectual Property purported to be owned by such Grantor free and clear of any Liens, including any pledges, assignments, licenses, user agreements, and covenants by such Grantor not to sue third persons, other than Permitted Liens.

(c) To the best of each Grantor's knowledge, no third party is infringing, or in such Grantor's reasonable business judgment, may be infringing, any of such Grantor's rights under the Intellectual Property.

(d) Each Grantor has performed and will continue to perform all acts and has paid and will continue to pay all required material fees and taxes to maintain each and every item of the Intellectual Property in full force and effect throughout the world, as applicable.

(e) Each of the Patents and Trademarks identified on **Schedule 3.17** has been properly registered with the United States Patent and Trademark Office and in corresponding offices throughout the world (where appropriate) and each of the Copyrights identified on **Schedule 3.17** has been properly registered with the United States Copyright Office and in corresponding offices throughout the world (where appropriate).

(f) To the best of each Grantor's knowledge, no claims with respect to the Intellectual Property have been asserted and are pending (i) to the effect that the sale, licensing, pledge, or use of any of the products of such Grantor's business infringes any other party's valid copyright, trademark, service mark, trade secret, or other intellectual property right, (ii) against the use by such Grantor of any Intellectual Property used in such Grantor's business as currently conducted, or (iii) challenging the ownership or use by such Grantor of any of the Intellectual Property that such Grantor purports to own or use, nor, to such Grantor's knowledge, is there a valid basis for such a claim described in this **Section 3.17**.

**3.18 Excluded Property.** Each Grantor hereby represents and warrants that the Excluded Property, when taken as a whole, is not material to the business operations or financial condition of Borrower and its Subsidiaries, taken as a whole.

The foregoing representations and warranties will be true and correct in all respects with respect to any additional Collateral or additional specific descriptions of certain Collateral delivered to Secured Party in the future by any Grantor. The failure of any of these representations or warranties or any description of Collateral therein to be accurate or complete shall not impair the security interest in any such Collateral.

**4. COVENANTS.** From the date of this Security Agreement, and thereafter until this Security Agreement is terminated:

**4.1 Loan Documents.** Each Grantor shall comply with, perform, and be bound by all covenants and agreements in the Loan Documents that are applicable to it, its assets, or its operations, each of which is hereby ratified and confirmed (**INCLUDING THE INDEMNIFICATION AND RELATED PROVISIONS IN SECTION 11.2 OF THE CREDIT AGREEMENT**); AND (**b**) **CONSENT TO AND APPROVE THE VENUE AND SERVICE OF PROCESS IN SECTION 11.12 OF THE CREDIT AGREEMENT**).

#### 4.2 General.

(a) **Inspection.** Each Grantor will permit Secured Party, by its representatives and agents (a) to inspect the Collateral, (b) to examine and make copies of the records of such Grantor relating to the Collateral, and (c) to discuss the Collateral and the related records of such Grantor with, and to be advised as to the same by, such Grantor's officers, employees, and accountants (and, in the case of any Receivable, with any Account Debtor) as provided in Section 6.6 of the Credit Agreement.

(b) **[Reserved].**

(c) [Reserved].

(d) **Financing Statements and Other Actions; Defense of Title.** Each Grantor will deliver to Secured Party all financing statements and execute and deliver control agreements and other Documents and take such other actions as may from time to time be requested by Secured Party in order to maintain a first priority perfected security interest in and, in the case of Investment Related Property, Deposit Accounts, Letter-of-Credit-Rights, and Electronic Chattel Paper, Control of, the Collateral. Each Grantor will take any and all actions reasonably necessary to defend title to the Collateral against all persons and to defend the security interest of Secured Party in the Collateral and the priority thereof against any Lien not expressly permitted hereunder.

(e) **Disposition of Collateral.** No Grantor will sell, lease, license or otherwise dispose of the Collateral except Dispositions permitted under the Credit Agreement.

(f) **Liens.** No Grantor will create, incur, or suffer to exist any Lien on the Collateral except (i) the security interest created by this Security Agreement, and (ii) other Liens permitted under the Credit Agreement.

(g) **Change in Location, Jurisdiction of Organization or Name.** No Grantor will (i) have any Inventory, Equipment, Fixtures, or Proceeds or products thereof (other than Inventory and Proceeds thereof disposed of as permitted by **Section 4.2(e)**) at a location other than a location specified on **Schedule 3.6**, (ii) maintain records relating to the Receivables at a location other than at the location specified on **Schedule 3.10**, (iii) maintain a place of business at a location other than a location specified on **Schedule 3.6**, (iv) change its name or taxpayer identification number, (v) change its mailing address, or (vi) change its jurisdiction of organization, unless such Grantor shall have given Secured Party not less than thirty (30) days' prior written notice thereof. Prior to making any of the foregoing changes, each Grantor shall execute and deliver all such additional Documents and perform all additional acts as Secured Party may reasonably request in order to continue or maintain the existence and priority of its security interest in all of the Collateral.

(h) **Other Financing Statements.** No Grantor will authorize any other financing statement naming it as debtor covering all or any portion of the Collateral, except as permitted by **Section 4.2(f)**.

#### 4.3 Receivables.

(a) **Certain Agreements on Receivables.** Other than pursuant to the Factoring Agreement, no Grantor will make or agree to make any discount, credit, rebate or other reduction in the original amount owing on a Receivable or accept in satisfaction of a Receivable less than the original amount thereof, except that, so long as no Event of Default exists, such Grantor may reduce the amount of Accounts arising from the sale of Inventory in accordance with its present policies and in the ordinary course of business or as permitted under the Credit Agreement.

(b) **Collection of Receivables.** Except as otherwise provided in this Security Agreement or as permitted under the Credit Agreement (including, but not limited to, dispositions of certain Receivables pursuant to the Factoring Agreement), each Grantor will, at such Grantor's sole expense, collect all amounts due or hereafter due to such Grantor under the Receivables and enforce such Grantor's rights under all Collateral Support or Supporting Obligation with respect to the Receivables.

(c) **Delivery of Invoices.** Each Grantor will deliver to Secured Party promptly upon its request after the occurrence and during the continuance of an Event of Default duplicate invoices with respect to each Account bearing such language of assignment as Secured Party shall specify.

(d) **Disclosure of Counterclaims on Receivables.** If (i) any discount, credit or agreement to make a rebate or to otherwise reduce the amount owing on a Receivable exists or (ii) if, to the knowledge of any Grantor, any dispute, setoff, claim, counterclaim or defense exists or has been asserted or threatened with respect to a Receivable, each Grantor will promptly disclose such fact to Secured Party in writing in connection with the inspection by Secured Party of any record of such Grantor relating to such Receivable and in connection with any invoice or report furnished by such Grantor to Secured Party relating to such Receivable.

#### 4.4 Inventory and Equipment.

(a) **Maintenance of Goods.** Each Grantor will do all things necessary to maintain, preserve, protect and keep the Inventory and the Equipment in good repair and working and saleable condition (ordinary wear and tear excepted).

(b) **Insurance.** Each Grantor will maintain insurance in accordance with the Credit Agreement.

(c) [Reserved]

(d) **Safekeeping of Inventory; Inventory Covenants.** Secured Party shall not be responsible for (i) the safekeeping of the Inventory, (ii) any loss or damage thereto or destruction thereof occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value of Inventory, or (iv) any act or default of any carrier, warehouseman, bailee or forwarding agency or any other person in any way dealing with or handling the Inventory, except to the extent that any Grantor incurs any loss, cost, claim or damage from any of the foregoing as a result of the gross negligence or willful misconduct of Secured Party as determined by a court of competent jurisdiction in final and non-appealable judgment. All risk of loss, damage, distribution or diminution in value of the Inventory shall, except as noted in the previous sentence, be borne by Grantors.

(e) [Reserved].

(f) **Certificates of Title.** With respect to any item of Equipment which is covered by a certificate of title and indication of a security interest on such certificate is required as a condition of perfection, upon the request of Secured Party, the applicable Grantor shall cause Secured Party's security interest to be properly indicated thereon; provided that, so long as no Event of Default exists, Vehicles shall not be subject to this **Section 4.4(f)**.

#### 4.5 Investment Related Property.

(a) **No Modification of Rights and Obligation.** Without the prior written consent of Secured Party, no Grantor shall vote to enable or take any other action to: (i) amend or terminate any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that materially adversely affects the Secured Party; (ii) other than as permitted under the Credit Agreement, permit any issuer of any Pledged Equity Interest to issue any additional stock, partnership interests, limited liability company interests or other equity interests of any nature or to issue securities convertible into or granting the right of purchase or exchange for any stock or other equity interest of any nature of such issuer; (iii) other than as permitted under the Credit Agreement, permit any issuer of any Pledged Equity Interest to dispose of all or a material portion of its assets; (iv) waive any default under or breach of any terms of organizational document relating to the issuer of any Pledged Equity Interest if such waiver would materially adversely affect the Secured Party; or (v) cause any issuer of any Pledged Partnership Interests or Pledged LLC Interests which are not securities (for purposes of the UCC) on the date hereof to elect or otherwise take any action to cause such Pledged Partnership Interests or Pledged LLC Interests to be treated as securities for purposes of the UCC; *provided, however*, notwithstanding the foregoing, if any issuer of any Pledged Partnership Interests or Pledged LLC Interests takes any such action in violation of the foregoing in this **clause (v)**, such Grantor shall promptly notify Secured Party in writing of any such election or action and, in such event, shall take all steps necessary or advisable to establish Secured Party's Control thereof.

(b) **Performance of Underlying Obligations.** Each Grantor shall comply with all of its Secured Obligations under any partnership agreement or limited liability company agreement relating to Pledged Partnership Interests or Pledged LLC Interests and shall enforce all of its rights with respect to any Investment Related Property.

(c) **Changes in Capital Structure of Issuers.** Without the prior written consent of Secured Party, no Grantor shall permit any issuer of any Pledged Equity Interest to merge or consolidate except as permitted under the Credit Agreement.

(d) **Consent of Grantor.** To the extent the consent of a Grantor, whether in its capacity as a partner, member, general partner, managing member, shareholder, issuer, or otherwise, is required for the transfer, conveyance, or encumbrance of all or any portion of the Pledged Equity Interests in any partnership or limited liability company, such Grantor hereby irrevocably (a) consents to the grant of the security interests herein by all applicable Grantors described in this Security Agreement, (b) consents to the transfer or conveyance of the Pledged Equity Interests pursuant to Secured Party's exercise of its rights and remedies under this Security Agreement or any of the other Loan Documents, at law or in equity, (c) consents to the admission of Secured Party, its nominees, or any other transferee of any Pledged Equity Interest as a partner (including as the general partner) or member (including as the managing member) of such partnership or limited liability company, and (d) agrees that all terms and conditions in the constituent documents applicable to the pledge of any Pledged Equity Interest, the enforcement thereof, the transfer of any Pledged Equity Interest or the admission of Secured Party, its nominees, or any other transferee of any Pledged Equity Interest as a partner (including as the general partner) or member (including as the managing member) of such partnership or limited liability company have been satisfied or waived. Each Grantor hereby irrevocably agrees not to vote to amend the applicable constituent documents to provide that its equity interests are securities governed by *Article 8* of the UCC, and hereby agrees and acknowledges that any such vote shall be invalid and any such amendment shall be void ab initio.

(e) **Voting of Securities.** So long as no Event of Default has occurred and is continuing, each Grantor is entitled to exercise all voting rights pertaining to any Pledged Equity Interests. On and after the occurrence and during the continuance of an Event of Default and if Secured Party elects to exercise such right, the right to vote any Pledged Equity Interests shall be vested exclusively in Secured Party. To this end, each Grantor hereby irrevocably constitutes and appoints Secured Party the proxy and attorney-in-fact of such Grantor, with full power of substitution, to vote, and to act with respect to, any and all Collateral that is Pledged Equity Interests standing in the name of such Grantor or with respect to which such Grantor is entitled to vote and act, subject to the understanding that (y) the Secured Party shall not exercise such proxy unless an Event of Default has occurred and is continuing and (z) each Grantor shall retain the rights expressed to be granted to the Secured Party in this **Section 4.5(e)**, and the Secured Party shall not exercise any such rights, unless an Event of Default has occurred and is continuing. The proxy herein granted is coupled with an interest, is irrevocable, and shall continue until the termination of this Security Agreement pursuant to **Section 6.16**.

#### 4.6 Accounts.

(a) **[Reserved]**

(b) **Verification of Accounts.** Secured Party shall have the right, at any time or times hereafter, in its name or in the name of a nominee of Secured Party, to verify the validity, amount or any other matter relating to any Accounts, by mail, telephone, telegraph or otherwise.

(c) **Disputed Accounts; Limitation on Modification of Accounts.** Each Grantor shall give Secured Party prompt written notice of any Accounts which are in dispute between any Account Debtor and such Grantor and disclose with respect thereto, in reasonable detail, the reason for the dispute, all claims related thereto and the amount in controversy. No Grantor will, without Secured Party's prior written consent, grant any extension of the time for payment of any of the Accounts, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any person liable for the payment thereof, or allow any credit or discount whatsoever thereon other than trade discounts granted in the ordinary course of business of such Grantor or as permitted under the Credit Agreement.

#### 4.7 Intellectual Property.

(a) **Prosecution of Applications.** Each Grantor shall take all reasonable and necessary steps to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of all material Intellectual Property owned by it.

(b) **[Reserved]**.



(c) **Maintenance of Rights.** Each Grantor shall preserve and maintain all of its material rights in the Intellectual Property and protect its Intellectual Property from infringement, unfair competition, cancellation, or dilution by all appropriate action necessary in such Grantor's reasonable business judgment, including the commencement and prosecution of legal proceedings to recover damages for infringement and to defend and preserve its rights in the Intellectual Property.

(d) **No Abandonment.** No Grantor may abandon any of the Intellectual Property necessary to the conduct of its business in the exercise of such Grantor's reasonable business judgment.

(e) **Licenses.** (i) No Grantor shall sell or assign any of its interest in any of the Intellectual Property other than in the ordinary course of business for full and fair consideration without the prior written consent of Secured Party; (ii) no Grantor shall grant any license or sublicense with respect to any of its Intellectual Property without the prior written consent of Secured Party; and (iii) each Grantor shall maintain the quality of any and all products and services with respect to which the Intellectual Property is used.

(f) **No Conflicting Agreements.** No Grantor shall enter into any agreement, including any licensing agreement, that is or may be inconsistent with such Grantor's Secured Obligations under this Security Agreement or any of the other Loan Documents, except as permitted under the Credit Agreement.

(g) **Additional Intellectual Property.** Each Grantor shall give Secured Party prompt written notice if such Grantor shall obtain rights to or become entitled to the benefit of any Intellectual Property not identified on **Schedule 3.17**. Each Grantor shall execute and deliver any and all Patent Security Agreements, Copyright Security Agreements, or Trademark Security Agreements, each in form and substance satisfactory to Secured Party, as Secured Party may request to evidence Secured Party's Lien on such Intellectual Property.

(h) **Obligation upon Default.** On and after the occurrence and during the continuance of an Event of Default, each Grantor shall use its reasonable efforts to obtain any consents, waivers, or agreements necessary to enable Secured Party to exercise its rights and remedies with respect to the Intellectual Property.

**4.8 Collateral Notes and Collateral Note Security.** Without the prior written consent of Secured Party, no Grantor may (a) modify or substitute, or permit the modification, or substitution of, any Collateral Note or any Document evidencing the Collateral Note Security or (b) release any Collateral Note Security unless specifically required by the terms thereof.

**4.9 Instruments; Chattel Paper; and Documents.** Each Grantor will (a) deliver to Secured Party promptly upon execution of this Security Agreement the originals of all Chattel Paper and Instruments (if any then exists), (b) hold in trust for Secured Party upon receipt and promptly thereafter deliver to Secured Party any Chattel Paper and Instruments constituting Collateral, (c) mark conspicuously all Chattel Paper and Instruments (other than any delivered to Secured Party) with an appropriate reference to the security interest of Secured Party, and (d) upon Secured Party's request, deliver to Secured Party (and thereafter hold in trust for Secured Party upon receipt and promptly deliver to Secured Party) any Document evidencing or constituting Collateral.

**4.10 Deposit, Commodity, and Securities Accounts.** With respect to any Deposit Account, Commodity Account, or Securities Account, each Grantor shall (a) maintain such accounts at the institutions described on **Schedule 3.10** or such additional institutions as have complied with the Credit Agreement and (b) deliver to Secured Party all certificates or Instruments as required by and in accordance with the Credit Agreement.

**4.11 Commercial Tort Claims.** If any Grantor at any time holds or acquires a Commercial Tort Claim in excess of \$500,000, such Grantor shall (a) promptly forward to Secured Party written notification of any and all Commercial Tort Claims, including any and all actions, suits and proceedings before any court or Governmental Authority by or affecting such Grantor; and (b) execute and deliver such statements, Documents and notices and do and cause to be done all such things as may be required by Secured Party, or required by law, including all things which may from time to time be necessary under the UCC to fully create, preserve, perfect and protect the priority of Secured Party's security interest in any Commercial Tort Claims.

**4.12 Letters-of-Credit Rights.** If any Grantor is at any time a beneficiary under a letter of credit now or hereafter issued in favor of any Grantor, such Grantor shall promptly notify Secured Party thereof in writing and, at Secured Party's request, such Grantor shall, pursuant to an agreement in form and substance satisfactory to Secured Party, either (a) arrange for the issuer or any confirmer of

such letter of credit to consent to an assignment to Secured Party of the Proceeds of any drawing under the letter of credit or (b) arrange for Secured Party to become the transferee beneficiary of the letter of credit, with Secured Party agreeing, in each case, that the Proceeds of any drawing under the letter of credit are to be applied to the Secured Obligations as provided in the Credit Agreement.

**4.13 Fixtures.** For any Collateral that is a Fixture or an accession which has been attached to real estate or other goods prior to the perfection of the security interest of Secured Party, the applicable Grantor shall furnish Secured Party, upon reasonable demand, a disclaimer of interest in each such Fixture or accession and a consent in writing to the security interest of Secured Party therein, signed by all persons having any interest in such Fixture or accession by virtue of any interest in the real estate or other goods to which such Fixture or accession has been attached.

**4.14 Federal, State or Municipal Claims.** Each Grantor will notify Secured Party of any Collateral which constitutes a claim against a Governmental Authority, or any instrumentality or agency thereof, the assignment of which claim is restricted by federal, state or municipal law.

**4.15 Warehouse Receipts Non-Negotiable.** Each Grantor agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its inventory, such warehouse receipt or receipt in the nature thereof shall not be “negotiable” (as such term is used in *Section 7-104* of the UCC).

**4.16 Mortgagee’s and Landlord Waivers.** Upon request by Secured Party, each Grantor shall cause each mortgagee of real property owned by such Grantor and each landlord of real property leased by such Grantor to execute and deliver agreements reasonably satisfactory in form and substance to Secured Party by which such mortgagee or landlord waives or subordinates their rights, if any, in the Collateral and permits Secured Party to enter the subject property on and after the occurrence of an Event of Default; provided that, for the avoidance of doubt, no Collateral Access Agreement shall be required for the Borrower’s leased premises at 110 Old Settlers Boulevard, Round Rock, Texas 78664.

**4.17 Lockboxes.** If an Event of Default has occurred and is continuing, and upon request of Secured Party, each Grantor shall execute and deliver to Secured Party irrevocable lockbox agreements in the form provided by or otherwise acceptable to Secured Party, which agreements shall be accompanied by an acknowledgment by the bank where the lockbox is located of the Lien of Secured Party granted hereunder and of irrevocable instructions to wire all amounts collected therein to a special collateral account at Secured Party.

**4.18 Use and Operation of Collateral.** Should any Collateral come into the possession of Secured Party, Secured Party may use or operate such Collateral for the purpose of preserving it or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Secured Party in respect of such Collateral. Each Grantor covenants to promptly reimburse and pay to Secured Party, at Secured Party’s request, the amount of all expenses (including the cost of any insurance and payment of taxes or other charges) incurred by Secured Party in connection with its custody and preservation of the Collateral, and all such expenses, costs, taxes, and other charges shall be payable by Grantors to Secured Party upon demand and shall become part of the Secured Obligations. The Secured Party shall handle and deal with all such Collateral as the Secured Party deals with similar property for its own account but in no event less than a commercially reasonable manner. However, the risk of accidental loss or damage to, or diminution in value of, the Collateral is on Grantors, and Secured Party shall have no liability whatever for failure to obtain or maintain insurance, nor to determine whether any insurance ever in force is adequate as to amount or as to the risks insured. With respect to the Collateral that is in the possession of Secured Party, Secured Party shall have no duty to fix or preserve rights against prior parties to such Collateral and shall never be liable for any failure to use diligence to collect any amount payable in respect of such Collateral, but shall be liable only to account to Grantors for what it may actually collect or receive thereon. The provisions of this subparagraph are applicable whether or not an Event of Default has occurred.

**4.19 Certain Proceeds.** Notwithstanding any contrary provision herein, any and all Proceeds of any Collateral consisting of cash, checks and other non-cash items shall be part of the Collateral hereunder. Any cash Proceeds of the Collateral which come into the possession of Secured Party on and after the occurrence and during the continuance of an Event of Default (including insurance Proceeds) may, at Secured Party’s option, be applied in whole or in part to the Secured Obligations (to the extent then due), be released in whole or in part to or on the written instructions of such Grantor for any general or specific purpose, or be retained in whole or in part by Secured Party as additional Collateral.

**4.20 Further Assurances.** At any time and from time to time, upon the request of Secured Party, and at the sole expense of Grantors, each Grantor shall promptly execute and deliver all such further Instruments and Documents and take such further actions as

Secured Party may reasonably deem necessary or desirable (a) to assure Secured Party that its security interests hereunder are perfected with a first priority Lien, (b) to carry out the provisions and purposes of this Security Agreement, including (i) the filing of such financing statements as Secured Party may require, (ii) executing control agreements with respect to the Collateral, in each case naming Secured Party, as secured party, in form and substance satisfactory to Secured Party, (iii) furnishing to Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Secured Party may reasonably request, all in reasonable detail, (iv) the deposit of all certificates of title issuable with respect to any of the Collateral and noting thereon the security interest hereunder, and (v) taking all actions required by law in any relevant UCC, or by other law as applicable in any foreign jurisdiction. A carbon, photographic, or other reproduction of this Security Agreement or of any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement and may be filed as a financing statement.

**4.21 Additional Grantors.** Upon the execution and delivery by any person of a security agreement supplement in form and substance satisfactory to Secured Party (each a “**Security Agreement Supplement**”), (a) such person shall be and become a Grantor hereunder and each reference in this Security Agreement and the other Loan Documents to “Grantor” shall also mean and be a reference to such person, and (b) the supplemental **Schedules 3.5, 3.6, 3.10, and 3.17** attached to each Security Agreement Supplement shall be incorporated into and become a part of **Schedules 3.5, 3.6, 3.10, and 3.17** respectively, hereto, and Secured Party may attach such supplemental exhibits to such Schedules; each reference to such Schedules means a reference to such Schedules as supplemented pursuant to each Security Agreement Supplement.

## 5. REMEDIES UPON EVENT OF DEFAULT

**5.1 Remedies.** On and after the occurrence and during the continuance of an Event of Default under the Credit Agreement or any other Loan Document, Secured Party may exercise any or all of the following rights and remedies:

(a) **Contractual Remedies.** Those rights and remedies provided in this Security Agreement, the Credit Agreement, or any other Loan Document, *provided that this **Section 5.1(a)** shall not limit any rights or remedies available to Secured Party prior to the occurrence of an Event of Default.*

(b) **Legal Remedies.** Those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including any law governing the exercise of a bank’s right of setoff or bankers’ lien) when a debtor is in default under a security agreement.

(c) **Disposition of Collateral.** Without notice except as specifically provided in *Section 5.2(c)* or elsewhere herein, sell, lease, assign, grant an option or options to purchase or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, for cash, on credit or for future delivery, and upon such other terms as Secured Party may deem commercially reasonable. Neither Secured Party’s compliance with any applicable state or federal law in the conduct of such sale, nor its disclaimer of any warranties relating to the Collateral, shall be considered to affect the commercial reasonableness of such sale. Each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

(d) **Distributions.** On and after the occurrence and during the continuance of an Event of Default, all payments and distributions made to any Grantor upon or with respect to the Collateral shall be paid or delivered to Secured Party, and each Grantor agrees to take all such action as Secured Party may deem necessary or appropriate to cause all such payments and distributions to be made to Secured Party. Further, Secured Party shall have the right, at any time after the occurrence and during the continuance of any Event of Default, to notify and direct any issuer to thereafter make all payments, dividends, and any other distributions payable in respect thereof directly to Secured Party. Such issuer shall be fully protected in relying on the written statement of Secured Party that it then holds a security interest which entitles it to receive such payments and distributions. Any and all Money and other property paid over to or received by Secured Party hereunder shall be retained by Secured Party as additional collateral hereunder and may be applied in accordance with **Section 5.10** hereof.

(e) **Use of Premises.** Secured Party shall be entitled to occupy and use any premises owned or leased by any Grantor where any of the Collateral or any records relating to the Collateral are located until the Secured Obligations are paid or the Collateral is removed therefrom, whichever first occurs, without any obligation to pay such Grantor for such use and occupancy.

**5.2 Grantors' Obligations Upon Event of Default.** Upon the request of Secured Party on and after the occurrence and during the continuance of an Event of Default, each Grantor will:

(a) **Assembly of Collateral.** Assemble and make available to Secured Party the Collateral and all records relating thereto at any place or places specified by Secured Party.

(b) **Secured Party Access.** Permit Secured Party, by Secured Party's representatives and agents, to enter any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral and to remove all or any part of the Collateral.

(c) **Notice of Disposition of Collateral.** Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market (in which case the Secured Party may give shorter notice), any requirement of reasonable notice of any public or private sale or other disposition of the Collateral or of any other event in connection with the exercise of remedies in the Collateral shall be met if written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made or of such other relevant event is personally served on or mailed, postage prepaid, to the Grantors in accordance with Section 6.17 hereof at least ten (10) calendar days before the time of sale or other event giving rise to the requirement of such notice; provided, however, no notification need be given to the Grantors if the Grantors have signed, after an Event of Default has occurred, a statement renouncing any right to notification of sale or other intended disposition. Secured Party shall not be obligated to make any sale or other disposition of the Collateral regardless of notice having been given. Subject to the provisions of applicable law, Secured Party may postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, to the extent permitted by law, be made at the time and place to which the sale was postponed, or Secured Party may further postpone such sale by announcement made at such time and place.

**5.3 Condition of Collateral; Warranties.** Secured Party has no obligation to clean-up or otherwise prepare the Collateral for sale. Secured Party may sell the Collateral without giving any warranties as to the Collateral. Secured Party may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

**5.4 Collection of Receivables.** On and after the occurrence and during the continuance of an Event of Default, Secured Party may at any time in its sole discretion, by giving Grantors written notice, elect to require that the Receivables (excluding Receivables subject to the Factoring Agreement) be paid directly to Secured Party. In such event, each Grantor shall, and shall permit Secured Party to, promptly notify the Account Debtors under such Receivables of Secured Party's interest therein and direct such Account Debtors to make payment of all amounts then or thereafter due under such Receivables directly to Secured Party. Upon receipt of any such notice from Secured Party, each Grantor shall thereafter hold in trust for Secured Party, all amounts and Proceeds received by it with respect to such Receivables and promptly and at all times thereafter deliver to Secured Party all such amounts and Proceeds in the same form as so received, whether by cash, check, draft or otherwise, with any necessary endorsements. Secured Party shall hold and apply funds so received as provided by the terms of **Section 5.10**. If after the occurrence and during the continuance of an Event of Default, any Account Debtor fails or refuses to make payment on any Collateral when due, Secured Party is authorized, in its sole discretion, either in its own name or in the name of Grantors, to take such action as Secured Party shall deem appropriate for the collection of any amounts owed with respect to Collateral or upon which a delinquency exists. Each Grantor agrees that Secured Party may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable (other than Receivables subject to the Factoring Agreement), accept in full payment of any Receivable such amount as Secured Party in its sole discretion shall determine or abandon any Receivable, and any such action by Secured Party shall be commercially reasonable so long as Secured Party acts in good faith based on information known to it at the time it takes any such action. Regardless of any other provision hereof, however, Secured Party shall never be liable for its failure to collect, or for its failure to exercise diligence in the

collection of, any amounts owed with respect to Collateral, nor shall it be under any duty whatsoever to anyone except Grantors to account for funds that it shall actually receive hereunder.

**5.5 Cash Collateral Account.** On and after the occurrence and during the continuance of an Event of Default, Secured Party shall have, and each Grantor hereby grants to Secured Party, the right and authority to transfer all funds on deposit in the Deposit Accounts to a “*Cash Collateral Account*” (herein so called) maintained with a depository institution acceptable to Secured Party and subject to the exclusive direction, domain, and Control of Secured Party, and no disbursements or withdrawals shall be permitted to be made by any Grantor from such Cash Collateral Account. Such Cash Collateral Account shall be subject to the security interest in favor of Secured Party herein created, and each Grantor hereby grants a security interest to Secured Party in and to, such Cash Collateral Account and all checks, drafts, and other items ever received by any Grantor for deposit therein. Furthermore, if an Event of Default has occurred and is continuing, Secured Party shall have the right, at any time in its discretion without notice to any Grantor, (a) to transfer to or to register in the name of Secured Party or nominee any certificates of deposit or deposit instruments constituting Deposit Accounts and shall have the right to exchange such certificates or Instruments representing Deposit Accounts for certificates or Instruments of smaller or larger denominations and (b) to take and apply against the Secured Obligations any and all funds then or thereafter on deposit in the Cash Collateral Account or otherwise constituting Deposit Accounts.

**5.6 Intellectual Property.** For purposes of enabling Secured Party to exercise its rights and remedies under this Security Agreement and enabling Secured Party and its successors and assigns to enjoy the full benefits of the Collateral, each Grantor hereby grants to Secured Party an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, license, or sublicense any of the Intellectual Property; provided that the license and right granted to Secured Party by this **Section 5.6** shall only be exercisable after an Event of Default has occurred and while it is continuing. Each Grantor shall provide Secured Party with reasonable access to all media in which any of the Intellectual Property may be recorded or stored and all computer programs used for the completion or printout thereof. This license shall also inure to the benefit of all successors, assigns, and transferees of Secured Party. On and after the occurrence and during the continuance of an Event of Default, Secured Party may require that Grantors assign all of their right, title, and interest in and to the Intellectual Property or any part thereof to Secured Party or such other person as Secured Party may designate pursuant to Documents reasonably satisfactory to Secured Party. If no Event of Default exists, Grantors shall have the exclusive, non-transferable right and license to use the Intellectual Property in the ordinary course of business and the exclusive right to grant to other persons licenses and sublicenses with respect to the Intellectual Property for full and fair consideration.

**5.7 Record Ownership of Securities.** On and after the occurrence and during the continuance of an Event of Default, Secured Party at any time may have any Collateral that is Pledged Equity Interests and that is in the possession of Secured Party, or its nominee or nominees, registered in its name, or in the name of its nominee or nominees, as Secured Party; and, as to any Collateral that is Pledged Equity Interests so registered, Secured Party shall execute and deliver (or cause to be executed and delivered) to the applicable Grantor all such proxies, powers of attorney, dividend coupons or orders, and other Documents as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting rights and powers which it is entitled to exercise under this Security Agreement or to receive the dividends and other distributions and payments in respect of such Collateral that is Pledged Equity Interests or Proceeds thereof which it is authorized to receive and retain under this Security Agreement.

**5.8 Investment Related Property.** Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the “*Securities Act*”) and applicable state securities laws, Secured Party may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property 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 than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such commercially reasonably conducted private sale shall be deemed to have been made in a commercially reasonable manner and that Secured Party shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If Secured Party determines to exercise its right to sell any or all of the Investment Related Property, upon written request, each Grantor shall and shall cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to Secured Party all such information as Secured Party may request in order to determine the number and nature



of interest, shares or other Instruments included in the Investment Related Property which may be sold by Secured Party in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder. In case of any sale of all or any part of the Investment Related Property on credit or for future delivery, such Collateral so sold may be retained by Secured Party until the selling price is paid by the purchaser thereof, but Secured Party shall not incur any liability in case of the failure of such purchaser to take up and pay for such assets so sold and in case of any such failure, such Collateral may again be sold upon like notice. Secured Party, instead of exercising the power of sale herein conferred upon them, may proceed by a suit or suits at law or in equity to foreclose security interests created hereunder and sell such Investment Related Property, or any portion thereof, under a judgment or decree of a court or courts of competent jurisdiction.

**5.9 Sales on Credit.** On and after the occurrence and during the continuance of an Event of Default, if Secured Party sells any of the Collateral upon credit, Grantors will be credited only with payments actually made by the purchaser, received by Secured Party, and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Secured Party may resell the Collateral and Grantors shall be credited with the Proceeds of the sale.

**5.10 Application of Proceeds.** On and after the occurrence and during the continuance of an Event of Default, the Proceeds of the Collateral shall be applied by Secured Party to payment of the Secured Obligations in such manner and order as Secured Party may elect in its sole discretion. If the Proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Grantors shall be liable for the deficiency and the fees of any attorneys employed by Secured Party to collect such deficiency.

**5.11 Power of Attorney.** Each Grantor hereby appoints Secured Party and Secured Party's designee as its attorney, with power: (a) on and after the occurrence and during the continuance of an Event of Default, to endorse such Grantor's name on any checks, notes, acceptances, money orders, or other forms of payment or security that come into Secured Party's possession; (b) so long as any Event of Default has occurred and is continuing, to sign such Grantor's name on any invoice, bill of lading, warehouse receipt, or other negotiable or non-negotiable Document constituting Collateral, on drafts against customers, on assignments of Accounts, on notices of assignment, and other public records; (c) so long as any Event of Default has occurred and is continuing, to notify the post office authorities to change the address for delivery of any Grantor's mail to an address designated by Secured Party and to receive, open, and dispose of all mail addressed to any Grantor; (d) so long as any Event of Default has occurred and is continuing, to send requests for verification of Accounts to customers or Account Debtors; (e) so long as any Event of Default has occurred and is continuing, to complete in any Grantor's name or Secured Party's name, any order, sale, or transaction, obtain the necessary Documents in connection therewith, and collect the Proceeds thereof; (f) so long as any Event of Default has occurred and is continuing, to clear Inventory through customs in any Grantor's name, Secured Party's name, or the name of Secured Party's designee, and to sign and deliver to customs officials powers of attorney in any Grantor's name for such purpose; (g) to the extent that any Grantor's authorization given in **Section 2.3** of this Security Agreement is not sufficient, to file such financing statements with respect to this Security Agreement, with or without such Grantor's signature, or to file a photocopy of this Security Agreement in substitution for a financing statement, as Secured Party may deem appropriate and to execute in such Grantor's name such financing statements and amendments thereto and continuation statements which may require such Grantor's signature; and (h) subject to the terms and conditions of this Security Agreement and, if applicable, after Secured Party has determined that any Grantor has failed to take any action required under the Credit Agreement, this Security Agreement or any other Loan Documents, to do all things reasonably necessary to carry out the terms and conditions of the Credit Agreement and this Security Agreement. Each Grantor ratifies and approves all acts of such attorney. None of Lender or Secured Party nor their attorneys will be liable for any acts or omissions or for any error of judgment or mistake of fact or law except for their willful misconduct, gross negligence, or violation of law as determined by a court of competent jurisdiction in final and non-appealable judgment. This power, being coupled with an interest, is irrevocable until this Security Agreement is terminated in accordance with **Section 6.16**.

## **6. GENERAL PROVISIONS.**

### **6.1 Joint and Several Obligations of Grantors.**

(a) Each Grantor is accepting joint and several liability hereunder with other persons that have executed or will execute a Security Agreement in consideration of the financial accommodation to be provided by the holders of the Secured Obligations, for the mutual benefit, directly and indirectly, of each Grantor and in consideration of the undertakings of each Grantor to accept joint and several liability for the Secured Obligations of each of them.



(b) Each Grantor jointly and severally hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Grantors with respect to the payment and performance of all of the Secured Obligations, it being the intention of the parties hereto that all the Secured Obligations shall be the joint and several Secured Obligations of each Grantor without preferences or distinction among them.

## 6.2 Limitation of Obligations.

(a) The provisions of this Security Agreement are severable, and in any action or proceeding involving any applicable law affecting the rights of creditors generally, if the Secured Obligations of any Grantor under this Security Agreement would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Grantor's liability under this Security Agreement, then, notwithstanding any other provision of this Security Agreement to the contrary, the amount of such liability shall, without any further action by Grantors or Secured Party, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Grantor's "**Maximum Liability**"). This **Section 6.2** with respect to the Maximum Liability of each Grantor is intended solely to preserve the rights of Secured Party hereunder to the maximum extent not subject to avoidance under applicable law, and none of Grantors or any other Person shall have any right or claim under this **Section 6.2(a)** with respect to the Maximum Liability, except to the extent necessary to ensure that the Secured Obligations of Grantors hereunder shall not be rendered voidable under applicable law.

(b) Each Grantor agrees that the Secured Obligations may at any time and from time to time exceed the Maximum Liability of such Grantor, and may exceed the aggregate Maximum Liability of all other Grantors, without impairing this Security Agreement or affecting the rights and remedies of Secured Party. Nothing in this **Section 6.2(b)** shall be construed to increase any Grantor's Secured Obligations hereunder beyond its Maximum Liability.

(c) Notwithstanding any or all of the Secured Obligations becoming unenforceable against any Grantor or the determination that any or all of the Secured Obligations shall have become discharged, disallowed, invalid, illegal, void or otherwise unenforceable as against any Grantor (whether by operation of any present or future law or by order of any court or governmental agency), the Secured Obligations shall, for the purposes of this Security Agreement, continue to be outstanding and in full force and effect.

**6.3 NO RELEASE OF GRANTORS.** THE OBLIGATIONS OF GRANTORS UNDER THIS SECURITY AGREEMENT SHALL NOT BE REDUCED, LIMITED OR TERMINATED, NOR SHALL GRANTORS BE DISCHARGED FROM ANY OBLIGATION HEREUNDER, FOR ANY REASON WHATSOEVER (other than pursuant to **Section 6.16**), including (and whether or not the same shall have occurred or failed to occur once or more than once and whether or not Grantors shall have received notice thereof):

(a) (i) any increase in the principal amount of, or interest rate applicable to, (ii) any extension of the time of payment, observance or performance of, (iii) any other amendment or modification of any of the other terms and provisions of, (iv) any release, composition or settlement (whether by way of acceptance of a plan of reorganization or otherwise) of, (v) any subordination (whether present or future or contractual or otherwise) of, or (vi) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of, the Secured Obligations;

(b) (i) any failure to obtain, (ii) any release, composition or settlement of, (iii) any amendment or modification of any of the terms and provisions of, (iv) any subordination of, or (v) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of, any Loan Documents;

(c) (i) any failure to obtain or any release of, any failure to protect or preserve, (ii) any release, compromise, settlement or extension of the time of payment of any Secured Obligations constituting, (iii) any failure to perfect or maintain the perfection or priority of any Lien upon, (iv) any subordination of any Lien upon, or (v) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of any Lien or intended Lien upon, any collateral now or hereafter securing, the Secured Obligations or any other guaranties thereof;

(d) any termination of or change in any relationship between Grantors and Secured Party or the addition or release of any Grantor;

(e) any exercise of, or any failure or election not to exercise, delay in the exercise of, waiver of, or forbearance of or other indulgence with respect to, any right, remedy or power available to Secured Party, including (i) any election not to or failure to exercise any right of setoff, recoupment or counterclaim, (ii) any election of remedies effected by Secured Party, including the foreclosure upon any real estate constituting collateral, whether or not such election affects the right to obtain a deficiency judgment, and (iii) any election by Secured Party in any proceeding under the Bankruptcy Code of the application of *Section 1111(b)(2)* of the Bankruptcy Code; and

(f) ANY OTHER ACT OR FAILURE TO ACT OR ANY OTHER EVENT OR CIRCUMSTANCE THAT (i) VARIES THE RISK OF GRANTORS UNDER THIS SECURITY AGREEMENT OR (ii) BUT FOR THE PROVISIONS HEREOF, WOULD, AS A MATTER OF STATUTE OR RULE OF LAW OR EQUITY, OPERATE TO REDUCE, LIMIT OR TERMINATE THE OBLIGATIONS OF GRANTORS HEREUNDER OR DISCHARGE GRANTORS FROM ANY OBLIGATION HEREUNDER.

**6.4 Subordination of Certain Claims.** Any and all rights and claims of Grantors against Borrower or against any other Person or property, arising by reason of any payment by any Grantors to Secured Party pursuant to the provisions, or in respect, of this Security Agreement shall be subordinate, junior and subject in right of payment to the prior and indefeasible payment in full of all Secured Obligations to Secured Party, and until such time, Grantors defer all rights of subrogation, contribution or any similar right and until such time agree not to enforce any such right or remedy Secured Party may now or hereafter have against Borrower, any endorser or any other Grantor of all or any part of the Secured Obligations and any right to participate in, or benefit from, any security given to Secured Party to secure any of the Secured Obligations. All Liens and security interests of Grantors, whether now or hereafter arising and howsoever existing, in assets of Borrower or any assets securing the Secured Obligations shall be and hereby are subordinated to the rights and interests of Secured Party and in those assets until the prior and indefeasible final payment in full of all Secured Obligations to Secured Party. If any amount shall be paid to Grantors contrary to the provisions of this **Section 6.4** at any time when any of the Secured Obligations shall not have been indefeasibly paid in full, such amount shall be held in trust for the benefit of Secured Party and shall forthwith be turned over in kind in the form received to Secured Party (duly endorsed if necessary) to be credited and applied against the Secured Obligations, whether matured or unmatured, in accordance with the terms of the Credit Agreement.

**6.5 Recovered Payments.** The Secured Obligations shall be deemed not to have been paid, observed or performed, and Grantors' Secured Obligations under this Security Agreement in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by any Grantor is recovered from or paid over by or for the account of Secured Party for any reason, including as a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Secured Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or governmental agency, by any plan of reorganization or by settlement or compromise by Secured Party (whether or not consented to by Grantors) of any claim for any such recovery or payment over. Each Grantor hereby expressly waives the benefit of any applicable statute of limitations and agrees that it shall be liable hereunder whenever such a recovery or payment over occurs.

**6.6 No Waiver.** No delay or omission of Secured Party to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Event of Default, or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by Secured Party and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Security Agreement or by law afforded shall be cumulative and all shall be available to Secured Party until the Secured Obligations have been paid in full.

**6.7 Secured Party Performance of Grantors' Obligations.** Without having any obligation to do so, Secured Party may perform or pay any Secured Obligation which any Grantor has agreed to perform or pay in this Security Agreement and each Grantor

shall, jointly and severally, reimburse Secured Party for any amounts paid by Secured Party pursuant to this **Section 6.7**. Each Grantor's Secured Obligation to reimburse Secured Party pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

**6.8 Specific Performance of Certain Covenants.** Each Grantor acknowledges and agrees that a breach of any of the covenants contained in **Sections 4.2(d), 4.2(f), 4.9, 4.17, 5.4, 5.5, 5.6, 5.10, 5.11, or 6.9** will cause irreparable injury to Secured Party, that Secured Party has no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of Secured Party to seek and obtain specific performance of other Secured Obligations of such Grantor contained in this Security Agreement, that the covenants of such Grantor contained in the Sections referred to in this **Section 6.8** shall be specifically enforceable against such Grantor.

**6.9 Dispositions Not Authorized.** No Grantor is authorized to sell or otherwise dispose of the Collateral except as set forth in **Section 4.2(e)** and notwithstanding any course of dealing between any Grantor and Secured Party or other conduct of Secured Party, no authorization to sell or otherwise dispose of the Collateral (except as set forth in **Section 4.2(e)**) shall be binding upon Secured Party unless such authorization is in writing signed by Secured Party.

**6.10 Waivers.** Except to the extent expressly otherwise provided herein or in other Loan Documents and to the fullest extent permitted by applicable law, each Grantor waives (a) any right to require Secured Party to proceed against any other Person, to exhaust its rights in Collateral, or to pursue any other right which Secured Party or any Lender may have; (b) with respect to the Secured Obligations, presentment and demand for payment, protest, notice of protest and nonpayment, notice of intent to accelerate, and notice of acceleration; and (c) all rights of marshaling in respect of any and all of the Collateral.

**6.11 Benefit of Agreement.** The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of Grantors, Secured Party, the Lenders, and their respective successors and assigns, except that no Grantor shall have the right to assign its rights or delegate its Secured Obligations under this Security Agreement or any interest herein, without the prior written consent of Secured Party.

**6.12 Survival.** All representations and warranties of each Grantor contained in this Security Agreement shall survive the execution and delivery of this Security Agreement. Without prejudice to the survival of any other Secured Obligation of each Grantor hereunder, the Secured Obligations of each Grantor under **Sections 6.14** shall survive termination of this Security Agreement.

**6.13 Notices.** Whenever any notice is required or permitted to be given under the terms of this Security Agreement, the same shall be given in writing, and sent in accordance with the terms of and to the address for such party in accordance with Section 11.11 of the Credit Agreement.

**6.14 Taxes and Expenses.** Any taxes (including income taxes) payable or ruled payable by federal or state authority in respect of this Security Agreement shall be paid by each Grantor, together with interest and penalties, if any. Grantors shall jointly and severally reimburse Secured Party for any and all reasonable, documented, out-of-pocket expenses (including reasonable, documented, and out-of-pocket attorneys', auditors' and accountants' fees and reasonable time charges of attorneys, paralegals, auditors and accountants who may be employees of Secured Party) paid or incurred by Secured Party in connection with the preparation, execution, delivery, and administration of this Security Agreement and in the audit, analysis, and administration of the Collateral (including the reasonable, documented, and out-of-pocket expenses and charges associated with any periodic or special audit of the Collateral). In addition, Grantors shall be jointly and severally obligated to pay all of the costs and expenses incurred by Secured Party, including attorneys' fees, and all court costs and such additional fees and expenses as may be directed by any court, in the preservation or sale of the Collateral, or otherwise obtaining or liquidating the Collateral, in enforcing payment of the Secured Obligations, or in the prosecution or defense of any action or proceeding by or against Secured Party or any Grantor concerning any matter arising out of or connected with this Security Agreement, any Collateral or the Secured Obligations, including any of the foregoing arising in, arising under or related to a case under any bankruptcy, insolvency or similar law. Any and all costs and expenses incurred by each Grantor in the performance of actions required pursuant to the terms hereof shall be borne solely by such Grantor.

**6.15 Headings.** The title of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

**6.16 Termination.** This Security Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no Secured Obligations outstanding) until (a) the Credit Agreement has terminated pursuant to its express terms and (b) all of the Secured Obligations have been indefeasibly paid and performed in full and no commitments of Secured Party which would give rise to

any Secured Obligations are outstanding; *provided that* the termination of this Security Agreement under this **Section 6.16** is subject to **Section 6.5**.

**6.17 INDEMNIFICATION; GOVERNING LAW/VENUE; SERVICE OF PROCESS; WAIVER OF JURY TRIAL.** Section 11.2 (“Indemnification”), Section 11.12 (“Governing Law; Venue; Service of Process”) and Section 11.18 (“Waiver of Jury Trial”) in the Credit Agreement are hereby incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

6.18 [Reserved].

6.19 [Reserved].

**6.20 FINAL AGREEMENT.** THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

**6.21 Conflicts and Credit Agreement.** In the event of any conflict between the terms of this Agreement and the terms of the Credit Agreement, the terms of the Credit Agreement shall govern and apply to the extent of the inconsistency. Notwithstanding the foregoing, this **Section 6.21** shall not apply to limit, restrict, prejudice or otherwise affect or impair in any way the rights of the Administrative Agent under this Agreement after it has become and for so long as it remains enforceable.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE TO FOLLOW.**

**IN WITNESS WHEREOF,** Grantors and Secured Party have executed this Security Agreement as of the date first above written.

**GRANTORS:**

**VTC, L.L.C.,**  
a Maryland limited liability company

By: /s/ Daniel M. Chism  
Name: Daniel M. Chism  
Title: Vice President and Treasurer

**TSS, INC.,**  
a Delaware corporation

By: /s/ Daniel M. Chism  
Name: Daniel M. Chism  
Title: Chief Financial Officer

**SECURED PARTY:**

**SUSSER BANK,**  
a Texas state bank,  
as Administrative Agent

By: /s/ Mark Metcalfe  
Name: Mark Metcalfe  
Title: Executive Vice President

Security Agreement  
Signature Page

**TSS, Inc. Announces New \$20M Debt Financing to Meet Accelerating Demand for AI-Enabled Technologies**

*Secures funding to expand operations and enhance power infrastructure in support of recently announced long-term customer agreement*

ROUND ROCK, Texas, January 7, 2025 -- TSS, Inc. (Nasdaq: TSSI), a leader in IT hardware and software integration for AI and high-performance computing, today announced it has closed on a \$20 million credit facility with Texas-based Susser Bank to support capacity expansion required to meet accelerating demand for AI-enabled technologies.

As previously announced, the company signed a long-term agreement to lease 212,793 square feet of space in the Georgetown Logistics Park located in Georgetown, Texas. This lease is part of the company's plan to expand its power infrastructure to support expected AI integration growth under its recently announced long-term customer agreement. Drawdowns under the new credit agreement will be used to fund improvements at the Georgetown facility.

The company also filed a shelf registration statement with the Securities and Exchange Commission (the "SEC"). The company believes that filing the shelf registration statement is a prudent corporate housekeeping measure that will provide greater financial flexibility in the coming years. If the company decides to raise capital in a future offering using the shelf registration statement, it will describe the specific details of that future offering in a prospectus supplement that is filed with the SEC.

Darryll Dewan, Chief Executive Officer of TSS Inc. commented, "We are pleased to expand our relationship with Susser Bank, and we appreciate their support. Our ability to expand our physical capacity with bank financing is a testament to the credibility of our growth plan. This credit facility supports the development of our operational footprint required by the projected demand from our customer and enables us to pursue new opportunities in the rapidly evolving AI space. Build out of the new space has begun, and we continue to expect to be operational at this location in early 2025."

**Key Terms of the Agreement**

The credit facility has a term of five years, and borrowings bear interest at a rate of one-month term SOFR plus 3.00% per annum. Payments will be interest-only for a maximum of six months, converting to a fully amortizing term loan upon completion of construction.

**About TSS, Inc.**

TSS specializes in simplifying the complex. The TSS mission is to streamline the integration and deployment of high-performance computing infrastructure and software, ensuring that end users quickly receive and efficiently utilize the necessary technology. Known for flexibility, the company builds, integrates, and deploys custom, high-volume solutions that empower data centers and catalyze the digital transformation of generative AI and other leading-edge technologies essential for modern computing, data, and business needs. TSS's reputation is built on passion and experience, quality, and fast time to value. As trusted partners of the world's leading data center technology providers, the company manages and deploys billions of dollars in technology each year. For more information, visit [www.tssiusa.com](http://www.tssiusa.com).

**About Susser Bank**

Founded 63 years ago, Susser Bank is a Texas – based company and has operated under the ownership and direction of Susser Banc Holdings Corporation since 2018. The combined entities hold assets exceeding \$2.45 billion while maintaining very strong capital and liquidity. The company is led by the Susser family and a legacy of six generations of Texas entrepreneurs. Susser Bank is dedicated to building long-term client relationships and providing outstanding financial solutions that make Texas stronger.

**Forward Looking Statements**

This press release may contain "forward-looking statements" -- that is, statements related to future -- not past -- events, plans, and prospects. In this context, forward-looking statements may address matters such as our expected future business and financial



performance, and often contain words such as “guidance,” “prospects,” “expects,” “anticipates,” “intends,” “plans,” “believes,” “seeks,” “should,” or “will.” Forward-looking statements by their nature address matters that are, to different degrees, uncertain. Particular uncertainties that could adversely or positively affect the Company's future results include: we may not have sufficient resources to fund our business and may need to issue debt or equity to obtain additional funding; our reliance on a significant portion of our revenues from a limited number of customers and our ability to diversify our customer base; risks relating to operating in a highly competitive industry; risks relating to supply chain challenges; risk related to changes in labor market conditions; risks related to the implementation of a new enterprise resource IT system; risks related to the development of our procurement services business; risks relating to rapid technological, structural, and competitive changes affecting the industries we serve; risks involved in properly managing complex projects; risks relating to the possible cancellation of customer contracts on short notice; risks relating to our ability to continue to implement our strategy, including having sufficient financial resources to carry out that strategy; and other risks and uncertainties disclosed in our filings with the Securities and Exchange Commission, including the Annual Report on Form 10-K for the fiscal year ended December 31, 2023. These uncertainties may cause our actual future results to be materially different than those expressed in our forward-looking statements. We do not undertake to update our forward-looking statements.

Contacts:

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**Cover****Dec. 31, 2024****Cover [Abstract]**

<u>Entity Registrant Name</u>	TSS, INC.
<u>Entity Central Index Key</u>	0001320760
<u>Document Type</u>	8-K
<u>Amendment Flag</u>	false
<u>Entity Emerging Growth Company</u>	false
<u>Document Period End Date</u>	Dec. 31, 2024
<u>Entity File Number</u>	000-33627
<u>Entity Incorporation State Country Code</u>	DE
<u>Entity Tax Identification Number</u>	20-2027651
<u>Entity Address Address Line 1</u>	110 E. Old Settlers Road
<u>Entity Address City Or Town</u>	Round Rock
<u>Entity Address State Or Province</u>	TX
<u>Entity Address Postal Zip Code</u>	78664
<u>City Area Code</u>	512
<u>Local Phone Number</u>	310-1000
<u>Written Communications</u>	false
<u>Soliciting Material</u>	false
<u>Pre Commencement Tender Offer</u>	false
<u>Pre Commencement Issuer Tender Offer</u>	false
<u>Security 12b Title</u>	Common Stock, \$0.0001 Par Value
<u>Trading Symbol</u>	TSSI
<u>Security Exchange Name</u>	NASDAQ

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            "https://xbrl.sec.gov/del/2024/del-2024.xsd",
            "https://xbrl.sec.gov/asxch/2024/asxch-2024.xsd",
            "https://xbrl.sec.gov/raisc/2024/raisc-2024.xsd",
            "https://xbrl.sec.gov/aic/2024/aic-2024.xsd",
            "https://xbrl.sec.gov/stpe/2024/stpe-2024.xsd"
          ]
        },
        "calculationLink": {
          "local": {
            "tasi-20241231_cal.xml"
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        },
        "definitionLink": {
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            "tasi-20241231_def.xml"
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        },
        "labelLink": {
          "local": {
            "tasi-20241231_lab.xml"
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        },
        "presentationLink": {
          "local": {
            "tasi-20241231_pre.xml"
          }
        },
        "inline": {
          "local": {
            "tasi_8k.htm"
          }
        },
        "keyStandard": 22,
        "keyCustom": 0,
        "xsltStandard": 0,
        "xsltCustom": 0,
        "memberStandard": 0,
        "memberCustom": 0,
        "hidden": {
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        "contextCount": 1,
        "entityCount": 1,
        "segmentCount": 0,
        "elementCount": 23,
        "unitCount": 2,
        "baseTaxonomies": {
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        },
        "report": {
          "id": {
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            "longName": "000001 - Document - Cover",
            "shortName": "Cover",
            "isDefault": "true",
            "groupType": "document",
            "subGroupType": "",
            "manual": "Cover",
            "order": "1",
            "firstAnchor": {
              "contextRef": "From2024-12-31to2024-12-31",
              "name": "dei:EntityRegistrantName",
              "unitRef": null,
              "xsiNil": "false",
              "lang": "en-US",
              "decimals": null,
              "ancestors": [
                "xbrl",
                "strong",
                "p",
                "td",
                "tr",
                "tbody",
                "table",
                "body",
                "html"
              ]
            },
            "reportCount": 1,
            "baseRef": "tasi_8k.htm",
            "first": true,
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            "name": "dei:EntityRegistrantName",
            "unitRef": null,
            "xsiNil": "false",
            "lang": "en-US",
            "decimals": null,
            "ancestors": [
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              "p",
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              "tbody",
              "table",
              "body",
              "html"
            ]
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          "first": true,
          "unique": true
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          "idType": "booleanIntType",
          "nsuri": "http://xbrl.sec.gov/del/2024",
          "localname": "AmendmentFlag",
          "presentation": {
            "http://totalsitesolutions.com/role/Cover"
          },
          "lang": {
            "en-us": {
              "role": {
                "label": "Amendment Flag",
                "documentation": "Boolean flag that is true when the XBRL content amends previously-filed or accepted submission."
              }
            }
          },
          "auth_ref": []
        },
        "dei:CityAreaCode": {
          "idType": "nonLocalizedStringType",
          "nsuri": "http://xbrl.sec.gov/del/2024",
          "localname": "CityAreaCode",
          "presentation": {
            "http://totalsitesolutions.com/role/Cover"
          },
          "lang": {
            "en-us": {
              "role": {
                "label": "City Area Code",
                "documentation": "Area code of city"
              }
            }
          },
          "auth_ref": []
        },
        "dei:CoverAbstract": {
          "idType": "stringIntType",
          "nsuri": "http://xbrl.sec.gov/del/2024",
          "localname": "CoverAbstract",
          "lang": {
            "en-us": {
              "role": {
                "label": "Cover [Abstract]",
                "documentation": "Cover page."
              }
            }
          },
          "auth_ref": []
        },
        "dei:DocumentPeriodEndDate": {
          "idType": "dateTimeType",
          "nsuri": "http://xbrl.sec.gov/del/2024",
          "localname": "DocumentPeriodEndDate",
          "presentation": {
            "http://totalsitesolutions.com/role/Cover"
          },
          "lang": {
            "en-us": {
              "role": {

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        "label": "Document Period End Date",
        "documentation": "For the EDGAR submission types of Form S-K: the date of the report, the date of the earliest event reported; for the EDGAR submission types of Form M-1A: the filing date; for all other submission types: the end of the reporting or transition period. The format of the data is YYYY-MM-DD."
    },
    {
        "auth_ref": []
    },
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        "del_EntityType": {
            "del_EntityType": "SubmissionItemType",
            "nsuri": "http://xbrl.sec.gov/del/2024",
            "localname": "DocumentType",
            "presentation": {
                "http://totalisolutions.com/role/Cover"
            },
            "lang": {
                "en-us": {
                    "role": {
                        "label": "Document Type",
                        "documentation": "The type of document being provided (such as 10-K, 10-Q, 485BPOS, etc.). The document type is limited to the same value as the supporting SEC submission type, or the word 'Other'."
                    }
                }
            },
            "auth_ref": []
        },
        "del_EntityAddressAddressLine1": {
            "del_EntityType": "NormalisedStringItemType",
            "nsuri": "http://xbrl.sec.gov/del/2024",
            "localname": "EntityAddressAddressLine1",
            "presentation": {
                "http://totalisolutions.com/role/Cover"
            },
            "lang": {
                "en-us": {
                    "role": {
                        "label": "Entity Address Address Line 1",
                        "documentation": "Address Line 1 such as Attn, Building Name, Street Name"
                    }
                }
            },
            "auth_ref": []
        },
        "del_EntityAddressCityOrTown": {
            "del_EntityType": "NormalisedStringItemType",
            "nsuri": "http://xbrl.sec.gov/del/2024",
            "localname": "EntityAddressCityOrTown",
            "presentation": {
                "http://totalisolutions.com/role/Cover"
            },
            "lang": {
                "en-us": {
                    "role": {
                        "label": "Entity Address City Or Town",
                        "documentation": "Name of the City or Town"
                    }
                }
            },
            "auth_ref": []
        },
        "del_EntityAddressPostalZipCode": {
            "del_EntityType": "NormalisedStringItemType",
            "nsuri": "http://xbrl.sec.gov/del/2024",
            "localname": "EntityAddressPostalZipCode",
            "presentation": {
                "http://totalisolutions.com/role/Cover"
            },
            "lang": {
                "en-us": {
                    "role": {
                        "label": "Entity Address Postal Zip Code",
                        "documentation": "Code for the postal or zip code"
                    }
                }
            },
            "auth_ref": []
        },
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            "nsuri": "http://xbrl.sec.gov/del/2024",
            "localname": "EntityAddressStateOrProvince",
            "presentation": {
                "http://totalisolutions.com/role/Cover"
            },
            "lang": {
                "en-us": {
                    "role": {
                        "label": "Entity Address State Or Province",
                        "documentation": "Name of the state or province."
                    }
                }
            },
            "auth_ref": []
        },
        "del_EntityCentralIndexKey": {
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            "nsuri": "http://xbrl.sec.gov/del/2024",
            "localname": "EntityCentralIndexKey",
            "presentation": {
                "http://totalisolutions.com/role/Cover"
            },
            "lang": {
                "en-us": {
                    "role": {
                        "label": "Entity Central Index Key",
                        "documentation": "A unique 10-digit SEC-issued value to identify entities that have filed disclosures with the SEC. It is commonly abbreviated as CIK."
                    }
                }
            },
            "auth_ref": [
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        },
        "del_EntityEmergingGrowthCompany": {
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            "nsuri": "http://xbrl.sec.gov/del/2024",
            "localname": "EntityEmergingGrowthCompany",
            "presentation": {
                "http://totalisolutions.com/role/Cover"
            },
            "lang": {
                "en-us": {
                    "role": {
                        "label": "Entity Emerging Growth Company",
                        "documentation": "Indicate if registrant meets the emerging growth company criteria."
                    }
                }
            },
            "auth_ref": [
                "pi"
            ]
        },
        "del_EntityFileNumber": {
            "del_EntityType": "NormalisedStringItemType",
            "nsuri": "http://xbrl.sec.gov/del/2024",
            "localname": "EntityFileNumber",
            "presentation": {
                "http://totalisolutions.com/role/Cover"
            },
            "lang": {
                "en-us": {
                    "role": {
                        "label": "Entity File Number",
                        "documentation": "Commission file number. The field allows up to 17 characters. The prefix may contain 1-3 digits, the sequence number may contain 1-8 digits, the optional suffix may contain 1-4 characters, and the fields are separated with a hyphen."
                    }
                }
            },
            "auth_ref": []
        },
        "del_EntityIncorporationStateCountryCode": {
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            "nsuri": "http://xbrl.sec.gov/del/2024",
            "localname": "EntityIncorporationStateCountryCode",
            "presentation": {
                "http://totalisolutions.com/role/Cover"
            },
            "lang": {
                "en-us": {
                    "role": {
                        "label": "Entity Incorporation State Country Code",
                        "documentation": "Two-character EDGAR code representing the state or country of incorporation."
                    }
                }
            },
            "auth_ref": []
        },
        "del_EntityRegistrantName": {
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            "localname": "EntityRegistrantName",
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            },
            "lang": {
                "en-us": {
                    "role": {
                        "label": "Entity Registrant Name",
                        "documentation": "The exact name of the entity filing the report as specified in its charter, which is required by forms filed with the SEC."
                    }
                }
            },
            "auth_ref": [
                "pi"
            ]
        },
        "del_EntityTaxIdentificationNumber": {
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            "nsuri": "http://xbrl.sec.gov/del/2024",
            "localname": "EntityTaxIdentificationNumber",
            "presentation": {
                "http://totalisolutions.com/role/Cover"
            },
            "lang": {
                "en-us": {
                    "role": {
                        "label": "Entity Tax Identification Number",
                        "documentation": "The Tax Identification Number (TIN), also known as an Employer Identification Number (EIN), is a unique 9-digit value assigned by the IRS."
                    }
                }
            },
            "auth_ref": [
                "pi"
            ]
        },
        "del_LocalPhoneNumber": {
            "del_EntityType": "NormalisedStringItemType",

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