

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

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): March 10, 2023

JOANN Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-40204
(Commission
File Number)

46-1095540
(IRS Employer
Identification No.)

5555 Darrow Road
Hudson, Ohio 44236
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (330) 656-2600

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

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

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

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

Title of Each Class	Trading Symbol	Name of Each Exchange on which Registered
Common stock, par value \$0.01 per share	JOAN	The Nasdaq Global Market

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

Emerging growth company ☐

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

Item 1.01. Entry Into a Material Definitive Agreement

On March 10, 2023 (the “Closing Date”), Jo-Ann Stores, LLC (“Jo-Ann”), a wholly-owned subsidiary of JOANN Inc. (the “Company”), entered into the Third Amendment (the “Third Amendment”) to the Amended and Restated Credit Agreement (dated as of October 21, 2016 and as previously amended, supplemented or otherwise modified prior to the Third Amendment (the “Existing Credit Agreement” and, as further amended by the Third Amendment, the “Amended Credit Agreement”)), by and among Jo-Ann, as borrower, Needle Holdings LLC, the guarantors party thereto, Bank of America, N.A. (“BofA”) as administrative agent and collateral agent (the “Agent”), 1903P Loan Agent, LLC, as FILO Documentation Agent, and the various lenders from time to time party thereto.

The Third Amendment, among other things, adds a series of first-in last-out loans (the “FILO Loans”) in an aggregate amount of \$100.0 million, the full amount of which was drawn on the Closing Date and a portion of which proceeds were used, among other things, to refinance a portion of the revolving loans drawn and outstanding under the Existing Credit Agreement immediately prior to the Closing Date. The FILO Loans mature at the same time as the commitments under the Existing Credit Agreement (the “Revolving Commitments”) on December 22, 2026. The FILO Loans will not amortize. The FILO Loans are SOFR loans (as defined in the Third Amendment), that bear monthly interest at an annual rate of 9.75% with one 100 basis point stepdown based on minimum Consolidated EBITDA (as defined in the Third Amendment) and are subject to a SOFR floor of 1.50%.

The Third Amendment also amends the Existing Credit Agreement to (i) include certain trade receivables in the borrowing base, (ii) provide that loans drawn pursuant to the Revolving Commitments may be made at Jo-Ann’s election as base rate loans or SOFR loans and (iii) increases the applicable margin for SOFR loans to 2.00% with two twenty-five basis point step-downs based on excess availability. Revolving Loans made in SOFR are subject to a credit spread adjustment of 0.10% and a floor of 0.00%.

Other than the changes described above, all other material provisions of the Existing Credit Agreement remain unchanged and as previously disclosed.

Certain of the lenders party to the Amended Credit Agreement, and their respective affiliates, have performed, and may in the future perform for the Company and its subsidiaries, various commercial banking, investment banking, underwriting and other financial advisory services, for which they have received, or may receive, customary fees and expense reimbursements.

The foregoing description of the Third Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Third Amendment, which is filed as Exhibit 10.1 hereto and incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	<u>Third Amendment, dated as of March 10, 2023, by and among Jo-Ann Stores, LLC, Needle Holdings LLC, each of the Guarantors, each of the lenders party thereto, Bank of America, N.A., as administrative agent and collateral agent for the lenders and 1903P Loan Agent, LLC, as FILO Documentation Agent</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURE

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

Date: March 13, 2023

JOANN INC.

By: /s/ Scott N. Sekella

Name: _____
Scott N. Sekella

Title: _____
Senior Vice President, Chief Financial Officer

EXECUTION VERSION

THIRD AMENDMENT TO
AMENDED AND RESTATED CREDIT AGREEMENT

THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this “Amendment”) dated as of March 10, 2023 by and among

JO-ANN STORES, LLC, an Ohio limited liability company (the “Borrower”),

NEEDLE HOLDINGS LLC, a Delaware limited liability company (“Holdings”),

the other Loan Parties party hereto,

the FILO Lenders party hereto,

the other Lenders party hereto,

BANK OF AMERICA, N.A., as Administrative Agent and Collateral Agent, and

1903P LOAN AGENT, LLC, as FILO Documentation Agent;

in consideration of the mutual covenants herein contained and benefits to be derived herefrom.

W I T N E S S E T H:

WHEREAS, the Borrower, Holdings, the Lenders, the Administrative Agent and the Collateral Agent, among others, have entered into a certain Amended and Restated Credit Agreement dated as of October 21, 2016 (as amended by that certain First Amendment to Amended and Restated Credit Agreement, dated as of November 25, 2020, as further amended by that certain Second Amendment to Amended and Restated Credit Agreement, dated as of December 22, 2021, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the effectiveness of this Amendment, the “Existing Credit Agreement”);

WHEREAS, the Borrower has requested to amend certain provisions of the Existing Credit Agreement, in each case, subject to the terms and conditions hereof;

WHEREAS, the Borrower has requested that the FILO Lenders provide a first-in, last-out term loan facility, and the FILO Lenders have agreed to provide such facility on the terms and conditions set forth herein; and

WHEREAS, the Lenders under (and as defined in) the Existing Credit Agreement, the Administrative Agent, the FILO Lenders and the FILO Documentation Agent have agreed to amend the Existing Credit Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto hereby agree as follows:

1. Incorporation of Terms and Conditions of Existing Credit Agreement. All capitalized terms not otherwise defined herein shall have the same meaning as in the Existing Credit Agreement, as amended by this Amendment (the “Amended Credit Agreement”).
-

2. Representations and Warranties. Each Loan Party hereby represents and warrants that after giving effect to this Amendment, (i) no Default or Event of Default exists under the Amended Credit Agreement or under any other Loan Document, and (ii) all representations and warranties contained in the Amended Credit Agreement and in the other Loan Documents are true and correct in all material respects (except in the case of any representation and warranty qualified by “materiality” or “Material Adverse Effect”, which is true and correct in all respects) as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (except in the case of any representation and warranty qualified by “materiality” or “Material Adverse Effect”, which is true and correct in all respects) as of such earlier date.
3. Amendments to Existing Credit Agreement. Subject to the satisfaction of the conditions precedent set forth in Section 4 below, the Existing Credit Agreement is hereby amended as following:
- a. Credit Agreement. The Existing Credit Agreement is hereby amended as set forth in Annex A attached hereto such that all of the newly inserted double underlined text (indicated textually in the same manner as the following example: double-underlined text) and any formatting changes attached hereto shall be deemed to be inserted and all stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) shall be deemed to be deleted therefrom._
- b. Exhibits to Credit Agreement. Exhibit A (Form of Assignment and Assumption), Exhibit C (Form of Notice of Borrowing), Exhibit F (Form of Notice of Conversion or Continuation), Exhibit J (Form of Borrowing Base Certificate), Exhibit N (Form of Compliance Certificate) and Exhibit O (Form of Solvency Certificate) to the Existing Credit Agreement are hereby deleted in their entirety and new Exhibit A, Exhibit C, Exhibit F, Exhibit J, Exhibit N and Exhibit O, respectively, are substituted in their stead as attached hereto in Annex B. Exhibit P (Form of FILO Note) attached hereto in Annex B is hereby added to the Amended Credit Agreement as Exhibit P thereto.
- c. Schedules to Credit Agreement. Schedule I (Commitments), Schedule II (Guarantors), Schedule 5.12 (Subsidiaries and Other Equity Investments), Schedule 9.1(b) (Existing Liens), Schedule 9.2(f) (Existing Investments), Schedule 9.3(b) (Existing Indebtedness), Schedule 9.8 (Transactions with Affiliates) and Schedule 12.8 (Administrative Agent’s Office, Certain Addresses for Notices) to the Existing Credit Agreement are hereby deleted in their entirety and new Schedule I, Schedule II, Schedule 5.12, Schedule 9.1(b), Schedule 9.2(f), Schedule 9.3(b), Schedule 9.8 and Schedule 12.8, respectively, are substituted in their stead as attached hereto in Annex C.
4. Conditions to Effectiveness. This Amendment shall become effective on the date (the “Third Amendment Effective Date”) when each of the following conditions precedent has been fulfilled to the reasonable satisfaction of the Administrative Agent and the FILO Documentation Agent:
- a. Amendment Documents. (i) This Amendment shall have been duly executed and delivered by the Loan Parties, the Administrative Agent, the FILO Documentation Agent, the FILO Lenders and other Lenders under (and as defined in) the Existing Credit Agreement, (ii) the FILO Fee Letter shall have been duly executed and delivered by each of the parties thereto, and (iii) the Fee Letter referenced in clause (z)(ii) of the definition of “Fee Letter” in the Credit Agreement shall have been duly executed and delivered by each of the parties thereto.

- b. FILO Note. A FILO Note, substantially in the form of Exhibit P to the Amended Credit Agreement, shall have been duly executed and delivered by the Borrower in favor of each FILO Lender requesting a FILO Note and reflecting the FILO Commitment of such FILO Lender after giving effect to this Amendment.
- c. Solvency Certificate. A Solvency Certificate shall have been duly executed and delivered by the chief financial officer of the Borrower substantially in the form of Exhibit Q to the Amended Credit Agreement.
- d. Officer's Closing Certificate. A certificate shall have been duly executed and delivered by a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent and the FILO Documentation Agent, certifying as to satisfaction of the conditions precedent set forth in clauses (i) and (k) below and the representations and warranties set forth in Section 2 above.
- e. Information Certificate. An updated Information Certificate shall have been duly executed and delivered by the Loan Parties.
- f. Lien Searches. The Administrative Agent and the FILO Documentation Agent each shall have received the results of (i) searches of the UCC filings (or equivalent filings) and (ii) tax lien searches, made with respect to the Loan Parties in, with respect to searches in respect of clause (i), the states or other jurisdictions of formation of such Persons and, with respect to searches in respect of clause (ii), such other locations as are satisfactory to the Administrative Agent and the FILO Documentation Agent, together with copies of the financing statements (or, in the case of clause (ii), similar documents) disclosed by such searches.
- g. Corporate Action. All action on the part of the Loan Parties necessary for the valid execution, delivery and performance by the Loan Parties of this Amendment shall have been duly and effectively taken. The Administrative Agent and the FILO Documentation Agent each shall have received such customary corporate resolutions, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party evidencing the authority of each Loan Party to enter into this Amendment and the other Loan Documents to which such Loan Party is a party and the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Third Amendment Effective Date, good standing certificates, other certificates, copies of each Loan Party's Constituent Documents and other customary corporate documents as the Administrative Agent or the FILO Documentation Agent shall reasonably request.
- h. Opinions of Counsel. The Administrative Agent and the FILO Documentation Agent shall have received a favorable opinion of (i) Latham & Watkins LLP, special counsel to the Borrower with respect to certain matters of federal and New York law and certain routine matters under Delaware law and (ii) Jones Day, Ohio counsel to the Loan Parties.
- i. No Default. After giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing.
- j. Borrowing Base Certificate; Availability. The Administrative Agent and the FILO Documentation Agent each shall have received an executed Borrowing Base Certificate

dated as of the Third Amendment Effective Date, relating to the fiscal month ending January 31, 2023. The Excess Availability under the Amended Credit Agreement on the Third Amendment Effective Date after giving effect to all amounts funded under the Amended Credit Agreement on such date (including the FILO Loans) and all prepayments of the Revolving Loans on the Third Amendment Effective Date, shall be equal to or greater than \$120,000,000, based on the Borrowing Base Certificate delivered on the Third Amendment Effective Date.

- k. No Material Adverse Effect. No event shall have occurred after January 29, 2022 that could reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole._
- l. Fees and Expenses. The Administrative Agent, the FILO Documentation Agent and the Lenders shall have received all applicable fees, including fees under the FILO Fee Letter and the Fee Letter referenced in clause (z)(ii) of the definition of “Fee Letter” in the Credit Agreement and other amounts due and payable on or prior to the Third Amendment Effective Date, including without limitation, to the extent invoiced prior to the Third Amendment Effective Date, reasonable and documented attorneys’ fees of one counsel to the Administrative Agent and one counsel to the FILO Documentation Agent, in connection with or relating to this Amendment, which shall have been reimbursed or paid.
- m. Documents. The Administrative Agent and the FILO Documentation Agent each shall have received such other documents, agreements, or items as the Administrative Agent or the FILO Documentation Agent may reasonably request in order to effectuate, or in connection with, the transactions contemplated hereby.

Without limiting the generality of the provisions Section 11.1 of the Amended Credit Agreement, for purposes of determining compliance with the conditions specified in this Section 4, each Lender that has signed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent or the FILO Documentation Agent shall have received notice from such Lender prior to the proposed Third Amendment Effective Date specifying its objection thereto.

5. Confirmation, Ratification and Reaffirmation.

- a. Each of the Loan Parties hereby ratifies and confirms all of its Obligations to the Agents, the Swing Loan Lender, the Issuer, and the Lenders under the Amended Credit Agreement, including, without limitation, the Revolving Loans, Swing Loans, FILO Loans and other Credit Extensions, and each of the Loan Parties hereby affirms its absolute and unconditional promise to pay to the Lenders, the Issuer and the Agents, as applicable, the Revolving Loans, FILO Loans, other Credit Extensions, reimbursement obligations and all other amounts due or to become due and payable to the Lenders, the Issuer, and the Agents, as applicable, under the Amended Credit Agreement and it is the intent of the parties hereto that nothing contained herein shall constitute a novation or accord and satisfaction. Except as expressly amended hereby, the Existing Credit Agreement shall continue in full force and effect. Each of the Loan Parties hereby further (i) ratifies and confirms all of the terms and conditions of each of the documents, instruments and agreements, including those documents, instruments and agreements set forth on Annex D hereto (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “Ancillary Loan Documents”) to which it is a party and executed and delivered in connection with the

Existing Credit Agreement, (ii) acknowledges and agrees that each of the Ancillary Loan Documents (including any schedules thereto) remain in full force and effect, and (iii) reaffirms that, after giving effect to the Amended Credit Agreement, all of its warranties and representations set forth in each of the Ancillary Loan Documents to which it is a party remain true and correct in all material respects as of the Third Amendment Effective Date; provided that, to the extent that such representations and warranties specifically refer to an earlier date, such representations and warranties remain true and correct in all material respects as of such earlier date; provided, further that, any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

- b. Each of the Guarantors hereby acknowledges, confirms and agrees that the Guaranteed Obligations of the Guarantors under, and as defined in, the Guaranty include, without limitation, all Obligations of the Loan Parties at any time and from time to time outstanding under the Amended Credit Agreement.
- c. Without in any manner limiting Section 5(a) above, each Loan Party hereby ratifies and reaffirms its grant of liens on and security interest in any and all Collateral as security for the Obligations arising under or pursuant to and as defined in the Existing Credit Agreement, and confirms and agrees that, after giving effect to the Amended Credit Agreement, such liens and security interests shall continue to secure all Obligations of the Loan Parties at any time and from time to time outstanding under the Amended Credit Agreement and the Ancillary Loan Documents (including, without limitation, the FILO Obligations), as such Obligations have been, and may hereafter be, amended, restated, amended and restated, supplemented, increased or otherwise modified from time to time.

6. Joinder of FILO Lenders and FILO Documentation Agent. Subject to the satisfaction of the conditions precedent set forth in Section 4 above, each of the FILO Documentation Agent and each FILO Lender hereby:

- a. becomes a party to the Amended Credit Agreement as (i) the FILO Documentation Agent or (ii) a FILO Lender and a Lender, as applicable;
- b. agrees that (i) it shall be bound by all agreements, acknowledgments and obligations, and has all of the rights and benefits, of the FILO Documentation Agent or a FILO Lender, as applicable, under the Amended Credit Agreement and all other applicable Loan Documents and (ii) that it has received and acknowledged the Intercreditor Agreement and agrees to be bound by such agreement;
- c. agrees that it will perform in accordance with their terms all of the obligations that by the terms of the Amended Credit Agreement are required to be performed by it as the FILO Documentation Agent or a FILO Lender, as applicable;
- d. in the case of each FILO Lender, acknowledges and agrees that its FILO Commitment shall be the amount specified for such FILO Lender set forth on Schedule I to the Amended Credit Agreement;
- e. agrees that it will, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time,

continue to make its own credit decisions in taking or not taking action under the Amended Credit Agreement;

- f. in the case of each FILO Lender, irrevocably appoints and authorizes each of the Administrative Agent, the Collateral Agent and the FILO Documentation Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Amended Credit Agreement and the other Loan Documents as are delegated to such Agent by the terms thereof, together with such powers and discretion as are reasonably incidental thereto; and
 - g. confirms it has received such documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Amendment.
7. Binding Effect; Integration, Etc. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their heirs, representatives, successors and assigns. This Amendment and the Amended Credit Agreement shall hereafter be read and construed together as a single document, and all references in the Existing Credit Agreement, any other Loan Document or any agreement or instrument related to the Existing Credit Agreement shall hereafter refer to the Amended Credit Agreement. This Amendment shall constitute a Loan Document.
8. Multiple Counterparts. This Amendment may be executed in multiple counterparts, each of which shall constitute an original and together which shall constitute but one and the same instrument. Delivery of any executed counterpart of a signature page of this Amendment by telecopy or e-mail shall be effective as delivery of a manually executed counterpart of this Amendment.
9. Governing Law; Waiver of Jury Trial. EACH PARTY HERETO HEREBY AGREES THAT THE PROVISIONS OF SECTION 12.12 AND SECTION 12.13 OF THE EXISTING CREDIT AGREEMENT SHALL APPLY TO THIS AMENDMENT.

[Signature Pages Follow.]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered by each of the parties hereto as of the date first above written.

JO-ANN STORES, LLC, as the Borrower

By: /s/ Scott Sekella

Name: Scott Sekella

Title: Senior Vice President, Chief Financial Officer & Treasurer

NEEDLE HOLDINGS LLC, as Holdings

By: /s/ Scott Sekella

Name: Scott Sekella

Title: Senior Vice President, Chief Financial Officer & Treasurer

JOANN.COM, LLC, as a Guarantor

By: /s/ Scott Sekella

Name: Scott Sekella

Title: Vice President & Treasurer

JO-ANN STORES SUPPORT CENTER, INC., as a Guarantor

By: /s/ Scott Sekella

Name: Scott Sekella

Title: Vice President & Treasurer

CREATIVEBUG, LLC, as a Guarantor

By: /s/ Scott Sekella

Name: Scott Sekella

Title: Vice President & Treasurer

CREATIVE TECH SOLUTIONS LLC, as a Guarantor

By: /s/ Scott Sekella

Name: Scott Sekella

Title: Vice President & Treasurer

WEAVEUP, INC., as a Guarantor

By: /s/ Scott Sekella

Name: Scott Sekella

Title: Vice President & Treasurer

JOANN DITTO HOLDINGS INC., as a Guarantor

By: /s/ Scott Sekella

Name: Scott Sekella

Title: Vice President & Treasurer

1943 HOLDINGS LLC, as a Guarantor

By: /s/ Scott Sekella

Name: Scott Sekella

Title: Vice President & Treasurer

BANK OF AMERICA, N.A.,
as Administrative Agent, Collateral Agent and a Revolving Credit Lender

By: /s/ Courtney Kolb
Name: Courtney Kolb
Title: Vice President

1903P LOAN AGENT, LLC,
as FILO Documentation Agent

By: /s/ Kyle Shonak
Name: Kyle Shonak
Title: Senior Managing Director

GB FUNDING, LLC,
as a FILO Lender

By: /s/ Kyle Shonak
Name: Kyle Shonak
Title: Senior Managing Director

CENTERBRIDGE CREDIT CS, L.P.,
as a FILO Lender

By: /s/ Gavin Baiera
Name: Gavin Baiera
Title: Authorized Signatory

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Revolving
Credit Lender

By: /s/ Katelyn Murray
Name: Katelyn Murray
Title: Assistant Vice President

By: /s/ David Lawrence
Name: David Lawrence
Title: Vice President

By: /s/ Joseph Basa
Name: Joseph Basa
Title: Vice President

PNC BANK, as a Revolving Credit Lender

By: /s/ Ralph Mielnik

Name: Ralph Mielnik

Title: Assistant Vice President

TD BANK, N.A., as a Revolving Credit Lender

By: /s/ Antimo Barbieri

Name: Antimo Barbieri

Title: Vice President

By: /s/ Patricia Scudder

Name: Patricia Scudder

Title: Relationship Manager/Vice President

ANNEX A

Composite Credit Agreement

[See Attached]

\$500,000,000
AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of October 21, 2016,
as amended on November 25, 2020,
~~and as further amended on~~ December 22, 2021, and March 10, 2023

among

JO-ANN STORES, LLC,
as the Borrower,

NEEDLE HOLDINGS LLC,
as Holdings,

BANK OF AMERICA, N.A.,
as Administrative Agent, Collateral Agent and Issuer,

-

1903P LOAN AGENT, LLC,
as FILO Documentation Agent,

-

and

THE OTHER LENDERS AND ISSUERS PARTY HERETO

~~JPMORGAN CHASE BANK, N.A.,~~
~~and~~

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as ~~Co-Syndication Agents~~Syndication Agent,

BMO HARRIS BANK, N.A.,
PNC BANK, NATIONAL ASSOCIATION,
TD BANK, N.A.

and

U.S. BANK NATIONAL ASSOCIATION,
as Co-Documentation Agents,

BANK OF AMERICA, N.A., and
~~JPMORGAN CHASE BANK, N.A.~~
~~and~~

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ARTICLE I DEFINITIONS, INTERPRETATION AND ACCOUNTING TERMS 1

SECTION 1.1	Defined Terms	1
SECTION 1.2	Other Interpretive Provisions	66 <u>68</u>
SECTION 1.3	Accounting Terms	67 <u>69</u>
SECTION 1.4	Rounding	67 <u>70</u>
SECTION 1.5	Letter of Credit Amounts	68 <u>70</u>
SECTION 1.6	References to Agreements, Laws, Etc	68 <u>70</u>
SECTION 1.7	Times of Day	68 <u>70</u>
SECTION 1.8	Pro Forma Calculations	68 ; <u>Reclassification; IP Matters</u> 70
SECTION 1.9	Limited Condition Acquisitions.	70 <u>72</u>
SECTION 1.10	Interest Rates	71 <u>73</u>
<u>SECTION 1.11</u>	<u>FILO Documentation Agent</u>	<u>73</u>

ARTICLE II THE ~~FACILITY~~FACILITIES ~~71~~73

SECTION 2.1	The Revolving Credit Commitments	71 <u>73</u>
SECTION 2.2	Borrowing Procedures 72 <u>for Revolving Loans; Conforming Changes</u>	<u>74</u>
SECTION 2.3	Swing Loans	74 <u>76</u>
SECTION 2.4	Letters of Credit	76 <u>77</u>
SECTION 2.5	Reduction and Termination of the Revolving Credit Commitments	82 <u>83</u>
SECTION 2.6	Repayment of Loans	82 <u>83</u>
SECTION 2.7	Evidence of Indebtedness.	82 <u>83</u>
SECTION 2.8	Optional Prepayments	83 <u>84</u>
SECTION 2.9	Mandatory Prepayments	83 <u>84</u>

TABLE OF CONTENTS
(CONTINUED)

SECTION 2.10	Interest	84 <u>85</u>	
SECTION 2.11	Conversion/Continuation Option	85 <u>86</u>	
SECTION 2.12	Fees	85 <u>87</u>	
SECTION 2.13	Payments and Computations	87 <u>88</u>	
SECTION 2.14	Special Provisions Governing Eurodollar Rate Loans	89 <u>[Reserved]</u>	<u>90</u>
SECTION 2.15	Revolving Commitment Increase	89 <u>90</u>	
SECTION 2.16	Defaulting Lenders	91	
SECTION 2.17	Extensions of Loans	93	
SECTION 2.18	Sustainability Adjustments	96	
<u>SECTION 2.19 FILO Deficiency Reserve; Certain Availability Reserves</u> <u>97</u>			
ARTICLE III TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY		97 <u>98</u>	
SECTION 3.1	Taxes	97 <u>98</u>	
SECTION 3.2	Illegality	100 <u>101</u>	
SECTION 3.3	Inability to Determine Rates	101 <u>102</u>	
SECTION 3.4	Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Rate <u>Term SOFR</u> Loans.	105 <u>104</u>	
SECTION 3.5	Funding Losses	106	
SECTION 3.6	Matters Applicable to all Requests for Compensation.	106	
SECTION 3.7	Replacement of Lenders under Certain Circumstances.	107 <u>106</u>	
SECTION 3.8	Survival	109 <u>108</u>	
ARTICLE IV CONDITIONS PRECEDENT		109 <u>108</u>	
SECTION 4.1	Conditions Precedent to Effectiveness of this Agreement	109 <u>108</u>	
SECTION 4.2	Conditions Precedent to Each Loan and Letter of Credit	111 <u>110</u>	
SECTION 4.3	Determinations of Effective Date Borrowing Conditions	112 <u>111</u>	

TABLE OF CONTENTS
(CONTINUED)

ARTICLE V REPRESENTATIONS AND WARRANTIES	H2 <u>111</u>
SECTION 5.1 Existence, Qualification and Power; Compliance with Laws	H3 <u>111</u>
SECTION 5.2 Authorization; No Contravention	H3 <u>111</u>
SECTION 5.3 Governmental Authorization	H3 <u>112</u>
SECTION 5.4 Binding Effect	H3 <u>112</u>
SECTION 5.5 Financial Statements; No Material Adverse Effect	H4 <u>112</u>
SECTION 5.6 Litigation	H4 <u>112</u>
SECTION 5.7 Labor Matters	H4 <u>113</u>
SECTION 5.8 Ownership of Property; Liens	H4 <u>113</u>
SECTION 5.9 Environmental Matters	H4 <u>113</u>
SECTION 5.10 Taxes	H5 <u>113</u>
SECTION 5.11 ERISA Compliance	H5 <u>113</u>
SECTION 5.12 Subsidiaries	H7 <u>115</u>
SECTION 5.13 Margin Regulations; Investment Company Act	H7 <u>115</u>
SECTION 5.14 Disclosure	H7 <u>115</u>
SECTION 5.15 Intellectual Property; Licenses, Etc.	H7 <u>115</u>
SECTION 5.16 Solvency	H8 <u>116</u>
SECTION 5.17 OFAC; Sanctions	H8 <u>116</u>
SECTION 5.18 USA PATRIOT Act	H8 <u>116</u>
SECTION 5.19 Collateral Documents	H8 <u>116</u>
SECTION 5.20 Anti-Corruption Laws.	H9 <u>116</u>
SECTION 5.21 EEA Affected Financial Institution.	H9 <u>117</u>
ARTICLE VI FINANCIAL COVENANT	H9 <u>117</u>
SECTION 6.1 Minimum Consolidated Fixed Charge Coverage Ratio	H9 <u>117</u>

TABLE OF CONTENTS
(CONTINUED)

ARTICLE VII REPORTING COVENANTS	119 <u>117</u>	
SECTION 7.1 Financial Statements, Etc.	120 <u>117</u>	
SECTION 7.2 Certificates; Other Information	122 <u>119</u>	
SECTION 7.3 Notices	124 <u>122</u>	
SECTION 7.4 Borrowing Base Certificate	125 <u>Certificates; Appraisals; Field Examinations</u>	<u>122</u>
ARTICLE VIII AFFIRMATIVE COVENANTS	126 <u>124</u>	
SECTION 8.1 Preservation of Existence, Etc.	126 <u>124</u>	
SECTION 8.2 Compliance with Laws, Etc.	127 <u>124</u>	
SECTION 8.3 Designation of Subsidiaries	127 <u>124</u>	
SECTION 8.4 Payment of Taxes, Etc.	127 <u>125</u>	
SECTION 8.5 Maintenance of Insurance	128 <u>125</u>	
SECTION 8.6 Inspection Rights	128 <u>125</u>	
SECTION 8.7 Books and Records	129 <u>126</u>	
SECTION 8.8 Maintenance of Properties.	129 <u>126</u>	
SECTION 8.9 Use of Proceeds	129 <u>126</u>	
SECTION 8.10 Compliance with Environmental Laws	129 <u>126</u>	
SECTION 8.11 Covenant to Guarantee Obligations and Give Security	129 <u>127</u>	
SECTION 8.12 Cash Receipts	131 <u>128</u>	
SECTION 8.13 Further Assurances	132 <u>129</u>	
ARTICLE IX NEGATIVE COVENANTS	133 <u>130</u>	
SECTION 9.1 Liens	133 <u>130</u>	
SECTION 9.2 Investments	137 <u>133</u>	
SECTION 9.3 Indebtedness	139 <u>135</u>	
SECTION 9.4 Fundamental Changes	144 <u>139</u>	
SECTION 9.5 Dispositions	145 <u>141</u>	

TABLE OF CONTENTS
(CONTINUED)

SECTION 9.6	Restricted Payments	148 <u>143</u>
SECTION 9.7	Change in Nature of Business	152 <u>146</u>
SECTION 9.8	Transactions with Affiliates	152 <u>146</u>
SECTION 9.9	Burdensome Agreements	154 <u>148</u>
SECTION 9.10	Accounting Changes; Fiscal Year.	156 <u>150</u>
SECTION 9.11	Prepayment, Etc. of Indebtedness.	156 <u>150</u>
SECTION 9.12	Modification of Debt Agreements	156 <u>150</u>
SECTION 9.13	Holdings	157 <u>151</u>
ARTICLE X	EVENTS OF DEFAULT <u>AND REMEDIES</u>	157 <u>151</u>
SECTION 10.1	Events of Default	157 <u>151</u>
SECTION 10.2	Remedies upon Event of Default	160 <u>154</u>
SECTION 10.3	Application of Funds	161 <u>156</u>
SECTION 10.4	Borrower's Right to Cure.	163 <u>157</u>
SECTION 10.5	Actions in Respect of Letters of Credit; Cash Collateral	164 <u>158</u>
<u>SECTION 10.6 Post-Petition Financings; Insolvency Proceedings</u>		<u>159</u>
<u>SECTION 10.7 Separate Classification</u>		<u>161</u>
<u>SECTION 10.8 Avoidance and Reinstatement</u>		<u>161</u>
<u>SECTION 10.9 Payments Over</u>		<u>162</u>
<u>SECTION 10.10 Subrogation</u>		<u>162</u>
<u>SECTION 10.11 Credit Bidding</u>		<u>162</u>
<u>SECTION 10.12 FILO Purchase Option</u>		<u>163</u>
ARTICLE XI	THE ADMINISTRATIVE AGENT	165
SECTION 11.1	Appointment and Authorization	165
SECTION 11.2	Rights as a Lender.	165
SECTION 11.3	Exculpatory Provisions	166

TABLE OF CONTENTS
(CONTINUED)

SECTION 11.4	Reliance by the Administrative Agent	167
SECTION 11.5	Delegation of Duties	168 <u>167</u>
SECTION 11.6	Resignation of Administrative Agent	168
SECTION 11.7	Non-Reliance on Administrative Agent and Other Lenders; Disclosure of Information by Agents	169
SECTION 11.8	No Other Duties; Other Agents, Arrangers, Managers, Etc	170 <u>169</u>
SECTION 11.9	Intercreditor Agreement	170 <u>169</u>
SECTION 11.10	Administrative Agent May File Proofs of Claim	170
SECTION 11.11	Collateral and Guaranty Matters	171 <u>170</u>
SECTION 11.12	Secured Cash Management Agreements, <u>Secured Bank Product Agreements</u> and Secured Hedge Agreements	172 <u>171</u>
SECTION 11.13	Indemnification of Agents	173 <u>172</u>
SECTION <u>SECTION</u>	11.14 Certain ERISA Matters.....	174 <u>173</u>
SECTION <u>SECTION</u>	11.15 Recovery of Erroneous Payments.....	176 <u>174</u>
ARTICLE XII MISCELLANEOUS 176 <u>174</u>		
SECTION 12.1	Amendments, Etc.	176 <u>174</u>
SECTION 12.2	Successors and Assigns	179
SECTION 12.3	Costs and Expenses	185 <u>184</u>
SECTION 12.4	Indemnities	186 <u>185</u>
SECTION 12.5	Limitation of Liability	187 <u>186</u>
SECTION 12.6	Right of Set-off	187 <u>186</u>
SECTION 12.7	Sharing of Payments.	188 <u>187</u>
SECTION 12.8	Notices and Other Communications; Facsimile Copies	189 <u>188</u>
SECTION 12.9	No Waiver; Cumulative Remedies	191 <u>189</u>
SECTION 12.10	[Reserved].	191 <u>190</u>

TABLE OF CONTENTS
(CONTINUED)

SECTION 12.11	Binding Effect	191 190
SECTION 12.12	Governing Law; Submission to Jurisdiction; Service of Process	191 190
SECTION 12.13	Waiver of Jury Trial	192 191
SECTION 12.14	Marshaling; Payments Set Aside	192 191
SECTION 12.15	Execution in Counterparts	193 191
SECTION 12.16	Electronic Execution of Assignments and Certain Other Documents	193 192
SECTION 12.17	Confidentiality	194 193
SECTION 12.18	Use of Name, Logo, etc.	195 194
SECTION 12.19	USA PATRIOT Act Notice	196 194
SECTION 12.20	No Advisory or Fiduciary Responsibility	196 194
SECTION 12.21	Severability	197 195
SECTION 12.22	Survival of Representations and Warranties	197 195
SECTION 12.23	Lender Action	197 195
SECTION 12.24	Interest Rate Limitation	198 195
SECTION 12.25	Time of the Essence.	198 196
SECTION 12.26	No Strict Construction.	198 196
SECTION 12.27	Intercreditor Agreement.	198 196
SECTION 12.28	Keepwell.	198 196
SECTION 12.29	Acknowledgment and Consent to Bail-In of Affected Financial Institutions.	199 197
SECTION 12.30	Acknowledgement Regarding Any Supported QFCs.	199 197
SECTION 12.31	Amendment and Restatement.	200 198

**TABLE OF CONTENTS
(CONTINUED)**

SCHEDULES

Schedule I	-	Revolving Credit Commitments
Schedule II	-	Guarantors
Schedule 1.1C	-	[Reserved]
Schedule 1.1D	-	Designated Assets
Schedule 1.1E	-	Credit Card Agreements
Schedule 5.12	-	Subsidiaries and Other Equity Investments
Schedule 8.12	-	Material Bank Accounts; Credit Card Processors
Schedule 9.1(b)	-	Existing Liens
Schedule 9.2(f)	-	Existing Investments
Schedule 9.3(b)	-	Existing Indebtedness
Schedule 9.8	-	Transactions with Affiliates
Schedule 9.9	-	Burdensome Agreements
Schedule 12.8	-	Administrative Agent's Office, Certain Addresses for Notices

**TABLE OF CONTENTS
(CONTINUED)**

EXHIBITS

Exhibit A	-	Form of Assignment and Assumption
Exhibit B -		Form of Revolving Credit Note
Exhibit C -		Form of Notice of Borrowing
Exhibit D	-	Form of Swing Loan Request
Exhibit E -		Form of Letter of Credit Request
Exhibit F -		Form of Notice of Conversion or Continuation
Exhibit G-1	-	[Reserved]
Exhibit G-2	-	[Reserved]
Exhibit H	-	Form of Guaranty
Exhibit I -		Form of Security Agreement
Exhibit J -		Form of Borrowing Base Certificate
Exhibit K	-	Form of Intercreditor Agreement
Exhibit L -		Form of Intercompany Subordination Agreement
Exhibit M	-	Form of United States Tax Compliance Certificate
Exhibit N	-	Form of Compliance Certificate
Exhibit O	-	Form of Solvency Certificate

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<u>Exhibit P</u>	=	<u>Form of FILO Note</u>
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This AMENDED AND RESTATED CREDIT AGREEMENT (“*Agreement*”) is entered into as of October 21, 2016, as amended on November 25, 2020, ~~and as further amended on~~ December 22, 2021, ~~and March 10, 2023~~, among JO-ANN STORES, LLC, an Ohio limited liability company (the “*Borrower*”), NEEDLE HOLDINGS LLC, a Delaware limited liability company (“*Holdings*”), BANK OF AMERICA, N.A., as administrative agent (in such capacity, including any successor thereto, the “*Administrative Agent*”) and as collateral agent (in such capacity, including any successor thereto, the “*Collateral Agent*”) under the Loan Documents, 1903P LOAN AGENT, LLC, as documentation agent for the FILO Facility (in such capacity, including any successor thereto, the “FILO Documentation Agent”), and each lender from time to time party hereto (collectively, the “*Lenders*” and individually, a “*Lender*”).

PRELIMINARY STATEMENTS

Holdings and the Borrower have entered into that certain Credit Agreement, dated as of March 18, 2011 (as amended and in effect, the “*Original Credit Agreement*”), among Holdings, the Borrower, the “*Lenders*” as defined therein, and Bank of America, N.A., as Administrative Agent and Collateral Agent thereunder.

The applicable Lenders have indicated their willingness to lend, and the Issuers have indicated their willingness to issue Letters of Credit, in each case, on the terms and subject to the conditions set forth herein, and to amend and restate the Original Credit Agreement in accordance with *Section 12.1* of the Original Credit Agreement.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree that the Original Credit Agreement shall be amended and restated in its entirety to read as follows:

ARTICLE I

DEFINITIONS, INTERPRETATION AND ACCOUNTING TERMS

SECTION 1.1 Defined Terms

As used in this Agreement, the following terms have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“*Account*” has the meaning given to such term in Article 9 of the UCC~~;~~ and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of or (b) for services rendered or to be rendered.

“*Account Debtor*” has the meaning given to such term in Article 9 of the UCC.

“*ACH*” means automated clearing house transfers.

“*Additional Lender*” has the meaning specified in *Section 2.15(a)*.

“*Adjustment Date*” means the first day of each Fiscal Quarter beginning with ~~April~~July 30, ~~2022~~2023.

“*Administrative Agent*” has the meaning specified in the introductory paragraph to this Agreement.

“*Administrative Agent’s Office*” means the Administrative Agent’s address and, as appropriate, account as set forth on *Schedule 12.8*, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

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

“*Affected Financial Institution*” any EEA Financial Institution or UK Financial Institution.

“*Affiliate*” means, with respect to any Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. For the avoidance of doubt, none of the Arrangers, the Agents or their respective lending affiliates or any entity acting as an Issuer hereunder shall be deemed to be an Affiliate of Holdings, the Borrower or any of their respective Subsidiaries.

“*Agent Parties*” has the meaning specified in *Section 12.8(d)*.

“*Agent-Related Persons*” means the Agents, together with their respective Affiliates, and the officers, directors, employees, agents, attorney-in-fact, partners, trustees and advisors of such Persons and of such Persons’ Affiliates.

“*Agents*” means, collectively, the Administrative Agent, the Collateral Agent, each of the Co-Syndication Agents, each of the Co-Documentation Agent, the FILO Documentation Agent, each co-agent or sub-agent (if any) appointed by the Administrative Agent from time to time pursuant to *Section 11.5* and the Arrangers.

“*Aggregate Commitments*” means the Revolving Credit Commitments of all the Lenders. As of the ~~First~~Third Amendment Effective Date, the Aggregate Commitments are \$500,000,000 (excluding, for the avoidance of doubt, the FILO Commitments).

“*Agreement*” means this Credit Agreement, as amended, restated, modified, replaced, extended, renewed or supplemented from time to time in accordance with the terms hereof.

“*Annual Financial Statements*” means the audited consolidated balance sheets of the Borrower and its Subsidiaries as of ~~February 1~~January 29, 2020~~2022~~, and the related consolidated statements of operations, changes in stockholders’ equity and cash flows for the Borrower for the Fiscal Years then ended.

“*Applicable Indebtedness*” has the meaning specified in the definition of “Weighted Average Life to Maturity”.

“*Applicable Margin*” means a percentage per annum equal to (a) from and after the ~~Second~~Third Amendment Effective Date until the first Adjustment Date, the percentages set forth in Level ~~III~~ of the pricing grid below; and (b) thereafter, the following percentages per annum, based upon Average Historical Excess Availability as of the most recent Adjustment Date:

Level	Average Historical Excess Availability	Eurodollar Rate for <u>Term SOFR</u> Loans and <u>Term SOFR Margin for</u> Letter of Credit Fees (Standby Letters of Credit)	Base Rate	Letter of Credit Fees (Documentary Letters of Credit)
I	Greater than or equal to 40 <u>66 2/3</u> % of the Maximum Credit	1.25 <u>1.50</u> %	0.25 <u>0.50</u> %	0.625 <u>0.75</u> %
II	Less than 40 <u>66 2/3</u> % of the Maximum <u>Credit, but greater than or equal to 33 1/3% of the Maximum</u> Credit	1.50 <u>1.75</u> %	0.50 <u>0.75</u> %	0.75 <u>0.875</u> %
III	<u>Less than 33 1/3% of the Maximum Credit</u>	<u>2.00%</u>	<u>1.00%</u>	<u>1.00%</u>

The Applicable Margin shall be adjusted quarterly in accordance with the table above on each Adjustment Date for the period beginning on such Adjustment Date based upon the Average Historical Excess Availability as the Administrative Agent shall determine in good faith within ten (10) Business Days after such Adjustment Date. Any increase or decrease in the Applicable Margin resulting from a change in the Average Historical Excess Availability shall become effective as of the first Business Day immediately following the Adjustment Date. If any Borrowing Base Certificates are at any time restated or otherwise revised or if the information set forth in any Borrowing Base Certificates otherwise proves to be false or incorrect such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest due under this Agreement shall be immediately recalculated at such higher rate for any applicable periods and shall be due and payable on demand.

“*Applicable Percentage*” means with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender’s Revolving Credit Commitment at such time, subject to adjustment as provided in *Section 2.16(a)(iv)*. If the commitment of each Revolving Credit Lender to make Revolving Loans and the obligation of the Issuers to make L/C Credit Extensions have been terminated pursuant to *Section 10.2(a)(i)*, or if the Aggregate Commitments have expired, then the Applicable Percentage of each Revolving Credit Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Revolving Credit Lender is set forth opposite the name of such Lender on *Schedule I* or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“*Applicable Unused Commitment Fee Rate*” means, for any day, a percentage per annum equal to 0.20% per annum.

“Approved Account Bank” means a financial institution at which the Borrower or a Guarantor maintains an Approved Deposit Account.

“Approved Deposit Account” means each Deposit Account in respect of which a Loan Party shall have entered into a Deposit Account Control Agreement.

“Approved Fund” means, with respect to any Lender, any Fund that is administered, advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

“Approved Securities Account” means each Securities Account in respect of which the Borrower or any Subsidiary Guarantor shall have entered into a Securities Account Control Agreement.

“Approved Securities Intermediary” means a securities intermediary at which the Borrower or a Subsidiary Guarantor maintains an Approved Securities Account.

“Arrangers” means BofA Securities, Inc. (or any of its designated affiliates), Wells Fargo Bank, National Association, U.S. Bank National Association, and BMO Harris Bank, N.A., each in its capacity as a joint lead arranger and joint bookrunner under this Agreement.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in substantially the form of *Exhibit A* or any other form approved by the Administrative Agent.

“Attorney Costs” means all reasonable and documented fees, expenses and disbursements of one counsel to the Administrative Agent, the Issuers and the Lenders taken as a whole, one counsel to the FILO Secured Parties taken as a whole, and, if necessary, of one local counsel in any relevant jurisdiction material to the interest of the Lenders and, in the event of any conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Lenders similarly situated taken as a whole of the affected parties.

“Attributable Indebtedness” means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“Availability Reserves” means, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Administrative Agent (solely with respect to the Borrowing Base) or the FILO Documentation Agent (solely with respect to the FILO Borrowing Base) from time to time determines in its Permitted Discretion as being appropriate (a) to reflect the impediments to the Collateral Agent’s ability to realize upon the Current Asset Collateral, (b) to reflect claims and liabilities that the Administrative Agent or the FILO Documentation Agent determines will need to be satisfied in connection with the realization upon the Current Asset Collateral, or (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base or the FILO Borrowing Base, the Current Asset Collateral or the validity or enforceability of this Agreement or the other Loan Documents or any material remedies of the Secured Parties hereunder or thereunder. Without limiting the generality of the foregoing, Availability Reserves may include (but are not limited to) reserves based on: (i) rent; *provided* that, as long as no Event of Default is continuing, such Availability Reserves shall be limited to an

amount not to exceed the sum of (x) past due rent for all of the Borrower and the Subsidiary Guarantors' leased locations plus (y) one (1) month's rent for all of the Borrower and the Subsidiary Guarantors' leased locations (A) located in the states of Washington, Virginia, Pennsylvania and all other Landlord Lien States or (B) that are distribution centers or warehouses, other than, in each case, such locations, distribution centers or warehouses with respect to which the Administrative Agent has received a Collateral Access Agreement; (ii) customs duties, and other costs to release Inventory which is being imported into the United States; (iii) outstanding Taxes and other governmental charges, including, without limitation, *ad valorem*, real estate, personal property, sales, and other Taxes which would have priority over the interests of the Collateral Agent in the Current Asset Collateral; (iv) during the continuance of a Cash Dominion Period, salaries, wages and benefits due to employees of the Borrower; (v) Customer Credit Liabilities and customer deposits; (vi) warehousemen's or bailee's charges and other Liens permitted under *Section 9.1* which would have priority over the interests of the Collateral Agent in the Current Asset Collateral; and (vii) ~~reserves in respect of (A) the Cash Management Reserve, (B) the Bank Product Reserve and (C) the Swap Obligations Reserve; provided that reserves of the type described in, in each case, that any such Availability Reserve under~~ this clause (vii) ~~in respect of such Cash Management Obligations~~ shall not be established unless ~~either~~ Excess Availability is less than \$75,000,000 or an Event of Default ~~is continuing; and (viii) reserves in respect of Obligations in respect of Secured Hedge Agreements, provided that, reserves of the type described in this clause (viii) in respect of such Obligations shall not be established unless either Excess Availability is less than \$75,000,000 or an Event of Default~~ has occurred and is continuing. The amount of any Availability Reserve established or increased by the Administrative Agent or the FILO Documentation Agent shall (i) have a reasonable relationship to the event, condition or other matter that is the basis for the Availability Reserve and (ii) be limited to such Availability Reserves and changes as (1) the Administrative Agent determines, in its Permitted Discretion, are appropriate based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the First Amendment Effective Date or that differ from facts or events occurring and known to the Administrative Agent on the First Amendment Effective Date or (2) the FILO Documentation Agent determines, in its Permitted Discretion, are appropriate based on the analysis of facts or events first occurring or first discovered by the FILO Documentation Agent after the Third Amendment Effective Date or that differ from facts or events occurring and known to the FILO Documentation Agent on the Third Amendment Effective Date; provided, this clause (2) shall not prohibit the Administrative Agent or the FILO Documentation Agent from implementing Cash Management Reserves, Bank Product Reserves and/or Swap Obligations Reserves in accordance with clause (vii) above. Notwithstanding anything herein to the contrary, Availability Reserves shall not duplicate eligibility criteria contained in the definition of Eligible Credit Card Receivables, Eligible Trade Receivables, Eligible In-Transit Inventory, Eligible Inventory or Eligible Letter of Credit Inventory. For the avoidance of doubt, the FILO Deficiency Reserve shall not be deemed to be an Availability Reserve.

"Average Historical Excess Availability" means, at any Adjustment Date, the average daily Excess Availability for the Fiscal Quarter immediately preceding such Adjustment Date.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA 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 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 of America*” means Bank of America, N.A., a national banking association, acting in its individual capacity, and its successors and assigns.

“Bank Product Agreement” means any agreement or arrangement to provide Bank Products.

“Bank Product Bank” means, as of any date of determination, any Person that is an Agent, a Revolving Credit Lender or an Affiliate of a Revolving Credit Lender on such date.

“Bank Product Obligations” means obligations owed by any Loan Party to any Bank Product Bank in respect of or in connection with any Bank Products and either (i) in existence on the Third Amendment Effective Date or (ii) after the Third Amendment Effective Date, designated by the Bank Product Bank and the Borrower in writing to the Administrative Agent as “Bank Product Obligations”.

“Bank Product Reserve” shall mean the aggregate amount of reserves established (based upon the obligations and liabilities of any Loan Party in respect of the Bank Product Obligations) by the Administrative Agent or the FILO Documentation Agent from time to time in its Permitted Discretion in respect of Bank Product Obligations then outstanding.

“Bank Product / Swap Obligations Cap” shall mean, in respect of amounts applied to payment of Bank Product Obligations and obligations of any Loan Party arising under any Secured Hedge Agreement pursuant to Section 10.3, an aggregate amount equal to \$5,000,000.

“Bank Products” shall mean any of the following products, services or facilities extended to the Borrower or any Restricted Subsidiary from time to time by any Revolving Credit Lender or any of its Affiliates: (i) supply chain financing services and (ii) credit or debit cards, including purchase cards. Notwithstanding the foregoing, and for the avoidance of doubt, Bank Products shall not include any Cash Management Services or Swap Contracts.

“*Banker’s Acceptance*” means a time draft or bill of exchange or other deferred payment obligation relating to a Documentary Letter of Credit which has been accepted by the Issuer.

“Bankruptcy Code” means Title 11 of the United States Code or any similar federal or state law for the relief of debtors, as now and hereafter in effect, or any successor statute.

“*Base Rate*” means for any day a fluctuating rate of interest per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” ~~and (c) the Eurodollar Rate~~ Term SOFR plus 1.00%, and (d) the applicable Floor plus 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to ~~Section 3.3 hereof~~, then the Base Rate shall be the ~~greater~~ highest of ~~clauses (a) and, (b) and (d)~~ above and shall be determined without reference to ~~clause (c)~~ above. The Floor shall be determined

separately for the Revolving Obligations and the FILO Obligations, as set forth in the definition of “Floor”.

“*Base Rate Loan*” means a Loan that bears interest based on the Base Rate.

“*Beneficial Ownership Certification*” means a certification regarding beneficial ownership 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 ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“*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.

“*Borrower*” has the meaning specified in the preamble to this Agreement.

“*Borrower Materials*” has the meaning specified in *Section 7.2*.

“*Borrowing*” means a borrowing consisting of Loans of the same Class and Type made, converted or continued on the same date and, in the case of ~~Eurodollar Rate~~ Term SOFR Loans, having the same Interest Period.

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

(a) the face amount of Eligible Credit Card Receivables multiplied by the Credit Card Advance Rate; plus

(b) the face amount of Eligible Trade Receivables multiplied by the Trade Receivables Advance Rate, net of Receivables Reserves applicable thereto; provided that unless and until the Administrative Agent receives (A) a Field Examination of all Accounts arising from the sale of the Borrower’s or any Subsidiary Guarantor’s Inventory from a field examiner reasonably satisfactory to the Administrative Agent in its Permitted Discretion and establishes Receivables Reserves (if applicable) therefor in accordance with this Agreement, and (B) such other due diligence as the Administrative Agent may reasonably require, no Accounts shall be included in the Borrowing Base pursuant to this clause (b); plus

(bc) the Net Recovery Percentage of Eligible Inventory (other than, for the avoidance of doubt, Eligible Letter of Credit Inventory and Eligible In-Transit Inventory), multiplied by the Inventory Advance Rate multiplied by the Cost of Eligible Inventory (other than, for the avoidance of doubt, Eligible Letter of Credit Inventory and Eligible In-Transit Inventory), net of Inventory Reserves attributable to Eligible Inventory; plus

(ed) the Net Recovery Percentage of Eligible Letter of Credit Inventory multiplied by the Letter of Credit Advance Rate, multiplied by the Cost of Eligible Letter of Credit Inventory, net of Inventory Reserves attributable to Eligible Letter of Credit Inventory; plus

(~~de~~) the Net Recovery Percentage of Eligible In-Transit Inventory multiplied by the In-Transit Advance Rate, multiplied by the Cost of Eligible In-Transit Inventory, net of Inventory Reserves attributable to Eligible In-Transit Inventory; minus

(f) the then amount of any FILO Deficiency Reserve; minus

(eg) the then amount of all Availability Reserves.

The Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent and the FILO Documentation Agent pursuant to *Section 7.4*, as adjusted to give effect to Availability Reserves and any FILO Deficiency Reserve following such delivery; *provided*, that such Availability Reserves shall not be established or changed except upon not less than three (3) Business Days' notice to the Borrower (during which period the Administrative Agent shall be available to discuss any such proposed Availability Reserve with the Borrower and the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Availability Reserve no longer exists, in a manner and to the extent reasonably satisfactory to the Administrative Agent); *provided further* that, during such three (3) Business Day period, Credit Extensions hereunder shall be subject to the Borrowing Base as if such new or modified Availability Reserves were given effect; *provided further* that no such prior notice shall be required for changes to any Availability Reserves resulting solely by virtue of mathematical calculations of the amount of the Availability Reserve in accordance with the methodology of calculation previously utilized (such as, but not limited to, rent and Customer Credit Liabilities) or if an Event of Default is continuing.

"*Borrowing Base Certificate*" means a certificate of the Borrower substantially in the form of *Exhibit J*.

"*Business Day*" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the ~~jurisdiction~~state where the Administrative Agent's Office ~~with respect to Obligations is located and if such day relates to any interest rate settings as to a Eurodollar Rate Loan, any fundings, disbursements, settlements and payments in respect of any such Eurodollar Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Eurodollar Rate Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.~~ is located.

"*Capital Expenditures*" means, for any period, the aggregate of (a) all amounts that would be reflected as additions to property, plant or equipment on a Consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries in accordance with GAAP and (b) the value of all assets under Capitalized Leases incurred by the Borrower and its Restricted Subsidiaries during such period; provided that the term "Capital Expenditures" shall not include (i) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed with (x) insurance proceeds paid on account of the loss of or damage to the assets being replaced, substituted, restored or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (ii) the purchase of plant, property or equipment or software to the extent financed with the Net Cash Proceeds of Dispositions that are not required to be applied to prepay the Loans; or the Term Facilities, (iii) expenditures that are accounted for as capital expenditures by the Borrower or any Restricted Subsidiary and that actually are paid for, or reimbursed to the Borrower or any Restricted Subsidiary in cash or Cash Equivalents, by a Person other than the Borrower or any Restricted Subsidiary and for which neither the Borrower nor any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation (other than rent) in

respect of such expenditures to such Person or any other Person (whether before, during or after such period), including, without limitation, expenditures which are contractually required to be, and are, reimbursed to the Borrower or a Subsidiary Guarantor in cash by its landlords as tenant allowances during such period, (iv) expenditures to the extent constituting any portion of a Permitted Acquisition, (v) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (A) used or surplus equipment traded in at the time of such purchase, and (B) the Net Cash Proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business, *provided* that such portion of the purchase price in excess of the credit granted by the seller of such equipment for the equipment being traded in at such time or such Net Cash Proceeds, as applicable, shall not be excluded as “Capital Expenditures” hereunder, (vi) expenditures relating to the construction, acquisition, replacement, reconstruction, development, refurbishment, renovation or improvement of any property which has been transferred to a Person other than a Loan Party or any of its Restricted Subsidiaries during the same Fiscal Year in which such expenditures were made pursuant to a sale-leaseback transaction, to the extent of the Net Cash Proceeds received by a Loan Party or such Restricted Subsidiary pursuant to such sale-leaseback transaction, *provided* that such portion of the expenditures which exceed the Net Cash Proceeds received by a Loan Party or such Restricted Subsidiary pursuant to such sale-leaseback transaction shall not be excluded as “Capital Expenditures” hereunder, or (vii) expenditures financed with the proceeds of an issuance of Equity Interests of the Borrower or a capital contribution to the Borrower or Indebtedness permitted to be incurred hereunder, to the extent such expenditures are made within 365 days after the receipt of such proceeds.

“*Capitalized Lease Obligation*” means, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

“*Capitalized Leases*” means all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the Capitalized Lease Obligation with respect thereto; *provided further* that any lease that would be characterized as an operating lease in accordance with GAAP on the Effective Date (whether or not such operating lease was in effect on such date) shall continue to be accounted for as an operating lease (and not as a Capitalized Lease) for purposes of this Agreement regardless of any change in GAAP following the Effective Date that would otherwise require such lease to be recharacterized (on a prospective or retroactive basis or otherwise) as a Capitalized Lease.

“Carve Out” means, in connection with any Insolvency Proceeding relating to any Loan Party, any carve out amount granted with respect to professional fees and expenses, court costs, filing fees, and fees and costs of the Office of the United States Trustee as granted by the court or as agreed to by the Administrative Agent in its reasonable discretion.

“*Cash Collateral*” shall have a meaning correlative to “Cash Collateralize” and shall include the proceeds of such cash collateral and other credit support.

“*Cash Collateralize*” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent, an Issuer or the Swing Loan Lender (as applicable) and the **Revolving Credit** Lenders, as collateral for Letter of Credit Obligations, Obligations in respect of Swing Loans, or obligations of **Revolving Credit** Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the applicable Issuer or Swing Loan Lender benefitting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the applicable Issuer or the Swing Loan Lender (as applicable).

“Cash Dominion Period” means (a) each period beginning on the date that Excess Availability shall have been less than the greater of (x) 10% of the **Modified** Maximum Credit and (y) \$35,000,000, in either case, for five (5) consecutive Business Days, and ending on the date Excess Availability shall have been equal to or greater than the greater of (x) 10% of the **Modified** Maximum Credit and (y) \$35,000,000, in each case, for twenty (20) consecutive calendar days or (b) upon the occurrence of a Specified Event of Default, the period that such Specified Event of Default shall be continuing; *provided that* a Cash Dominion Period shall be deemed continuing (even if Excess Availability exceeds the required amounts for twenty (20) consecutive calendar day) if a Cash Dominion Period has occurred and been discontinued on five (5) occasions in any twelve month period. The termination of a Cash Dominion Period as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Cash Dominion Period in the event that the conditions set forth in this definition again arise.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any Restricted Subsidiary:

(a) Dollars;

(b) in the case of any Foreign Subsidiary that is a Restricted Subsidiary, such local currencies held by it from time to time in the ordinary course of business and not for speculation;

(c) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the United States government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 12 months or less from the date of acquisition;

(d) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than \$500,000,000;

(e) repurchase obligations for underlying securities of the types described in *clauses (c) and (d)* above or *clause (g)* below entered into with any financial institution meeting the qualifications specified in clause (d) above;

(f) commercial paper rated at least P-2 by Moody’s or at least A-2 by S&P (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) and in each case maturing within 12 months after the date of creation thereof;

(g) marketable short-term money market and similar highly liquid funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(h) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody’s or S&P (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) with maturities of 12 months or less from the date of acquisition;

(i) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency); and

(j) investment funds investing substantially all of their assets in securities of the types described in clauses (a) through (i) above.

In the case of Investments by any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a country outside the United States, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a) through (j) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries that are Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (j) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clause (a) above, provided that such amounts are converted into Dollars as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

"Cash Management Agreement" means any agreement or arrangement to provide Cash Management Services.

"Cash Management Bank" means, as of any date of determination, any Person that is an Agent, a Revolving Credit Lender or an Affiliate of a Revolving Credit Lender on such date.

"Cash Management Obligations" means obligations owed by ~~the Borrower or any Restricted Subsidiary~~ Loan Party to any Cash Management Bank in respect of or in connection with any Cash Management Services and either (i) in existence on the Third Amendment Effective Date or (ii) after the Third Amendment Effective Date, designated by the Cash Management Bank and the Borrower in writing to the Administrative Agent as "Cash Management Obligations".

"Cash Management Reserve" shall mean the aggregate amount of reserves established (based upon the obligations and liabilities of any Loan Party in respect of the Cash Management Obligations) by the Administrative Agent or the FILO Documentation Agent from time to time in its Permitted Discretion in respect of Cash Management Obligations then outstanding.

"Cash Management Services" means any agreement or arrangement to provide ~~(i) cash management services, including automated clearinghouse transfers, controlled disbursement accounts, treasury, depository, overdraft, credit card processing or credit or debit card, purchase card, electronic funds transfer and other cash management arrangements and (ii) supply chain financing services.~~ Notwithstanding the foregoing, and for the avoidance of doubt, Cash Management Services shall not include any Bank Products or Swap Contracts.

"Cash Receipts" shall have the meaning specified in *Section 8.12(c)*.

"Cash Taxes" means, with respect to any Test Period, all taxes paid or payable in cash by the Borrower and its Restricted Subsidiaries during such period.

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

“*Change of Control*” means the earliest to occur of:

(a) (i) at any time prior to the consummation of a Qualifying IPO, the Permitted Holders ceasing to own, in the aggregate, directly or indirectly, beneficially and of record, at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings; or

(ii) at any time upon or after the consummation of a Qualifying IPO (1) any Person (other than a Permitted Holder) or (2) Persons (other than one or more Permitted Holders) constituting a “group” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person and its Subsidiaries, and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), become the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under such Exchange Act), directly or indirectly, of Equity Interests representing more than forty percent (40%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of Holdings beneficially owned, directly or indirectly, in the aggregate by the Permitted Holders;

unless, in the case of either *clause (a)(i)* or *(a)(ii)* above, the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the board of directors of Holdings; or

(b) any “Change of Control” (or any comparable term) in any document pertaining to any Term Facility; or

(c) the Borrower ceases to be a direct wholly owned Subsidiary of Holdings (or any successor under *Section 9.4(a)*).

“*Class*” (a) when used with respect to commitments, refers to whether such commitment is a Revolving Credit Commitment-~~or~~, an Extended Revolving Credit Commitment of a given Extension Series-~~or~~, a New Revolving Credit Commitment or a FILO Commitment, (b) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Revolving Loans, Loans under Extended Revolving Credit Commitments of a given Extension Series-~~or~~, Loans under New Revolving Credit Commitments or FILO Loans, and (c) when used with respect to Lenders, refers to whether such Lenders have a Loan or commitment with respect to a particular Class of Loans or commitments.

“CME” means CME Group Benchmark Administration Limited.

“*Co-Documentation Agents*” means BMO Harris Bank, N.A., PNC Bank, National Association, TD Bank, N.A. and U.S. Bank National Association, each as a Co-Documentation Agent under this Agreement.

“*Co-Investor*” means (a) the assignees, if any, of the equity commitments of any Sponsor who became holders of Equity Interests in the Borrower (or any of the direct or indirect parent companies of the Borrower) on or around March 18, 2011 (the “*Original LBO Closing Date*”) and (b) the transferees, if any, that acquired, within 60 days of the Original LBO Closing Date, any Equity Interests in the Borrower (or any of the direct or indirect parent companies of the Borrower) held by any Sponsor as of the Original LBO Closing Date.

“*Co-Syndication Agents*” means Wells Fargo Bank, National Association, U.S. Bank National Association, and BMO Harris Bank, N.A., each as a Co-Syndication Agent under this Agreement.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, and the regulations thereunder.

“*Collateral*” means all the “*Collateral*” (or equivalent term) as defined in any Collateral Document.

“*Collateral Agent*” has the meaning specified in the introductory paragraph to this Agreement.

“*Collateral Access Agreement*” means an agreement reasonably satisfactory in form and substance to the Administrative Agent executed by, as the case may be, (a) a bailee or other Person in possession of Collateral, and (b) any landlord of any premises leased by any Loan Party, pursuant to which, except as the Administrative Agent otherwise may agree, such Person (i) acknowledges the Collateral Agent’s Lien on the Collateral, (ii) releases or subordinates such Person’s Liens in the Collateral held by such Person or located on such premises, (iii) agrees to provide the Collateral Agent with access to the Collateral held by such bailee or other Person or located in or on such premises for the purpose of conducting field exams, appraisals or a Liquidation, and (iv) makes such other agreements with the Collateral Agent as the Administrative Agent may reasonably require.

“*Collateral and Guarantee Requirement*” means, at any time, the requirement that:

(a) the Administrative Agent shall have received (i) each Collateral Document required to be delivered on the Effective Date pursuant to *Section 4.1(a)(iv)*, pursuant to *Section 8.11*, *Section 8.12* or *Section 8.13* at such time and pursuant to Section 4 of the First Amendment required to be delivered on the ~~Second~~First Amendment Effective Date, duly executed by each Loan Party thereto, or (ii) a ratification of each Collateral Document delivered on or prior to the Effective Date ~~or~~, the Second Amendment Effective Date or the Third Amendment Effective Date (to the extent such Collateral Document shall remain in effect as of the Effective Date ~~or~~, the Second Amendment Effective Date or the Third Amendment Effective Date, as applicable);

(b) all Obligations shall have been unconditionally guaranteed by Holdings, each Restricted Subsidiary of the Borrower that is a Wholly-Owned Subsidiary that is a Material Domestic Subsidiary and not an Excluded Subsidiary, including those Subsidiaries that are listed on *Schedule II* hereto (each such guarantor, a “*Guarantor*”) and any Restricted Subsidiary of the Borrower that Guarantees any Indebtedness pursuant to the Term Facilities, any Junior Financing (or, in each case, any Permitted Refinancing thereof) shall be a Guarantor hereunder;

(c) the Obligations and the Guaranty shall have been secured by a first-priority perfected security interest in substantially all Current Asset Collateral of the Loan Parties, in each case, with the priority required by the Collateral Documents and *Section 8.12* shall have been complied with;

(d) the Obligations and the Guaranty shall have been secured by a perfected security interest (subject in priority only to the Lien of the First Lien Term Facility Administrative Agent to secure the obligations under the First Lien Term Facility, any Permitted Pari Passu Secured Debt (as defined in the Term Facility Credit Agreements as in effect on the Second Amendment Effective Date or, subject to prior consent of the Administrative Agent, as in effect after the Second Amendment Effective Date) or, in each case, any Permitted Refinancing thereof, and to any non-consensual Liens permitted by *Section 9.1*) in (i) all Equity Interests of the Borrower, (ii) all Equity Interests of each direct Wholly-Owned Subsidiary that is a Domestic Subsidiary (other than a Domestic Subsidiary described in the following *clause (iii)(A)*) of the Borrower or any Subsidiary Guarantor, and (iii) 65% of the issued and outstanding Equity Interests of (A) each Wholly-Owned Subsidiary that is a Domestic Subsidiary that is directly owned by the Borrower or by any Subsidiary Guarantor and substantially all of the assets of which consist of Equity Interests in one or more Foreign Subsidiaries and (B) each Wholly-Owned Subsidiary that is a Foreign Subsidiary that is directly owned by the Borrower or by any Subsidiary Guarantor;

(e) the Obligations and the Guaranty shall have been secured by a perfected security interest (subject in priority only to the Lien of the First Lien Term Facility Administrative Agent to secure the obligations under the First Lien Term Facility, any Permitted Pari Passu Secured Debt (as defined in the Term Facility Credit Agreements as in effect on the Second Amendment Effective Date or, subject to prior consent of the Administrative Agent, as in effect after the Second Amendment Effective Date) or, in each case, any Permitted Refinancing thereof, and to any non-consensual Liens permitted by *Section 9.1*) (to the extent such security interest may be perfected by delivering certificated securities, filing financing statements under the UCC or making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office) in substantially all other tangible and intangible personal property of the Borrower and each Guarantor other than the Current Asset Collateral, in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents.

The foregoing definition shall not require the creation or perfection of pledges of or security interests in, or the obtaining of title insurance, surveys, abstracts or appraisals with respect to, (i) any real property or (ii) any other particular assets if and for so long as, in the case of this clause (ii) in the reasonable judgment of the Administrative Agent and the Borrower, the cost of creating or perfecting such pledges or security interests in such assets or obtaining title insurance, surveys, abstracts or appraisals in respect of such assets shall be excessive in view of the benefits to be obtained by the Lenders therefrom.

The Administrative Agent may grant extensions of time for the perfection of security interests in particular assets where it reasonably determines, in consultation with the Borrower, that perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

“*Collateral Documents*” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Security Agreement Supplements, security agreements or other similar agreements delivered to the Administrative Agent or the Collateral Agent and the Lenders pursuant to *Section 4.1(a)(iv)*, *Section 8.11*, *Section 8.12* or *Section 8.13*, the Guaranty, each Lien Acknowledgment Agreement, the Intercreditor Agreement, the Securities Account Control Agreements (if any), the Deposit Account Control Agreements, and each of the other agreements, instruments or documents that creates or purports to create a Lien or Guarantee in favor of the Administrative Agent or the Collateral Agent for the benefit of the Secured Parties.

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

“Communication” has the meaning specified in Section 12.6.

“Compliance Certificate” means a certificate substantially in the form of *Exhibit N* and which certificate shall in any event be a certificate of the chief financial officer (a) certifying as to whether a Default has occurred and is continuing and, if applicable, specifying the details thereof and any action taken or proposed to be taken with respect thereto, and (b) setting forth a reasonably detailed calculation of Consolidated EBITDA and the Consolidated Fixed Charge Coverage Ratio for the most recently completed Test Period, ~~and (c) setting forth reasonably detailed calculations, in the case of financial statements delivered under Section 7.1 of the Net Cash Proceeds received during the applicable period by or on behalf of, Holdings or any of its Restricted Subsidiaries in respect of any Disposition subject to prepayment pursuant to Section 2.9(b).~~

“Concentration Account” has the meaning specified in Section 8.12(c).

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Term SOFR, as applicable, any conforming changes to the definitions of “Base Rate”, “SOFR”, “Term SOFR” and “Interest Period”, the addition of the concept of an “interest period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of “Business Day” and “U.S. Government Securities Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent determined in consultation with the Borrower (and, to the extent pertaining to the FILO Obligations, the FILO Documentation Agent), to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

~~“Concentration Account~~Conforming Post-Petition Financing” has the meaning specified in Section ~~8.12~~10.6(ea).

“Consolidated” means, with respect to any Person, the consolidation of accounts of such Person and any other Person in accordance with GAAP.

“Consolidated Depreciation and Amortization Expense” means, with respect to the Borrower and its Restricted Subsidiaries for any period, the total amount of depreciation and amortization expense of the Borrower and its Restricted Subsidiaries, including the amortization of deferred financing fees or costs for such period on a Consolidated basis and otherwise determined in accordance with GAAP.

“Consolidated EBITDA” means, with respect to the Borrower and its Restricted Subsidiaries for any Test Period, the Consolidated Net Income of the Borrower and its Restricted Subsidiaries for such Test Period:

(a) increased by (without duplication):

(i) (A) provision for taxes based on income or profits or capital, plus state, provincial, franchise, property or similar taxes and foreign withholding taxes and foreign unreimbursed value added taxes, of such Person for such period (including, in each case, penalties and interest related to such taxes or arising from tax examinations) deducted in computing Consolidated Net Income and (B) amounts paid to Holdings or any direct or indirect parent of Holdings in respect of taxes in accordance with *Section 9.6(g)*, solely to the extent such amounts were deducted in computing Consolidated Net Income, plus

(ii) (A) total interest expense (including (A) imputed interest on Capitalized Lease Obligations and Attributable Indebtedness (which, in each case, will be deemed to accrue at the interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligations or Attributable Indebtedness), (B) commissions, discounts and other fees, charges and expenses owed with respect to letters of credit, bankers' acceptance financing, surety and performance bonds and receivables financings, (C) amortization and write-offs of deferred financing fees, debt issuance costs, debt discounts, commissions, fees, premium and other expenses, as well as expensing of bridge, commitment or financing fees, (D) payments made in respect of hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, (E) cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than such Person or a wholly-owned Restricted Subsidiary) in connection with Indebtedness incurred by such plan or trust, (F) all interest paid or payable with respect to discontinued operations, (G) the interest portion of any deferred payment obligations) and (H) all interest on any Indebtedness that is (x) Indebtedness of others secured by any Lien on property owned or acquired by such Person or its Restricted Subsidiaries, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property, (y) contingent obligations in respect of Indebtedness; *provided* that such interest expense shall be calculated after giving effect to Hedge Agreements related to interest rates (including associated costs), but excluding unrealized gains and losses with respect to such Hedge Agreements or (z) fee and expenses paid to the Administrative Agent or the FILO Documentation Agent (in each case, in its capacity as such and for its own account) pursuant to the Loan Documents and fees and expenses paid to the administrative agent, the collateral agent, trustee or other similar Persons for any other Indebtedness permitted by *Section 9.3* of such Person for such period and (B) bank fees and costs of surety bonds, in each case under this clause (B), in connection with financing activities and, in each case under clauses (A) and (B), to the extent the same was deducted in computing Consolidated Net Income, plus

(iii) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent such depreciation and amortization were deducted in computing Consolidated Net Income, plus

(iv) any fees, expenses or charges related to any issuance of Equity Interests, Investment, acquisition, disposition, recapitalization or the incurrence or repayment of Indebtedness permitted to be incurred hereunder including a refinancing thereof (whether or not successful) and any amendment, restatement or modification to the terms of any such transactions, including such fees, expenses or charges incurred in connection with the First Amendment and any amendment or refinancing of the Term Facilities, in each case, deducted in computing Consolidated Net Income, plus

(v) (1) the amount of any charge, cost, loss, expense or reserve deducted in such period in computing Consolidated Net Income, including charges, costs, losses, expenses or reserves related to: (A) restructuring (including restructuring charges or reserves, whether or not classified as such under GAAP), severance, relocation, consolidation, integration or other similar items, (B) strategic and/or business initiatives, business optimization (including costs and expenses relating to business optimization programs, which, for the avoidance of doubt, shall include, without limitation, implementation of operational and reporting systems and technology initiatives; strategic initiatives; retention; severance; systems establishment costs; systems conversion and integration costs; contract termination costs; recruiting and relocation costs and expenses; costs, expenses and charges incurred in connection with curtailments or modifications to pension and post-retirement employee benefits plans; costs to start-up, pre-opening, opening, closure, transition and/or consolidation of distribution centers, operations, officers and facilities) including in connection with any Investment permitted hereunder, and new systems design and implementation, as well as consulting fees and any one-time expense relating to enhanced accounting function, (C) business or facilities (including greenfield facilities) start-up, opening, transition, consolidation, shut-down and closing, (D) signing, retention and completion bonuses, (E) severance, relocation or recruiting, (F) public company registration, listing, compliance, reporting and related expenses, (G) charges and expenses incurred in connection with litigation (including threatened litigation), any investigation or proceeding (or any threatened investigation or proceeding) by a regulatory, governmental or law enforcement body (including any attorney general), and (H) expenses incurred in connection with casualty events or asset sales outside the ordinary course of business and (2) any one-time costs, expenses or charges incurred in connection with (A) Permitted Acquisitions or other Investments permitted hereunder after the Effective Date or (B) the closing of any Stores or distribution centers after the First Amendment Effective Date; provided that the aggregate amount added back pursuant to this clause (v) when taken together with the aggregate amount added back to Consolidated EBITDA pursuant to clause (xiii) shall not exceed 20% of Consolidated EBITDA for such Test Period (calculated after giving effect to any increase to Consolidated EBITDA pursuant to this clause (v) and clause (xiii)); plus

(vi) the amount of costs relating to pre-opening and opening costs for Stores, signing, retention and completion bonuses, costs incurred in connection with any strategic initiatives, transition costs, consolidation and closing costs for Stores and costs incurred in connection with non-recurring (without, in any such case, limitation on the calculation hereof by Item 10(e) of Regulation S-K promulgated by the SEC) product and intellectual property development after the First Amendment Effective Date, other business optimization expenses (including costs and expenses relating to business optimization programs), and new systems design and implementation costs and project start-up costs, plus

(vii) any other non-cash charges including any write offs or write downs reducing such Consolidated Net Income for such period (provided that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (1) the Borrower may determine not to add back such non-cash charge in the current period and (2) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period), including the following: (A) non-cash expenses in connection with, or resulting from, stock option plans, employee benefit plans or agreements or

post-employment benefit plans or agreements, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights, (B) non-cash currency translation losses related to changes in currency exchange rates (including re-measurements of Indebtedness (including intercompany Indebtedness) and any net non-cash loss resulting from hedge agreements for currency exchange risk), (C) non-cash losses, expenses, charges or negative adjustments attributable to the movement in the mark-to-market valuation of hedge agreements or other derivative instruments, including the effect of FASB Accounting Standards Codification 815 and International Accounting Standard No. 9 and their respective related pronouncements and interpretations, (D) non-cash charges for deferred tax asset valuation allowances, (E) any non-cash impairment charge or asset write-off or write-down related to intangible assets (including goodwill), long-lived assets, and Investments in debt and equity securities, (F) any non-cash charges or losses resulting from any purchase accounting adjustment or any step-ups with respect to re-valuing assets and liabilities in connection with any Investments permitted hereunder, (G) all non-cash losses from Investments permitted hereunder recorded using the equity method and (H) the excess of GAAP rent expense over actual cash rent paid during such period due to the use of straight line rent for GAAP purposes and (z) any non-cash interest expense); plus

(viii) the amount of any minority interest expense deducted in calculating Consolidated Net Income, plus

(ix) the amount of management, monitoring, consulting and advisory fees (including termination fees) and related indemnities and expenses paid or accrued in such period under the Sponsor Management Agreement or otherwise to the Sponsors to the extent permitted under *Section 9.8* and deducted in such period in computing Consolidated Net Income; plus

(x) Public Company Costs, plus

(xi) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) below for any previous period and not added back, plus

(xii) any costs or expenses incurred by the Borrower or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or stockholders agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of the Borrower or net cash proceeds of issuance of Equity Interests of the Borrower (other than Disqualified Equity Interests); plus

(xiii) the amount of “run rate” cost savings, operating expense reductions and other cost synergies that are projected by the Borrower in good faith to result from actions taken, committed to be taken or expected to be taken no later than 12 months after the end of such Test Period (which amounts will be determined by the Borrower in good faith and calculated on a pro forma basis as though such amounts had been realized on the first day of the Test Period for which Consolidated EBITDA is being determined), net of the amount of actual benefits realized during such Test Period from such actions; provided that, in the good faith judgment of the Borrower such cost savings are reasonably

identifiable, reasonably anticipated to be realized and factually supportable (it being agreed such determinations need not be made in compliance with Regulation S-X or other applicable securities law); provided that the aggregate amount added back pursuant to this clause (xiii) when taken together with the aggregate amount added back to Consolidated EBITDA pursuant to clause (v) shall not exceed 20% of Consolidated EBITDA for such Test Period (calculated after giving effect to any increase to Consolidated EBITDA pursuant to this clause (xiii) and clause (v)), plus

(xiv) proceeds of business interruption insurance actually received (to the extent not counted in any prior period in anticipation of such receipt) or, to the extent not counted in any prior period, reasonably expected to be received, and

(b) decreased by (without duplication):

(i) any non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any gains that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period (other than such cash charges that have been added back to Consolidated Net Income in calculating Consolidated EBITDA in accordance with this definition), plus

(ii) any non-cash gains with respect to cash actually received in a prior period unless such cash did not increase Consolidated EBITDA in such prior period.

“Consolidated Fixed Charge Coverage Ratio” means, for any Test Period, the ratio of (a) (i) Consolidated EBITDA for such period, minus (ii) Capital Expenditures made during such period and not financed with the proceeds of Indebtedness, minus (iii) Cash Taxes during such period to (b) Debt Service Charges of or by the Borrower and its Restricted Subsidiaries on a Consolidated basis for the most recently completed Test Period in accordance with GAAP.

“Consolidated Interest Charges” means, for any Test Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense with respect to such period under Capitalized Lease Obligations that is treated as interest in accordance with GAAP, minus (c) cash interest income during such period, in each case of or by the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Test Period in accordance with GAAP. For purposes of the foregoing, interest expense shall exclude one-time financing fees (including arrangement, amendment and contract fees), debt issuance costs, commissions, expenses and, in each case, the amortization thereof.

“Consolidated Net Debt” means, as of any date of determination, (a) Consolidated Total Debt, minus (b) the amount of cash and Cash Equivalents on a consolidated balance sheet of the Borrower that are not “Restricted” for purposes of GAAP on such balance sheet.

“Consolidated Net Income” means, with respect to the Borrower and its Restricted Subsidiaries for any Test Period, the aggregate of the Net Income of the Borrower and its Restricted Subsidiaries for such Test Period on a Consolidated basis and otherwise determined in accordance with GAAP; *provided, however*, that, without duplication,

(a) any net after-tax extraordinary, non-recurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses, and fees and expenses in connection with relocation costs, integration costs, facility consolidation and closing costs, severance costs and

expenses and non-recurring compensation charges (without, in any such case, limitation on the calculation hereof by Item 10(e) of Regulation S-K promulgated by the SEC), shall be excluded,

(b) the Net Income for such Test Period shall not include the cumulative effect of a change in accounting principles during such Test Period, whether effected through a cumulative effect adjustment or a retroactive application in each case in accordance with GAAP,

(c) effects of adjustments (including the effects of such adjustments pushed down to the Borrower and the Restricted Subsidiaries) in such Person's Consolidated financial statements pursuant to GAAP (including in the inventory, property and equipment, software, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to any consummated Permitted Acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded,

(d) any net after-tax income (loss) from disposed or discontinued operations and any net after-tax gains or losses on disposal of disposed or discontinued operations shall be excluded,

(e) any net after-tax gains or losses (less all fees and expenses relating thereto) attributable to asset Dispositions or the other Disposition of any Equity Interests of any Person other than in the ordinary course of business, as determined in good faith by the Borrower, shall be excluded,

(f) the Net Income for such Test Period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that Consolidated Net Income of the Borrower and its Restricted Subsidiaries shall include the amount of dividends or distributions or other payments that are actually paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such Test Period,

(g) (i) any net unrealized gain or loss (after any offset) resulting in such Test Period from obligations in respect of Swap Contracts and the application of Financial Accounting Standards Board Accounting Standards Codification 815 (Derivatives and Hedging), (ii) any net gain or loss resulting in such period from currency translation gains or losses related to currency remeasurements of Indebtedness (including the net loss or gain (A) resulting from Swap Contracts for currency exchange risk and (B) resulting from intercompany Indebtedness) and all other foreign currency translation gains or losses to the extent such gain or losses are non-cash items, and (iii) any net after-tax income (loss) for such Test Period attributable to the early extinguishment or conversion of (A) Indebtedness, (B) obligations under any Swap Contracts or (C) other derivative instruments, shall be excluded,

(h) any impairment charge or asset write-off, including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(i) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other Disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days), shall be excluded,

(j) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses with respect to liability or casualty events or business interruption shall be excluded, and

(k) any non-cash (for such period and all other periods) compensation charge or expense, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs shall be excluded, and any cash charges associated with the rollover, acceleration or payout of Equity Interests by, or to, management of the Borrower or any of its Restricted Subsidiaries, shall be excluded.

“*Consolidated Total Debt*” means, as of any date of determination, the aggregate principal amount of Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, determined on a Consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with any Permitted Acquisition or any other Investment permitted hereunder), consisting of Indebtedness for borrowed money, unreimbursed obligations in respect of drawn letters of credit, obligations in respect of Capitalized Leases and debt obligations evidenced by promissory notes or similar instruments; *provided* that Consolidated Total Debt shall not include Indebtedness in respect of (i) any letter of credit, except to the extent of unreimbursed obligations in respect of drawn letters of credit (*provided* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Total Debt until three (3) Business Days after such amount is drawn (it being understood that any borrowing, whether automatic or otherwise, to fund such reimbursement shall be counted)) and (ii) obligations under Swap Contracts.

“*Constituent Documents*” means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating or limited liability company agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“*Contractual Obligation*” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “*Controlling*” and “*Controlled*” have meanings correlative thereto.

“*Cos*” means the cost of purchases of Inventory determined according to the accounting policies used in the preparation of the Borrower’s financial statements.

“*Covenant Trigger Event*” means that Excess Availability on any day is less than the greater of (i) \$35,000,000 and (ii) 10% of the [Modified](#) Maximum Credit. For purposes hereof, the occurrence of a Covenant Trigger Event shall be deemed to be continuing until Excess Availability is equal to or greater than the greater of (i) \$35,000,000 and (ii) 10% of the [Modified](#) Maximum Credit, in

each case, for thirty (30) consecutive calendar days, in which case a Covenant Trigger Event shall no longer be deemed to be continuing for purposes of this Agreement. The termination of a Covenant Trigger Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Covenant Trigger Event in the event that the conditions set forth in this definition again arise.

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

“*Covered Party*” has the meaning specified in *Section 12.30*.

“*Credit Card Advance Rate*” means 90%.

“*Credit Card Agreements*” means all agreements or arrangements now or hereafter entered into by the Borrower or any Guarantor for the benefit of the Borrower or a Subsidiary Guarantor, in each case with any Credit Card Issuer or any Credit Card Processor, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, including, but not limited to, the agreements or arrangements set forth on *Schedule 1.1E* hereto.

“*Credit Card Issuer*” means any Person (other than the Borrower or a Guarantor) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., and Novus Services, Inc.

“*Credit Card Notification*” means, collectively, the notices to Credit Card Issuers or Credit Card Processors who are parties to Credit Card Agreements in substantially the form delivered under the Original Credit Agreement, which Credit Card Notifications shall require the ACH or wire transfer no less frequently than each Business Day (and whether or not there are then any outstanding Obligations) to an Approved Deposit Account of all payments due from Credit Card Processors.

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

“*Credit Card Receivables*” means, collectively, (a) all present and future rights of the Borrower or any Guarantor to payment from any Credit Card Issuer, Credit Card Processor or other third party arising from sales of goods or rendition of services to customers who have purchased such goods or services using a credit or debit card and (b) all present and future rights of the Borrower or any Guarantor to payment from any Credit Card Issuer, Credit Card Processor or other third party in connection with the sale or transfer of Accounts arising pursuant to the sale of goods or rendition of services to customers who have purchased such goods or services using a credit card or a debit card, including, but not limited to, all amounts at any time due or to become due from any Credit Card Issuer or Credit Card Processor under the Credit Card Agreements or otherwise, in each case above calculated net of prevailing interchange charges.

“Credit Extension” means each of the following: (a) a Borrowing and (b) a L/C Credit Extension.

“Cure Amount” has the meaning specified in Section 10.4.

“Current Asset Collateral” means all the “ABL Priority Collateral” as defined in the Intercreditor Agreement.

“Customer Credit Liabilities” means, at any time, the aggregate remaining balance at such time of (a) outstanding gift certificates and gift cards of the Borrower and each Subsidiary Guarantor entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory and (b) outstanding merchandise credits of the Borrower or such Subsidiary Guarantor, in each case, net of any dormancy reserves maintained by the Borrower on its books and records in the ordinary course of business consistent with past practices.

“Customs Broker/Carrier Agreement” means an agreement in form and substance reasonably satisfactory to the Administrative Agent among a Loan Party, a customs broker, freight forwarder, consolidator, or other carrier, and the Collateral Agent, in which the customs broker, freight forwarder, consolidator, or carrier acknowledges that it has control over and holds the documents evidencing ownership of, or other shipping documents relating to, the subject Inventory or other property for the benefit of the Collateral Agent and agrees, upon notice from the Collateral Agent (which notice shall be delivered only upon the occurrence and during the continuance of an Event of Default), to hold and dispose of the subject Inventory and other property solely as directed by the Collateral Agent.

“Daily Simple SOFR” with respect to any applicable determination date means the SOFR published on such date on the Federal Reserve Bank of New York’s website (or any successor source).

“Debt Service Charges” means for any Test Period, the sum of (a) Consolidated Interest Charges paid, or required to be paid, in cash for such Test Period, plus (b) scheduled principal payments made or required to be made on account of Indebtedness of the types set forth in clauses (a), (b), (c) and (f) of the definition of “Indebtedness” (excluding the Obligations but including, without limitation, Capitalized Lease Obligations) for such Test Period, in each case determined on a consolidated basis in accordance with GAAP.

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

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

“Default Rate” means (a) when used with respect to Revolving Obligations, an interest rate equal to ~~(a)~~ the Base Rate plus (b) the Applicable Margin applicable to Base Rate Loans plus (c) 2.0% per annum; provided that with respect to the outstanding principal amount of any Loan constituting a Revolving Obligation, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan (giving effect to Section 2.10) plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws; and (b) when used with respect to FILO Obligations, an interest rate equal to (i) the Base Rate plus (ii) the FILO Applicable

Margin applicable to Base Rate Loans plus (iii) 2.0% per annum; provided that with respect to the outstanding principal amount of any Loan constituting a FILO Obligation, the Default Rate shall be an interest rate equal to the interest rate (including any FILO Applicable Margin) otherwise applicable to such Loan (giving effect to Section 2.10) plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

“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 2.16(b), any Revolving Credit Lender that, as reasonably determined by the Administrative Agent, (a) has failed to perform any of its funding obligations hereunder, including in respect of its Revolving Loans or participations in respect of Letters of Credit or Swing Loans, within three (3) Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit generally, (c) has failed, within three Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations (*provided that any Lender that has failed to give such timely confirmation shall cease to be a Defaulting Lender under this clause (c) upon receipt of such confirmation by the Administrative Agent*), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) become subject to a Bail-In Action or had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; 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.

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

“Deposit Account Control Agreement” has the meaning specified in Section 8.12(a).

“Designated Assets” means the assets set forth on Schedule 1.1D.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Designated Non-Cash Consideration” means the fair market value of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with a Disposition pursuant to Section 9.5(j) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower, setting forth the basis of such valuation (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash within one-hundred eighty (180) days following the consummation of the applicable Disposition).

“Dilution Reserve” means, for any period, that percentage reasonably determined by the Administrative Agent (or, if Eligible Trade Receivables are included in the FILO Borrowing

Base, the FILO Documentation Agent) based upon the immediately prior 12 months (or such shorter period as determined by the Administrative Agent (or, if Eligible Trade Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent) in its Permitted Discretion) by dividing (A) the amount of charge-offs of Eligible Trade Receivables and returns of goods purchased from the Borrower and the Subsidiary Guarantors during such period which had, at the time of sale, resulted in the creation of an Eligible Trade Receivable, by (B) the amount of sales (exclusive of sales and other similar taxes) of the Borrower and the Subsidiary Guarantors during such period and thereafter ("Dilution") but only to the extent to which Dilution is in excess of 5%.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any sale or issuance of Equity Interests in a Restricted Subsidiary), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Disqualified Equity Interests" means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Revolving Credit Commitments and all outstanding Letters of Credit (unless the Outstanding Amount of the Letter of Credit Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit in form and substance reasonably satisfactory to the applicable Issuer)), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after Latest Maturity Date at the time of issuance; *provided* that if such Equity Interests are issued pursuant to a plan for the benefit of employees of Holdings, the Borrower or the Restricted Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by Holdings, the Borrower or the Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

"Disqualified Institution" means:

(1) any Person that is a competitor of the Borrower and identified by the Borrower in good faith in writing to the Administrative Agent from time to time after the Effective Date;

(2) those banks, financial institutions, other institutional lenders and investors and other entities that were identified by the Borrower as such in writing to the Administrative Agent on or prior to the [Third Amendment](#) Effective Date; and

(3) any Affiliates of Persons described in the foregoing clauses (1) and (2) that are readily identifiable as such solely on the basis of their names (other than any such Affiliate that is a bank, financial institution or fund (other than a Person described in clause (2) above) that regularly invest in commercial loans or similar extensions of credit in the ordinary course of business and for which no personnel involved with the relevant competitor or Person referred to in clause (2) above make investment decisions);

provided that in no event shall any update to the list of Disqualified Institutions (A) be effective prior to two Business Days after receipt thereof by the Administrative Agent or (B) apply retroactively to disqualify any Persons that have previously acquired an assignment or participation interest under this Agreement or that is party to a pending trade.

Notwithstanding anything in the Loan Documents to the contrary, the Administrative Agent shall not be responsible (or have any liability) for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions thereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (1) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (2) have any liability with respect to or arising out of any assignment or participation of Revolving Credit Exposure ~~or~~, Revolving Credit Commitments or FILO Loans, or disclosure of confidential information, to any Disqualified Institution. The list of Disqualified Institutions may be made available by the Administrative Agent on the Platform and to prospective assignees and Participants (including Public Lenders).

“Dividing Person” has the meaning assigned to it in the definition of “Division.”

“Division” means the division of the assets, liabilities and/or obligations of a Person (the *“Dividing Person”*) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Division Successor” means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

“Document” has the meaning set forth in Article 9 of the UCC.

“Documentary Letter of Credit” means any Letter of Credit that is drawable upon presentation of documents evidencing the sale or shipment of goods purchased by the Borrower or a Guarantor in the ordinary course of its business.

“Dollar Equivalent” of any amount means, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount or (b) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it reasonably deems appropriate.

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

“Domestic Subsidiary” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia (excluding, for the avoidance of doubt, any Subsidiary organized under the Laws of Puerto Rico or any other territory).

“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.

“*Effective Date*” means the first date all the conditions precedent in *Section 4.1* were satisfied or waived in accordance with *Section 12.1*.

“*Effective Date Quarterly Financial Statements*” means the unaudited Consolidated balance sheets and related statements of income, and cash flows of the Borrower and its Subsidiaries for the most recent Fiscal Quarters after the date of the Effective Date Annual Financial Statements (other than the fourth Fiscal Quarter of the Borrower’s Fiscal Year) and ended at least forty-five (45) days before the Effective Date (and the corresponding period of the prior Fiscal Year).

“*Effective Date Annual Financial Statements*” means the audited consolidated balance sheets of the Borrower and its Subsidiaries as of the Saturday closest to each of January 31, 2016, 2015 and 2014, and the related consolidated statements of operations, changes in stockholders’ equity and cash flows for the Borrower for the Fiscal Years then ended.

“*Electronic Copy*” has the meaning specified in *Section 12.6*.

“*Electronic Record*” has the meaning specified in *Section 12.6*.

“*Electronic Signature*” has the meaning specified in *Section 12.6*.

“*Eligible Assignee*” means (a) a Lender or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of \$250,000,000; (c) an Approved Fund; (d) any Person to whom a Lender assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Lender’s rights in and to a material portion of such Lender’s portfolio of asset based credit facilities, and (e) any other Person that meets the requirements to be an assignee under *Section 12.2(b)(iv)* and *(v)* (subject to such consents, if any, as may be required under *Section 12.2(b)(iii)*); provided that, with respect to the Revolving Facility (other than in connection with any exercise of the purchase option under *Section 10.12*), no FILO Lender, Affiliate of any FILO Lender or Approved Fund with respect to any FILO Lender may be an Eligible Assignee without the written approval of Administrative Agent (which may be granted or withheld at the Administrative Agent’s sole discretion).

“*Eligible Credit Card Receivables*” means Credit Card Receivables due to the Borrower or any Subsidiary Guarantor on a non-recourse basis from Visa, Mastercard, American Express Co., Discover and other major credit card processors reasonably acceptable to the Administrative Agent and the FILO Documentation Agent as arise in the ordinary course of business, which have been earned by performance and are deemed by the Administrative Agent and the FILO Documentation Agent, each in its Permitted Discretion, to be eligible for inclusion in the calculation of the Borrowing Base and the FILO Borrowing Base. Without limiting the foregoing, unless otherwise approved in writing by the

Administrative Agent [and the FILO Documentation Agent](#), none of the following shall be deemed to be Eligible Credit Card Receivables:

- (a) Any Credit Card Receivable that has been outstanding for more than five (5) Business Days from the date of sale of the Inventory giving rise to such Credit Card Receivable;
- (b) Credit Card Receivables with respect to which the Borrower or a Subsidiary Guarantor does not have good, valid and marketable title thereto, free and clear of any Lien (other than (i) Liens granted to the Collateral Agent, for its benefit and the ratable benefit of the Secured Parties, pursuant to the Collateral Documents and (ii) (A) Liens permitted under *Section 9.1* having priority by operation of applicable Laws over the Liens of the Collateral Agent, and (B) Liens under *Section 9.1(w)* securing obligations under the Term Facilities and any Permitted Refinancings thereof);
- (c) Credit Card Receivables that are not subject to a first priority security interest in favor of the Collateral Agent, for the benefit of itself and the Secured Parties (it being the intent that chargebacks in the ordinary course by the credit card processors shall not be deemed violative of this clause); or
- (d) Credit Card Receivables which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (to the extent of such claim, counterclaim, offset or chargeback).

Any Credit Card Receivables which are not Eligible Credit Card Receivables shall nevertheless be part of the Collateral.

“Eligible In-Transit Inventory” means, as of the date of determination thereof, without duplication of other Eligible Inventory, Inventory (a) located outside of the United States or in transit within or outside of the United States to the Borrower or any Subsidiary Guarantor from vendors and suppliers for receipt by the Borrower or a Subsidiary Guarantor within sixty (60) days of the date of determination that has not yet been received into a distribution center or store of such Person, (b) for which the purchase order for such Inventory is in the name of the Borrower or a Subsidiary Guarantor and title has passed to the Borrower or a Subsidiary Guarantor, (c) which has been consigned to the Borrower or a Subsidiary Guarantor (along with delivery to the Borrower or a Subsidiary Guarantor of the documents of title with respect thereto), (d) as to which a Customs Broker/Carrier Agreement, reasonably satisfactory to the Administrative Agent, is in effect or with respect to which Inventory Reserves have been established by the Administrative Agent [or the FILO Documentation Agent](#), and (e) which otherwise would constitute Eligible Inventory; *provided* that the Administrative Agent [or the FILO Documentation Agent](#) may, in its Permitted Discretion, and upon notice to the Borrower, exclude any particular Inventory from the definition of *“Eligible In-Transit Inventory”* in the event that the Administrative Agent [or the FILO Documentation Agent](#) determines in its Permitted Discretion and upon notice to the Borrower that such Inventory is subject to any Person’s right or claim which is (or is capable of being) senior to, or pari passu with, the Lien of the Collateral Agent (such as, without limitation, a right of reclamation or stoppage in transit), as applicable, and would be reasonably likely to adversely impact the ability of the Collateral Agent to realize upon such Inventory.

“Eligible Inventory” means, as of the date of determination thereof, (a) Eligible In-Transit Inventory, (b) Eligible Letter of Credit Inventory but only if and to the extent that the Administrative Agent [and the FILO Documentation Agent, each](#) in its Permitted Discretion, determines to include such as Eligible Inventory, and (c) items of Inventory of the Borrower or a Subsidiary Guarantor that are finished goods, merchantable and readily saleable to the public in the ordinary course deemed by the Administrative Agent [and the FILO Documentation Agent, each](#) in its Permitted Discretion, to be eligible for inclusion in the calculation of the [Borrowing Base and the FILO Borrowing Base](#). Without

limiting the foregoing, unless otherwise approved in writing by the Administrative Agent and the FILO Documentation Agent, none of the following shall be deemed to be Eligible Inventory:

- (a) Inventory that is not owned solely by the Borrower or a Subsidiary Guarantor, or is leased or on consignment or the Borrower or a Subsidiary Guarantor does not have good and valid title thereto;
- (b) Inventory (including any portion thereof in transit from vendors, other than Eligible In-Transit Inventory) that is not located at a warehouse facility used by the Borrower or a Subsidiary Guarantor in the ordinary course or at a property that is owned or leased by the Borrower or a Subsidiary Guarantor;
- (c) Inventory that is comprised of goods which (i) are damaged, defective, “seconds,” or otherwise unmerchantable, (ii) are to be returned to the vendor, (iii) are obsolete or slow moving, or custom items, work-in-process, raw materials, or that constitute spare parts, promotional, marketing, packaging and shipping materials or supplies used or consumed in the Borrower’s or a Subsidiary Guarantor’s business, (iv) are not in compliance in all material respects with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (v) are bill and hold goods;
- (d) Inventory that is not located in the United States of America (excluding territories and possessions thereof) other than Eligible In-Transit Inventory;
- (e) Inventory that is not subject to a perfected first-priority security interest in favor of the Collateral Agent for the benefit of the Secured Parties (subject only to Liens permitted under *Section 9.1* having priority by operation of applicable Law over the Liens of the Collateral Agent);
- (f) Inventory which consists of samples, labels, bags, packaging, and other similar non-merchandise categories;
- (g) Inventory as to which insurance in compliance with the provisions of *Section 8.5* hereof is not in effect;
- (h) Inventory which has been sold but not yet delivered or as to which the Borrower or any Subsidiary Guarantor has accepted a deposit;
- (i) Inventory which is being Disposed of in a Store closing, “going-out-of-business” or similar sale; and
- (j) Inventory acquired in a Permitted Acquisition, unless and until the Collateral Agent has completed or received (A) an appraisal of such Inventory from appraisers satisfactory to the Administrative Agent, ~~and~~ and the FILO Documentation Agent, and the Administrative Agent or the FILO Documentation Agent has established Inventory Reserves (if applicable) therefor, and (B) such other due diligence as the Administrative Agent or the FILO Documentation Agent may require, all of the results of the foregoing to be reasonably satisfactory to the Administrative Agent and the FILO Documentation Agent, each in its Permitted Discretion.

Any Inventory which is not Eligible Inventory shall nevertheless be part of the Collateral.

“*Eligible Letter of Credit Inventory*” means, as of the date of determination thereof, without duplication of other Eligible Inventory, Inventory (a) which does not constitute Eligible In-Transit Inventory and for which no documents of title have then been issued, (b) the purchase of which is supported by a Documentary Letter of Credit or Banker’s Acceptance having an expiry within sixty (60) days of such date of determination, which Documentary Letter of Credit or Banker’s Acceptance provides that it may be drawn only after the Inventory is completed and after documents of title have been issued for such Inventory reflecting the Borrower, a Subsidiary Guarantor or the Collateral Agent as consignee of such Inventory, and (c) which otherwise would constitute Eligible Inventory. For the avoidance of doubt, Eligible Letter of Credit Inventory is without duplication of Eligible In-Transit Inventory.

“*Eligible Trade Receivables*” means Accounts arising from the sale of the Borrower’s or any Subsidiary Guarantor’s Inventory (but excluding, for the avoidance of doubt, Credit Card Receivables) that satisfies the following criteria at the time of creation and continues to meet the same at the time of such determination: such Account (i) has been earned by performance and represents the bona fide amounts due to the Borrower or any Subsidiary Guarantor from an account debtor, and in each case is originated in the ordinary course of business of the Borrower or such Subsidiary Guarantor, and (ii) in each case is acceptable to the Administrative Agent (and, if Eligible Trade Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent), in its Permitted Discretion, and is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (r) below. Without limiting the foregoing, to qualify as an Eligible Trade Receivable, an Account shall indicate no Person other than the Borrower or a Subsidiary Guarantor as payee or remittance party. In determining the amount to be so included, and without duplication of eligibility criteria or Availability Reserves, the face amount of an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that the Borrower or a Subsidiary Guarantor may be obligated to rebate to a customer pursuant to the terms of any written agreement) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by the Borrower or Subsidiary Guarantors to reduce the amount of such Eligible Trade Receivable. Except as otherwise agreed by the Administrative Agent (and, if Eligible Trade Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent), any Account included within any of the following categories shall not constitute an Eligible Trade Receivable:

(a) Accounts that are not evidenced by an invoice;

(b) Accounts that have been outstanding for more than ninety (90) days from the date of sale or more than sixty (60) days past the due date;

(c) Accounts due from any account debtor for which more than fifty percent (50%) of the accounts of such account debtor are accounts described in clause (b), above;

(d) All Accounts owed by an account debtor and/or its Affiliates together exceed fifteen percent (15%) (or such higher percentage as the Administrative Agent (and, if Eligible Trade Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent) may establish from time to time in its Permitted Discretion) of the amount of all Accounts at any one time (but the portion of the Accounts not in excess of the applicable percentage may be deemed Eligible Trade Receivables, in the Administrative Agent’s (and, if Eligible Trade Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent’s) discretion);

(e) Accounts (i) that are not subject to a perfected first-priority security interest in favor of the Collateral Agent, for its benefit and the ratable benefit of the Secured Parties, or (ii) with respect to which the Borrower or a Subsidiary Guarantor does not have good and valid title thereto, free and clear of any Lien (other than (i) Liens granted to the Collateral Agent, for its benefit and the ratable benefit of the Secured Parties, pursuant to the Collateral Documents and (ii) (A) Liens permitted under Section 9.1 having priority by operation of applicable Laws over the Liens of the Collateral Agent, and (B) Liens under Section 9.1(y) securing obligations under the Term Facilities and any Permitted Refinancings thereof);

(f) Accounts which are disputed or with respect to which a claim, counterclaim, offset or chargeback has been asserted, but only to the extent of such dispute, counterclaim, offset or chargeback; provided that no Account that otherwise constitutes an Eligible Trade Receivable shall be rendered ineligible by virtue of this clause (f) to the extent, but only to the extent, that the account debtor's right of setoff is limited by an enforceable agreement that is reasonably satisfactory to the Administrative Agent (and, if Eligible Trade Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent);

(g) Accounts which arise out of any sale (i) not made in the ordinary course of business, or (ii) are not payable in Dollars;

(h) [reserved];

(i) Accounts which are owed by any Affiliate or any employee of a Loan Party;

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

(k) Accounts due from an account debtor which is the subject of any bankruptcy or insolvency proceeding, has had a trustee or receiver appointed for all or a substantial part of its property, has made an assignment for the benefit of creditors or has suspended its business;

(l) Accounts due from any Governmental Authority except to the extent that the subject account debtor is the federal government of the United States of America and the Borrower or Subsidiary Guarantors have complied with the Federal Assignment of Claims Act of 1940;

(m) Accounts (i) owing from any Person that is also a supplier to or creditor of the Borrower or any Subsidiary Guarantor or (ii) representing any manufacturer's or supplier's credits, discounts, incentive plans or similar arrangements entitling the Borrower or any Subsidiary Guarantor to discounts on future purchase therefrom;

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

(o) Accounts arising out of sales to account debtors outside the United States unless either (i) such Accounts are fully backed by an irrevocable letter of credit on terms, and issued by a financial institution, acceptable to the Administrative Agent (and, if Eligible Trade

Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent) and such irrevocable letter of credit is in the possession of the Collateral Agent or (ii) covered by credit insurance reasonably acceptable to the Administrative Agent (and, if Eligible Trade Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent);

(p) Accounts evidenced by a promissory note or other instrument;

(q) Accounts consisting of amounts due from vendors as rebates or allowances; and

(r) Accounts acquired in a Permitted Acquisition, unless and until the Collateral Agent has completed or received (A) a Field Exam in respect of such Accounts, which Field Exam shows results reasonably satisfactory to the Administrative Agent (and, if Eligible Trade Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent), and the Administrative Agent (or, if Eligible Trade Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent) has established Receivables Reserves (if applicable) therefor, and (B) such other due diligence as the Administrative Agent (or, if Eligible Trade Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent) may require, all of the results of the foregoing to be reasonably satisfactory to the Administrative Agent (and, if Eligible Trade Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent) in its Permitted Discretion.

“Entitlement Holder” has the meaning given to such term in Article 8 of the UCC.

“Entitlement Order” has the meaning given to such term in Article 8 of the UCC.

“Environmental Claim” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations (other than internal reports prepared by any Loan Party or any of its Subsidiaries (a) in the ordinary course of such Person’s business or (b) as required in connection with a financing transaction or an acquisition or disposition of real estate) or proceedings with respect to any Environmental Liability (hereinafter “Claims”), including (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

“Environmental Laws” means any and all Laws relating to the protection of the environment or, to the extent relating to exposure to Hazardous Materials, human health.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of any Loan Party or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase,

acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Pension 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 that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is insolvent within the meaning of Title IV of ERISA; (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA with respect to the termination of any Pension Plan or Multiemployer Plan, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) the failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Section 412 of the Code) with respect to a Pension Plan, whether or not waived, (g) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (h) the imposition of a lien under Section 303(k) of ERISA with respect to any Pension Plan; or (i) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 303 of ERISA).

“ESG” has the meaning specified in *Section 2.18*.

“ESG Amendment” has the meaning specified in *Section 2.18*.

“ESG Pricing Provisions” has the meaning specified in *Section 2.18*.

“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.

~~“Eurodollar Rate” means the higher of:~~

~~(i) the LIBOR Floor; and~~

~~(ii)(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars) for a period equal in length to such Interest Period (“LIBOR”) as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the~~

~~commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;~~

~~(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two London Banking Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day.~~

~~“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on the Eurodollar Rate.~~

~~“Event of Default” has the meaning specified in Section 10.1.~~

~~“Excess Availability” means, at any time, (a) the Maximum Credit at such time minus (b) the aggregate Revolving Credit Outstandings at such time.~~

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

~~“Excluded Accounts” means deposit or securities accounts (a) established (or otherwise maintained) (including deposit accounts that are that are zero balance accounts) by the Loan Parties that do not have cash balances at any time exceeding \$5,000,000 in the aggregate for all such accounts, (b) solely containing cash allocated as proceeds of the sale of Term Priority Collateral (as such term is defined in the Intercreditor Agreement), (c) payroll, trust and tax withholding accounts, (d) used by the Loan Parties exclusively for disbursements and payments in the ordinary course of business, or (e) that are located outside of the United States.~~

~~“Excluded Subsidiary” means (a) any Subsidiary that is not a wholly owned Subsidiary of the Borrower or a Guarantor, (b) any Foreign Subsidiary, (c) any Domestic Subsidiary substantially all of the assets of which consist of Equity Interests in one or more Foreign Subsidiaries, (d) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary, (e) any Subsidiary that is prohibited or restricted by applicable Law from providing a Guaranty or if such Guaranty would require governmental (including regulatory) consent, approval, license or authorization, (f) any special purpose securitization vehicle (or similar entity), (g) any Subsidiary that is a not-for-profit organization, (h) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent (confirmed in writing by notice to the Borrower), the cost or other consequences (including any adverse tax consequences) of providing the Guaranty shall be excessive in view of the benefits to be obtained by the Lenders therefrom and (i) each Unrestricted Subsidiary.~~

~~“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 guaranty of such Loan Party under the Guaranty of, or the grant under a Loan Document by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation 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 Section 12.28 hereof and any and all guarantees of such Loan Party’s Swap Obligations by other Loan Parties) at the time the guaranty of such Loan Party, or grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such guaranty or security interest becomes illegal.~~

“*Excluded Taxes*” means, with respect to any Agent, any Lender, any Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, (a) any tax on such recipient’s net income or profits (or franchise tax or minimum tax imposed in lieu of such tax on net income or profits) imposed by a jurisdiction as a result of such recipient being organized or having its principal office or applicable Lending Office located in such jurisdiction (including, for the avoidance of doubt, any backup withholding in respect of such a tax under section 3406 of the Code) or as a result of any other present or former connection between such recipient and the jurisdiction (including as a result of such recipient carrying on a trade or business, having a permanent establishment or being a resident for tax purposes in such jurisdiction), other than a connection arising solely from such recipient having executed, delivered, enforced, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction specifically contemplated by, or enforced, any Loan Documents, (b) any branch profits tax under Section 884(a) of the Code, or any similar tax, imposed by any jurisdiction described in (a), (c) with respect to any Foreign Lender (other than any Foreign Lender becoming a party hereto pursuant to the Borrower’s request under *Section 3.7*), any U.S. federal withholding tax that is imposed on amounts payable to such Foreign Lender pursuant to a Law in effect at the time such Foreign Lender becomes a party hereto (or where the Foreign Lender is a partnership for U.S. federal income tax purposes, pursuant to a Law in effect on the later of the date on which such Foreign Lender becomes a party hereto or the date on which the affected partner becomes a partner of such Foreign Lender) or designates a new Lending Office or experiences a change in circumstances (other than a Change in Law), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment or change in circumstances), to receive additional amounts from a Loan Party with respect to such U.S. federal withholding tax pursuant to *Section 3.1*, (d) any withholding tax attributable to such recipient’s failure to comply with *Section 3.1(c)*, (e) any tax imposed as a result of such recipient’s failure to establish a complete exemption under FATCA and (f) any interest, additions to taxes and penalties with respect to any taxes described in clauses (a) through (e) of this definition.

“*Existing Revolver Tranche*” has the meaning specified in *Section 2.17(a)*.

“*Extended Revolving Credit Commitments*” has the meaning specified in *Section 2.17(a)*.

“*Extending Revolving Credit Lender*” has the meaning specified in *Section 2.17(b)*.

“*Extension*” means any establishment of Extended Revolving Credit Commitments pursuant to *Section 2.17* and the applicable Extension Amendment.

“*Extension Amendment*” has the meaning specified in *Section 2.17(d)*.

“*Extension Election*” has the meaning specified in *Section 2.17(b)*.

“*Extension Request*” has the meaning specified in *Section 2.17(a)*.

“*Extension Series*” has the meaning specified in *Section 2.17(a)*.

~~“*Facility*” means the Revolving Credit Commitments and the provisions herein related to the Revolving Loans, Swing Loans and Letters of Credit, Loans under Extended Revolving Credit Commitments and Loans under New Revolving Credit Commitments.~~

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

“*Federal Funds Rate*” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“*Federal Reserve Board*” means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“*Fee Letter*” means, collectively, (x) the Fee Letter dated September 20, 2016, among the Borrower, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Bank of America; (y) the Fee Letter dated as of the First Amendment Effective Date, among the Borrower and Bank of America; and (z)(i) the Fee Letter dated as of the Second Amendment Effective Date, among the Borrower and Bank of America, as ~~each~~ may be amended and in effect from time to time and (ii) the Fee Letter dated as of the Third Amendment Effective Date, among the Borrower and Bank of America, as may be amended and in effect from time to time.

“*Field Examination*” has the meaning specified in *Section 7.4(d)*.

“*FILO Adjustment Date*” has the meaning specified in the definition of “*FILO Applicable Margin*”.

“*FILO Applicable Margin*” means a percentage per annum equal to (a) from and after the Third Amendment Effective Date until the first FILO Adjustment Date thereafter, the applicable percentage set forth in Level II of the pricing grid below, and (b) thereafter, the applicable percentage in the applicable Level of pricing grid below, based upon Consolidated EBITDA for the then most-recently ended Test Period as of the most recent FILO Adjustment Date:

<u>Level</u>	<u>Consolidated EBITDA</u>	<u>Term SOFR Loans</u>	<u>Base Rate Loans</u>
<u>I</u>	<u>Greater than the FILO Applicable Margin EBITDA Threshold for the applicable Test Period</u>	<u>8.75%</u>	<u>7.75%</u>
<u>II</u>	<u>Less than or equal to the FILO Applicable Margin EBITDA Threshold for the</u>	<u>9.75%</u>	<u>8.75%</u>

	<u>applicable Test Period</u>		
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The calculation of Consolidated EBITDA shall be based upon the Compliance Certificate and accompanying financial statements delivered by the Borrower to the Administrative Agent and the FILO Documentation Agent by the date required under this Agreement. The movement between Levels in the pricing grid shall occur on the first calendar day of the month following the month in which the respective Compliance Certificate and accompanying financial statements (commencing with the Compliance Certificate and accompanying financial statements for the Fiscal Quarter ending July 29, 2023) have been delivered to the Administrative Agent and the FILO Documentation Agent (a “FILO Adjustment Date”). For example, if the Borrower delivers the Compliance Certificate and accompanying financial statements for the Fiscal Quarter ending July 29, 2023 during the month of September 2023, then any applicable Level change would be implemented on the first calendar day in October 2023.

Notwithstanding the foregoing, (x) if the Borrower fails to deliver the financial statements and the related Compliance Certificate necessary to determine the relevant Level under the pricing grid by the date required under this Agreement with respect to any Test Period, then at the FILO Documentation Agent’s election, the FILO Applicable Margin shall be a percentage per annum equal to the applicable percentage set forth in Level II of the pricing grid above until such financial statements and Compliance Certificate are delivered (in which event any applicable Level change would be implemented on the first calendar day of the month following such delivery), and (y) no reduction to the FILO Applicable Margin shall become effective at any time when an Event of Default has occurred and is continuing.

If, as a result of any restatement of or other adjustment to the financial statements of the Borrower, the FILO Documentation Agent determines that (i) Consolidated EBITDA as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of Consolidated EBITDA would have resulted in different pricing for any period, then (1) if the proper calculation of Consolidated EBITDA would have resulted in higher pricing for such period, the Borrower shall automatically and retroactively be obligated to pay an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period unless waived by the FILO Documentation Agent, and (2) if the proper calculation of Consolidated EBITDA would have resulted in lower pricing for such period, neither the FILO Documentation Agent nor the FILO Lenders shall have any obligation to repay any interest or fees to the Borrower; *provided that* if, as a result of any restatement or other event a proper calculation of Consolidated EBITDA would have resulted in higher pricing for one or more periods and lower pricing for one or more other periods (due to the shifting of income or expenses from one period to another period or any similar reason), then the amount payable by the Borrower pursuant to the foregoing clause (1) shall be based upon the excess, if any, of the amount of interest and fees that should have been paid for all applicable periods over the amount of interest and fees paid for all such periods.

“FILO Applicable Margin EBITDA Threshold” means, for the applicable Test Period in the table below, the amount of Consolidated EBITDA corresponding to such Test Period in such table:

<u>Test Period Ending On or About</u>	<u>Consolidated EBITDA</u>
<u>July 29, 2023</u>	<u>\$126,700,000</u>
<u>October 28, 2023</u>	<u>\$123,000,000</u>
<u>February 3, 2024</u>	<u>\$113,000,000</u>
<u>May 4, 2024</u>	<u>\$114,700,000</u>
<u>August 3, 2024</u>	<u>\$116,400,000</u>
<u>November 2, 2024</u>	<u>\$117,300,000</u>
<u>February 1, 2025</u>	<u>\$121,500,000</u>
<u>May 3, 2025</u>	<u>\$122,500,000</u>
<u>August 2, 2025</u>	<u>\$123,100,000</u>
<u>November 1, 2025</u>	<u>\$125,700,000</u>
<u>January 31, 2026</u>	<u>\$130,200,000</u>
<u>May 2, 2026</u>	<u>\$131,200,000</u>
<u>August 1, 2026</u>	<u>\$131,800,000</u>
<u>October 31, 2026 and thereafter</u>	<u>\$134,600,000</u>

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

(a) the face amount of Eligible Credit Card Receivables multiplied by the FILO Credit Card Advance Rate; plus

(b) the face amount of Eligible Trade Receivables multiplied by the FILO Trade Receivables Advance Rate, net of Receivables Reserves applicable thereto; provided that unless and until the FILO Documentation Agent (A) receives a Field Examination of all Accounts arising from the sale of the Borrower’s or any Subsidiary Guarantor’s Inventory from a field examiner reasonably satisfactory to the FILO Documentation Agent in its sole discretion and establishes Receivables Reserves (if applicable) therefor in accordance with this Agreement, (B) receives such other due diligence as the FILO Agent may require in its sole discretion, and (C) determines in its sole discretion to include Eligible Trade Receivables in the FILO Borrowing Base, no Accounts shall be included in the FILO Borrowing Base pursuant to this clause (b); plus

(c) the Net Recovery Percentage of Eligible Inventory (other than, for the avoidance of doubt, Eligible Letter of Credit Inventory and Eligible In-Transit Inventory), multiplied by the FILO Inventory Advance Rate multiplied by the Cost of Eligible Inventory (other than, for the avoidance of doubt, Eligible Letter of Credit Inventory and Eligible In-Transit Inventory), net of Inventory Reserves attributable to Eligible Inventory (without duplication of Inventory Reserves in effect under the Borrowing Base); plus

(d) the Net Recovery Percentage of Eligible Letter of Credit Inventory multiplied by the FILO Letter of Credit Advance Rate, multiplied by the Cost of Eligible Letter of Credit Inventory, net of Inventory Reserves attributable to Eligible Letter of Credit Inventory (without duplication of Inventory Reserves in effect under the Borrowing Base); plus

(e) the Net Recovery Percentage of Eligible In-Transit Inventory multiplied by the FILO In-Transit Advance Rate, multiplied by the Cost of Eligible In-Transit Inventory, net of Inventory Reserves attributable to Eligible In-Transit Inventory (without duplication of Inventory Reserves in effect under the Borrowing Base); minus

(f) the then amount of all Availability Reserves (without duplication of Availability Reserves in effect under the Borrowing Base).

The FILO Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent and the FILO Documentation Agent pursuant to Section 7.4, as adjusted to give effect to Availability Reserves following such delivery (without duplication of Availability Reserves in effect under the Borrowing Base); provided, that such Availability Reserves shall not be established or changed except upon not less than three (3) Business Days' notice to the Borrower (during which period the FILO Documentation Agent shall be available to discuss any such proposed Availability Reserve with the Borrower and the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Availability Reserve no longer exists, in a manner and to the extent reasonably satisfactory to the FILO Documentation Agent); provided further that, during such three (3) Business Day period, Credit Extensions hereunder shall be subject to the Borrowing Base (including after giving effect to any new or increased FILO Deficiency Reserve) as if such new or modified Availability Reserves were given effect; provided further that no such prior notice shall be required for changes to any Availability Reserves resulting solely by virtue of mathematical calculations of the amount of the Availability Reserve in accordance with the methodology of calculation previously utilized (such as, but not limited to, rent and Customer Credit Liabilities) or if an Event of Default is continuing.

"FILO Commitment" means, with respect to each FILO Lender, the commitment of such FILO Lender to make its FILO Loan pursuant to Section 2.1(d). The initial amount of each FILO Lender's FILO Commitment is set forth on Schedule I under the caption "FILO Commitment". The aggregate amount of the FILO Commitments as of the Third Amendment Effective Date is \$100,000,000.

"FILO Credit Card Advance Rate" means 10%; provided, that such advance rate shall be reduced by 2.5% (i.e., from 10% to 7.5%) at all times when Excess Availability (calculated without giving effect to such reduction or any corresponding reduction under any other component of the FILO Borrowing Base) is less than 20% of the Global Borrowing Base.

"FILO Deficiency Reserve" means, at any time, a reserve maintained against the Borrowing Base established by the Administrative Agent (subject to Section 2.19(a)) in the amount, if any, by which the then outstanding principal amount of the FILO Loans (excluding, for this purpose, any portion of the FILO Prepayment Premium capitalized to such principal) exceeds the FILO Borrowing Base at such time.

"FILO Deficiency Reserve Correction Notice" has the meaning specified in Section 2.19(a).

“FILO Documentation Agent” has the meaning specified in the introductory paragraph to this Agreement.

“FILO Facility” means the FILO Commitments and the FILO Loans made pursuant thereto on the Third Amendment Effective Date pursuant to Section 2.1(d).

“FILO Fee Letter” means the FILO Fee Letter dated as of the Third Amendment Effective Date, between the Borrower and the FILO Documentation Agent, as amended and in effect from time to time.

“FILO In-Transit Advance Rate” means (a) during the period from September 1 of any Fiscal Year through and including November 30 of such Fiscal Year, 12.5% and (b) at all other times, 15%; provided, in each case, that such applicable advance rate shall be reduced by 2.5% (i.e., from 12.5% to 10%, or from 15% to 12.5%, as applicable) at all times when Excess Availability (calculated without giving effect to such reduction or any corresponding reduction under any other component of the FILO Borrowing Base) is less than 20% of the Global Borrowing Base.

“FILO Inventory Advance Rate” means (a) during the period from September 1 of any Fiscal Year through and including November 30 of such Fiscal Year, 17.5% and (b) at all other times, 20%; provided, in each case, that such applicable advance rate shall be reduced by 2.5% (i.e., from 17.5% to 15%, or from 20% to 17.5%, as applicable) at all times when Excess Availability (calculated without giving effect to such reduction or any corresponding reduction under any other component of the FILO Borrowing Base) is less than 20% of the Global Borrowing Base.

“FILO Lender” means each Lender that (a) has a FILO Commitment or (b) holds a FILO Loan.

“FILO Letter of Credit Advance Rate” means 15%; provided, that such advance rate shall be reduced by 2.5% (i.e., from 15% to 12.5%) at all times when Excess Availability (calculated without giving effect to such reduction or any corresponding reduction under any other component of the FILO Borrowing Base) is less than 20% of the Global Borrowing Base.

“FILO Loan” has the meaning specified in Section 2.1(d).

“FILO Maturity Date” means the earliest of (a) the Scheduled Termination Date, (b) the Revolving Credit Termination Date and (c) the date on which the Obligations become due and payable pursuant to Section 10.2.

“FILO Note” means a promissory note of the Borrower payable to the order of any FILO Lender evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the FILO Loan owing to such Lender.

“FILO Obligations” means all Obligations with respect to any FILO Loan (including the FILO Prepayment Premium, if applicable) or otherwise payable to any FILO Secured Party or otherwise in respect of the FILO Facility.

“FILO Prepayment Premium” has the meaning specified in the FILO Fee Letter.

“FILO Secured Parties” means, collectively, the FILO Documentation Agent and the FILO Lenders.

“FILO Specified Event of Default” means (a) an Event of Default under Section 10.1(a) with respect to the FILO Loans or any other FILO Obligations, (b) an Event of Default under Section 10.1(a) with respect to the Revolving Obligations as a result of failure of the Borrower to pay all such Obligations then due and owing on the Revolving Credit Termination Date, (c) an Event of Default under Section 10.1(b)(i), but only to the extent such Event of Default arises from the Loan Parties’ failure to comply with the provisions of Section 6.1, (d) an Event of Default under Section 10.1(b)(iii) or 10.1(b)(iv), but only to the extent such Event of Default arises from the Loan Parties’ failure to comply with the provisions of Section 7.4(a) or 7.4(b), and (e) an Event of Default under Section 10.1(b)(ii). Each determination of whether a FILO Specified Event of Default has occurred and is continuing shall be made without giving effect to any waiver or modification of any such provision effected pursuant to the terms hereof without the consent of the FILO Documentation Agent.

“FILO Standstill Period” means the period commencing on the date of the Administrative Agent’s and the Borrower’s receipt of written notice from the FILO Documentation Agent that a FILO Specified Event of Default has occurred and is continuing and that the FILO Documentation Agent is requesting the Administrative Agent to accelerate the FILO Obligations or otherwise commence the enforcement of remedies, and ending on the date that is (a) thirty (30) days after receipt of such notice with respect to a FILO Specified Event of Default arising under Section 10.1(a) and (b) forty-five (45) days after such receipt of such notice with respect to any other FILO Specified Event of Default.

“FILO Trade Receivables Advance Rate” means the lesser of (a) 10% and (b) such other advance rate to be determined by the FILO Documentation Agent in its sole discretion; provided, that such advance rate shall be reduced by 2.5% (i.e., from 10% (or such lower advance rate) to 7.5% (or such lower advance rate minus 2.5 percentage points) at all times when Excess Availability (calculated without giving effect to such reduction or any corresponding reduction under any other component of the FILO Borrowing Base) is less than 20% of the Global Borrowing Base.

“Financial Asset” has the meaning given to such term in Article 8 of the UCC.

“Financial Statements” means the financial statements of the Borrower and its Subsidiaries delivered in accordance with Sections 7.1(a) and 7.1(b).

“First Amendment” means that certain First Amendment to Amended and Restated Credit Agreement by and among the Borrower, the other Loan Parties party hereto, the Lenders party thereto, and the Administrative Agent dated as of the First Amendment Effective Date.

“First Amendment Effective Date” means November 25, 2020.

“First Lien Term Facility” means the credit facilities under the First Lien Term Facility Credit Agreement.

“First Lien Term Facility Administrative Agent” means Bank of America, N.A. in its capacity as administrative agent and collateral agent under the First Lien Term Facility Credit Agreement, or any successor administrative agent and collateral agent under the First Lien Term Facility Credit Agreement.

“First Lien Term Facility Credit Agreement” means that certain credit agreement dated as of October 21, 2016 among the Borrower, Holdings, the lenders party thereto and Bank of America, N.A.,

as administrative agent and collateral agent, as amended by that certain Amendment No. 1 dated as of July 21, 2017, as amended by that certain Amendment No. 2 dated as of July 7, 2021, and as further amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case as and to the extent permitted by this Agreement and the Intercreditor Agreement.

“First Lien Term Facility Documentation” means the First Lien Term Facility Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith.

“First Lien Term Facility Lenders” means the lenders from time to time party to the First Lien Term Facility Credit Agreement.

“Fiscal Quarter” means a fiscal quarter of any Fiscal Year.

“Fiscal Year” means the fiscal year of the Borrower and its Subsidiaries ending on the Saturday closest to January 31 in the following calendar year.

“Floor” means a rate per annum equal to (a) with respect to the Revolving Obligations, 0.00%, and (b) with respect to the FILO Obligations, 1.50%.

“Foreign Lender” means any Lender that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“Foreign Plan” means any material employee benefit plan, program or agreement maintained or contributed to by, or entered into with, Holdings or any Subsidiary of Holdings with respect to employees employed outside the United States (other than benefit plans, programs or agreements that are mandated by applicable Laws).

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

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to an Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding Letter of Credit Obligations to the extent that such Defaulting Lender’s Applicable Percentage of such outstanding Letter of Credit Obligations has not been reallocated pursuant to *Section 2.16(a)(iv)* or Cash Collateralized pursuant to *Section 2.16(c)*, and (b) with respect to the Swing Loan Lender, such Defaulting Lender’s Applicable Percentage of Swing Loans to the extent that such Defaulting Lender’s Applicable Percentage of Swing Loans has not been reallocated pursuant to *Section 2.16(a)(iv)* or Cash Collateralized pursuant to *Section 2.16(c)*.

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

“GAAP” means generally accepted accounting principles in the United States, as in effect from time to time; *provided, however*, that (a) accounting for leases shall be determined in accordance with generally accepted accounting principles in the United States as in effect on the Effective Date and

(b) if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof (including through the adoption of IFRS) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Requisite Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through the adoption of IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“Global Borrowing Base” means, at any time of calculation, an amount equal to the sum of the Modified Borrowing Base plus the FILO Borrowing Base.

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

“*Granting Lender*” has the meaning specified in *Section 12.2(g)*.

“*Guarantee*” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “*primary obligor*”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or monetary other obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or monetary other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness for borrowed money). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“*Guarantors*” has the meaning specified in the definition of “Collateral and Guarantee Requirement”. For avoidance of doubt, the Borrower may cause any Restricted Subsidiary that is not a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute a joinder to the Guaranty in form and substance reasonably satisfactory to the Administrative Agent, and any such Restricted Subsidiary shall be a Guarantor hereunder for all purposes.

“*Guaranty*” means (a) the guaranty made by Holdings and the other Guarantors in favor of the Administrative Agent on behalf of the Secured Parties pursuant to *clause (b)* of the definition of “*Collateral and Guarantee Requirement*,” substantially in the form of *Exhibit H*, and (b) each other guaranty and guaranty supplement delivered pursuant to *Section 8.11*.

“*Hazardous Materials*” means all explosive or radioactive substances or wastes, all substances, wastes, contaminants or pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, and radon gas, regulated pursuant to any Environmental Law.

“*Hedge Bank*” means, as of any date of determination, (a) any Person that is a Revolving Credit Lender or an Affiliate of a Revolving Credit Lender on such date or (b) any Person who (i) was a Revolving Credit Lender or an Affiliate of a Revolving Credit Lender at the time the applicable Swap Contract was entered into and who is no longer a Revolving Credit Lender or an Affiliate of a Revolving Credit Lender, (ii) is, and at all times remains, in compliance with the provisions of *Section 11.12(b)(i)*, and (iii) agrees in writing that the Agents and the other Secured Parties shall have no duty to such Person (other than the payment of any amounts to which such Person may be entitled under *Section 10.3* hereof and acknowledges that the Agents and the other Secured Parties may deal with the Loan Parties and the Collateral as they deem appropriate (including the release of any Loan Party or all or any portion of the Collateral) without notice or consent from such Person, whether or not such action impairs the ability of such Person to be repaid the Secured Obligations under the Secured Hedge Agreements) and agrees to be bound by *Sections 11.12*, in each case such Person being a party to a Secured Hedge Agreement.

“*Holdings*” has the meaning specified in the preamble to this Agreement.

~~“*Impacted Loans*” has the meaning specified in *Section 3.3(a)*.~~

“*In-Transit Advance Rate*” means (a) during the period from September 1 of any Fiscal Year through and including November 30 of such Fiscal Year, 92.5% and (b) at all other times, 90%.

“*Incremental Amendment*” has the meaning specified in *Section 2.15(a)*.

“*Incremental Availability*” has the meaning specified in *Section 2.15(a)*.

“*Incremental Facility Effective Date*” has the meaning specified in *Section 2.15(a)*.

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount (after giving effect to any prior drawings or reductions that may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable and accrued expenses payable in the ordinary course of business, (ii) any earn-out obligation and (iii) accruals for payroll and other liabilities

accrued in the ordinary course of business), to the extent that the same would be required to be shown as a long-term liability on the balance sheet for such Person prepared in accordance with GAAP;

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse, *provided* that if such Indebtedness has not been assumed by such Person, the amount of Indebtedness under this *clause (e)* shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value (as determined by such Person in good faith) of the property encumbered thereby;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests; and

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

For all purposes hereof, (x) the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Debt, (y) the amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date, and (z) loans and advances made by Loan Parties to Restricted Subsidiaries that are not Loan Parties which have a term not exceeding 364 days (inclusive of any roll over or extensions of terms) and which are made in the ordinary course of business shall not be deemed "Indebtedness" hereunder (except for purposes of Sections 9.2(c)(iv) and 9.3(d)). Notwithstanding the foregoing, Indebtedness will not include (1) contingent obligations incurred in the ordinary course of business unless and until such obligations are non-contingent, (2) earn-outs, purchase price holdbacks or similar obligations in connection with any Permitted Acquisition, (3) intercompany liabilities in the ordinary course of business, (4) Indebtedness of any direct or indirect parent company appearing on the balance sheet of such Person solely by reason of push down accounting under GAAP and (5) lease obligations other than in respect of a Capitalized Lease.

"Indemnified Liabilities" has the meaning specified in *Section 12.4*.

"Indemnitees" has the meaning specified in *Section 12.4*.

"Independent Financial Advisor" means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates.

"Information" has the meaning specified in *Section 12.17*.

"Insolvency Increase Amount" means, during any Insolvency Proceeding by or against a Loan Party, an amount equal to the result of (a) 5% of the Modified Borrowing Base, minus (b) any then outstanding Protective Advances made pursuant to clause (b) of the definition of Maximum Revolving Insolvency Amount (subject to the limitations set forth therein), whether such

Protective Advance is made prior to or during such Insolvency Proceeding; *provided* that such result shall not be less than zero.

“Insolvency Proceeding” means any case or proceeding commenced by or against a Person under any state, federal, provincial, territorial or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code or any other Debtor Relief Law, (b) the appointment of a receiver, interim receiver, monitor, trustee, liquidator, administrator, conservator, custodian or other similar Person for such Person or any part of its property, including, in the case of any Lender, the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such capacity, or (c) an assignment for the benefit of creditors.

“Intellectual Property” has the meaning specified in the Security Agreement.

“Intellectual Property Security Agreements” has the meaning specified in the Security Agreement.

“Intercompany Subordination Agreement” means an agreement executed by each Restricted Subsidiary of the Borrower, in substantially the form of *Exhibit L*.

“Intercreditor Agreement” means the intercreditor agreement dated as of May 21, 2018, among Holdings, the Borrower, the Subsidiary Guarantors, the Administrative Agent, the Collateral Agent and the Term Facility Administrative Agents, substantially in the form attached as *Exhibit K*, as amended, restated, supplemented or otherwise modified from time to time in accordance therewith and herewith.

“Interest Period” means, as to each ~~Eurodollar Rate~~ Term SOFR Loan that is a Revolving Loan, the period commencing on the date such ~~Eurodollar Rate~~ Term SOFR Loan is disbursed or converted to or continued as a ~~Eurodollar Rate~~ Term SOFR Loan and ending on the date one, ~~two~~, three or six months thereafter, ~~or to the extent consented to by each applicable Lender, twelve months (or such period of less than one month as may be consented to by each applicable Lender)~~, as selected by the Borrower in its Notice of Borrowing ~~or Notice of Conversion or Continuation~~; provided that:

(~~a~~) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the ~~immediately next~~ preceding Business Day;

(~~b~~) any Interest Period ~~(other than an Interest Period having a duration of less than one month)~~ that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(~~c~~) no Interest Period shall extend beyond the ~~applicable Scheduled~~ Revolving Credit Termination Date ~~of the Class of Loans of which the Eurodollar Rate Loan is a part.~~

Notwithstanding anything to the contrary herein, in no event shall a FILO Loan be assigned an Interest Period.

“*Inventory*” has the meaning given to such term in Article 9 of the UCC.

“*Inventory Advance Rate*” means (a) during the period from September 1 of any Fiscal Year through and including November 30 of such Fiscal Year, 92.5% and (b) at all other times, 90%.

“*Inventory Appraisal*” has the meaning specified in *Section 7.4(c)*.

“*Inventory Reserves*” means (a) such reserves as may be established from time to time by the Administrative Agent or the FILO Documentation Agent, in its Permitted Discretion, with respect to changes in the determination of the saleability, at retail, of the Eligible Inventory or which reflect such other factors as negatively affect the market value of the Eligible Inventory, (b) Shrink Reserves, and (c) contra Inventory load.

“*Investment*” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition (including without limitation by merger or otherwise) of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of the Borrower and its Restricted Subsidiaries, intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business) or (c) the purchase or other acquisition (in one transaction or a series of transactions, including without limitation by merger or otherwise) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment at any time shall be the amount actually invested (measured at the time made (which, in the case of any Investment constituting the contribution of an asset or property, shall be based on the Borrower’s good faith estimate of the fair market value of such asset or property at the time such Investment is made)), without adjustment for subsequent changes in the value of such Investment, net of any return representing a return of capital with respect to such Investment.

“*Investment Grade Rating*” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, or an equivalent rating by any other nationally recognized statistical rating agency selected by the Borrower.

“*IP Rights*” has the meaning specified in *Section 5.15*.

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

“*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 (or such later version thereof as may be in effect at the time of issuance).

“*Issue*” means, with respect to any Letter of Credit, to issue, extend the expiry of, amend, renew or increase the maximum face amount (including by deleting or reducing any scheduled decrease in such maximum face amount) of, such Letter of Credit. The terms “*Issued*”, “*Issuing*” and “*Issuance*” shall have a corresponding meaning.

“*Issuer*” means Bank of America and each other [Revolving Credit](#) Lender or Affiliate of a [Revolving Credit](#) Lender that (a) is listed on the signature pages hereof as an “Issuer” or (b) hereafter becomes an Issuer with the approval of the Administrative Agent and the Borrower by agreeing pursuant to an agreement with and in form and substance satisfactory to the Administrative Agent and the Borrower to be bound by the terms hereof applicable to Issuers (and in the case of any resignation, subject to and in accordance with *Section 12.2(h)*).

“*Issuer Documents*” means, with respect to any Letter of Credit, the Letter of Credit Request, and any other document, agreement and instrument entered into by an Issuer and the Borrower (or any of its Subsidiaries) or in favor of such Issuer and relating to such Letter of Credit.

“*Junior Financing*” means any Indebtedness that is unsecured or subordinated to the Obligations expressly by its terms (other than Indebtedness among Holdings, the Borrower and its Restricted Subsidiaries).

“*Junior Financing Documentation*” means any documentation governing any Junior Financing.

“*KPI's*” has the meaning specified in *Section 2.18*.

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

“*Landlord Lien State*” means any state in which, at any time, a landlord’s claim for rent has priority (notwithstanding any contractual provision to the contrary) by operation of applicable Law over the lien of the Collateral Agent in any of the Collateral.

“*Latest Maturity Date*” means, at any date of determination, the latest Scheduled Termination Date applicable to any Loan or Revolving Credit Commitment hereunder at such time, including the latest termination date of any Extended Revolving Credit Commitment or New Revolving Credit Commitment, as applicable, as extended in accordance with this Agreement from time to time.

“*Laws*” means, collectively, all applicable international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, 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.

“*Leases*” means, with respect to any Person, all of those leasehold estates in real property of such Person, as lessee, as such may be amended, supplemented or otherwise modified from time to time.

“*Lender*” means the Swing Loan Lender, each Revolving Credit Lender, [each FILO Lender](#) and each other financial institution or other entity that (a) is listed on the signature pages hereof as a “*Lender*” or (b) from time to time becomes a party hereto by execution of an Assignment and Assumption or, in connection with a Revolving Commitment Increase, an Incremental Amendment or, in connection with an Extended Revolving Credit Commitment or a New Revolving Credit Commitment, an Extension Amendment.

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

“*Letter of Credit*” means any Banker’s Acceptance or any letter of credit Issued (or deemed Issued) pursuant to *Section 2.4*. A Letter of Credit may be a Documentary Letter of Credit or a Standby Letter of Credit.

“*Letter of Credit Advance Rate*” means 90%.

“*Letter of Credit Borrowing*” means an extension of credit resulting from a drawing under any Letter of Credit that has not been reimbursed on the applicable Reimbursement Date or refinanced as a Revolving Loan.

“*Letter of Credit Fee*” has the meaning specified in *Section 2.12(b)*.

“*Letter of Credit Obligations*” means, at any time, the aggregate of all liabilities at such time of any Loan Party to all Issuers with respect to Letters of Credit, whether or not any such liability is contingent, including, without duplication, the sum of (a) the Reimbursement Obligations at such time and (b) the Letter of Credit Undrawn Amounts at such time.

“*Letter of Credit Reimbursement Agreement*” has the meaning specified in *clause (vi)* of the proviso to *clause (a)* of *Section 2.4*.

“*Letter of Credit Request*” has the meaning specified in *Section 2.4(c)*.

“*Letter of Credit Sublimit*” means \$125,000,000, as such amount may be increased or reduced in accordance with the provisions of this Agreement. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Commitments.

“*Letter of Credit Undrawn Amounts*” means, at any time, the aggregate undrawn face amount of all Letters of Credit outstanding at such time.

~~“*LIBOR*” has the meaning specified in the definition of Eurodollar Rate.~~

~~“*LIBOR Floor*” means 0% per annum.~~

~~“*LIBOR Replacement Date*” has the meaning specified in *Section 3.3(e)*.~~

~~“*LIBOR Screen Rate*” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).~~

~~“*LIBOR Successor Rate*” has the meaning specified in *Section 3.3(e)*.~~

~~“*LIBOR Successor Rate Conforming Changes*” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt,~~

~~the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document);~~

“*Lien*” means any mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing); *provided*, that in no event shall an operating lease in and of itself be deemed a Lien.

“*Lien Acknowledgment Agreement*” means each Collateral Access Agreement and Customs Broker/Carrier Agreement.

“*Limited Condition Acquisition*” means any Investment or acquisition (whether by way of merger, amalgamation, consolidation or other business combination or the acquisition of Equity Interests or otherwise) by the Borrower or one or more of its Restricted Subsidiaries permitted by this Agreement whose consummation is not conditioned on the availability of, or on obtaining, third party acquisition financing and which is designated as a Limited Condition Acquisition by the Borrower or such Restricted Subsidiary in writing to the Administrative Agent on or before the Transaction Agreement Date.

“*Liquidation*” means the exercise by the Collateral Agent or the Administrative Agent of those rights and remedies accorded to the Collateral Agent or the Administrative Agent under the Loan Documents and applicable Law as a creditor of the Loan Parties with respect to the realization on the Collateral, including (after the occurrence and continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Collateral Agent or the Administrative Agent, of any public, private or “going out of business” sale or other disposition of the Collateral for the purpose of liquidating the Collateral. Derivations of the word “*Liquidation*” (such as “*Liquidate*”) are used with like meaning in this Agreement.

“*Loan*” means any loan made by any Lender pursuant to this Agreement, including, without limitation, [Revolving Loans](#), [FILO Loans](#), Swing Loans and any Loans made in respect of any Revolving Commitment Increase.

“*Loan Documents*” means, collectively, this Agreement, the Revolving Credit Notes, [the FILO Notes](#), any Incremental Amendment and any Extension Amendment, the Guaranty, the [Fee Letter](#), [the FILO](#) Fee Letter, each Letter of Credit Reimbursement Agreement, the Collateral Documents, the Issuer Documents, the Ratification Agreement and each certificate, agreement or document executed by a Loan Party and delivered to the Administrative Agent or any Lender in connection with or pursuant to any of the foregoing.

“*Loan Parties*” means, collectively, (a) Holdings, (b) the Borrower and (c) each other Guarantor.

~~“*London Banking Day*” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.~~

“*Management Stockholders*” means the members of management of Holdings or any of its Subsidiaries who are investors in Holdings or any direct or indirect parent thereof.

“*Margin Stock*” has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“*Market Capitalization*” means an amount equal to (i) the total number of issued and outstanding shares of Equity Interests of Holdings or the applicable public company Parent Entity on the date of the declaration or making of the relevant Restricted Payment multiplied by (ii) the arithmetic mean of the closing prices per share of such Equity Interests for the 30 consecutive trading days immediately preceding the date of declaration or making of such Restricted Payment.

“*Master Agreement*” has the meaning specified in the definition of “*Swap Contract*.”

“*Material Adverse Effect*” means any event, circumstance or condition that has had a materially adverse effect on (a) the business, operations, assets, liabilities (actual or contingent) or financial condition of Holdings and its Subsidiaries, taken as a whole, (b) the ability of the Loan Parties (taken as a whole) to perform their respective material payment obligations under any Loan Document to which any of the Loan Parties is a party or (c) the rights and remedies of the Lenders, the Collateral Agent ~~or~~, the Administrative Agent and the FILO Documentation Agent (taken as a whole, collectively, for the Lenders and all such Agents) under the Loan Documents (taken as a whole) ~~under any Loan Document~~.

“*Material Bank Accounts*” has the meaning specified in *Section 8.12*.

“*Material Domestic Subsidiary*” means, at any date of determination, each of the Borrower’s Domestic Subsidiaries (a) whose total assets at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues for such Test Period were equal to or greater than 2.5% of the Consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; *provided* that if, at any time and from time to time after the Effective Date, Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in *clauses (a) or (b)* comprise in the aggregate more than 5.0% of Total Assets as of the end of the most recently ended Fiscal Quarter of the Borrower or more than 5.0% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for the period of four consecutive Fiscal Quarters ending as of the last day of such Fiscal Quarter, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter are required to be delivered pursuant to this Agreement (or such longer period as may be agreed by the Administrative Agent in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Domestic Subsidiaries as “Material Domestic Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of *Sections 8.11, 8.12 and 8.13* applicable to such Subsidiary. Notwithstanding anything to the contrary herein contained, the Borrower may, at any time, designate (by written notice to the Administrative Agent) a Subsidiary which would not otherwise constitute a “Material Domestic Subsidiary” as such a Material Domestic Subsidiary and shall thereupon comply with the provisions of *Sections 8.11, 8.12 and 8.13* applicable to such Subsidiary.

“*Material Foreign Subsidiary*” means, at any date of determination, each of the Borrower’s Foreign Subsidiaries (a) whose total assets at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues for such Test Period were equal to or greater than 2.5% of the Consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP.

“*Material Indebtedness*” means Indebtedness having an aggregate outstanding principal amount of \$45,000,000 or more.

“*Material Subsidiary*” means any Material Domestic Subsidiary or any Material Foreign Subsidiary.

“*Maximum Credit*” means, at any time, the lesser of (i) the Revolving Credit Commitments in effect at such time and (ii) the Borrowing Base at such time.

“*Maximum Rate*” has the meaning specified in *Section 12.24*.

“*Maximum Revolving Insolvency Amount*” means an amount equal to the sum of (a) the Borrowing Base, plus (b) Protective Advances (subject to the aggregate cap thereon in the definition of “Protective Advances”), plus (c) in addition to the Protective Advances described in the foregoing clause (b), Protective Advances (without regard to the aggregate cap thereon in the definition of “Protective Advances”) in an aggregate amount equal to the sum of (i) the aggregate amount required to fund payroll of the Loan Parties and their Subsidiaries for a two-week period and (ii) rent and charges at the Loan Parties’ distribution centers and warehouses for a one-month period, plus (d) all then outstanding Unintentional Overadvances, plus (e) the Insolvency Increase Amount, plus (f) the amount of Revolving Loans (including loans made pursuant to a Post-Petition Financing that is a Conforming Post-Petition Financing) to fund the Carve Out.

“*Modified Borrowing Base*” means the Borrowing Base (calculated without giving effect to any FILO Deficiency Reserves).

“*Modified Maximum Credit*” means, at any time, the lesser of (i) the Revolving Credit Commitments in effect at such time and (ii) the Modified Borrowing Base at such time.

“*Monthly Borrowing Base Certificate*” shall have the meaning specified in *Section 7.4(a)*.

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

“*Multiemployer Plan*” means any multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years has made or been obligated to make contributions.

“*Net Cash Proceeds*” means:

(a) with respect to the Disposition of any asset by the Borrower or any of the Restricted Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such Disposition (including any cash and 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, premium or penalty, if any, interest and other amounts on any Indebtedness that is secured by the asset subject to such Disposition and that is required to be repaid in

connection with such Disposition (other than Indebtedness under the Loan Documents or the Term Facility Documentation or any Permitted Refinancing of the Indebtedness under the Term Facility Documentation), (B) the out-of-pocket fees and expenses (including attorneys' fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees) actually incurred by the Borrower or such Restricted Subsidiary in connection with such Disposition, (C) in the case of any Disposition by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Cash Proceeds thereof (calculated without regard to this clause (C)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof, (D) taxes or distributions made pursuant to *Section 9.6(g)(i)* or *(g)(iii)* paid or reasonably estimated to be payable in connection therewith (including taxes imposed on the distribution or repatriation of any such Net Cash Proceeds), *provided* that to the extent that the actual taxes are less than such estimate, the excess shall constitute Net Cash Proceeds, and (E) any funded reserve for adjustment in respect of (x) the sale price of such asset or assets established in accordance with GAAP and (y) any liabilities associated with such asset or assets and retained by the Borrower or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, it being understood that "Net Cash Proceeds" shall include the amount of any reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in this clause (E); *provided* that, so long as no Cash Dominion Period has occurred and is continuing hereunder, no net cash proceeds calculated in accordance with the foregoing realized in any fiscal year shall constitute Net Cash Proceeds under this *clause (a)* in such fiscal year until the aggregate amount of all such net cash proceeds in such fiscal year shall exceed \$10,000,000 (and thereafter only net cash proceeds in excess of such amount shall constitute Net Cash Proceeds under this *clause (a)*); and

(b) (i) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary or any Permitted Equity Issuance by the Borrower, the excess, if any, of (A) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance over (B) the investment banking fees, underwriting discounts, commissions, costs and other out-of-pocket expenses and other customary expenses, incurred by the Borrower or such Restricted Subsidiary in connection with such incurrence or issuance and (ii) with respect to any Permitted Equity Issuance by any direct or indirect parent of the Borrower, the amount of cash from such Permitted Equity Issuance contributed to the capital of the Borrower.

"*Net Income*" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends.

"*Net Leverage Ratio*" means, with respect to any Test Period, the ratio of (a) Consolidated Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA of the Borrower for such Test Period.

"*Net Recovery Percentage*" means the fraction, expressed as a percentage, (a) the numerator of which is the amount equal to the recovery on the aggregate amount of the Inventory at such time on a "going out of business sale" basis as set forth in the most recent appraisal of Inventory received by the Administrative Agent [and the FILO Documentation Agent](#) in accordance with *Section 7.4*, net of operating expenses, liquidation expenses and commissions, and (b) the denominator of which is the applicable original cost of the aggregate amount of the Inventory subject to appraisal. The Net Recovery Percentage for any category of Inventory used in determining the Borrowing Base [and the FILO Borrowing Base](#) shall be based on the applicable percentage in the most recent appraisal conducted as set forth in *Section 7.4*.

“*New Revolving Commitment Lenders*” has the meaning specified in *Section 2.17(c)*.

“*New Revolving Credit Commitments*” has the meaning specified in *Section 2.17(c)*.

“*Non-Consenting Lender*” has the meaning specified in *Section 3.7*.

“*Non-Excluded Taxes*” means all Taxes other than Excluded Taxes and Other Taxes.

“*Non-Loan Party*” means any Subsidiary of the Borrower that is not a Loan Party.

“*Notice of Borrowing*” has the meaning specified in *Section 2.2*.

“*Notice of Conversion or Continuation*” has the meaning specified in *Section 2.11(a)*.

“*Notice of Intent to Cure*” has the meaning specified in *Section 7.2(a)*.

“*Obligations*” means all (a) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, (b) obligations of any Loan Party arising under any Secured Hedge Agreement, ~~and~~ (c) Cash Management Obligations, and (d) Bank Product Obligations. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and any of their Subsidiaries to the extent they have obligations under the Loan Documents) include the obligation (including guarantee obligations) to pay principal, interest, Letter of Credit, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document; *provided* that Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

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

“*OID*” means original issue discount.

“*Original Credit Agreement*” has the meaning specified in the introductory paragraph to this Agreement.

“*Other Taxes*” means any and all present or future stamp or documentary Taxes or any other excise or property Taxes arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document excluding, in each case, any such tax that result from an Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or other office for receiving payments under any Loan Document (an “Assignment Tax”), but only if (1) such Assignment Tax is imposed as a result of a present or former connection of the assignor or assignee and the jurisdiction imposing such Assignment Tax (other than a connection arising solely from such recipient having executed, delivered, enforced, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction specifically contemplated by, or enforced, any Loan Documents) and (2) the assignment, participation, etc., giving rise to such Assignment Tax did not take place at the request of the Borrower.

“*Outstanding Amount*” means (a) with respect to the Revolving Loans and Swing Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Loans (including any refinancing of Letter of Credit Obligations as a Revolving Loan) and Swing Loans, as the case may be, occurring on such date; and (b) with respect to any Letter of Credit Obligations on any date, the amount of such Letter of Credit Obligations on such date after giving effect to any related extension of any Letter of Credit occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding Letter of Credit Obligations (including any refinancing of outstanding Letter of Credit Obligations under related Letters of Credit or related extensions of any Letters of Credit as a Revolving Loan) or any reductions in the maximum amount available for drawing under related Letters of Credit taking effect on such date.

“*Overadvance*” means a Credit Extension to the extent that, immediately after its having been made, Excess Availability is less than zero.

“*Overnight Rate*” means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent, an Issuer, or the Swing Loan Lender, as applicable, in accordance with banking industry rules on interbank compensation.

“*Parent Entity*” has the meaning specified in Section 7.1.

“*Participant*” has the meaning specified in Section 12.2(d).

“*Participant Register*” has the meaning specified in Section 12.2(e).

“*Payment Conditions*” means, at any time of determination, that (a) (x) with respect to any Permitted Acquisition that is a Limited Condition Acquisition, no Event of Default under Section 10.1(a) or Section 10.1(f) shall have occurred and be continuing on the Transaction Agreement Date, and (y) with respect to any other Permitted Acquisition or other Specified Payment, no Event of Default exists or would arise as a result of the making of the subject Specified Payment or Permitted Acquisition, as the case may be, and (b) either (i) (x) after giving Pro Forma Effect to such Specified Payment or Permitted Acquisition, as the case may be, and for the thirty-day period immediately preceding such Specified Payment or Permitted Acquisition, as the case may be, Excess Availability shall be greater than the greater of (A) 12.5% of the Modified Maximum Credit and (B) \$40,000,000 and (y) the Consolidated Fixed Charge Coverage Ratio, in each case, as of the end of the most recently ended Test Period shall be greater than or equal to 1.0 to 1.0 after giving Pro Forma Effect to such Specified Payment or Permitted Acquisition, as the case may be as if such Specified Payment (if applicable to such calculation) had been made as of the first day of such Test Period, or (ii) after giving Pro Forma Effect to such Specified Payment or Permitted Acquisition, as the case may be, and for the thirty-day period immediately preceding such Specified Payment or Permitted Acquisition, as the case may be, Excess Availability shall be greater than 17.5% of the Modified Maximum Credit. In each case with respect to the above conditions, the Borrower shall have delivered in accordance with Section 7.2(f) hereof, to the Administrative Agent evidence reasonably satisfactory to the Administrative Agent that the conditions in the foregoing clauses (a) and (b)(i) or (ii), as applicable, have been satisfied.

“*PBGC*” means the Pension Benefit Guaranty Corporation or any successor thereto.

“*Pension Plan*” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates contributes or has an obligation to contribute, or in

the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions in the preceding five plan years.

“*Permitted Acquisition*” means the purchase or other acquisition by Holdings or any of its Restricted Subsidiaries of property and assets or businesses of any Person or of assets constituting a business unit, a line of business or division of such Person, a Store or Equity Interests in a Person that, upon the consummation thereof, will be a wholly owned Restricted Subsidiary of the Borrower (including as a result of a merger or consolidation); *provided* that, with respect to each such purchase or other acquisition:

(i) the property, assets and businesses acquired in such purchase or other acquisition shall constitute Collateral and each applicable Loan Party and any newly created or acquired Subsidiary (and, to the extent required under the Collateral and Guarantee Requirement, the Subsidiaries of such created or acquired Subsidiary) shall be Guarantors, except for any (A) Foreign Subsidiary or (B) Domestic Subsidiaries up to an acquisition amount not to exceed the greater of (i) \$55,000,000 and (ii) 2.50% of Total Assets in the aggregate for all such Domestic Subsidiaries, and shall have complied with the requirements of *Section 8.11, 8.12 and 8.13*, within the times specified therein (for the avoidance of doubt, this *clause (i)* shall not override any provisions of the Collateral and Guarantee Requirement); *provided* that the formation of any Subsidiary that is a Division Successor shall be deemed to constitute the acquisition of a Restricted Subsidiary for all purposes of this definition;

(ii) the Borrower shall have delivered to the Administrative Agent, on behalf of the Lenders, no later than five (5) Business Days before the date on which any such purchase or other acquisition is consummated, a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in this definition have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition; and

(iii) the Borrower is in compliance, on a pro forma basis after giving effect to such transaction, with the Payment Conditions.

“*Permitted Discretion*” means a determination made by the Administrative Agent, [the FILO Documentation Agent](#) or the Collateral Agent (as applicable) in good faith in the exercise of its reasonable (from the perspective of an asset-based lender) business judgment.

“*Permitted Equity Issuance*” means any sale or issuance of any Qualified Equity Interests of the Borrower or any direct or indirect parent of the Borrower, in each case to the extent permitted hereunder.

“*Permitted Holder*” means any of (a) the Sponsor, (b) the Management Stockholders and (c) the Co-Investors.

“*Permitted Refinancing*” means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium (including tender premiums) thereon plus fees and expenses (including upfront fees and OID) reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to *Sections 9.3(b) and (e)*, such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a

Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) [reserved], (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, (i) such modification, refinancing, refunding, renewal, replacement or extension shall be subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended, (ii) the terms and conditions (excluding as to subordination, pricing, premiums and optional prepayment or redemption provisions) of any such modified, refinanced, refunded, renewed or extended Indebtedness, taken as a whole, are not materially less favorable to the Loan Parties or the Lenders than the terms and conditions of the Indebtedness being modified, refinanced, refunded, renewed or extended; *provided* that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such five Business Day period that it disagrees with such determination (including a description of the basis upon which it disagrees) and (iii) such modification, refinancing, refunding, renewal or extension is incurred by the Person who is the obligor of the Indebtedness being modified, refinanced, refunded, renewed or extended and no additional obligors become liable for such Indebtedness, and (e) in the case of any Permitted Refinancing in respect of any Term Facility, such Permitted Refinancing is secured only by assets pursuant to one or more security agreements permitted by and subject to the Intercreditor Agreement (or another intercreditor agreement containing terms that are at least as favorable to the Secured Parties as those contained in the Intercreditor Agreement).

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

“*Plan*” means any material “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates.

“*Platform*” has the meaning specified in *Section 7.2*.

“*Pledged Debt*” has the meaning specified in the Security Agreement.

“*Pledged Equity*” has the meaning specified in the Security Agreement.

~~“*Pre-Adjustment Successor Rate*” has the meaning specified in *Section 3.3(e)*.~~

“*Post-Petition Financing*” means, in connection with any Insolvency Proceeding with respect to a Loan Party, the consensual use of cash collateral by, or the provision of financing or financial accommodations to, such Loan Party (including, in either event, all of the terms and conditions established and/or approved in connection with the consensual use of cash collateral, financing or financial accommodations).

“*Pro Forma Basis*” and “*Pro Forma Effect*” mean, with respect to compliance with any test or covenant or calculation hereunder, or the calculation of Consolidated EBITDA hereunder, the determination or calculation of such test, covenant, ratio or Consolidated EBITDA (including in connection with Specified Transactions) in accordance with *Section 1.8*.

“*Proceeds*” has the meaning given to such term in Article 9 of the UCC.

“Projections” shall have the meaning specified in *Section 7.1(d)*.

“Protective Advances” means an Overadvance made or deemed to exist by the Administrative Agent, in its discretion, which:

- (a) is made to maintain, protect or preserve the Collateral and/or the Loan Parties’ rights under the Loan Documents or which is otherwise for the benefit of the Loan Parties; or
- (b) is made to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation; or
- (c) is made to pay any other amount chargeable to any Loan Party hereunder; and
- (d) together with all other Protective Advances then outstanding, shall not (i) exceed ~~ten~~the greater of five percent (~~10~~5%) of the Modified Borrowing Base and \$20,000,000 at any time or (ii) unless a Liquidation is taking place, remain outstanding for more than forty-five (45) consecutive Business Days, unless in each case, the Requisite Revolving Credit Lenders and the FILO Documentation Agent otherwise agree;

provided however, that the foregoing shall not (i) modify or abrogate any of the provisions regarding the Revolving Credit Lenders’ obligations with respect to Letters of Credit or with respect to Swing Loans, or (ii) result in any claim or liability against the Administrative Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances, and such Unintentional Overadvances shall not reduce the amount of Protective Advances allowed hereunder.

“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 Company Costs” means costs relating to compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to Holdings’ status (or any relevant Parent Entity’s status) as a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act, the rules of securities exchange companies with listed equity securities, directors’ compensation, fees and expense reimbursement, shareholder meetings and reports to shareholders, directors’ and officers’ insurance and other executive costs, legal and other professional fees, and listing fees.

“Public Lender” has the meaning specified in *Section 7.2*.

“Purchase Date” has the meaning specified in *Section 10.12(a)*.

“Purchase Notice” has the meaning specified in *Section 10.12(a)*.

“Purchase Option Event” means the occurrence of any of the following: (a) the Administrative Agent shall notify the FILO Documentation Agent of its intention to (by itself or at the direction of the Requisite Lenders) sell, lease or otherwise dispose of all or substantially all of the Collateral whether by private or public sale or to release any Loan Party from its Obligations under this Agreement, in each case in accordance with the last paragraph of *Section 12.1*, (b) the Administrative Agent shall consent to any Liquidation of all or substantially all of the Current Asset Collateral (or if any such Liquidation is otherwise commenced or is the subject of a binding

agreement among any Loan Party and a liquidator), (c) any FILO Specified Event of Default shall occur, (d) any Event of Default under Section 10.1(f) shall occur, (e) any Event of Default under Section 10.1(b)(i) shall occur, but only to the extent (x) such Event of Default arises from the Loan Parties' failure to comply with the provisions of Section 9.1, Section 9.3, Section 9.4 or Section 9.5 (in each case, as in effect on the Third Amendment Effective Date) and (y) such Event of Default has not been waived or cured within thirty (30) days, (f) any Event of Default under Section 10.1(b)(v) shall occur, but only to the extent (x) such Event of Default arises from the Loan Parties' failure to comply with the provisions of Section 7.4(c) or (d) and (y) such Event of Default has not been waived or cured within thirty (30) days, or (g) any assignment by the Revolving Credit Lenders, after giving effect to which more than twenty-five percent (25%) of the aggregate Revolving Credit Exposure will be held by one or more Persons (together with each such Person's Affiliates and Approved Funds with respect to such Person) that is not a financial institution regulated by the Federal Reserve Board. The Administrative Agent shall endeavor to notify the FILO Documentation Agent of any Purchase Option Event arising under the foregoing clause (b) or clause (g).

"Purchasing Creditors" has the meaning specified in Section 10.12(a).

"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 specified in Section 12.30.

"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 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.

"Qualified Equity Interests" means any Equity Interests that are not Disqualified Equity Interests.

"Qualified Holding Company Debt" means unsecured Indebtedness of Holdings (A) that is not subject to any Guarantee by any Subsidiary of Holdings, (B) that will not mature prior to the date that is six (6) months after the Latest Maturity Date in effect on the date of issuance or incurrence thereof, (C) that has no scheduled amortization of principal and is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligation (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemption provisions satisfying the requirements of clause (E) below), (D) that does not require any payments in cash of interest or other amounts in respect of the principal thereof prior to the earlier to occur of (1) the date that is four (4) years from the date of the issuance or incurrence thereof and (2) the date that is ninety-one (91) days after the Latest Maturity Date in effect on the date of such issuance or incurrence, and (E) that has mandatory prepayment, repurchase or redemption, covenant, default and remedy provisions customary for senior discount notes of an issuer that is the parent of a borrower under senior secured credit facilities, and in any event, with respect to covenant, default and remedy provisions, no more restrictive (taken as a whole) than those set forth in this Agreement (other than provisions customary for senior discount notes of a holding company); *provided* that the Borrower shall have delivered a certificate of a Responsible Officer to the Administrative Agent at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement (and such certificate shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the

Borrower within such five (5) Business Day period that it disagrees with such determination (including a description of the basis upon which it disagrees)); *provided further* that any such Indebtedness shall constitute Qualified Holding Company Debt only if immediately after giving effect to the issuance or incurrence thereof and the use of proceeds thereof, no Event of Default shall have occurred and be continuing.

“*Qualifying IPO*” means the first offering and sale by Holdings, any direct or indirect parent of Holdings or any Permitted Holder of the common Equity Interests of Holdings or any direct or indirect parent of Holdings in an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act.

“*Quarterly Financial Statements*” means the unaudited Consolidated balance sheets and related statements of income, and cash flows of the Borrower and its Subsidiaries for the most recent Fiscal Quarters after the date of the Annual Financial Statements (other than the fourth Fiscal Quarter of the Borrower’s Fiscal Year) and ended at least forty-five (45) days before the First Amendment Effective Date (and the corresponding period of the prior Fiscal Year).

“*Ratable Portion*”, “*Pro Rata Share*”, “*ratable share*” or (other than in the expression “equally and ratably”) “*ratably*” means, ~~(a)~~ with respect to any Revolving Credit Lender, the percentage obtained by dividing ~~(a)~~ the Revolving Credit Commitment of such Class of such Lender by ~~(b)(i)~~ the aggregate Revolving Credit Commitments of all Lenders of such Class (or, at any time after the Revolving Credit Termination Date, the percentage obtained by dividing the aggregate outstanding principal balance of the Revolving Credit Outstandings of such Class owing to such Lender by the aggregate outstanding principal balance of the Revolving Credit Outstandings owing to all Lenders of such Class); ~~and (b) with respect to any FILO Lender, the percentage obtained by dividing (i) the aggregate outstanding principal balance of the FILO Loans owing to such Lender by (ii) the aggregate outstanding principal balance of the FILO Loans owing to all FILO Lenders.~~

“*Ratification Agreement*” means the Confirmation and Ratification Agreement dated as of the ~~First~~Third Amendment Effective Date by and among the Loan Parties and the Administrative Agent.

“*Receivables Reserves*” means such Reserves as may be established from time to time by the Administrative Agent (or, if Eligible Trade Receivables are included in the FILO Borrowing Base, the FILO Documentation Agent) in its Permitted Discretion with respect to the determination of the collectability in the ordinary course of Eligible Trade Receivables, including, without limitation, Dilution Reserves.

“*Recovery*” has the meaning specified in Section 10.8.

“*Register*” has the meaning specified in Section 12.2(c).

“*Reimbursement Date*” has the meaning specified in Section 2.4(h).

“*Reimbursement Obligations*” means, as and when matured, the obligation of any Loan Party to pay, on the date payment is made or scheduled to be made to the beneficiary under each such Letter of Credit (or at such other date as may be specified in the applicable Letter of Credit Reimbursement Agreement) and in the currency drawn (or in such other currency as may be specified in the applicable Letter of Credit Reimbursement Agreement), all amounts of each drafts and other requests

for payments drawn under Letters of Credit, and all other matured reimbursement or repayment obligations of any Loan Party to any Issuer with respect to amounts drawn under Letters of Credit.

~~“Related Adjustment” means, in determining any LIBOR Successor Rate, the first relevant available alternative set forth in the order below that can be determined by the Administrative Agent applicable to such LIBOR Successor Rate:~~

~~(A) the spread adjustment, or method for calculating or determining such spread adjustment, that has been selected or recommended by the Relevant Governmental Body for the relevant Pre-Adjustment Successor Rate (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto) and which adjustment or method (x) is published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion or (y) solely with respect to Term SOFR, if not currently published, which was previously so recommended for Term SOFR and published on an information service acceptable to the Administrative Agent; or~~

~~(B) the spread adjustment that would apply (or has previously been applied) to the fallback rate for a derivative transaction referencing the ISDA Definitions (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto);~~

“Related Indemnified Person” of an Indemnatee means (a) any controlling person or controlled affiliate of such Indemnatee, (b) the respective directors, officers, or employees of such Indemnatee or any of its controlling persons or controlled affiliates and (c) the respective agents of such Indemnatee or any of its controlling persons or controlled affiliates, in the case of this *clause (c)*, acting at the instructions of such Indemnatee, controlling person or such controlled affiliate; *provided* that each reference to a controlled affiliate or controlling person in this definition shall pertain to a controlled affiliate or controlling person involved in the negotiation or syndication of ~~the any Revolving~~ Facility, the FILO Facility, any Term Facility or any Junior Financing.

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

~~“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York;~~

“Reportable Event” means, with respect to any Pension Plan, any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

“Requisite Lenders” means, collectively, Lenders having more than fifty percent (50%) of the sum of (a) the aggregate outstanding amount of the Revolving Credit Commitments (or, after the Revolving Credit Termination Date, more than fifty percent (50%) of the aggregate Revolving Credit Outstandings) plus (b) the aggregate outstanding amount of the FILO Commitments (or, after the making of the FILO Loans on the Third Amendment Effective Date, the aggregate outstanding principal amount of the FILO Loans); *provided* that the unused Revolving Credit Commitment of, and

the portion of the Revolving Loans and outstanding Letters of Credit held or deemed held by, any Defaulting Lender or Disqualified Institution shall be excluded for purposes of making a determination of Requisite Lenders; provided further that for purposes of determining any consent, request, direction or other action of Requisite Lenders, such consent, request, direction or other action of the FILO Documentation Agent shall be binding upon and deemed to be a consent, request, direction or other action of each FILO Lender.

“Requisite Revolving Credit Lenders” means, collectively, Revolving Credit Lenders having more than fifty percent (50%) of the aggregate outstanding amount of the Revolving Credit Commitments (or, after the Revolving Credit Termination Date, the aggregate Revolving Credit Outstandings); provided that the unused Revolving Credit Commitment of, and the portion of the Revolving Loans and outstanding Letters of Credit held or deemed held by, any Defaulting Lender or Disqualified Institution shall be excluded for purposes of making a determination of Requisite Revolving Credit Lenders.

“Rescindable Amount” has the meaning specified in Section 2.13(e).

“Resolution Authority” 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, treasurer or controller of a Loan Party, solely for purposes of the delivery of incumbency certificates, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any of its Restricted Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Borrower’s or Holdings’ stockholders, partners or members (or the equivalent Persons thereof) other than (i) the payment of compensation in the ordinary course of business to holders of any such Equity Interests who are employees or service providers of Holdings (or any direct or indirect parent thereof) or any Subsidiary solely in their capacity as employees or service providers and (ii) other than payments of intercompany indebtedness permitted under this Agreement, unless such payments are made in the form of dividends or other distributions that would otherwise be classified as Restricted Payments hereunder.

“Restricted Subsidiary” means any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

“Revolving Commitment Increase” has the meaning specified in Section 2.15(a).

“Revolving Commitment Increase Lender” has the meaning specified in Section 2.15(a).

“*Revolving Credit Commitment*” means, with respect to each Revolving Credit Lender, the commitment of such Lender to make Revolving Loans and acquire interests in other Revolving Credit Outstandings expressed as an amount representing the maximum principal amount of the Revolving Loans to be made by such Lender under this Agreement, as such commitment may be (a) reduced from time to time pursuant to this Agreement and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Lender pursuant to an Assignment and Assumption, (ii) a Revolving Commitment Increase, (iii) a New Revolving Credit Commitment or (iv) an Extension. The initial amount of each Revolving Credit Lender’s Revolving Credit Commitment is set forth on *Schedule I* under the caption “*Revolving Credit Commitment*,” as amended to reflect each Assignment and Assumption, Incremental Amendment or Extension Amendment, in each case executed by such Lender. The aggregate amount of the Revolving Credit Commitments as of the ~~First~~Third Amendment Effective Date is \$500,000,000.

“*Revolving Credit Exposure*” means, as to each Revolving Credit Lender, the sum of the Outstanding Amount of such Lender’s Revolving Loans (including any Protective Advances), its Pro Rata Share of the Letter of Credit Obligations and its Pro Rata Share of the Swing Loan Obligations at such time.

“*Revolving Credit Lender*” means each Lender that (a) has a Revolving Credit Commitment, (b) holds a Revolving Loan or (c) participates in any Letter of Credit.

“*Revolving Credit Note*” means a promissory note of the Borrower payable to the order of any Revolving Credit Lender in a principal amount equal to the amount of such Lender’s Revolving Credit Commitment evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Revolving Loans of a given Class owing to such Lender.

“*Revolving Credit Outstandings*” means, at any particular time, the sum of (a) the principal amount of the Loans (other than FILO Loans) outstanding at such time, (b) the Letter of Credit Obligations outstanding at such time and (c) the principal amount of the Swing Loans outstanding at such time.

“*Revolving Credit Termination Date*” means the earliest of (a) the Scheduled Termination Date, (b) the date of termination of all of the Revolving Credit Commitments pursuant to *Section 2.5* and (c) the date on which the Obligations become due and payable pursuant to *Section 10.2*.

“*Revolving Facility*” means the Revolving Credit Commitments and the provisions herein related to the Revolving Loans, Swing Loans and Letters of Credit, Loans under Extended Revolving Credit Commitments and Loans under New Revolving Credit Commitments.

“*Revolving Loan*” has the meaning specified in *Section 2.1(a)*.

“*Revolving Obligations*” means all Obligations other than FILO Obligations.

“*Revolving ~~Loan~~*” ~~has the meaning specified in *Section 2.1(a)*~~*Secured Parties*” means all Secured Parties other than the FILO Secured Parties.

“*S&P*” means Standard & Poor’s Rating Services and any successor thereto.

“*Same Day Funds*” means disbursements and payments in immediately available funds.

“*Sanctioned Person*” has the meaning specified in *Section 5.17*.

“*Sanctions*” means any sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, ~~Her~~His Majesty’s Treasury (“*HMT*”) or other relevant sanctions authority.

“*Scheduled Termination Date*” means the date that is five (5) years after the Second Amendment Effective Date, as may be extended (solely with respect to the extending Class) pursuant to *Section 12.1(b)* or *Section 2.17* ~~hereof~~, provided that, in each case, if such day is not a Business Day, the Scheduled Termination Date shall be the Business Day immediately preceding such day.

“*Scheduled Unavailability Date*” has the meaning specified in *Section 3.3* ~~(eb)~~.

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

“*Second Amendment Effective Date*” means December 22, 2021.

“*Secured Bank Product Agreement*” means any Bank Product Agreement that is entered into by and between any Loan Party and any Bank Product Bank.

“*Secured Cash Management Agreement*” means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

“*Secured Hedge Agreement*” means any Swap Contract permitted under *Section 9.3(f)* that is entered into by and between any Loan Party ~~or any Restricted Subsidiary~~ and any Hedge Bank and designated in writing by the Hedge Bank and the Borrower to the Administrative Agent as a “*Secured Hedge Agreement*.”

“*Secured Obligations*” means, in the case of the Borrower, the Obligations and, in the case of any other Loan Party, the obligations of such Loan Party under the Guaranty and the other Loan Documents to which it is a party.

“*Secured Parties*” means, collectively, the Lenders, the Issuers, the Administrative Agent, the Collateral Agent, the FILO Documentation Agent, each Hedge Bank, each Cash Management Bank, each Bank Product Bank and each co-agent or sub-agent (if any) appointed by the Administrative Agent from time to time pursuant to *Section 11.5*.

“*Securities Account*” means all securities accounts of any Loan Party, including “securities accounts” within the meaning given to such term in Article 8 of the UCC.

“*Securities Account Control Agreement*” means an effective securities account control agreement with an Approved Securities Intermediary, in each case in form and substance reasonably satisfactory to the Administrative Agent.

“*Securities Act*” means the Securities Act of 1933, as amended.

“*Security*” means any Equity Interest, voting trust certificate, bond, debenture, note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, but shall not include any evidence of the Obligations.

“*Security Agreement*” means, collectively, the Security Agreement executed by the Loan Parties, substantially in the form of *Exhibit I*, together with each Security Agreement Supplement executed and delivered pursuant to *Section 8.11*.

“*Security Agreement Supplement*” has the meaning specified in the Security Agreement.

“*Shrink Reserve*” means an amount reasonably estimated by the Administrative Agent or the FILO Documentation Agent to be equal to that amount which is required in order that the shrink reflected in current books and records of the Borrower and its Restricted Subsidiaries would be reasonably equivalent to the shrink calculated as part of the Borrower’s and its Restricted Subsidiaries most recent physical Inventory (it being understood and agreed that no Shrink Reserve established by the Administrative Agent or the FILO Documentation Agent shall be duplicative of any shrink as so reflected in the current books and records of the Borrower and its Restricted Subsidiaries or estimated by the Borrower for purposes of computing the Borrowing Base and the FILO Borrowing Base).

~~“SOFR” with respect to any Business Day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source) at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day and, in each case, that has been selected or recommended by the Relevant Governmental Body.~~

“SOFR” means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“SOFR Adjustment” with respect to Daily Simple SOFR and Term SOFR means (a) with respect to the Revolving Obligations, 0.10% (10.00 basis points) per annum, and (b) with respect to the FILO Obligations, zero.

“*Solvent*” and “*Solvency*” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person exceeds its debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of such Person is greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and (d) such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“*SPC*” has the meaning specified in *Section 12.2(g)*.

“*Specified Event of Default*” means any Event of Default (a) of the type described in *Section 10.1(a)*, *10.1(b)(i)(A)*, *10.1(b)(ii)*, *10.1(b)(iii)*, *10.1(d)* (with respect to any Borrowing Base Certificate) or *10.1(f)*.

“*Specified Loan Party*” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to *Section 12.28*).

“*Specified Payment*” means any Investment, incurrence of Indebtedness, Restricted Payment or payment made pursuant to ~~Section~~Sections 2.8 or 9.11 that in each case is subject to the satisfaction of the Payment Conditions.

“*Specified Representations*” shall mean those representations and warranties made by the Borrower in *Sections 5.1(a)* (with respect to organizational existence only), *5.1(b)(ii)*, *5.2(a)*, *5.2(b)(i)*, *5.2(b)(iii)*, *5.4*, *5.13*, *5.16*, *5.18* and *5.19*.

“*Specified Transaction*” means any Investment that results in a Person becoming a Restricted Subsidiary, any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, any Permitted Acquisition, any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower, any Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person or a Store or any Disposition of a business unit, line of business or division or a Store of the Borrower or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise, incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), and any Restricted Payment or Revolving Commitment Increase that by the terms of this Agreement requires such test to be calculated on a “Pro Forma Basis” or after giving “Pro Forma Effect.”

“*Sponsor*” means Leonard Green & Partners, L.P. and any of its Affiliates and funds or partnerships managed or advised by it or any of its Affiliates but not including, however, any portfolio company of any of the foregoing.

“*Sponsor Management Agreement*” means the management agreement between certain of the management companies associated with the Sponsor or its advisors and Holdings and the Borrower, as the same may be amended, modified, supplemented or otherwise modified from time to time in accordance with its terms, but only to the extent that any such amendment, modification, supplement or other modification does not, directly or indirectly, increase the obligation of Holdings, the Borrower or any of its Restricted Subsidiaries to make any payments thereunder.

“*Sponsor Termination Fees*” means the one-time payment under the Sponsor Management Agreement of a termination fee to one or more of the Sponsors in the event of either a Change of Control or the completion of a Qualifying IPO.

“*Standby Letter of Credit*” means any Letter of Credit that is not a Documentary Letter of Credit.

“*Stated Amount*” means at any time the maximum amount for which a Letter of Credit may be honored.

“*Store*” means any retail store (which includes any real property, fixtures, equipment, Inventory and other property related thereto) operated, or to be operated, by the Borrower or any Restricted Subsidiary.

“*Store Accounts*” means Deposit Accounts established for the purpose of receiving receipts from a Store location of a Loan Party.

“*Subsidiary*” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (excluding, for the avoidance of doubt, charitable foundations) 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 the Borrower.

“*Subsidiary Guarantor*” means any Guarantor other than Holdings.

“*Successor Borrower*” has the meaning specified in *Section 9.4(d)*.

“*Successor Rate*” has the meaning specified in *Section 3.3(b)*.

“*Supermajority Revolving Credit Lenders*” means, collectively, **Revolving Credit** Lenders having more than 66.67% of the aggregate outstanding amount of the Revolving Credit Commitments or, after the Revolving Credit Termination Date, more than 66.67% of the aggregate Revolving Credit Outstandings; *provided* that the unused Revolving Credit Commitment of, and the portion of the Loans and outstanding Letters of Credit held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Supermajority **Revolving Credit** Lenders.

“*Supported QFC*” has the meaning specified in *Section 12.30*.

“*Sustainability Coordinator*” has the meaning specified in *Section 2.18*.

“*Sustainability Linked Loan Principles*” means the Sustainability Linked Loan Principles as most recently published by the Loan Market Association and Loan Syndications & Trading Association.

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

“*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.

“*Swap Obligations Reserve*” shall mean the aggregate amount of reserves established by the Administrative Agent or the FILO Documentation Agent from time to time in its Permitted Discretion in respect of Secured Hedge Agreements.

“*Swap Termination Value*” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap

Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in *clause (a)*, the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“*Swing Loan*” has the meaning specified in *Section 2.3(a)*.

“*Swing Loan Lender*” means Bank of America in its capacity as the Swing Loan Lender hereunder.

“*Swing Loan Obligations*” means, as at any date of determination, the aggregate Outstanding Amount of all Swing Loans.

“*Swing Loan Request*” has the meaning specified in *Section 2.3(b)*.

“*Swing Loan Sublimit*” means the lesser of (a) \$30,000,000 and (b) the aggregate principal amount of the Revolving Credit Commitments. The Swing Loan Sublimit is part of, and not in addition to, the Revolving Credit Commitments.

“*Taxes*” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, imposed by any Governmental Authority, including any interest, additions to tax and penalties applicable thereto.

“*Tax Indemnitee*” has the meaning specified in *Section 3.1(e)*.

“*Term Facilities*” means the First Lien Term Facilities.

“*Term Facility Administrative Agents*” means the First Lien Term Facility Administrative Agent.

“*Term Facility Credit Agreements*” means the First Lien Term Facility Credit Agreement.

“*Term Facility Documentation*” means the First Lien Term Facility Documentation.

“*Term Facility Lenders*” means the First Lien Term Facility Lenders.

“Term SOFR” means:

(c) for any Interest Period with respect to a Term SOFR Loan that is a Revolving Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published prior to 11:00 a.m. (New York City time) on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, plus the SOFR Adjustment for such Interest Period;

(d) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day; and

(e) for any interest calculation with respect to a Term SOFR Loan that is a FILO Loan, for any day in any calendar month, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the first day of such calendar month with a term of one month; provided that if the rate is not published prior to 11:00 a.m. (New York City time) on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto with a term of one month.

provided that if Term SOFR determined in accordance with any of the foregoing clauses (a), (b) or (c) of this definition would otherwise be less than the applicable Floor, Term SOFR shall be deemed to be the applicable Floor for purposes of this Agreement. The Floor shall be determined separately for the Revolving Obligations and the FILO Obligations, as set forth in the definition of "Floor".

"Term SOFR Loan" means a Loan that bears interest at a rate based on clause (a) or (c) of the definition of Term SOFR.

"Term SOFR Replacement Date" has the meaning specified in Section 3.3(b).

"Term SOFR Screen Rate" means the forward-looking SOFR term rate for any period that is approximately (as determined by administered by CME (or any successor administrator satisfactory to the Administrative Agent) as long as any of the Interest Period options set forth in the definition of "Interest Period" and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time in its reasonable discretion).

"Test Period" in effect at any time means the most recent period of four consecutive Fiscal Quarters of the Borrower ended on or prior to such time (taken as one accounting period) for which financial statements are available after the use of commercially reasonable efforts by the Borrower to provide same. A Test Period may be designated by reference to the last day thereof (i.e., the "January 29, 2021 Test Period" refers to the period of four consecutive Fiscal Quarters of the Borrower ended January 29, 2021), and a Test Period shall be deemed to end on the last day thereof.

"Threshold Amount" means \$45,000,000.

"Third Amendment Effective Date" means March 10, 2023.

"Total Assets" means the total assets of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Borrower delivered pursuant to Sections 7.1(a) or 7.1(b).

"Trade Receivables Advance Rate" means 85%.

"Transaction Agreement Date" has the meaning specified in Section 1.9.

"Type" means, with respect to a Loan, its character as a Base Rate Loan or a ~~Eurodollar Rate~~ Term SOFR Loan.

"UCC" means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or

any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“*UK Financial Institutions*” any BRRD Undertaking (as defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person subject to 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*” the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“*Unintentional Overadvance*” means an Overadvance which, to the Administrative Agent’s knowledge, did not constitute an Overadvance when made but which has become an Overadvance resulting from changed circumstances beyond the control of the Administrative Agent, the Issuers and the Lenders, including, without limitation, the imposition of (or increase in) the FILO Deficiency Reserve, a reduction in the Net Recovery Percentage of property or assets included in the Borrowing Base or the FILO Borrowing Base or misrepresentation by the Loan Parties.

“*United States*” and “*U.S.*” mean the United States of America.

“*United States Tax Compliance Certificate*” has the meaning given to such term in *Section 3.1(c)*.

“*Unrestricted Subsidiary*” means any Subsidiary of the Borrower designated by the board of directors of the Borrower as an Unrestricted Subsidiary pursuant to *Section 8.3* subsequent to the Effective Date, in each case, until such Person ceases to be an Unrestricted Subsidiary of the Borrower in accordance with *Section 8.3* or ceases to be a Subsidiary of the Borrower; *provided that* no Subsidiary may be designated as an Unrestricted Subsidiary unless none of its assets are included in the calculation of Borrowing Base and the FILO Borrowing Base immediately prior to such Subsidiary’s being designated as an Unrestricted Subsidiary.

“*Unused Commitment Fee*” has the meaning specified in *Section 2.12(a)*.

“*U.S. Government Securities Business Day*” means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

“*U.S. Lender*” means any Lender that is a “United States person” within the meaning of *Section 7701(a)(30)* of the Code.

“*U.S. Special Resolution Regimes*” has the meaning specified in *Section 12.30*.

“*USA PATRIOT Act*” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“*Weekly Monitoring Event*” means (a) a Specified Event of Default has occurred and is continuing or (b) the Borrower has failed to maintain, for five (5) consecutive Business Days, Excess

Availability of the greater of (i) \$35,000,000 and (ii) 12.5% of the Modified Maximum Credit; *provided* that a Weekly Monitoring Event shall be deemed continuing until the date on which, as applicable, in the case of the foregoing *clause (a)*, such Specified Event of Default is cured in accordance with *Section 10.4* or waived in accordance with *Section 12.1*, or, in the case of the foregoing *clause (b)*, Excess Availability has been greater than or equal to the greater of (i) \$35,000,000 and (ii) 12.5% of the Modified Maximum Credit, in each case under *clauses (i) and (ii)*, for at least twenty (20) consecutive calendar days.

“*Weighted Average Life to Maturity*” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (b) the then outstanding principal amount of such Indebtedness; *provided*, that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being modified, refinanced, refunded, renewed, replaced or extended (the “*Applicable Indebtedness*”), the effects of any prepayments or amortization made on such Applicable Indebtedness prior to the date of the applicable modification, refinancing, refunding, renewal, replacement or extension shall be disregarded.

“*Wholly-Owned Subsidiary*” of a Person means a Subsidiary of such Person, all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) nominal shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more Wholly-Owned Subsidiaries of such Person.

“*Withdrawal Liability*” means the liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such term is defined in Part I of Subtitle E of Title IV of ERISA.

“*Write-Down and Conversion Powers*” (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of ~~the applicable~~ 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; or (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 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) (i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) References in this Agreement to an Exhibit, Schedule, Article, Section, clause or sub-clause refer (A) to the appropriate Exhibit or Schedule to, or Article, Section, clause or sub-clause in this Agreement or (B) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears.

(iii) The term “including” is by way of example and not limitation, except when used in the computation of time periods.

(iv) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(v) Unless otherwise expressly indicated herein, the words “above” and “below”, when following a reference to a clause or a sub-clause of any Loan Document, refer to a clause or sub-clause within, respectively, the same Section or clause.

(c) The terms “Lender,” “Swing Loan Lender,” “Issuer,” “Administrative Agent” ~~and~~, “Collateral Agent” and “FILO Documentation Agent” include, without limitation, their respective successors.

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

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

(f) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in Dollars in full in cash or immediately available funds (or, in the case of contingent reimbursement obligations with respect to Letters of Credit, providing Cash Collateralization) of all of the Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Swap Contracts) other than (i) unasserted contingent indemnification Obligations, and any Obligations relating to Swap Contracts that, at such time, are allowed by the applicable Hedge Bank to remain outstanding without being required to be repaid.

(g) Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

SECTION 1.3 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with,

GAAP, except as otherwise specifically prescribed herein. For purposes of calculating any consolidated amounts necessary to determine compliance by any Person and, if applicable, its Restricted Subsidiaries with any ratio or other financial covenant in this Agreement, Unrestricted Subsidiaries shall be excluded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Requisite Lenders shall so request, the Administrative Agent, the Lenders and the 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 Requisite Lenders); *provided* that, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Annual Financial Statements 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 1.4 Rounding.

Any financial ratios required to be satisfied in order for a specific action to be permitted under 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).

SECTION 1.5 Letter of Credit Amounts.

Unless otherwise specified, all references herein to 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 of any Issuer Documents 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 1.6 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Constituent Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all appendices, exhibits and schedules thereto and all subsequent amendments, restatements, extensions, supplements and other modifications thereto (but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by any Loan Document); and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

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

SECTION 1.8 Pro Forma Calculations; Reclassification; IP Matters.

(a) Notwithstanding anything to the contrary herein, Consolidated EBITDA and any financial ratio or test, including the Net Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio shall be calculated in the manner prescribed by this *Section 1.8*; *provided* that, notwithstanding anything to the contrary in this *Section 1.8*, when calculating the Consolidated Fixed Charge Coverage Ratio for purposes of determining actual compliance (and not compliance on a Pro Forma Basis) with *Section 6.1*, the events described in this *Section 1.8* that occurred subsequent to the end of the applicable Test Period shall not be given Pro Forma Effect.

(b) For purposes of calculating Consolidated EBITDA and any financial ratio or tests, including the Net Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio, Specified Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (i) during the applicable Test Period or (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this *Section 1.8*, then the Net Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio and Consolidated EBITDA shall be calculated to give pro forma effect thereto in accordance with this *Section 1.8*.

(c) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of the Net Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio, as the case may be (in each case, other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Net Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio shall be calculated giving pro forma effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period.

(d) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Responsible Officer and may include, for the avoidance of doubt, the amount of cost savings, operating expense reductions, synergies, material changes to amounts to be paid by or received by Loan Parties projected by the Borrower in good faith to be realized as a result of specified actions taken, committed to be taken or expected to be taken (calculated on a *pro forma* basis as though amounts had been realized on the first day of such Test Period and as if any such cost savings, operating expense reductions and synergies were realized during the entirety of such period) relating to such Specified Transaction, net of the amount of actual benefits realized during such period from such actions (such amounts, "*Specified Transaction Adjustments*"); *provided* that (i) such Specified Transaction Adjustments are reasonably identifiable and quantifiable in the good faith judgment of the Borrower, (ii) such actions are taken, committed to be taken or expected to be taken no later than twelve months after the date of such Specified Transaction, and (iii) no amounts shall be included pursuant to this clause (c) to the extent duplicative of any amounts that are otherwise included in calculating Consolidated EBITDA, whether through a *pro forma* adjustment or otherwise, with respect to any Test Period.

(e) If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Consolidated Fixed Charge Coverage Ratio is made had been the applicable rate for the entire period (taking into account any hedging obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a ~~Eurodollar~~eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower may designate.

(f) The Borrower (i) shall in its sole discretion, exercised in good faith, determine under which category such Lien (other than Liens securing the Obligations or the Term Facilities) or Specified Payment (other than Indebtedness incurred under the Loan Documents or the Term Facility Documentation) is permitted and (ii) shall be permitted, in its sole discretion, to make any redetermination and/or to divide, classify or reclassify under which category or categories such Lien or Specified Payment is permitted from time to time as it may determine and without notice to the Administrative Agent or any Lender, so long as at the time of such redesignation the Loan Parties would be permitted to incur such Lien or Specified Payment under such category or categories, as applicable; *provided*, that, if Payment Conditions were not satisfied at the time of such Lien or Specified Payment, the Borrower may not make any redetermination and/or divide, classify or reclassify such Lien or Specified Payment as being made under a category that is or categories that are subject to the satisfaction of Payment Conditions.

(g) In the event of any Investment pursuant to *Section 9.2*, Disposition pursuant to *Section 9.5* or Restricted Payment pursuant to *Section 9.6* that results in the transfer by a Loan Party to an Unrestricted Subsidiary, non-Loan Party or third party of IP Rights necessary in connection with the Current Asset Collateral, the purchaser, assignee or other transferee thereof agrees in writing to be bound by a non-exclusive royalty-free worldwide license of such IP Rights in favor of such Loan Party, which license shall be in a form that enables the Administrative Agent to exercise rights and remedies on behalf of the Secured Parties; ~~provided~~, that, in the case of ~~any such Investment, Disposition of IP Rights by a Loan Party or one~~any such Investment, Disposition or Restricted Payment, intellectual property licensed to the Borrower or any of its Restricted Subsidiaries ~~to~~by a third party, ~~the~~such purchaser, assignee or other transferee ~~thereof~~ shall be required to provide such a license only to the extent ~~(x)~~ to which the applicable license gives it a right to do so ~~and (y) a Loan Party or one of its Restricted Subsidiaries has entered into an arrangement with such purchaser, assignee or other transferee for a license back of such IP Rights.~~

SECTION 1.9 Limited Condition Acquisitions.

In connection with any action being taken in connection with a Limited Condition Acquisition for purposes of determining:

- (a) whether any Indebtedness that is being incurred in connection with such Limited Condition Acquisition is permitted to be incurred in compliance with *Section 9.3* or *Section 2.15*;
- (b) whether any Lien being incurred in connection with such Limited Condition Acquisition is permitted to be incurred in accordance with *Section 9.1*;

(c) whether any other transaction undertaken or proposed to be undertaken in connection with such Limited Condition Acquisition complies with the covenants or agreements contained in this Agreement; and

(d) any calculation of the ratios or baskets, including the Net Leverage Ratio, Consolidated Fixed Charge Coverage Ratio, Consolidated Net Income, Consolidated EBITDA and/or pro forma cost savings and baskets determined by reference to Consolidated EBITDA or Total Assets and whether a Default or Event of Default exists in connection with the foregoing;

at the option of the Borrower, the date that the definitive agreement for such Limited Condition Acquisition is entered into (the “*Transaction Agreement Date*”) may be used as the applicable date of determination, as the case may be, in each case with such pro forma adjustments as are appropriate and consistent with the pro forma adjustment provisions set forth in the definition of “Pro Forma Basis” or “Consolidated EBITDA.” For the avoidance of doubt, if the Borrower elects to use the Transaction Agreement Date as the applicable date of determination in accordance with the foregoing, (a) any fluctuation or change in the Net Leverage Ratio, Consolidated Fixed Charge Coverage Ratio, Consolidated Net Income, Consolidated EBITDA and/or Total Assets of the Borrower from the Transaction Agreement Date to the date of consummation of such Limited Condition Acquisition will not be taken into account for purposes of determining whether any Indebtedness or Lien that is being incurred in connection with such Limited Condition Acquisition is permitted to be incurred, or whether any other transaction undertaken in connection with such Limited Condition Acquisition by the Borrower or any of the Restricted Subsidiaries complies with the Loan Documents and (b) after the Transaction Agreement Date and until such Limited Condition Acquisition is consummated or the definitive agreements in respect thereof are terminated or expire, such Limited Condition Acquisition and all transactions proposed to be undertaken in connection therewith (including without limitation the incurrence of Indebtedness and Liens) will be given Pro Forma Effect when determining compliance of other transactions (including without limitation the incurrence of Indebtedness and Liens unrelated to such Limited Condition Acquisition) that are consummated after the Transaction Agreement Date and on or prior to the date of consummation of such Limited Condition Acquisition and any such transactions (including without limitation any incurrence of Indebtedness and the use of proceeds thereof) will be deemed to have occurred on the Transaction Agreement Date and be outstanding thereafter for purposes of calculating any baskets or ratios under the Loan Documents after the Transaction Agreement Date and before the date of consummation of such Limited Condition Acquisition (or the date the definitive agreements in respect thereof are terminated or expire); *provided* that solely with respect to Restricted Payments only (and only until such time as the applicable Limited Condition Acquisition has been consummated or the definitive documentation for such Limited Condition Acquisition is terminated), such calculation shall also be made on a standalone basis without giving effect to such Limited Condition Acquisition and the other transactions in connection therewith.

SECTION 1.10 Interest Rates. The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “~~Eurodollar Rate~~ Term SOFR” or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any ~~LIBOR~~ Successor Rate) or the effect of any of the foregoing, or of any ~~LIBOR~~ Successor Rate Conforming Changes.

SECTION 1.11 FILO Documentation Agent. For the purposes of the definition of “Availability Reserves”, “Bank Product Reserve”, “Cash Management Reserve”, “Dilution Reserve”, “Eligible Credit Card Receivables”, “Eligible In-Transit Inventory”, “Eligible Inventory”, “Eligible Trade Receivables”, “Inventory Reserves”, “Receivables Reserves”, “Shrink Reserve” or “Swap Obligations Reserve”, or any other provision of this Agreement (other than the

provisions of Section 12.1) or any other Loan Document where the FILO Documentation Agent has a consent right on a matter for which the Administrative Agent also has a consent right, the FILO Documentation Agent shall consult with the Administrative Agent prior to imposing Reserves, withholding consent rights or otherwise taking action that would be less favorable to the Loan Parties than corresponding action taken by the Administrative Agent.

ARTICLE II

THE ~~FACILITY~~FACILITIES

SECTION 2.1 The ~~Revolving Credit~~ Commitments.

(a) Revolving Loans. On the terms and subject to the conditions contained in this Agreement, each Revolving Credit Lender severally agrees to make loans in Dollars (each, a “*Revolving Loan*”) to the Borrower from time to time on any Business Day during the period from the Effective Date until the Revolving Credit Termination Date in an aggregate principal amount at any time outstanding for all such loans by such Lender not to exceed such Lender’s Revolving Credit Commitment; *provided, however*, that at no time shall any Revolving Credit Lender be obligated to make a Revolving Loan in excess of such Lender’s Ratable Portion of the Maximum Credit. Within the limits of the Revolving Credit Commitment of each Revolving Credit Lender, amounts of Loans repaid may be reborrowed under this *Section 2.1*.

(b) Protective Advances. Subject to the limitations set forth below (and notwithstanding anything to the contrary in *Section 4.2*), the Administrative Agent is authorized by the Borrower and the Lenders, from time to time in the Administrative Agent’s sole discretion (but shall have absolutely no obligation), to make Revolving Loans (which may be a Swing Loan) to the Borrower, on behalf of all Revolving Credit Lenders at any time that any condition precedent set forth in *Section 4.2* has not been satisfied or waived, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable for the purposes specified in the definition of “Protective Advances”. Any Protective Advance may be made in a principal amount that would cause the aggregate Revolving Credit Exposure to exceed the Borrowing Base; *provided* that the aggregate amount of outstanding Protective Advances plus the aggregate of all other Revolving Credit Exposure shall not exceed the Aggregate Commitments; *provided* further that the foregoing shall not result in any claim or liability against the Administrative Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances, and such Unintentional Overadvances shall not reduce the amount of Protective Advances allowed hereunder. Protective Advances may be made even if the conditions precedent set forth in *Section 4.2* have not been satisfied or waived. Each Protective Advance shall be secured by the Liens in favor of the Collateral Agent in and to the Collateral and shall constitute Obligations hereunder. The Administrative Agent’s authorization to make Protective Advances may be revoked at any time by the Requisite Revolving Credit Lenders. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent’s receipt thereof. The making of a Protective Advance on any one occasion shall not obligate the Administrative Agent to make any Protective Advance on any other occasion. At any time that the conditions precedent set forth in *Section 4.2* have been satisfied or waived, the Administrative Agent may request the Revolving Credit Lenders to make a Revolving Loan to repay a Protective Advance. At any other time, the Administrative Agent may require the Revolving Credit Lenders to fund their risk participations described in *Section 2.1(c)*.

(c) Risk Participations in Protective Advances. Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Revolving Credit Lender shall be deemed, without further action by any party hereto, unconditionally and irrevocably to have purchased from the Administrative Agent without recourse or warranty, an

undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage. From and after the date, if any, on which any Revolving Credit Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

(d) FILO Loans. On the terms and subject to the conditions contained in this Agreement, each FILO Lender severally agrees to make a term loan in Dollars (each, a "FILO Loan") to the Borrower on the Third Amendment Effective Date in a principal amount equal to such FILO Lender's FILO Commitment. FILO Loans made pursuant to this Agreement and repaid or prepaid may not be reborrowed.

SECTION 2.2 Borrowing Procedures for Revolving Loans; Conforming Changes.

(a) Each Borrowing consisting of Revolving Loans shall be made on notice given by the Borrower to the Administrative Agent not later than (i) 11:00 a.m. on the same Business Day, in the case of a Borrowing of Base Rate Loans, and (ii) 12:00 noon three (3) Business Days, in the case of a Borrowing of ~~Eurodollar-Rate~~Term SOFR Loans, prior to the date of the proposed Borrowing. Each such notice shall be in substantially the form of *Exhibit C* (a "Notice of Borrowing"), specifying (A) the date of such proposed Borrowing, which shall be a Business Day, (B) the aggregate amount of such proposed Borrowing, (C) whether any portion of the proposed Borrowing will be of Base Rate Loans or ~~Eurodollar-Rate~~Term SOFR Loans, (D) the initial Interest Period or Interest Periods for any such ~~Eurodollar-Rate~~Term SOFR Loans, (E) the Class of the proposed Borrowing, and (F) with respect to any Borrowing the proceeds of which will be used to fund a Restricted Payment subject to the satisfaction of the Payment Conditions, an additional solvency representation and warranty of the Borrower and its Subsidiaries (taken as a whole) after giving effect to such Borrowing and the use of proceeds thereof. The Revolving Loans shall be made as Base Rate Loans unless, subject to *Section 2.14*, the Notice of Borrowing specifies that all or a portion thereof shall be ~~Eurodollar-Rate~~Term SOFR Loans. Each Borrowing ~~of consisting of Revolving Loans that are~~ Base Rate ~~Loan~~Loans shall be in an aggregate amount of not less than \$500,000 or an integral multiple of \$100,000 in excess thereof and the aggregate amount of each Borrowing ~~of Eurodollar-Rate~~consisting of Revolving Loans that are Term SOFR Loans for each Interest Period must be in the amount of at least \$1,000,000 or an integral multiple of \$500,000 in excess thereof.

(b) The Administrative Agent shall give to each Revolving Credit Lender prompt notice of the Administrative Agent's receipt of a Notice of Borrowing and, if ~~Eurodollar-Rate~~Term SOFR Loans are properly requested in such Notice of Borrowing, the applicable interest rate determined pursuant to *Section 2.14(a)*. Each Revolving Credit Lender shall, before 1:00 p.m. on the date of the proposed Borrowing, make available to the Administrative Agent at its address referred to in *Section 12.8*, in Same Day Funds, such Lender's Ratable Portion of such proposed Borrowing. Upon fulfillment (or due waiver in accordance with *Section 12.1*) (i) on the Effective Date, of the applicable conditions set forth in *Section 4.1* and (ii) at any time (including the Effective Date), of the applicable conditions set forth in *Section 4.2*, and, subject to *clause (c)* below, after the Administrative Agent's receipt of such funds, the Administrative Agent shall make such funds available to the Borrower as promptly as reasonably practicable.

(c) Unless the Administrative Agent shall have received notice from a Revolving Credit Lender prior to the date of any proposed Borrowing that such Lender will not make available to the Administrative Agent such Lender's Ratable Portion of such Borrowing (or any portion thereof), the

Administrative Agent may assume that such Lender has made such Ratable Portion available to the Administrative Agent on the date of such Borrowing in accordance with this *Section 2.2* and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such Ratable Portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent, at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate for the first Business Day and thereafter at the interest rate applicable at the time to the Loans comprising such Borrowing. If such Lender shall repay to the Administrative Agent such corresponding amount, such corresponding amount so repaid shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement. If the Borrower shall repay to the Administrative Agent such corresponding amount, such payment shall not relieve such Lender of any obligation it may have hereunder to the Borrower.

(d) The failure of any Defaulting Lender to make on the date specified any Loan or any payment required by it, including any payment in respect of its participation in Swing Loans and Letter of Credit Obligations, shall not relieve any other Lender of its obligations to make such Loan or payment on such date but, except to the extent otherwise provided herein, no such other Lender shall be responsible for the failure of any Defaulting Lender to make a Loan or payment required under this Agreement.

(e) After giving effect to all Borrowings, all conversions of **Revolving** Loans from one Type to the other, and all continuations of **Revolving** Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent; *provided* that after the establishment of any new Class of **Revolving** Loans pursuant to an Extension Amendment, the number of Interest Periods otherwise permitted by this *Section 2.2(e)* shall increase by three (3) Interest Periods for each applicable Class so established.

(f) With respect to SOFR or 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; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

SECTION 2.3 Swing Loans.

(a) On the terms and subject to the conditions contained in this Agreement, the Swing Loan Lender shall make, in Dollars, loans (each, a "*Swing Loan*") otherwise available to the Borrower under the **Revolving** Facility from time to time on any Business Day during the period from the Effective Date until the Revolving Credit Termination Date in an aggregate principal amount at any time outstanding (together with the aggregate outstanding principal amount of any other Loan made by the Swing Loan Lender hereunder in its capacity as the Swing Loan Lender) not to exceed the Swing Loan Sublimit; *provided, however*, that at no time shall the Swing Loan Lender make any Swing Loan to the extent that, after giving effect to such Swing Loan, the aggregate Revolving Credit Outstandings would exceed the Maximum Credit; *provided further* that in the event that the Swing Loan Lender and the Administrative Agent are not the same Person, then the Swing Loan Lender shall only make a Swing Loan after having given prior notice thereof to the Administrative Agent; *provided further* that the Swing

Loan Lender shall not be required to make any Swing Loan to the extent that such Swing Loan Lender reasonably believes that any Lender is a Defaulting Lender unless, after giving effect to the requested Swing Loan, there would exist no Fronting Exposure (in the good faith determination of the Swing Loan Lender and the Administrative Agent). Each Swing Loan shall be a Base Rate Loan and must be repaid in full in Dollars within seven (7) days after its making or, if sooner, upon any Borrowing hereunder and shall in any event mature no later than the Revolving Credit Termination Date (without giving effect to any extensions of the type referred to in ~~the proviso to Section 12.1(b)~~ hereof). Within the limits set forth in the first sentence of this *clause (a)*, amounts of Swing Loans repaid may be reborrowed under this *clause (a)*.

(b) In order to request a Swing Loan, the Borrower shall telecopy (or forward by electronic mail or similar means) to the Administrative Agent a duly completed request in substantially the form of *Exhibit D*, setting forth the requested amount and date of such Swing Loan (a “*Swing Loan Request*”), to be received by the Administrative Agent not later than 1:00 p.m. on the day of the proposed borrowing. The Administrative Agent shall promptly notify the Swing Loan Lender of the details of the requested Swing Loan. Subject to the terms of this Agreement, the Swing Loan Lender shall make a Swing Loan available to the Administrative Agent and, in turn, the Administrative Agent shall make such amounts available to the Borrower as promptly as reasonably practicable on the date set forth in the relevant Swing Loan Request. The Swing Loan Lender shall not make any Swing Loan (other than a Protective Advance) in the period commencing on the first Business Day after it receives written notice from the Administrative Agent or any Lender that one or more of the conditions precedent contained in *Section 4.2* shall not on such date be satisfied, and ending when such conditions are satisfied. The Swing Loan Lender shall not otherwise be required to determine that, or take notice whether, the conditions precedent set forth in *Section 4.2* have been satisfied in connection with the making of any Swing Loan.

(c) The Swing Loan Lender may demand at any time (and shall demand, not less frequently than weekly unless such Swing Loan is repaid in accordance with *Section 2.3(a)* hereof), that each Revolving Credit Lender pay to the Administrative Agent, for the account of the Swing Loan Lender, in the manner provided in *clause (d)* below, such Lender’s Ratable Portion of all or a portion of the outstanding Swing Loans, which demand shall be made through the Administrative Agent, shall be in writing and shall specify the outstanding principal amount of Swing Loans demanded to be paid.

(d) The Administrative Agent shall forward each demand referred to in *clause (c)* above to each Revolving Credit Lender on the day such notice or such demand is received by the Administrative Agent (except that any such notice or demand received by the Administrative Agent after 2:00 p.m. on any Business Day or any such notice or demand received on a day that is not a Business Day shall not be required to be forwarded to the Revolving Credit Lenders by the Administrative Agent until the next succeeding Business Day), together with a statement prepared by the Administrative Agent specifying the amount of each Revolving Credit Lender’s Ratable Portion of the aggregate principal amount of the Swing Loans stated to be outstanding in such notice or demanded to be paid pursuant to such demand, and, notwithstanding whether or not the conditions precedent set forth in *Sections 4.2* and *2.1* shall have been satisfied (which conditions precedent the Lenders hereby irrevocably waive), each Lender shall, before 11:00 a.m. on the Business Day next succeeding the date of such Lender’s receipt of such notice or demand, make available to the Administrative Agent, in Same Day Funds in Dollars, for the account of the Swing Loan Lender, the amount specified in such statement. Upon such payment by a Revolving Credit Lender, such Lender shall, except as provided in *clause (e)* below, be deemed to have made a Revolving Loan to the Borrower in the amount of such payment. The Administrative Agent shall use such funds to repay the Swing Loans to the Swing Loan Lender.

(e) Upon the occurrence of a Default under *Section 10.1(f)*, each Revolving Credit Lender shall acquire, without recourse or warranty, an undivided participation in each Swing Loan

otherwise required to be repaid by such Lender pursuant to *clause (d)* above, which participation shall be in a principal amount equal to such Lender's Ratable Portion of such Swing Loan, by paying to the Swing Loan Lender on the date on which such Lender would otherwise have been required to make a payment in respect of such Swing Loan pursuant to *clause (d)* above, in Same Day Funds, an amount equal to such Lender's Ratable Portion of such Swing Loan. If all or part of such amount is not in fact made available by such Lender to the Swing Loan Lender on such date, the Swing Loan Lender shall be entitled to recover any such unpaid amount on demand from such Lender together with interest accrued from such date at the Federal Funds Rate for the first Business Day after such payment was due and thereafter at the rate of interest then applicable to Base Rate Loans.

(f) From and after the date on which any **Revolving Credit** Lender (i) is deemed to have made a Revolving Loan pursuant to *clause (d)* above with respect to any Swing Loan or (ii) purchases an undivided participation interest in a Swing Loan pursuant to *clause (e)* above, the Swing Loan Lender shall promptly distribute to such Lender such Lender's Ratable Portion of all payments of principal and interest received by the Swing Loan Lender on account of such Swing Loan other than those received from a Lender pursuant to *clause (d)* or *(e)* above.

SECTION 2.4 Letters of Credit.

(a) Subject to the terms and subject to the conditions contained in this Agreement, each Issuer agrees to Issue at the request of the Borrower, for the account of the Borrower or a Restricted Subsidiary (*provided* that any Letter of Credit issued for the benefit of any Restricted Subsidiary that is not the Borrower shall be issued naming the Borrower as the account party on any such Letter of Credit but such Letter of Credit may contain a statement that it is being issued for the benefit of such Restricted Subsidiary), one or more Letters of Credit from time to time on any Business Day during the period commencing on the Effective Date and ending on the earlier of the Revolving Credit Termination Date and five (5) Business Days prior to the Scheduled Termination Date (without giving effect to any extension of the type referred to in ~~the proviso to~~ *Section 12.1(b)* hereof) (or, if such day is not a Business Day, the next preceding Business Day), or such later date as agreed to by the Administrative Agent in its sole discretion; *provided, however*, that no Issuer shall be under any obligation to Issue (and, upon the occurrence of any of the events described in *clauses (ii), (iii), (iv)* and *(v)(A)* below, shall not Issue) any Letter of Credit upon the occurrence of any of the following:

(i) any order, judgment or decree of any Governmental Authority or arbitrator having binding powers shall purport by its terms to enjoin or restrain such Issuer from Issuing such Letter of Credit or any Law applicable to such Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuer shall prohibit, or request that such Issuer refrain from, the Issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuer with respect to such Letter of Credit any restriction or reserve or capital requirement (for which such Issuer is not otherwise compensated) not in effect on the Effective Date or result in any unreimbursed loss, cost or expense that was not applicable, in effect or known to such Issuer as of the Effective Date and that such Issuer in good faith deems material to it (for which such Issuer is not otherwise compensated);

(ii) the issuance of such Letter of Credit would violate one or more policies of the Issuer applicable to letters of credit generally;

(iii) such Issuer shall have received any written notice of the type described in *clause (d)* below;

(iv) after giving effect to the Issuance of such Letter of Credit, (A) the aggregate Revolving Credit Outstandings would exceed the Maximum Credit at such time, (B) the Letter of Credit Obligations would exceed the Letter of Credit Sublimit or (C) the Revolving Credit Outstandings of any Revolving Credit Lender would exceed such Lender's Revolving Credit Commitment;

(v) such Letter of Credit is requested to be denominated in any currency other than Dollars, except as may be approved by the Administrative Agent and such Issuer, each in their reasonable discretion;

(vi) (A) any fees due in connection with a requested Issuance have not been paid, (B) such Letter of Credit is requested to be Issued in a form that is not acceptable to such Issuer or (C) the Issuer for such Letter of Credit shall not have received, in form and substance reasonably acceptable to it and, if applicable, duly executed by the Borrower, applications, agreements and other documentation (collectively, a "*Letter of Credit Reimbursement Agreement*") such Issuer generally employs in the ordinary course of its business for the Issuance of letters of credit of the type of such Letter of Credit;

(vii) any Revolving Credit Lender is at that time a Defaulting Lender, unless (i) after giving effect to the requested Issuance, there would exist no Fronting Exposure (in the good faith determination of the applicable Issuer) or (ii) the applicable Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the applicable Issuer (in its reasonable discretion) with the Borrower or such Lender to eliminate such Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or any other Letter of Credit Obligations as to which such Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

None of the Lenders (other than the Issuers in their capacity as such) shall have any obligation to Issue any Letter of Credit. Any Letter of Credit which has been or deemed Issued hereunder may be amended at any time to reduce the amount outstanding thereunder.

(b) In no event shall (i) the expiration date of (A) any Documentary Letter of Credit be more than 210 days after the date of issuance thereof, or (B) any Standby Letter of Credit be more than one (1) year after the date of issuance thereof; *provided, however*, that any Standby Letter of Credit with a term less than or equal to one (1) year may provide for the renewal thereof for additional periods less than or equal to one (1) year, as long as, on or before the expiration of each such term and each such period, the Borrower and the Issuer of such Standby Letter of Credit shall have the option to prevent such renewal or (ii) the expiration date of any Letter of Credit be later than the date that is five (5) Business Days before the Scheduled Termination Date; *provided further*, that, for any Letter of Credit having an expiration date after the Scheduled Termination Date, the Borrower agrees to deliver to the Administrative Agent on or prior to the Scheduled Termination Date a letter of credit or letters of credit in form and substance reasonably acceptable to the Administrative Agent issued by a bank acceptable to the Administrative Agent, in each case in its sole discretion, and/or cash collateral in an amount equal to 103% of the maximum drawable amount of any such Letter of Credit.

(c) In connection with the Issuance of each Letter of Credit, the Borrower shall give the relevant Issuer and the Administrative Agent at least two (2) Business Days' prior written notice, in substantially the form of *Exhibit E* (or in such other written or electronic form as is acceptable to such Issuer), of the requested Issuance of such Letter of Credit (a "*Letter of Credit Request*"). Such notice shall specify the Issuer of such Letter of Credit, the face amount of the Letter of Credit requested, the date

on which such Letter of Credit is to expire (which date shall be a Business Day) and, in the case of an issuance, the Person for whose benefit the requested Letter of Credit is to be issued. Such notice, to be effective, must be received by the relevant Issuer and the Administrative Agent not later than 11:00 a.m. on the last Business Day on which such notice can be given under the first sentence of this *clause (c)*; *provided* that the relevant Issuer and the Administrative Agent may agree in a particular instance in their sole discretion to a later time and date.

(d) Subject to the satisfaction of the conditions set forth in this *Section 2.4*, the relevant Issuer shall, on the requested date, Issue a Letter of Credit on behalf of the Borrower in accordance with such Issuer's usual and customary business practices. No Issuer shall Issue any Letter of Credit in the period commencing on the first Business Day after it receives written notice from any Lender that one or more of the conditions precedent contained in *Section 4.2* or *clause (a)* above are not on such date satisfied or duly waived and ending when such conditions are satisfied or duly waived. No Issuer shall otherwise be required to determine that, or take notice whether, the conditions precedent set forth in *Section 4.2* have been satisfied in connection with the Issuance of any Letter of Credit. Each Letter of Credit shall be Issued in Dollars.

(e) The Borrower agrees that, if requested by the Issuer of any Letter of Credit prior to the issuance of a Letter of Credit, it shall execute a Letter of Credit Reimbursement Agreement in respect to any Letter of Credit Issued hereunder. In the event of any conflict between the terms of any Letter of Credit Reimbursement Agreement and this Agreement, the terms of this Agreement shall govern.

(f) Each Issuer shall comply with the following:

(i) give the Administrative Agent written notice (or telephonic notice confirmed promptly thereafter in writing), which writing may be a telecopy or electronic mail, of the Issuance of any Letter of Credit Issued by it, all drawings under any Letter of Credit Issued by it and of the payment (or the failure to pay when due) by the Borrower of any Reimbursement Obligation when due (which notice the Administrative Agent shall promptly transmit by telecopy, electronic mail or similar transmission to each [Revolving Credit](#) Lender);

(ii) upon the request of any [Revolving Credit](#) Lender, furnish to such Lender copies of any Letter of Credit Reimbursement Agreement to which such Issuer is a party and such other documentation as may reasonably be requested by such Lender; and

(iii) on the first Business Day of each calendar week, provide to the Administrative Agent (and the Administrative Agent shall provide a copy to each [Revolving Credit](#) Lender requesting the same) and the Borrower separate schedules for Documentary Letters of Credit and Standby Letters of Credit issued by it, in form and substance reasonably satisfactory to the Administrative Agent, setting forth the aggregate Letter of Credit Obligations, in each case outstanding at the end of each month, and any information requested by the Borrower or the Administrative Agent relating thereto.

(g) Immediately upon the issuance by an Issuer of a Letter of Credit in accordance with the terms and conditions of this Agreement, such Issuer shall be deemed to have sold and transferred to each [Revolving Credit](#) Lender, and each [Revolving Credit](#) Lender shall be deemed irrevocably and unconditionally to have purchased and received from such Issuer, without recourse or warranty, an undivided interest and participation, to the extent of such Lender's Ratable Portion, in such Letter of Credit and the obligations of the Borrower with respect thereto (including all Letter of Credit Obligations with respect thereto) and any security therefor and guaranty pertaining thereto.

(h) The Borrower agrees to pay to the Issuer of any Letter of Credit the amount of all Reimbursement Obligations owing to such Issuer under any Letter of Credit issued for its account no later than (x) the Business Day following the date that the Borrower receives written notice from such Issuer that payment has been made under such Letter of Credit in accordance with its terms if such notice is received by the Borrower by 11:00 a.m. and (y) on the second Business Day after which the Borrower receives written notice from such Issuer that payment has been made under such Letter of Credit in accordance with its terms if such notice is received by the Borrower after 11:00 a.m. (such date described in *clause (x)* or *(y)* above, the “*Reimbursement Date*”), irrespective of any claim, set-off, defense or other right that the Borrower may have at any time against such Issuer or any other Person. In the event that any Issuer makes any payment under any Letter of Credit in accordance with its terms and the Borrower shall not have repaid such amount to such Issuer pursuant to this *clause (h)* (directly or by application of the deemed Loans described below in this *clause (h)* or by virtue of the penultimate sentence of this *clause (h)*) or any such payment by the Borrower is rescinded or set aside for any reason, such Reimbursement Obligation shall be payable on demand with interest thereon computed (i) from the date on which such Reimbursement Obligation arose to the Reimbursement Date, at the rate of interest applicable during such period to Loans that are Base Rate Loans and (ii) from the Reimbursement Date until the date of repayment in full, at the rate of interest applicable during such period to past due Loans that are Base Rate Loans, and such Issuer shall promptly notify the Administrative Agent, which shall promptly notify each [Revolving Credit](#) Lender of such failure, and each [Revolving Credit](#) Lender shall promptly and unconditionally pay to the Administrative Agent for the account of such Issuer the amount of such Lender’s Ratable Portion of such payment in Same Day Funds in Dollars. If the Administrative Agent so notifies such Lender prior to 11:00 a.m. on any Business Day, such Lender shall make available to the Administrative Agent for the account of such Issuer its Ratable Portion of the amount of such payment on such Business Day in Same Day Funds. Upon such payment by a [Revolving Credit](#) Lender, such Lender shall, except during the continuance of a Default or Event of Default under *Section 10.1(f)* and notwithstanding whether or not the conditions precedent set forth in *Section 4.2* shall have been satisfied (which conditions precedent the [Revolving Credit](#) Lenders hereby irrevocably waive), be deemed to have made a Revolving Loan to the Borrower in the principal amount of such payment. Whenever any Issuer receives from the Borrower a payment of a Reimbursement Obligation as to which the Administrative Agent has received for the account of such Issuer any payment from a [Revolving Credit](#) Lender pursuant to this *clause (h)*, such Issuer shall pay over to the Administrative Agent any amount received in excess of such Reimbursement Obligation and, upon receipt of such amount, the Administrative Agent shall promptly pay over to each [Revolving Credit](#) Lender, in Same Day Funds, an amount equal to such Lender’s Ratable Portion of the amount of such payment adjusted, if necessary, to reflect the respective amounts the [Revolving Credit](#) Lenders have paid in respect of such Reimbursement Obligation. (A) In the absence of written notice to the contrary from the Borrower, and subject to the other provisions of this Agreement (but without regard to the conditions to borrowing set forth in *Section 4.2*), Reimbursement Obligations shall be financed when due with a Base Rate Loan or Swing Loan to the Borrower in an equivalent amount and, to the extent so financed, the Borrower’s obligation to make such payment shall be discharged and replaced by the resulting Base Rate Loan or Swing Loan, and (B) in the event that the Borrower has notified the Administrative Agent that it will not so finance any such payments, the Borrower will make payment directly to the applicable Issuer when due. The Administrative Agent shall promptly remit the proceeds from any Loans made pursuant to *clause (A)* above in reimbursement of a draw under a Letter of Credit to the applicable Issuer.

(i) Each Defaulting Lender agrees to pay to the Administrative Agent for the account of such Issuer forthwith on demand any such unpaid amount together with interest thereon, for the first Business Day after payment was first due at the Federal Funds Rate and, thereafter, until such amount is repaid to the Administrative Agent for the account of such Issuer, at a rate per annum equal to the rate applicable to Base Rate Loans under the [Revolving](#) Facility.

(j) The Borrower's obligations to pay each Reimbursement Obligation and the obligations of the [Revolving Credit](#) Lenders to make payments to the Administrative Agent for the account of the Issuers with respect to Letters of Credit shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement, under any and all circumstances whatsoever, including the occurrence of any Default or Event of Default, and irrespective of any of the following:

- (i) any lack of validity or enforceability of any Letter of Credit or any Loan Document, or any term or provision therein;
- (ii) any amendment or waiver of or any consent to departure from all or any of the provisions of any Letter of Credit or any Loan Document;
- (iii) the existence of any claim, set-off, defense or other right that the Borrower, any other party guaranteeing, or otherwise obligated with, the Borrower, any Subsidiary or other Affiliate thereof or any other Person may at any time have against the beneficiary under any Letter of Credit, any Issuer, the Administrative Agent or any Lender or any other Person, whether in connection with this Agreement, any other Loan Document or any other related or unrelated agreement or transaction;
- (iv) any draft or other document presented under a 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;
- (v) payment by the Issuer under a Letter of Credit against presentation of a draft or other document that does not strictly comply, but that does substantially comply, with the terms of such Letter of Credit; or any payment made by an 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;
- (vi) any other act or omission to act or delay of any kind of any Issuer, the Lenders, the Administrative Agent or any other Person or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this *Section 2.4*, constitute a legal or equitable discharge of the Borrower's obligations hereunder; or
- (vii) the fact that any Default or Event of Default shall have occurred and be continuing.

Any action taken or omitted to be taken by the relevant Issuer under or in connection with any Letter of Credit, if taken or omitted in the absence of gross negligence or willful misconduct, shall not result in any liability of such Issuer to the Borrower or any [Revolving Credit](#) Lender. In determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof, the Issuers 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, in making any payment under any Letter of Credit, the Issuers may rely exclusively on the documents presented to it under such Letter of Credit as to any and all matters set forth therein, including reliance on the amount of any draft presented under such Letter of Credit, whether or not the amount due to the beneficiary thereunder equals the amount of such

draft and whether or not any document presented pursuant to such Letter of Credit proves to be insufficient in any respect, if such document on its face appears to be in order, and whether or not any other statement or any other document presented pursuant to such Letter of Credit proves to be forged or invalid or any statement therein proves to be inaccurate or untrue in any respect whatsoever, and any noncompliance in any immaterial respect of the documents presented under such Letter of Credit with the terms thereof shall, in each case, be deemed not to constitute willful misconduct or gross negligence of the applicable Issuer.

Each Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in *Article XI* with respect to any acts taken or omissions suffered by such 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 XI* included such Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to such Issuer.

(k) *Applicability of ISP and UCP.* Unless otherwise expressly agreed by the relevant Issuer and the Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each Standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance, shall apply to each Documentary Letter of Credit.

SECTION 2.5 Reduction and Termination of the ~~Revolving Credit~~ Commitments.

The Borrower may, upon at least three (3) Business Days’ prior notice to the Administrative Agent, terminate in whole or reduce in part ratably the unused portions of any Class of Revolving Credit Commitments of the Revolving Credit Lenders without premium or penalty other than any amount required to be paid by the Borrower pursuant to *Section 3.5*; *provided, however*, that each partial reduction shall be in an aggregate amount of not less than \$1,000,000 or an integral multiple of \$500,000 in excess thereof *provided, further*, that no reduction or termination of the Revolving Credit Commitments having a later maturity shall be permitted on a greater than pro rata basis with commitments having an earlier maturity. Except as set forth in the following sentence, each such notice of reduction or termination shall be irrevocable when given. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of the Revolving Credit Commitments if such termination would have resulted from a refinancing of all of the applicable Revolving Facility, which refinancing shall not be consummated or otherwise shall be delayed. The FILO Commitments shall terminate on the Third Amendment Effective Date upon the Borrowing of FILO Loans pursuant to Section 2.1(d).

SECTION 2.6 Repayment of Loans.

The Borrower promises to repay to the Administrative Agent for the ratable account of (a) the Revolving Credit Lenders the aggregate unpaid principal amount of the Loans (including any Letter of Credit Borrowings, but excluding the FILO Loans) and the Swing Loans on the Revolving Credit Termination Date or earlier, if otherwise required by the terms hereof, and (b) the FILO Lenders the aggregate unpaid principal amount of the FILO Loans on the FILO Maturity Date or earlier, if otherwise required by the terms hereof.

SECTION 2.7 Evidence of Indebtedness.

(a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and maintained by the Administrative Agent, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be *prima facie* evidence absent manifest error of the amount of the Loans made by the Lenders to the 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 the 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 any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. After the end of each month, the Administrative Agent shall send to the Borrower a statement accounting for the charges, loans, advances and other transactions occurring among and between the Administrative Agent, the Lenders and the Borrower during that month. The monthly statements shall, absent manifest error, be an account stated, which is final, conclusive and binding on the Borrower.

(b) [Reserved].

(c) The entries made in the Register and in the accounts therein maintained pursuant to *clauses (a) and (b)* above and *Section 12.2* hereof shall, to the extent permitted by applicable law, be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided, however*, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans or perform any of its obligations hereunder or under any other Loan Documents in accordance with their terms. In addition, the Loan Parties, the Administrative Agent, the FILO Documentation Agent, the Lenders and the Issuers shall treat each Person whose name is recorded in the Register as a Lender or as an Issuer, as applicable, for all purposes of this Agreement. Information contained in the Register with respect to any Lender or Issuer shall be available for inspection by the Borrower, the Administrative Agent, the FILO Documentation Agent, such Lender or such Issuer at any reasonable time and from time to time upon reasonable prior notice.

(d) Notwithstanding any other provision of the Agreement, in the event that any Lender requests that the Borrower execute and deliver a promissory note or notes payable to such Lender in order to evidence the Indebtedness owing to such Lender by the Borrower hereunder, the Borrower shall promptly execute and deliver a Revolving Credit Note or Revolving Credit Notes, or a FILO Note or FILO Notes, as applicable, to such Lender evidencing the Loans of such Lender, substantially in the form of *Exhibit B* or Exhibit P, as applicable. Each Lender may attach schedules to its Revolving Credit Note or FILO Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto; *provided* that the failure to do so shall in no way affect the obligations of the Borrower or any other Loan Party under any Loan Document.

SECTION 2.8 Optional Prepayments.

The Borrower may prepay the outstanding principal amount of the Loans and Swing Loans in whole or in part at any time (in the case of any such prepayment of the FILO Loans, together with payment of any FILO Prepayment Premium due and payable with respect thereto, if applicable); *provided, however*, that if any prepayment of any ~~Eurodollar Rate~~ Term SOFR Loan is made by the Borrower other than on the last day of an Interest Period for such Loan, the Borrower shall also pay any amount owing pursuant to *Section 3.5*; *provided further, that any prepayment of the FILO Loans (other than, for the avoidance of doubt, a Permitted Refinancing of the full remaining*

amount of the FILO Loans or a repayment in full of the FILO Loans on the FILO Maturity Date) shall be subject to satisfaction of Payment Conditions. For the avoidance of doubt, the Borrower may prepay all or a portion of the outstanding Revolving Loans on or about the Third Amendment Effective Date with notice on the same date of such prepayment.

SECTION 2.9 Mandatory Prepayments.

(a) If at any time, the aggregate principal amount of Revolving Credit Outstandings exceeds the aggregate Maximum Credit at such time, the Borrower shall forthwith, upon notification by the Administrative Agent, prepay the Swing Loans *first* and then the other Loans (other than FILO Loans) then outstanding in an amount equal to such excess. If any such excess remains after repayment in full of the aggregate outstanding Swing Loans and the other Loans (other than FILO Loans), the Borrower shall Cash Collateralize the Letter of Credit Obligations in the manner set forth in *Section 10.5* in an amount equal to 103% of such excess.

(b) [Reserved].

(c) [Reserved].

(d) Subject to *Section 3.5* hereof, all such payments in respect of the Loans pursuant to this *Section 2.9* shall be without premium or penalty (except to the extent of any FILO Prepayment Premium due and payable with respect to any such prepayment of the FILO Loans). All interest accrued on the principal amount of the Loans paid pursuant to this *Section 2.9* shall be paid, or may be charged by the Administrative Agent to any loan account(s) of the Borrower, at the Administrative Agent's option, on the date of such payment. Interest shall accrue and be due, until the next Business Day, if the amount so paid by the Borrower to the bank account designated by the Administrative Agent for such purpose is received in such bank account after 3:00 p.m.

(e) At all times after the occurrence and during the continuance of a Cash Dominion Period and notification thereof by the Administrative Agent to the Borrower (subject to the provisions of *Section 10.3* and to the terms of the Security Agreement), on each Business Day, at or before 1:00 p.m., the Administrative Agent shall apply all Same Day Funds credited to the Concentration Account ~~and all amounts received pursuant to *Section 2.9(b)*~~, *first* to pay any fees or expense reimbursements then due to the Administrative Agent, the FILO Documentation Agent, the Issuers and the Lenders (other than in connection with Cash Management Obligations, Obligations in respect of Secured Hedge Agreements or any Revolving Commitment Increases), *pro rata*, *second* to pay interest due and payable in respect of any Loans (including Swing Loans, but excluding FILO Loans) and any Protective Advances that may be outstanding, *pro rata*, *third* to prepay the principal of any Protective Advances that may be outstanding, *pro rata*, and *fourth* to prepay the principal of the Loans (including Swing Loans, but excluding FILO Loans) and to Cash Collateralize outstanding Letter of Credit Obligations, *pro rata*.

SECTION 2.10 Interest.

(a) Rate of Interest. Subject to the provisions of *Section 3.3* ~~(e)~~, all Loans and the outstanding amount of all other Obligations owing under the Loan Documents shall bear interest, in the case of any Class of Loans, on the unpaid principal amount thereof from the date such Loans are made and, in the case of such other Obligations, from the date such other Obligations are due and payable until, in all cases, paid in full, except as otherwise provided in *clause (c)* below, as follows:

(i) when used with respect to Revolving Obligations, if a Base Rate Loan or such other Revolving Obligation (other than a ~~Eurodollar Rate~~ Term SOFR Loan), at a rate

per annum equal to the sum of (A) the Base Rate as in effect from time to time and (B) the Applicable Margin for Base Rate Loans;
~~and~~

(ii) ~~if a Eurodollar Rate~~ when used with respect to Revolving Obligations, if a Term SOFR Loan, at a rate per annum equal to the sum of (A) ~~the Eurodollar Rate~~ Term SOFR determined for the applicable Interest Period and (B) the Applicable Margin for ~~Eurodollar Rate~~ Term SOFR Loans in effect from time to time during such Interest Period;

(iii) when used with respect to FILO Obligations, if a Base Rate Loan or such other FILO Obligation (other than a Term SOFR Loan), at a rate per annum equal to the sum of (A) the Base Rate as in effect from time to time and (B) the FILO Applicable Margin for Base Rate Loans; and

(iv) when used with respect to FILO Obligations, if a Term SOFR Loan, at a rate per annum equal to the sum of (A) Term SOFR and (B) the FILO Applicable Margin for Term SOFR Loans.

Notwithstanding the foregoing, all FILO Loans shall be made and maintained as Term SOFR Loans (and may not be made as or converted to Base Rate Loans), except as otherwise provided in Sections 3.2, 3.3 and 3.6.

(b) Interest Payments. (i) Interest accrued on each Base Rate Loan (other than Swing Loans) shall be payable in arrears (A) in the case of FILO Loans, on the first Business Day of each calendar month, commencing on the first such day following the making of such Base Rate Loan, (B) in the case of Revolving Loans, on the first Business Day of each January, April, July and October, commencing on the first such day following the making of such Base Rate Loan and (BC) if not previously paid in full, at maturity (whether by acceleration or otherwise) of such Base Rate Loan, (ii) interest accrued on Swing Loans shall be payable in arrears on the first Business Day of each January, April, July and October, (iii) interest accrued on each ~~Eurodollar Rate~~ Term SOFR Loan shall be payable in arrears (A) ~~on~~ in the case of FILO Loans, on the first Business Day of each calendar month, commencing on the first such day following the making of such Term SOFR Loan, (B) in the case of Revolving Loans, on the last day of each Interest Period applicable to such Loan and, if such Interest Period has a duration of more than three (3) months, on each date during such Interest Period occurring every three (3) months from the first day of such Interest Period, (BC) upon the payment or prepayment thereof in full or in part and (ED) if not previously paid in full, at maturity (whether by acceleration or otherwise) of such ~~Eurodollar Rate~~ Term SOFR Loan and (iv) interest accrued on the amount of all other Obligations shall be payable on demand from and after the time such Obligation becomes due and payable (whether by acceleration or otherwise).

(c) Default Interest. The Borrower shall pay interest on past due amounts hereunder constituting Revolving Obligations at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. During the continuance of any Event of Default, the Borrower shall, (i) effective upon notice from the FILO Documentation Agent (which notice may elect to apply such Default Rate retroactively as of the first day of such Event of Default, or such later date as the FILO Documentation Agent may agree) or (ii) automatically when any Event of Default under Section 10.1(f) exists, pay interest on all outstanding FILO Obligations at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(d) Notwithstanding anything herein or in any other Loan Document to the contrary, if on the Third Amendment Effective Date, any Eurodollar Rate Loans (as such term was defined in this Agreement, immediately prior to the Third Amendment Effective Date) remain outstanding (the “Existing Eurodollar Rate Loans”), such Loans shall, for the duration of the Interest Period (as such term was defined in this Agreement, immediately prior to the Third Amendment Effective Date) be governed by the terms of this Agreement, immediately prior to the Third Amendment Effective Date. Upon the expiration of the Interest Period applicable to the Existing Eurodollar Rate Loans, (i) such Existing Eurodollar Rate Loans shall be continued, automatically, subject to the terms hereof, as Term SOFR Loans having an Interest Period of one month unless otherwise elected by the Borrower in accordance with the terms of this Agreement (as amended by on the Third Amendment Effective Date) (provided, for the avoidance of doubt, that such Loans may not be continued as LIBOR Rate Loans (as such term was defined in this Agreement, immediately prior to the Third Amendment Effective Date)) and (ii) this Agreement, as amended by on the Third Amendment Effective Date, shall govern and control such Existing Eurodollar Rate Loans in all respects.

SECTION 2.11 Conversion/Continuation Option.

(a) The Borrower may elect (i) at any time on any Business Day, to convert Base Rate Loans (other than Swing Loans) consisting of Revolving Loans or any portion thereof to ~~Eurodollar Rate~~ Term SOFR Loans and (ii) at the end of any applicable Interest Period, to convert ~~Eurodollar Rate~~ Term SOFR Loans consisting of Revolving Loans or any portion thereof into Base Rate Loans or to continue such ~~Eurodollar Rate~~ Term SOFR Loans or any portion thereof for an additional Interest Period; *provided, however*, that the aggregate amount of ~~the Eurodollar Rate~~ Term SOFR Loans for each Interest Period must be in the amount of at least \$1,000,000 or an integral multiple of \$500,000 in excess thereof. Each conversion or continuation shall be allocated among the Revolving Loans of each Revolving Credit Lender in accordance with such Lender’s Ratable Portion. Each such election shall be in substantially the form of *Exhibit F* (a “*Notice of Conversion or Continuation*”) and shall be made by giving the Administrative Agent at least two (2) Business Days’ prior written notice specifying (A) the amount and ~~type~~ Type of Revolving Loan being converted or continued, (B) in the case of a conversion to or a continuation of ~~Eurodollar Rate~~ Term SOFR Loans, the applicable Interest Period and (C) in the case of a conversion, the date of such conversion.

(b) The Administrative Agent shall promptly notify each Revolving Credit Lender of its receipt of a Notice of Conversion or Continuation and of the options selected therein. Notwithstanding the foregoing, the Administrative Agent or the Requisite Revolving Credit Lenders may require, by notice to the Borrower, that no conversion in whole or in part of Base Rate Loans ~~to Eurodollar Rate~~ consisting of Revolving Loans to Term SOFR Loans and no continuation in whole or in part of ~~Eurodollar Rate~~ Term SOFR Loans consisting of Revolving Loans upon the expiration of any applicable Interest Period shall be permitted at any time at which (A) an Event of Default shall have occurred and be continuing, or (B) the continuation of, or conversion into, a ~~Eurodollar Rate~~ Term SOFR Loan would violate any provision of *Section 2.14*. If, within the time period required under the terms of this *Section 2.11*, the Administrative Agent does not receive a Notice of Conversion or Continuation from the Borrower containing a permitted election to continue any ~~Eurodollar Rate~~ Term SOFR Loans consisting of Revolving Loans for an additional Interest Period or to convert any such Loans, then, upon the expiration of the applicable Interest Period, such Loans shall be automatically converted to Base Rate Loans. Each Notice of Conversion or Continuation shall be irrevocable.

SECTION 2.12 Fees.

(a) Unused Commitment Fee. The Borrower agrees to pay in Same Day Funds in Dollars to the Administrative Agent for the account of each Revolving Credit Lender a commitment fee (the “*Unused Commitment Fee*”) on the average daily amount by which the Revolving Credit Commitment of such Lender exceeds such Lender’s Ratable Portion of the sum of (i) the aggregate outstanding principal amount of Revolving Loans for the applicable Class, and (ii) the outstanding amount of the aggregate Letter of Credit Undrawn Amounts from the Effective Date through the Revolving Credit Termination Date at the Applicable Unused Commitment Fee Rate, payable in arrears (x) on the first Business Day of each January, April, July and October, commencing on the first such Business Day following the Effective Date and (y) on the Revolving Credit Termination Date. For the avoidance of doubt, any Swing Loans outstanding shall reduce the Revolving Credit Commitment of the Swing Loan Lender in its capacity as a Lender.

(b) Letter of Credit Fees. The Borrower agrees to pay the following amounts with respect to Letters of Credit issued by any Issuer:

(i) to the Administrative Agent for the account of each Issuer of a Letter of Credit, with respect to each Letter of Credit issued by such Issuer, an issuance fee equal to 0.125% per annum of the average daily maximum undrawn face amount of such Letter of Credit for the immediately preceding calendar quarter (or portion thereof), payable in arrears (A) on the first Business Day of each January, April, July and October, commencing on the first such Business Day following the issuance of such Letter of Credit and (B) on the Revolving Credit Termination Date;

(ii) to the Administrative Agent for the ratable benefit of the Revolving Credit Lenders, with respect to each Letter of Credit, a fee accruing in Dollars at a rate per annum equal to (x) in the case of each Standby Letter of Credit, the Applicable Margin for ~~Eurodollar Rate~~ Term SOFR Loans and (y) in the case of each Documentary Letter of Credit, 50% of the Applicable Margin for ~~Eurodollar Rate~~ Term SOFR Loans (each such fee, a “*Letter of Credit Fee*”), in each case multiplied by the daily Stated Amount of such Letter of Credit for the immediately preceding calendar quarter (or portion thereof), payable in arrears (A) on the first Business Day of each January, April, July and October, commencing on the first such Business Day following the issuance of such Letter of Credit and (B) on the Revolving Credit Termination Date; *provided, however*, that any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the applicable Issuer pursuant to *Section 2.4* shall be payable, to the maximum extent permitted by applicable Law, to the other Revolving Credit Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to *Section 2.16(a)(iv)*, with the balance of such fee, if any, payable to the applicable Issuer for its own account; and

(iii) to the Issuer of any Letter of Credit, with respect to the issuance, amendment or transfer of each Letter of Credit and each drawing made thereunder, customary documentary and processing charges in accordance with such Issuer’s standard schedule for such charges in effect at the time of issuance, amendment, transfer or drawing, as the case may be.

(c) Additional Fees. The Borrower has agreed to pay to (i) the Administrative Agent and the Arrangers additional fees, the amount and dates of payment of which are embodied in the Fee Letter, and (ii) the FILO Documentation Agent additional fees, the amount and dates of payment of which are embodied in the FILO Fee Letter.

SECTION 2.13 Payments and Computations.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. The Borrower shall make each payment and prepayment hereunder (including fees and expenses) not later than 2:00 p.m. on the day when due, in Dollars to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office for payment and in Same Day Funds without condition or deduction for any defense, recoupment, set-off or counterclaim. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office; provided, however, that all payments of principal and interest in respect of the FILO Loans shall be distributed to the FILO Documentation Agent for further distribution by the FILO Documentation Agent to the FILO Lenders as separately agreed by the FILO Lenders. All payments received by the Administrative Agent after 2:00 p.m. shall, in each case, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) All computations of interest for Base Rate Loans when the Base Rate is determined by Bank of America's "prime rate" shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(c) Each payment by the Borrower of any Loan and Reimbursement Obligation (including interest and fees in respect thereof) and each reimbursement of costs, expenses and other Obligations owing under any Loan Document shall be made in Dollars.

(d) Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, the due date for such payment shall be extended to the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fees, as the case may be; *provided, however*, that if such extension would cause payment of interest on or principal of any ~~Eurodollar-Rate~~Term SOFR Loan to be made in the next calendar month, such payment shall be made on the immediately preceding Business Day. All repayments of any Revolving Loans shall be applied as follows: *first*, to repay any such Loans outstanding as Base Rate Loans and *then*, to repay any such Loans outstanding as ~~Eurodollar-Rate~~Term SOFR Loans, with those ~~Eurodollar-Rate~~Term SOFR Loans having earlier expiring Interest Periods being repaid prior to those having later expiring Interest Periods.

(e) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the applicable Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable Issuer, as the case may be, the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders or any Issuer hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "*Rescindable Amount*"): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or

not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the applicable Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or such Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this clause (e) shall be conclusive, absent manifest error.

(f) Except for payments and other amounts received by the Administrative Agent and applied in accordance with the provisions of *Section 10.2* ~~(b) below~~ (or required to be applied in accordance with *Section 2.9*), all payments and any other amounts received by the Administrative Agent from or for the benefit of the Borrower shall be applied as follows: *first*, to pay principal of, and interest on, any portion of the Loans the Administrative Agent may have advanced pursuant to the express provisions of this Agreement on behalf of any Lender, for which the Administrative Agent has not then been reimbursed by such Lender or the Borrower, *second*, to pay all other Obligations then due and payable and *third*, as the Borrower so designates. Payments in respect of Swing Loans received by the Administrative Agent shall be distributed to the Swing Loan Lender; payments in respect of Loans received by the Administrative Agent shall be distributed to each Lender in accordance with such Lender's Ratable Portion; and all payments of fees and all other payments in respect of any other Obligation shall be allocated among such of the Lenders and Issuers as are entitled thereto and, for such payments allocated to the Lenders, in proportion to their respective Ratable Portions.

(g) At the option of the Administrative Agent, principal on the Swing Loans, Reimbursement Obligations, interest, fees, expenses and other sums due and payable in respect of the Loans and Protective Advances may be paid from the proceeds of Swing Loans or the Revolving Loans unless the Borrower makes such payments on the next succeeding Business Day after the Borrower receives written notice from the Administrative Agent requesting such payments. The Borrower hereby authorizes the Swing Loan Lender to make such Swing Loans pursuant to *Section 2.3(a)* and the Lenders to make such Loans pursuant to *Section 2.2(a)* from time to time in the amounts of any and all principal payable with respect to the Swing Loans, Reimbursement Obligations, interest, fees, expenses and other sums payable in respect of the Loans and Protective Advances, and further authorizes the Administrative Agent to give the Lenders notice of any Borrowing with respect to such Swing Loans and the Revolving Loans and to distribute the proceeds of such Swing Loans and the Revolving Loans to pay such amounts. The Borrower agrees that all such Swing Loans and the Revolving Loans so made shall be deemed to have been requested by it (irrespective of the satisfaction of the conditions in *Section 4.2*, which conditions the Lenders irrevocably waive) and directs that all proceeds thereof shall be used to pay such amounts.

SECTION 2.14 ~~Special Provisions Governing Eurodollar Rate Loans~~ [Reserved].

~~(a) Determination of Interest Rate:~~

~~The Eurodollar Rate for each Interest Period for Eurodollar Rate Loans shall be determined by the Administrative Agent pursuant to the procedures set forth in the definition of "Eurodollar Rate." The Administrative Agent's determination shall be presumed to be correct and binding on the Loan Parties, absent manifest error.~~

~~(b) Interest Rate Unascertainable, Inadequate or Unfair.~~

~~In the event that (i) the Administrative Agent reasonably determines that adequate and fair means do not exist for ascertaining the applicable interest rates by reference to which the Eurodollar Rate then being determined is to be fixed or (ii) the Requisite Lenders reasonably determine and notify the Administrative Agent that the Eurodollar Rate for any Interest Period will not adequately reflect the cost to the Lenders of making or maintaining such Loans for such Interest Period, the Administrative Agent shall forthwith so notify the Borrower and the Lenders, whereupon each Eurodollar Rate Loan shall automatically, on the last day of the current Interest Period for such Loan, convert into a Base Rate Loan and the obligations of the Lenders to make Eurodollar Rate Loans or to convert Base Rate Loans into Eurodollar Rate Loans shall be suspended until the Administrative Agent shall notify the Borrower that the Requisite Lenders have determined that the circumstances causing such suspension no longer exist.~~

SECTION 2.15 Revolving Commitment Increase.

(a) The Borrower may at any time or from time to time after the First Amendment Effective Date, by notice to the Administrative Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders), request one or more increases in the amount of any Class of Revolving Credit Commitments (each such increase, a “*Revolving Commitment Increase*”); *provided* that subject to the Limited Condition Acquisition provisions, at the time of any such Revolving Commitment Increase (and after giving effect thereto), no Default or Event of Default (or, in the case of any Revolving Commitment Increase to be used to fund a Limited Condition Acquisition, no Event of Default under *Section 10.1(a)* or *Section 10.1(f)* as of the Transaction Agreement Date) shall exist. Each Revolving Commitment Increase shall be in an aggregate principal amount that is not less than \$20,000,000 (*provided* that such amount may be less than \$20,000,000 if such amount represents all remaining availability under the limit set forth in the next sentence). Notwithstanding anything to the contrary herein, the aggregate amount of the Revolving Commitment Increases shall not exceed \$150,000,000 (the “*Incremental Availability*”), and the Borrower may make a maximum of five (5) such requests. Each notice from the Borrower pursuant to this *Section 2.15* shall set forth the requested amount and proposed terms of the relevant Revolving Commitment Increases. Revolving Commitment Increases may be provided by any existing Revolving Credit Lender (it being understood that no existing Revolving Credit Lender will have an obligation to provide a portion of any Revolving Commitment Increase), in each case on terms permitted in this *Section 2.15* and otherwise on terms reasonably acceptable to the Administrative Agent or by any other Person constituting an Eligible Assignee (any such other Person being called an “*Additional Lender*”), *provided* that the Administrative Agent shall have consented (such consent not to be unreasonably withheld or delayed) to such Lender’s or Additional Lender’s providing such Revolving Commitment Increases if such consent would be required under *Section 12.2(b)* for an assignment of Loans or Revolving Credit Commitments to such Lender or Additional Lender. Revolving Credit Commitments in respect of Revolving Commitment Increases shall become Revolving Credit Commitments (or in the case of a Revolving Commitment Increase to be provided by an existing Revolving Credit Lender, an increase in such Lender’s applicable Revolving Credit Commitment) under this Agreement pursuant to an amendment (an “*Incremental Amendment*”) to this Agreement and, as appropriate, the other Loan Documents, executed by Holdings, the Borrower, each Revolving Credit Lender agreeing to provide such Revolving Credit Commitment, if any, each Additional Lender, if any, and the Administrative Agent. The Incremental 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 and the Borrower, to effect the provisions of this Section. The effectiveness of any Incremental Amendment shall

be subject to the satisfaction on the date thereof (each, an “*Incremental Facility Effective Date*”) of each of the conditions set forth in *Section 4.2* (it being understood that all references to “the date of such Loan or Issuance” or similar language in such *Section 4.2* shall be deemed to refer to the effective date of such Incremental Amendment) and such other conditions as the parties thereto shall agree. The representations and warranties contained in the Loan Documents (or, in the case of any Revolving Commitment Increase used to fund a Permitted Acquisition or similar permitted Investment (including any Limited Condition Acquisition), the Specified Representations) shall be accurate in all material respects (or, if qualified by “materiality”, “Material Adverse Effect” or similar language, in all respects (after giving effect to such qualification)) before and after the effectiveness of any Incremental Amendment referred to below and any Revolving Commitment Increase shall be documented as an increase to the Revolving Facility and shall be on terms identical to those applicable to the Revolving Facility, except with respect to any commitment, arrangement, upfront or similar fees that may be agreed to among the Borrower and the lenders agreeing to participate in such Revolving Commitment Increase. The Borrower shall use Revolving Commitment Increases only as permitted pursuant to *Section 8.9* hereof. Upon each increase in the Revolving Credit Commitments pursuant to this *Section 2.15*, (x) each Revolving Credit Lender of the applicable Class immediately prior to such increase will automatically and without further act be deemed to have assigned to each Revolving Credit Lender providing a portion of the Revolving Commitment Increase of the applicable Class (each a “*Revolving Commitment Increase Lender*”) in respect of such increase, and each such Revolving Commitment Increase Lender will automatically and without further act be deemed to have assumed, a portion of such Lender’s participations hereunder in outstanding Letters of Credit and Swing Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (i) participations hereunder in Letters of Credit, (ii) participations hereunder in Swing Loans held by each Revolving Credit Lender of the applicable Class and (iii) participations in Protective Advances held by each Revolving Credit Lender of the applicable Class (including each such Revolving Commitment Increase Lender) will equal the percentage of the aggregate Revolving Credit Commitments of all Revolving Credit Lenders of such Class represented by such Lender’s Revolving Credit Commitment and (y) if, on the date of such increase, there are any Revolving Loans of such Class outstanding, such Revolving Loans shall on or prior to the effectiveness of such Revolving Commitment Increase be prepaid from the proceeds of additional Revolving Loans of such Class made hereunder (reflecting such increase in Revolving Credit Commitments of such Class), which prepayment shall be accompanied by accrued interest on the Revolving Loans of such Class being prepaid and any costs incurred by any Revolving Credit Lender in accordance with *Section 3.5*. The Administrative Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence.

(b) This *Section 2.15* shall supersede any provisions in *Section 12.1* or *Section 12.7* to the contrary.

SECTION 2.16 Defaulting Lenders.

(a) *Adjustments.* Notwithstanding anything to the contrary contained in this Agreement, if any Revolving Credit Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) *Waivers and Amendments.* That Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in *Section 12.1*.

(ii) *Reallocation of Payments.* Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to *Article X* or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to *Section 12.6*), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to any Issuer or the Swing Loan Lender hereunder; *third*, if so determined by the Administrative Agent or requested by any Issuer or the Swing Loan Lender, to be held as cash collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Loan or Letter of Credit; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, any Issuer or the Swing Loan Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuer or the Swing Loan Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or Letter of Credit Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or Letter of Credit Borrowings were made 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 Letter of Credit Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or Letter of Credit Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this *Section 2.16(a)(ii)* shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) *Certain Fees.* That Defaulting Lender (x) shall not be entitled to receive any commitment fee pursuant to *Section 2.12(a)* for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender for such period) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in *Section 2.12(b)*.

(iv) *Reallocation of Applicable Percentages to Reduce Fronting Exposure.* During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Swing Loans or Letters of Credit pursuant to *Sections 2.3* and *2.4*, the "Applicable Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Revolving Credit Commitment of that Defaulting Lender; *provided* that (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default exists; and (ii) the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Loans shall not exceed the positive difference, if any, of (1) the Revolving Credit Commitment of that non-Defaulting Lender minus

(2) the aggregate Outstanding Amount of the Revolving Loans (including Protective Advances) of that Lender.

(b) *Defaulting Lender Cure.* If the Borrower, the Administrative Agent, Swing Loan Lender and the Issuers agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit and Swing Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to *Section 2.16(a)(iv)*), whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower for the period that such 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.

(c) *Cash Collateral.* At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent, the applicable Issuer or the Swing Loan Lender, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to *Section 2.16(a)(iv)*) and any Cash Collateral provided by the Defaulting Lender).

SECTION 2.17 Extensions of Loans.

(a) *Extension of Revolving Credit Commitments.* The Borrower may at any time and from time to time request that all or a portion of the Revolving Credit Commitments of a given Class (each, an "*Existing Revolver Tranche*") be amended to extend the Scheduled Termination Date with respect to all or a portion of any principal amount of such Revolving Credit Commitments (any such Revolving Credit Commitments which have been so amended, "*Extended Revolving Credit Commitments*") and to provide for other terms consistent with this *Section 2.17*; *provided* that there shall be no more than two (2) Classes of **Revolving** Loans and **Revolving Credit** Commitments outstanding at any time. In order to establish any Extended Revolving Credit Commitments, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Revolver Tranche) (each, a "*Extension Request*") setting forth the proposed terms (which shall be determined in consultation with the Administrative Agent) of the Extended Revolving Credit Commitments to be established, which shall (x) be identical as offered to each Lender under such Existing Revolver Tranche (including as to the proposed interest rates and fees payable) and offered pro rata to each Lender under such Existing Revolver Tranche and (y) be identical to the Revolving Credit Commitments under the Existing Revolver Tranche from which such Extended Revolving Credit Commitments are to be amended, except that: (i) the Scheduled Termination Date of the Extended Revolving Credit Commitments shall be later than the Scheduled Termination Date of the Revolving Credit Commitments of such Existing Revolver Tranche, (ii) the Extension Amendment may provide for other covenants and terms that (I) apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Revolving Credit Commitments) or (II) are reasonably satisfactory to the Administrative Agent and the Borrower to incorporate such more restrictive provisions for the benefit of the Lenders (which amendment shall, notwithstanding any provision herein to the contrary, not require

the consent of any Lender); and (iii) all borrowings under the Revolving Credit Commitments and repayments thereunder shall be made on a pro rata basis (except for (I) payments of interest and fees at different rates on Extended Revolving Credit Commitments (and related outstandings) and (II) repayments required upon the Revolving Credit Termination Date of the non-extending Revolving Credit Commitments); *provided, further*, that (A) the conditions precedent to a Borrowing set forth in *Section 4.2* shall be satisfied as of the date of such Extension Amendment and at the time when any Loans are made in respect of any Extended Revolving Credit Commitment, (B) in no event shall the final maturity date of any Extended Revolving Credit Commitments of a given Extension Series at the time of establishment thereof be earlier than the then Latest Maturity Date of any other Revolving Credit Commitments hereunder, (C) any such Extended Revolving Credit Commitments (and the Liens securing the same) shall be permitted by the terms of the Intercreditor Agreements (to the extent any Intercreditor Agreement is then in effect) and (D) all documentation in respect of the such Extension Amendment shall be consistent with the foregoing. Any Extended Revolving Credit Commitments amended pursuant to any Extension Request shall be designated a series (each, a “*Extension Series*”) of Extended Revolving Credit Commitments for all purposes of this Agreement; provided that any Extended Revolving Credit Commitments amended from an Existing Revolver Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Extension Series with respect to such Existing Revolver Tranche. Each Extension Series of Extended Revolving Credit Commitments incurred under this *Section 2.17* shall be in an aggregate principal amount equal to not less than 50% of the aggregate Revolving Credit Commitments outstanding at the time such Extended Revolving Credit Commitments become effective.

(b) *Extension Request.* The Borrower shall provide the applicable Extension Request at least ten (10) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the date on which Lenders under the Existing Revolver Tranche are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably, to accomplish the purposes of this *Section 2.17*. No Lender shall have any obligation to agree to provide any Extended Revolving Credit Commitment pursuant to any Extension Request. Any Revolving Credit Lender (each, an “*Extending Revolving Credit Lender*”) wishing to have all or a portion of its Revolving Credit Commitments under the Existing Revolver Tranche subject to such Extension Request amended into Extended Revolving Credit Commitments shall notify the Administrative Agent (each, an “*Extension Election*”) on or prior to the date specified in such Extension Request of the amount of its Revolving Credit Commitments under the Existing Revolver Tranche which it has elected to request be amended into Extended Revolving Credit Commitments (subject to any minimum denomination requirements imposed by the Administrative Agent). In the event that the aggregate principal amount of Revolving Credit Commitments under the Existing Revolver Tranche in respect of which applicable Revolving Credit Lenders shall have accepted the relevant Extension Request exceeds the amount of Extended Revolving Credit Commitments requested to be extended pursuant to the Extension Request, Revolving Credit Commitments subject to Extension Elections shall be amended to reflect allocations of the Extended Revolving Credit Commitments, which Extended Revolving Credit Commitments shall be allocated as agreed by Administrative Agent and the Borrower.

(c) *New Revolving Commitment Lenders.* Following any Extension Request made by the Borrower in accordance with this *Section 2.17*, if the [Revolving Credit](#) Lenders shall have declined to agree during the period specified in *Section 2.17(b)* above to provide Extended Revolving Credit Commitments in an aggregate principal amount equal to the amount requested by the Borrower in such Extension Request, the Borrower may request that banks, financial institutions or other institutional lenders or investors other than the [Revolving Credit](#) Lenders or Extending Revolving Credit Lenders (the “*New Revolving Commitment Lenders*”), which New Revolving Commitment Lenders may elect to provide an Extended Revolving Credit Commitment hereunder (the “*New Revolving Credit*

Commitment"); *provided* that such Extended Revolving Credit Commitments of such New Revolving Commitment Lenders (i) shall be in an aggregate principal amount for all such New Revolving Commitment Lenders not to exceed the aggregate principal amount of Extended Revolving Credit Commitments so declined to be provided by the existing [Revolving Credit](#) Lenders and (ii) shall be on identical terms to the terms applicable to the terms specified in the applicable Extension Request (and any Extended Revolving Credit Commitments provided by existing [Revolving Credit](#) Lenders in respect thereof); *provided further* that, as a condition to the effectiveness of any Extended Revolving Credit Commitment of any New Revolving Commitment Lender, the Administrative Agent, each Issuer and the Swing Loan Lender shall have consented (such consent not to be unreasonably withheld or delayed) to each New Revolving Commitment Lender if such consent would be required under *Section 12.2(b)(iii)* for an assignment of Revolving Credit Commitments to such Person. Notwithstanding anything herein to the contrary, any Extended Revolving Credit Commitment provided by New Revolving Commitment Lenders shall be pro rata to each New Revolving Commitment Lender. Upon effectiveness of the Extension Amendment to which each such New Revolving Commitment Lender is a party, (a) the Revolving Credit Commitments of all existing Revolving Credit Lenders of each Class specified in the Extension Amendment in accordance with this *Section 2.17* will be permanently reduced pro rata by an aggregate amount equal to the aggregate principal amount of the Extended Revolving Credit Commitments of such New Revolving Commitment Lenders and (b) the Revolving Credit Commitment of each such New Revolving Commitment Lender will become effective. The Extended Revolving Credit Commitments of New Revolving Commitment Lenders will be incorporated as Revolving Credit Commitments hereunder in the same manner in which Extended Revolving Credit Commitments of existing [Revolving Credit](#) Lenders are incorporated hereunder pursuant to this *Section 2.17*, and for the avoidance of doubt, all Borrowings and repayments of Revolving Loans from and after the effectiveness of such Extension Amendment shall be made pro rata across all Classes of Revolving Credit Commitments including such New Revolving Commitment Lenders (based on the outstanding principal amounts of the respective Classes of Revolving Credit Commitments) except for (x) payments of interest and fees at different rates for each Class of Revolving Credit Commitments (and related Outstanding Amounts) and (y) repayments required on the Revolving Credit Termination Date for any particular Class of Revolving Credit Commitments. Upon the effectiveness of each New Revolving Credit Commitment pursuant to this *Section 2.17(c)*, (a) each Revolving Credit Lender of all applicable existing Classes of Revolving Credit Commitments immediately prior to such effectiveness will automatically and without further act be deemed to have assigned to each New Revolving Commitment Lender, and each such New Revolving Commitment Lender will automatically and without further act be deemed to have assumed, a portion of such Revolving Credit Lender's participations hereunder in outstanding Letters of Credit and Swing Loans such that, after giving effect to each such deemed assignment and assumption of participations, subject to *Section 2.16*, the percentage of the outstanding (i) participations hereunder in Letters of Credit and (ii) participations hereunder in Swing Loans held by each Revolving Credit Lender of each Class of Revolving Credit Commitments (including each such New Revolving Commitment Lender) will equal the percentage of the aggregate Revolving Credit Commitments of all Classes of Revolving Credit Lenders represented by such Revolving Credit Lender's Revolving Credit Commitment and (b) if, on the date of such effectiveness, there are any Revolving Loans outstanding, such Revolving Loans shall on or prior to the effectiveness of such New Revolving Credit Commitment be prepaid from the proceeds of Revolving Loans made hereunder under the New Revolving Credit Commitments, which prepayment shall be accompanied by accrued interest on the Revolving Loans being prepaid and any costs incurred by any [Revolving Credit](#) Lender in accordance with *Section 3.5*. The Administrative Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence.

(d) *Extension Amendment.* Extended Revolving Credit Commitments and New Revolving Credit Commitments shall be established pursuant to an amendment (each, an "*Extension*")

Amendment”) to this Agreement among the Borrower, the Administrative Agent and each Extending Revolving Credit Lender and each New Revolving Commitment Lender, if any, providing an Extended Revolving Credit Commitment or a New Revolving Credit Commitment, as applicable, thereunder, which shall be consistent with the provisions set forth in *Sections 2.17(a, (b))* and *(c)* above (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in *Sections 4.2(a)* and *(b)* and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) legal opinions, board resolutions and officers’ certificates consistent with those delivered on the Effective Date other than changes to such legal opinion resulting from a Change in Law, change in fact or change to counsel’s form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Collateral Agent in order to ensure that the Extended Revolving Credit Commitments or the New Revolving Credit Commitments, as the case may be, are provided with the benefit of the applicable Loan Documents. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Revolving Credit Commitments or the New Revolving Credit Commitments, as the case may be, incurred pursuant thereto, (ii) make such other changes to this Agreement and the other Loan Documents (without the consent of the Requisite Lenders) and (iii) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section, and the Requisite Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment.

(e) No conversion of **Revolving** Loans pursuant to any Extension in accordance with this *Section 2.17* shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

SECTION 2.18 Sustainability Adjustments. After the Second Amendment Effective Date, the Borrower, in consultation with the Administrative Agent (in such capacity, the “*Sustainability Coordinator*”), shall be entitled to establish specified Key Performance Indicators (“*KPI’s*”) with respect to certain Environmental, Social and Governance (“*ESG*”) targets of Holdings and its Subsidiaries. The Sustainability Coordinator, the Requisite **Revolving Credit** Lenders and the Borrower may amend this Agreement (such amendment, the “*ESG Amendment*”) solely for the purpose of incorporating the KPI’s and other related provisions (the “*ESG Pricing Provisions*”) into this Agreement. Upon effectiveness of any such ESG Amendment, based on Holdings’ and its Subsidiaries’ performance against the KPI’s, certain adjustments (increase, decrease or no adjustment) to the otherwise applicable Applicable Unused Commitment Fee Rate, Applicable Margin for Base Rate Loans **consisting of Revolving Loans**, and Applicable Margin for ~~Eurodollar Rate~~ **Term SOFR Loans consisting of Revolving Loans** will be made; *provided that* the amount of such adjustments shall not exceed (i) a 0.05% increase and/or a 0.05% decrease in the otherwise applicable Applicable Margin for ~~Eurodollar Rate~~ **Term SOFR Loans consisting of Revolving Loans**, in each case, determined based upon the applicable rating on the effective date of the ESG Amendment, and the adjustments to the Applicable Margin for Base Rate Loans **consisting of Revolving Loans** shall be the same amount, in basis points, as the adjustments to the Applicable Margin for ~~Eurodollar Rate~~ **Term SOFR Loans consisting of Revolving Loans** or (ii) a 0.01% increase and/or a 0.01% decrease in the otherwise Applicable Unused Commitment Fee Rate. The pricing adjustments pursuant to the KPI’s will require, among other things, reporting and validation of the measurement of the KPI’s in a manner that is aligned with the Sustainability Linked Loan Principles and is to be agreed between the Borrower and the Sustainability Coordinator (each acting reasonably). Following the effectiveness of the ESG Amendment, any modification to the ESG Pricing Provisions

which does not have the effect of reducing the Applicable Unused Commitment Fee Rate, Applicable Margin for Base Rate Loans consisting of Revolving Loans or Applicable Margin for ~~Eurodollar-Rate~~ Term SOFR Loans consisting of Revolving Loans to a level not otherwise permitted by this paragraph shall be subject only to the consent of the Requisite Revolving Credit Lenders. The Sustainability Coordinator will (i) assist the Borrower in determining the ESG Pricing Provisions in connection with the ESG Amendment and (ii) assist the Borrowers in preparing informational materials focused on ESG to be used in connection with the ESG Amendment. The provisions of this Section shall supersede any provisions in Section 12.1 to the contrary.

SECTION 2.19 FILO Deficiency Reserve; Certain Availability Reserves.

(a) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, as long as any portion of the FILO Loans are outstanding, the Administrative Agent shall implement and maintain the FILO Deficiency Reserve, if applicable. For the purposes of determining any FILO Deficiency Reserve, the Administrative Agent shall be entitled to rely solely on the calculation thereof made by the Borrower as reflected in the most recent Borrowing Base Certificate delivered by the Borrower to the Administrative Agent, unless the Administrative Agent is notified in writing by the FILO Documentation Agent that such calculation is inaccurate and providing the Administrative Agent and the Borrower with the correct calculation, prepared in good faith, of the FILO Deficiency Reserve (any such notice, a “FILO Deficiency Reserve Correction Notice”), and, in such event, the Administrative Agent shall be entitled to rely solely on the calculation of the FILO Deficiency Reserve made by the FILO Documentation Agent as reflected in the FILO Deficiency Reserve Correction Notice. Upon receipt by the Administrative Agent of a Borrowing Base Certificate or a FILO Deficiency Reserve Correction Notice, as applicable, the Administrative Agent shall have a two (2) Business Day period of time to implement any FILO Deficiency Reserve or any adjustments to the FILO Deficiency Reserve then in effect as set forth in such Borrowing Base Certificate or such FILO Deficiency Reserve Correction Notice, as the case may be, and shall thereafter maintain such FILO Deficiency Reserve until further adjustment, if any, pursuant to receipt of a subsequent Borrowing Base Certificate or FILO Deficiency Reserve Correction Notice. The Administrative Agent shall not have any liability for relying on the calculation of any FILO Deficiency Reserve as set forth in a Borrowing Base Certificate delivered by the Borrower or in any FILO Deficiency Reserve Correction Notice delivered by the FILO Documentation Agent, as the case may be. In the event of any discrepancy or dispute between the FILO Documentation Agent and the Borrower as to the amount of any FILO Deficiency Reserve, the Administrative Agent shall rely (and shall be entitled to rely) solely on the calculation of the FILO Deficiency Reserve as determined by the FILO Documentation Agent and shall have no liability to any Person for doing so.

(b) At any time that Excess Availability is less than \$75,000,000 or an Event of Default is continuing, upon the written request of the FILO Documentation Agent (with any such written request to be delivered to the Borrower concurrent with delivery to the Administrative Agent), the Administrative Agent shall establish a Cash Management Reserve, a Bank Product Reserve and a Swap Obligations Reserve. The amount of such Cash Management Reserve, Bank Product Reserve and Swap Obligations Reserve shall be determined by the Administrative Agent in its Permitted Discretion, in consultation with the FILO Documentation Agent, and shall be reviewed and adjusted by the Administrative Agent periodically (but no less frequently than with the delivery of each Borrowing Base Certificate) to reflect any material changes in the credit exposure with respect to such Obligations. The Administrative Agent shall release any such Cash Management Reserve, Bank Product Reserve and Swap Obligations Reserve established pursuant to this Section 2.19(b) on the date on which (x) if the occurrence of an Event of Default was the basis for establishing such reserve, no Event of Default is continuing or (y) if Excess Availability being

less than \$75,000,000 was the basis for establishing such reserve, Excess Availability is at least equal to \$75,000,000. The foregoing provisions are intended solely to establish circumstances in which the Administrative Agent must establish, at the direction of the FILO Documentation Agent, any such Cash Management Reserve, Bank Product Reserve and Swap Obligations Reserve. This Section 2.19(b) shall not limit the right of the Administrative Agent to establish Availability Reserves at such time and in such amounts as the Administrative Agent determines in its Permitted Discretion and in accordance with the terms of this Agreement.

(c) Notwithstanding anything to the contrary contained in this Agreement, as long as any FILO Loans remain outstanding, (i) the Administrative Agent shall maintain Availability Reserves against the Borrowing Base of the type established on the Third Amendment Effective Date, which Availability Reserves shall be calculated by the same methodology as established on the Third Amendment Effective Date; provided that (A) subject to the following clause (ii), the Administrative Agent may eliminate (or reduce below the level of such Availability Reserve as of the Third Amendment Effective Date) any such Availability Reserve concurrently with or after elimination or reduction of the risk, event or circumstance that gave rise to the establishment of such Availability Reserve (other than any Cash Management Reserve, Bank Product Reserve or Swap Obligations Reserve described in Section 2.19(b), which shall be implemented and may be released in accordance with the terms of Section 2.19(b)), (B) the Administrative Agent may, in accordance with the terms of this Agreement, change the methodology used to calculate any such Availability Reserve if the effect of such change is to increase the amount of such Availability Reserve and (C) subject to the following clause (ii), the Administrative Agent may reduce, eliminate or modify any Availability Reserve against the Borrowing Base to the extent imposed or established after the Third Amendment Effective Date; provided, further, that, in connection with a Conforming Post-Petition Financing and that is consented to by the Administrative Agent, the Person providing such Post-Petition Financing may release or eliminate any Availability Reserves against the Borrowing Base implemented and maintained by the Administrative Agent that relate to claims or rights that are not senior in priority to such Post-Petition Financing, and (ii) at any time that Excess Availability is less than \$75,000,000 or an Event of Default is continuing, the Administrative Agent shall establish Availability Reserves against the Borrowing Base as recommended by the field examiner in connection with any Field Examination (other than any such recommended Availability Reserves that the Administrative Agent and the FILO Documentation Agent mutually agreed to remove or not to implement in connection with or following a prior Field Examination) and shall maintain such Availability Reserves until the field examiner recommends their removal in connection with a subsequent Field Examination, unless otherwise mutually agreed by the Administrative Agent and the FILO Documentation Agent, each in its Permitted Discretion. For clarity, the foregoing shall not limit the right of the Administrative Agent, (x) to modify the amount of any of any Availability Reserves against the Borrowing Base based upon mathematical calculations (e.g., based on an increase or reduction in deposits at the time of calculation) or (y) without regard to the foregoing clause (x), but subject to the foregoing clause (ii), to increase any Availability Reserve against the Borrowing Base from the level established as of the Third Amendment Effective Date and thereafter to reduce the amount of such Availability Reserve to an amount not less than (unless otherwise permitted pursuant to this Section 2.19(c)) the amount thereof established on the Third Amendment Effective Date, in the case of each of clauses (x) and (y), in a manner otherwise permitted by this Agreement.

ARTICLE III

TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

SECTION 3.1 Taxes. For purposes of this Section 3.1, the term “*applicable Law*” or “*Law*” includes FATCA.

(a) All sums payable by any Loan Party hereunder or under any other Loan Document to any Agent, Issuer or any Lender shall (except to the extent required by Law) be paid free and clear of, and without any deduction or withholding on account of, any Taxes.

(b) If any Loan Party or any Agent, Issuer or Lender is required by Law to make any deduction or withholding on account of any Non-Excluded Tax or Other Taxes from any sum paid or payable by any Loan Party to any Lender, Issuer or Agent under any of the Loan Documents: (i) the applicable Loan Party (if it is required to make the deduction or withholding) shall notify the applicable Agent of any such requirement or any change in any such requirement as soon as such Loan Party becomes aware of it; (ii) the applicable Loan Party or Agent, Issuer or Lender, as applicable, shall make such deduction or withholding and pay to the relevant Governmental Authority, in accordance with applicable Law, any such Non-Excluded Tax or Other Tax before the date on which penalties attach thereto; (iii) the sum payable to such Lender, Issuer or Agent (as applicable) shall be increased by such Loan Party to the extent necessary to ensure that, after the making of any required deduction or withholding (including any deductions or withholdings attributable to any payments required to be made under this *Section 3.1*), such Lender, Issuer or Agent (as applicable), receives on the due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and (iv) within thirty days after paying any sum from which it is required by Law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which it is required by clause (ii) above to pay, the Loan Party making such payments (if it is required to make the deduction or withholding) shall deliver to the Administrative Agent evidence reasonably satisfactory to the other affected parties of such deduction or withholding and of the remittance thereof to the relevant Governmental Authority.

(c) Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, any withholding Tax with respect to any payments to be made to such Lender under any Loan Document. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documentation required below in this *Section 3.1(c)*) obsolete, expired or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent of its inability to do so.

Without limiting the foregoing:

(1) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(2) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed original copies of IRS Form W-8BEN or W-8BEN-E, as applicable (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(B) two properly completed and duly signed original copies of IRS Form W-8ECI (or any successor forms),

(C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (A) two properly completed and duly signed certificates substantially in the form of Exhibit M (any such certificate, a “United States Tax Compliance Certificate”) and (B) two properly completed and duly signed original copies of IRS Form W-8BEN or W-8BEN-E, as applicable (or any successor forms),

(D) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or a participating Lender), two properly completed duly signed original copies of IRS Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by a Form W-8ECI, W-8BEN or W-8BEN-E, as applicable United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information (or any successor forms) from each beneficial owner that would be required under this *Section 3.1(c)* if such beneficial owner were a Lender, as applicable (provided that, if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Foreign Lender on behalf of such beneficial owner), or

(E) two properly completed and duly signed original copies of any other form prescribed by applicable U.S. federal income tax Laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, United States federal withholding tax on any payments to such Lender under the Loan Documents.

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

Notwithstanding any other provision of this clause (c), a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(d) In addition to the payments by a Loan Party required by *Section 3.1(b)*, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(e) The Borrower shall indemnify each Lender, each Issuer and each Agent (each a “Tax Indemnitee”), within 20 days after written demand therefor, for the full amount of any Non-Excluded Taxes paid or payable by such Tax Indemnitee that is imposed on or in respect of any payment under or with respect to any Loan Document, and any Other Taxes payable by such Tax Indemnitee (including Non-Excluded Taxes or Other Taxes imposed on or attributable to amounts payable under this *Section 3.1*), whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered by the Tax Indemnitee or by the Administrative Agent on its own behalf or on behalf of another Tax Indemnitee, shall be conclusive absent manifest error.

(f) If and to the extent that a Tax Indemnitee, in its sole discretion (exercised in good faith), determines that it has received a refund of any Non-Excluded Taxes or Other Taxes in respect of which it has received additional payments under this *Section 3.1*, then such Tax Indemnitee shall pay to the relevant Loan Party the amount of such refund, net of all out-of-pocket expenses of the Tax Indemnitee (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Loan Party, upon the request of the Tax Indemnitee, agrees to repay the amount paid over by the Tax Indemnitee (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Tax Indemnitee if the Tax Indemnitee is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require a Tax Indemnitee to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(g) In the event that a Loan Party makes an indemnification payment to a Tax Indemnitee with respect to Non-Excluded Taxes or Other Taxes pursuant to subsection (e) of this *Section 3.1* or a Loan Party is required to repay to a Tax Indemnitee an amount in respect of a refund of any Non-Excluded Taxes or Other Taxes previously paid over to such Loan Party pursuant to subsection (f) of this *Section 3.1*, such Tax Indemnitee shall reasonably cooperate with all reasonable requests of such Loan Party, at the sole expense of such Loan Party, if (i) in the reasonable judgment of the Tax Indemnitee such cooperation shall not subject such Tax Indemnitee, as the case may be, to any unreimbursed third party cost or expense or otherwise be materially disadvantageous to such Tax Indemnitee and (ii) there is a reasonable basis for such Loan Party to contest with the applicable Governmental Authority the imposition of such Non-Excluded Taxes or Other Taxes or the repayment of such refund. Any resulting refund shall be governed by *Section 3.1(f)*. This subsection shall not be construed to require a Tax Indemnitee to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(h) For purposes of determining withholding Taxes imposed under FATCA, from and after the First Amendment Effective Date, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) this Agreement as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

SECTION 3.2 Illegality. ~~Subject to the provisions set forth in Section 3.3(c) below, if~~ if any Lender ~~reasonably~~ determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to ~~the Eurodollar Rate~~ SOFR or Term SOFR, or to determine or charge interest rates based upon ~~the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market~~ SOFR or Term SOFR, then, ~~on~~ upon notice thereof by such Lender to the Borrower (through

the Administrative Agent), ~~(ia)~~ any obligation of such Lender to make or continue ~~Eurodollar-Rate~~Term SOFR Loans or to convert Base Rate Loans to ~~Eurodollar-Rate~~Term SOFR Loans shall be suspended, and ~~(ib)~~ if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the ~~Eurodollar-Rate~~Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Eurodollar-Rate~~Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, ~~(xi)~~ the Borrower ~~may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar-Rate Loans and~~ shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all ~~Eurodollar-Rate~~Term SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Eurodollar-Rate~~Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor ~~(or, in the case of any impacted FILO Loan, the last day of the current calendar month)~~, if such Lender may lawfully continue to maintain such ~~Eurodollar-Rate Loans~~Term SOFR Loan to such day, or immediately, if such Lender may not lawfully continue to maintain such ~~Eurodollar-Rate Loans~~Term SOFR Loan and ~~(yii)~~ if such notice asserts the illegality of such Lender determining or charging interest rates based upon ~~the Eurodollar-Rate component of the Base Rate with respect to any Base Rate Loans~~SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the ~~Eurodollar-Rate~~Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon ~~the Eurodollar-Rate~~SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.5.

SECTION 3.3 Inability to Determine Rates.

(a) ~~Subject to Section 3.3(c) below, if~~ If in connection with any request for a ~~Eurodollar-Rate~~Term SOFR Loan or a conversion ~~to or of Base Rate Loans to Term SOFR Loans or a~~ continuation thereof ~~for maintenance of any of such Loans, as applicable,~~ (i) the Administrative Agent determines ~~that (A) Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan~~(which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.3(b), and the circumstances under clause (i) of Section 3.3(b) or the Scheduled Unavailability Date has occurred, or (B) ~~(x)~~ adequate and reasonable means do not otherwise exist for determining ~~the Eurodollar-Rate~~Term SOFR for any requested Interest Period ~~(or, in the case of the FILO Loans, for any calendar month)~~ with respect to ~~an existing or proposed Eurodollar-Rate~~Term SOFR Loan or in connection with an existing or proposed Base Rate Loan ~~and (y) the circumstances described in Section 3.3(c)(i) do not apply (in each case with respect to this clause (i), "Impacted Loans")~~, or (ii) the Administrative Agent or the Requisite ~~Lenders~~Revolving Credit Lenders (with respect to the Revolving Obligations) or the FILO Documentation Agent (with respect to the FILO Obligations) determine that for any reason ~~the Eurodollar-Rate~~that Term SOFR for any requested Interest Period (or, in the case of the FILO

Loans, for any calendar month) with respect to ~~an existing or~~ proposed ~~Eurodollar Rate~~ Loan does not adequately and fairly reflect the cost to ~~such the applicable~~ Lenders of funding ~~or maintaining~~ such ~~Eurodollar Rate~~ Loan, the Administrative Agent will promptly so notify the Borrower and each applicable Lender.

~~(a)~~ Thereafter, (x) the obligation of the applicable Lenders to make or maintain ~~Eurodollar~~ Term SOFR Loans, or to convert Base Rate Loans to Term SOFR Loans, shall be suspended; ~~(to the extent of the affected Eurodollar Rate Term SOFR Loans or Interest Periods)~~, and (y) in the event of a determination described in the preceding sentence with respect to the ~~Eurodollar Rate~~ Term SOFR component of the Base Rate, the utilization of the ~~Eurodollar Rate~~ Term SOFR component in determining the Base Rate for such Loans shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Requisite Revolving Credit Lenders or the FILO Documentation Agent described in *clause (ii)* of this Section 3.3(a), until the Administrative Agent upon instruction of the Requisite Revolving Credit Lenders or the FILO Documentation Agent, as applicable) revokes such notice.

Upon receipt of such notice, (i) the Borrower may revoke any pending request for a Borrowing of, or conversion to, or continuation of ~~Eurodollar Rate~~ Term SOFR Loans (to the extent of the affected ~~Eurodollar Rate~~ Term SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein; and (ii) any outstanding Term SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period (or, in the case of any impacted FILO Loan, at the end of the current calendar month).

~~(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (i) of Section 3.3(a), the Administrative Agent, in consultation with the Borrower and Requisite Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (i) of the first sentence of Section 3.3(a), (ii) the Administrative Agent or the Requisite Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.~~

(b) ~~(c)~~ Replacement of Term SOFR or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Requisite ~~Lenders~~ Revolving

Credit Lenders (with respect to the Revolving Obligations) or FILO Documentation Agent (with respect to the FILO Obligations) notify the Administrative Agent (with, in the case of the Requisite Revolving Credit Lenders or the FILO Documentation Agent, as applicable, a copy to the Borrower) that the Borrower or Requisite Revolving Credit Lenders or FILO Documentation Agent (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining ~~LIBOR for any Interest Period hereunder or any other tenors of LIBOR~~ one month, three month and six month interest periods of Term SOFR (or, in the case of the FILO Loans, the one month period of Term SOFR), including, without limitation, because the ~~LIBOR~~ Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) ~~the~~ CME or any successor administrator of the ~~LIBOR~~ Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which ~~LIBOR or the LIBOR~~ one month, three month and six month interest periods of Term SOFR (or, in the case of the FILO Loans, the one month period of Term SOFR) or the Term SOFR Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of ~~loans~~ U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide ~~LIBOR~~ such interest periods of Term SOFR after such specific date (~~such specific date~~ the latest date on which one month, three month and six month interest periods of Term SOFR (or, in the case of the FILO Loans, the one month period of Term SOFR) or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the “Scheduled Unavailability Date”); ~~or~~

~~(iii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over such administrator has made a public statement announcing that all Interest Periods and other tenors of LIBOR are no longer representative; or~~

~~(iv) syndicated loans currently being executed, or that include language similar to that contained in this Section 3.3, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;~~

then, ~~in the case of clauses (i)-(iii) above,~~ on a date and time determined by the Administrative Agent ~~in consultation with the Borrower~~ (any such date, the “LIBOR Term SOFR Replacement Date”), which date shall be at the end of an Interest Period (or, in the case of the FILO Loans, at the end of the current calendar month) or on the relevant interest payment date, as applicable, for interest calculated ~~and shall occur reasonably promptly upon the occurrence of any of the events or circumstances under clauses (i), (ii) or (iii) above~~ and, solely with respect to *clause (ii)* above, no later than the Scheduled Unavailability Date, ~~LIBOR~~ Term SOFR will be replaced hereunder and under any Loan Document with, ~~subject to the proviso below, the first available alternative set forth in the order below~~ (x) with respect to the Revolving Obligations, Daily Simple SOFR plus the SOFR Adjustment for any payment period for interest calculated that can be determined by the Administrative Agent, or (y) with respect to the FILO Obligations, an alternate benchmark rate that has been selected by the Administrative Agent, the FILO Documentation Agent and the Borrower giving due consideration to any evolving or then-prevailing market

convention for determining a benchmark rate as a replacement to the then-current rate applicable to FILO Obligations hereunder for similar credit facilities at such time, in each case of the foregoing clauses (x) and (y), without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the “~~LIBOR Successor Rate~~”; and any such rate before giving effect to the Related Adjustment, the “~~Pre-Adjustment Successor Rate~~”);

~~(x) Term SOFR plus the Related Adjustment; and~~

~~(y) SOFR plus the Related Adjustment;~~

~~and in the case of clause (iv) above, the Borrower and Administrative Agent may amend this Agreement solely for the purpose of replacing LIBOR under this Agreement and under any other Loan Document in accordance with the definition of “LIBOR Successor Rate” and such amendment will become effective at 5:00 p.m., on the fifth Business Day after the Administrative Agent shall have notified all Lenders and the Borrower of the occurrence of the circumstances described in clause (iv) above unless, prior to such time, Lenders comprising the Requisite Lenders have delivered to the Administrative Agent written notice that such Requisite Lenders object to the implementation of a LIBOR Successor Rate pursuant to such clause;~~

~~provided that, if the Administrative Agent in consultation with the Borrower determines that Term SOFR has become available, is administratively feasible for the Administrative Agent and would have been identified as the Pre-Adjustment Successor Rate in accordance with the foregoing if it had been so available at the time that the LIBOR Successor Rate then in effect was so identified, and the Administrative Agent notifies the Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Pre-Adjustment Successor Rate shall be Term SOFR and the LIBOR Successor Rate shall be Term SOFR plus the relevant Related Adjustment;~~

~~The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of (x) any occurrence of any of the events, periods or circumstances under clauses (i) through (iii) above, (y) a LIBOR Replacement Date and (z) the LIBOR Successor Rate;~~

~~Any LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent;~~

(c) Solely with respect to the Revolving Obligations, if the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a quarterly basis (it being understood that all interest payments with respect to the FILO Loans will always be payable on a monthly basis).

~~Notwithstanding anything else herein, if at any time any LIBOR Successor Rate as so determined would otherwise be less than the LIBOR Floor, the LIBOR Successor Rate will~~

~~be deemed to be the LIBOR Floor for the purposes of this Agreement and the other Loan Documents.~~

~~In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent will have the right to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such LIBOR Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such LIBOR Successor Rate Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.~~

~~If the events or circumstances of the type described in 3.3(c)(i)-(iii) have occurred with respect to the LIBOR Successor Rate then in effect, then the successor rate thereto shall be determined in accordance with the definition of "LIBOR Successor Rate."~~

(d) Notwithstanding anything to the contrary herein, (i) ~~after any such determination by the Administrative Agent or receipt by the Administrative Agent of any such notice described under Section 3.3(c)(i)-(iii), as applicable solely with respect to the Revolving Obligations~~, if the Administrative Agent determines that ~~none of the LIBOR Successor Rates is~~ Daily Simple SOFR is not available on or prior to the LIBOR Term SOFR Replacement Date, or (ii) ~~if the events or circumstances described in Section 3.3(c)(iv) have occurred but none of the LIBOR Successor Rates is available, or~~ (iii) if the events or circumstances of the type described in Section 3.3(eb)(i) - or (iii) have occurred with respect to Term SOFR or the LIBOR Successor Rate then in effect ~~and the Administrative Agent determines that none of the LIBOR Successor Rates is available~~, then in each case, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing LIBOR Term SOFR or any then current LIBOR Successor Rate in accordance with this Section 3.3 at the end of any Interest Period (or, in the case of the FILO Loans, at the end of the current calendar month), relevant interest payment date or payment period for interest calculated, as applicable, with ~~another alternate~~ (x) with respect to the Revolving Obligations, an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated ~~syndicated~~ syndicated and agented in the United States for such alternative ~~benchmarks~~ benchmark, and, in each case, including any ~~Related Adjustments and any other~~ mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated ~~syndicated~~ syndicated and agented in the United States for such ~~benchmarks~~ benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated, or (y) with respect to the FILO Obligations, an alternate benchmark rate described in clause (y) of the definition of "Successor Rate" above. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a LIBOR "Successor Rate". Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all applicable Lenders and the Borrower unless, prior to such time, Lenders comprising the Requisite ~~Lenders~~ Revolving Credit Lenders (with respect to the Revolving Obligations) or the FILO Documentation Agent (with respect to the FILO Obligations) have delivered to the Administrative Agent written notice that such Requisite Revolving Credit Lenders or the FILO Documentation Agent, as applicable, object to such amendment.

~~(e) If, at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, no LIBOR Successor Rate has been determined in accordance with clauses (c) or (d) of this Section 3.3 and the circumstances under clauses (c)(i) or (c)(iii) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, (to the extent of the affected Eurodollar Rate Loans, Interest Periods, interest payment dates or payment periods), and (y) the Eurodollar Rate component shall no longer be utilized in determining the Base Rate, until the LIBOR Successor Rate has been determined in accordance with clauses (c) or (d). Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans, Interest Periods, interest payment dates or payment periods) or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein.~~

(e) The Administrative Agent will promptly (in one or more notices) notify the Borrower and each applicable Lender of the implementation of any Successor Rate.

(f) Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

(g) Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than the applicable Floor, the Successor Rate will be deemed to be the applicable Floor for the purposes of this Agreement and the other Loan Documents. The Floor shall be determined separately for the Revolving Obligations and the FILO Obligations, as set forth in the definition of "Floor".

(h) In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

SECTION 3.4 Increased Cost and Reduced Return; Capital Adequacy; Reserves on ~~Eurodollar Rate~~Term SOFR Loans.

(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 any Issuer;

(ii) subject any Lender or any Issuer to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any ~~Eurodollar Rate~~Term SOFR Loan made by it, or change the basis of taxation of payments to

such Lender or the Issuer in respect thereof (except for any Excluded Taxes or any Non-Excluded Taxes or Other Taxes indemnified or otherwise paid under *Section 3.1*); or

(iii) impose on any Lender or any Issuer ~~or the London interbank market~~ any other condition, cost or expense affecting this Agreement or ~~Eurodollar Rate~~ Term SOFR Loans made by such Lender or any Letter of Credit or participation therein, in each case that is not otherwise accounted for in this *clause (a)*;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to ~~the Eurodollar Rate~~ Term SOFR (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such Issuer 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 or Issuer hereunder (whether of principal, interest or any other amount) then, from time to time within ~~fifteen~~ (1510) days after demand by such Lender or Issuer setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender or Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If any Lender or any Issuer reasonably determines that any Change in Law affecting such Lender or such Issuer or any Lending Office of such Lender or such Lender's or such 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 such Issuer's capital or on the capital of such Lender's or such Issuer's holding company, if any, as a consequence of this Agreement, the Revolving Credit Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuer, to a level below that which such Lender or such Issuer or such Lender's or such Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuer's policies and the policies of such Lender's or such Issuer's holding company with respect to capital adequacy), then from time to time upon demand of such Lender or such Issuer setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender or such Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuer or such Lender's or such Issuer's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of a Lender or an Issuer setting forth the amount or amounts necessary to compensate such Lender or such Issuer or its holding company, as the case may be, as specified in *subsection (a)* or *(b)* of this *Section 3.4* and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or such 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 any Issuer to demand compensation pursuant to the foregoing provisions of this *Section 3.4* shall not constitute a waiver of such Lender's or such Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or an Issuer pursuant to the foregoing provisions of this *Section 3.4* for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender or such Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such 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 180 day period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 3.5 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, other than with respect to the repayment of Revolving Loans on the Third Amendment Effective Date (including with the proceeds of the FILO Loans), which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

- (a) any continuation, conversion, 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 the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or
- (c) any assignment of a ~~Eurodollar Rate~~ Term SOFR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to *Section 3.7*;

including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of 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.

SECTION 3.6 Matters Applicable to all Requests for Compensation.

(a) *Designation of a Different Lending Office*. If any Lender requests compensation under *Section 3.4*, or the Borrower is required to pay any additional amount to any Lender, any Issuer, or any Governmental Authority for the account of any Lender or any Issuer pursuant to *Section 3.1*, or if any Lender gives a notice pursuant to *Section 3.2*, then such Lender or such Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or such Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to *Section 3.1* or *3.4*, as the case may be, in the future, or eliminate the need for the notice pursuant to *Section 3.2*, as applicable, and (ii) in each case, would not subject such Lender or such Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or such Issuer, as the case may be in any material economic, legal or regulatory respect.

(b) *Suspension of Lender Obligations*. If any Lender requests compensation by the Borrower under *Section 3.4*, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make ~~or~~, continue ~~Eurodollar Rate~~ Term SOFR Loans from one Interest Period to another Interest Period or maintain Term SOFR Loans, or to convert Base Rate Loans into ~~Eurodollar Rate~~ Term SOFR Loans, until the event or condition giving rise to such request ceases to be in effect ~~(in which case the provisions of Section 3.6(c) shall be applicable)~~; *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

~~(c) Conversion of Eurodollar Rate Loans. If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Sections 3.2, 3.3 or 3.4 hereof that gave rise to the conversion of such Lender's Eurodollar Rate Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Rate Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding Eurodollar Rate Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.~~

SECTION 3.7 Replacement of Lenders under Certain Circumstances.

If (i) any Lender requests compensation under *Section 3.4* or ceases to make ~~Eurodollar Rate~~ Term SOFR Loans as a result of any condition described in *Section 3.2* or *Section 3.4*, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to *Section 3.1*, (iii) any Lender is a Non-Consenting Lender or (iv) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, *Section 12.2*), all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in *Section 12.2(b)(iv)*;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under *Section 3.5* and, in the case of any FILO Loan, any applicable FILO Prepayment Premium due and payable with respect thereto, determined as if such Loan were voluntarily prepaid as of such date) from the assignee (to the extent of such outstanding principal and accrued interest and fees, other than the applicable FILO Prepayment Premium) or the Borrower (in the case of all other amounts, including the applicable FILO Prepayment Premium);

(c) such Lender being replaced pursuant to this *Section 3.7* shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's Commitment and outstanding Loans, and (ii) deliver any Revolving Credit Notes or FILO Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided that* the failure of any such Lender to execute an Assignment and Assumption or deliver such Revolving Credit Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Revolving Credit Notes or FILO Notes, as applicable, shall be deemed to be canceled upon such failure;

(d) pursuant to such Assignment and Assumption, (i) the Eligible Assignee shall acquire all or a portion, as the case may be, of the assigning Lender's Revolving Credit Commitment and outstanding Loans, (ii) the Eligible Assignee shall purchase, at par, all Loans, accrued interest, accrued

fees and other amounts owing to the assigning Lender as of the date of replacement and (iii) upon such payment (regardless of whether such replaced Lender has executed an Assignment and Assumption or delivered its Revolving Credit Notes **or FILO Notes, as applicable**, to the Borrower or the Administrative Agent), the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Revolving Credit Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender;

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

(f) such assignment does not conflict with applicable Laws.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans and (iii) the Requisite Lenders or the requisite Lenders of the applicable Class or Classes of the Loans **(or, with respect to the FILO Loans, the FILO Documentation Agent)**, have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “*Non-Consenting Lender*.”

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 3.8 Survival. All of the Borrower’s obligations under this *Article III* shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent, the Collateral Agent, the Swing Loan Lender or any Issuer.

ARTICLE IV

CONDITIONS PRECEDENT

SECTION 4.1 Conditions Precedent to Effectiveness of this Agreement.

The effectiveness of this Agreement on the Effective Date was subject to the satisfaction or due waiver in accordance with *Section 12.1* of each of the following conditions precedent (the date on which such conditions were satisfied or waived being herein in accordance with *Section 12.1* shall be the “*Effective Date*”):

(a) The Administrative Agent’s receipt of the following, each of which shall be originals or facsimiles or other electronic image scan transmission (e.g., “pdf” or “tif” via e-mail) (in each case followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party each in form and substance reasonably satisfactory to the Administrative Agent and its legal counsel:

(i) executed counterparts of this Agreement and the Ratification Agreement;

(ii) a Revolving Credit Note executed by the Borrower in favor of each Lender that has requested a Revolving Credit Note at least two (2) Business Days in advance of the Effective Date;

(iii) evidence that all UCC financing statements required by Law to be filed, registered or recorded to create or perfect the Lien of the Collateral Agent on the Collateral have been so filed, registered or recorded;

(iv) such certificates of good standing from the applicable secretary of state of the state of organization of each Loan Party, copies of each Loan Party's Constituent Documents, certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the authority of each Loan Party to enter into this Agreement and the other Loan Documents to which such Loan Party is a party and the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Effective Date;

(v) an opinion from Latham & Watkins LLP, New York counsel to the Loan Parties substantially in the form of *Exhibit G-1*, and an opinion from Thompson Hine LLP, Ohio counsel to the Loan Parties substantially in the form of *Exhibit G-2*;

(vi) a solvency certificate from the chief financial officer of the Borrower substantially in the form attached hereto as *Exhibit O*;

(vii) evidence that all insurance required to be maintained pursuant to the Loan Documents as of the Effective Date, has been obtained and is in effect and that the Collateral Agent has been named as lender loss payee and/or additional insured, as applicable, under each insurance policy with respect to such insurance as to which the Collateral Agent shall have requested to be so named;

(viii) copies of a recent Lien and judgment search in each jurisdiction reasonably requested by the Administrative Agent with respect to the Loan Parties;

(ix) a Borrowing Base Certificate, certified as complete and correct in all material respects, which calculates the Borrowing Base as of the last Business Day of the most recent month ended at least fifteen (15) days prior to the Effective Date; and

(x) to the extent not previously delivered in connection with the Original Credit Agreement, copies of Credit Card Notifications which have been executed on behalf of such Loan Party to be delivered to such Loan Party's Credit Card Processors listed on *Schedule 8.12*.

(b) All fees and expenses required to be paid hereunder and invoiced at least two (2) Business Days before the Effective Date (except as otherwise reasonably agreed by the Borrower) shall have been paid in full in cash.

(c) The Administrative Agent shall have received reasonably satisfactory evidence that the Borrower shall have received at least \$725,000,000 in gross cash proceeds from borrowings under the First Lien Term Facility.

(d) The intercreditor agreement, dated as of the Effective Date, and the First Lien Term Facility Documentation required to be delivered under the First Lien Term Facility Credit Agreement on the Closing Date (as defined therein) shall have been duly executed and delivered by each party thereto, and shall be in full force and effect.

(e) Excess Availability shall be not less than \$200,000,000.

(f) The Arrangers shall have received (i) the Effective Date Annual Financial Statements, (ii) the Effective Date Quarterly Financial Statements.

(g) The Arrangers shall have received at least five days prior to the Effective Date all documentation and other information reasonably requested in writing by them at least ten (10) Business Days prior to the Effective Date in order to allow the Arrangers and the Lenders to comply with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

Without limiting the generality of the provisions of the last paragraph of *Section 9.3*, for purposes of determining compliance with the conditions specified in this *Section 4.1*, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

SECTION 4.2 Conditions Precedent to Each Loan and Letter of Credit.

The obligation of each Lender on any date to make any Loan and of each Issuer on any date to Issue any Letter of Credit is subject to the satisfaction of each of the following conditions precedent:

(a) Request for Borrowing or Issuance of Letter of Credit. With respect to any Revolving Loan, the Administrative Agent shall have received a duly executed Notice of Borrowing (or, in the case of Swing Loans, a duly executed Swing Loan Request), and, with respect to any Letter of Credit, the Administrative Agent and the applicable Issuer shall have received a duly executed Letter of Credit Request.

(b) Representations and Warranties; No Defaults. The following statements shall be true on the date of such Loan or Issuance, both immediately before and immediately after giving effect thereto and, in the case of any Loan, giving effect to the application of the proceeds thereof:

(i) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document (or, if the applicable Loan is being incurred in connection with a Revolving Commitment Increase the proceeds of which are to fund a Permitted Acquisition or similar permitted Investment, the Specified Representations) shall be true and correct in all material respects on and as of the date of such Borrowing; *provided* that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided, further* that, any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates; and

(ii) (x) no Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds therefrom, and (y) no Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(c) Borrowing Base. After giving effect to the Loans or Letters of Credit requested to be made or Issued on any such date and the use of proceeds thereof, the Revolving Credit Outstandings shall not exceed the Maximum Credit at such time.

Each submission by the Borrower to the Administrative Agent of a Notice of Borrowing or a Swing Loan Request and the acceptance by the Borrower of the proceeds of each Loan requested therein, and each submission by the Borrower to an Issuer of a Letter of Credit Request, and the Issuance of each Letter of Credit requested therein, shall be deemed to constitute a representation and warranty by the Borrower that the conditions specified in *clause (b)* above have been satisfied on and as of the date of the making of such Loan or the Issuance of such Letter of Credit.

The conditions set forth in this *Section 4.2* are for the sole benefit of the Secured Parties but until the Requisite Revolving Credit Lenders otherwise direct the Administrative Agent to cease making Loans, the Lenders will fund their Applicable Percentage of all Loans and Letter of Credit Borrowings and participate in all Swing Loans and Letters of Credit whenever made or issued, which are requested by the Borrower and which, notwithstanding the failure of the Loan Parties to comply with the provisions of this *Section 4.2*, are agreed to by the Administrative Agent, *provided*, however, the making of any such Loans or the issuance of any Letters of Credit shall not be deemed a modification or waiver by any Secured Party of the provisions of this *Section 4.2* on any future occasion or a waiver of any rights or the Secured Parties against the Loan Parties as a result of any such failure to comply.

Notwithstanding the foregoing, other than in connection with Protective Advances made in accordance with *Section 2.1(b)* or referred to in *clause (c)* of the definition of “Maximum Revolving Insolvency Amount”, neither the Administrative Agent nor any Lender will waive any condition in this *Section 4.2* if the Loan Parties are not, on a Pro Forma Basis, in compliance with *Section 6.1* immediately before and after giving effect to the applicable Credit Extension.

SECTION 4.3 Determinations of Effective Date Borrowing Conditions.

For purposes of determining compliance with the conditions specified in *Section 4.1*, each Lender shall be deemed to have consented to, approved, accepted or be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Borrowing on the Effective Date, borrowing of Swing Loans or Issuance or deemed Issuance hereunder specifying its objection thereto and such Lender shall not have made available to the Administrative Agent such Lender's Ratable Portion of such Borrowing or Swing Loans.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

To induce the Lenders, the Issuers ~~and~~, the Administrative Agent and the FILO Documentation Agent to enter into this Agreement, each of Holdings and the Borrower represents and warrants each of the following to the Lenders, the Issuers ~~and~~, the Administrative Agent and the FILO Documentation Agent, on and as of the ~~First~~Third Amendment Effective Date and after giving effect

to the making of the Loans and the other financial accommodations on the ~~First~~Third Amendment Effective Date and on and as of each date as required by *Section 4.2(b)(i)*:

SECTION 5.1 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its Restricted Subsidiaries that is a Material Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction), (b) has all corporate or other organizational power and authority to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (to the extent such concept exists) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all applicable Laws, orders, writs, injunctions and orders and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clause (c), (d) or (e), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.2 Authorization; No Contravention. (a) The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action. (b) Neither the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party nor the consummation of the transactions contemplated ~~by to occur on~~ the ~~First~~Third Amendment Effective Date (including the Borrowing of FILO Loans) will (i) contravene the terms of any of such Person's Constituent Documents, (ii) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Restricted Subsidiaries (other than as permitted under *Section 9.1*) under (A) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any applicable Law; except with respect to any breach, contravention or violation (but not creation of Liens) referred to in *clauses (ii) and (iii)*, to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.3 Governmental Authorization. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (i) filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.4 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party that is party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

SECTION 5.5 Financial Statements; No Material Adverse Effect.

(a) The Annual Financial Statements and the Quarterly Financial Statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, (A) except as otherwise expressly noted therein and (B) subject, in the case of the Quarterly Financial Statements, to changes resulting from, normal year-end adjustments and the absence of footnotes.

(b) Since the date of the Annual Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

(c) The forecasts of consolidated balance sheets, income statements and cash flow statements of the Borrower and its Subsidiaries, copies of which have been furnished to the Administrative Agent and the FILO Documentation Agent prior to the ~~First~~Third Amendment Effective Date, and all Projections delivered pursuant to *Section 7.1(d)* have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made, it being understood that projections as to future events are not to be viewed as facts and actual results may vary materially from such forecasts.

SECTION 5.6 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings, the Borrower, or any of the Restricted Subsidiaries that would reasonably be expected to have a Material Adverse Effect.

SECTION 5.7 Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) there are no strikes or other labor disputes against any of the Borrower or its Subsidiaries pending or, to the knowledge of the Borrower, threatened and (b) since February 2, 2017, hours worked by and payment made based on hours worked to employees of each of the Borrower or its Subsidiaries have not been in material violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters.

SECTION 5.8 Ownership of Property; Liens. Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for Liens permitted by *Section 9.1* and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.9 Environmental Matters.

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (i) each Loan Party and each of its Subsidiaries and their respective operations is in compliance with all applicable Environmental Laws (including having obtained all Environmental Permits) and (ii) none of the Loan Parties or any of their respective Subsidiaries has become subject to any pending, or to the knowledge of the Borrower, threatened Environmental Claim or any other Environmental Liability.

(b) None of the Loan Parties or any of their respective Subsidiaries has released, treated, stored, transported, arranged for transport or disposed of Hazardous Materials at or from any

currently or formerly owned or operated real estate or facility in a manner that would reasonably be expected to have a Material Adverse Effect.

SECTION 5.10 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, Holdings, the Borrower and its Restricted Subsidiaries (i) have timely filed all federal and state and other Tax returns and reports required to be filed, and (ii) have timely paid all federal and state and other Taxes, assessments, fees and other governmental charges (including satisfying its withholding tax obligations) levied or imposed on their properties, income or assets or otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP.

SECTION 5.11 ERISA Compliance.

(a) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws.

(b) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has failed to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan; (iii) none of the Loan Parties or any of their respective ERISA Affiliates 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 Sections 4201 et seq. or 4243 of ERISA with respect to a Multiemployer Plan; (iv) none of the Loan Parties or any of their respective ERISA Affiliates has engaged in a transaction that is subject to Sections 4069 or 4212(c) of ERISA; and (v) neither any Loan Party nor any ERISA Affiliate has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent (within the meaning of Section 4245 of ERISA) or has been determined to be in “endangered” or critical status (within the meaning of Section 432 of the Code or Section 305 of ERISA) and no such Multiemployer Plan is expected to be insolvent or endangered or critical status, except, with respect to each of the foregoing clauses of this *Section 5.11(b)*, as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(c) Except where noncompliance or the incurrence of an obligation would not reasonably be expected to result in a Material Adverse Effect, each Foreign Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders, and neither Holdings nor any Subsidiary has incurred any obligation in connection with the termination of or withdrawal from any Foreign Plan.

(d) Borrower represents and warrants, as of the ~~First~~Third Amendment Effective Date and throughout the term of this Agreement, at least one of the following is and will be true with respect to the Borrower:

(i) the Borrower is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to the Borrower’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit 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 the Borrower's entering into and performance of this Agreement, the other Loan Documents, the Loans, the Letters of Credit or the Revolving Credit Commitments and each action or obligation hereunder and thereunder,

(iii) (A) the Borrower 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 Borrower to enter into and perform this Agreement, the other Loan Documents, the Loans, the Letters of Credit or the Revolving Credit Commitments and each action or obligation hereunder and thereunder, (C) the entering into and performance of this Agreement, the other Loan Documents, the Loans, the Letters of Credit or the Revolving Credit Commitments and each action or obligation hereunder and thereunder, each satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of the Borrower, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to the Borrower's entering into and performance of this Agreement, the other Loan Documents, the Loans, the Letters of Credit or the Revolving Credit Commitments and each action or obligation hereunder and thereunder, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and the Borrower.

(e) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (d) is true with respect to the Borrower or (2) the Borrower has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (d), the Borrower further represents and warrants, as of the date hereof and throughout the term of this Agreement, that the Administrative Agent is not a fiduciary with respect to the assets of the Borrower involved in the Borrower's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement (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).

SECTION 5.12 Subsidiaries. As of the ~~First~~Third Amendment Effective Date, neither Holdings nor any other Loan Party has any Subsidiaries other than those specifically disclosed in *Schedule 5.12*, and all of the outstanding Equity Interests in Holdings, the Borrower and the Subsidiaries have been validly issued and are fully paid and (if applicable) nonassessable, and all Equity Interests owned by Holdings or any other Loan Party are owned free and clear of all security interests of any person except (i) those created under the Collateral Documents or under the Term Facility Documentation and secured Permitted Refinancing Indebtedness in respect of the Indebtedness under the Term Facility Documentation (which Liens shall be subject to the Intercreditor Agreement) and (ii) any nonconsensual Lien that is permitted under *Section 9.1*. As of the ~~First~~Third Amendment Effective Date, *Schedule 5.12* (a) sets forth the name and jurisdiction of each Subsidiary, (b) sets forth the ownership interest of Holdings, the Borrower and any other Subsidiary in each Subsidiary, including the percentage of such ownership and (c) identifies each Subsidiary the Equity Interests of which are required to be pledged on the ~~First~~Third Amendment Effective Date pursuant to the Collateral and Guarantee Requirement.

SECTION 5.13 Margin Regulations: Investment Company Act.

(a) As of the **FirstThird** Amendment Effective Date, none of the Collateral is comprised of any Margin Stock. No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Federal Reserve Board), or extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.

(b) Neither the Borrower nor any Guarantor is an “investment company” under the Investment Company Act of 1940.

SECTION 5.14 Disclosure. None of the information and data heretofore or contemporaneously furnished in writing by or on behalf of any Loan Party to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make such information and data (taken as a whole), in the light of the circumstances under which it was delivered, not materially misleading; it being understood that for purposes of this *Section 5.14*, such information and data shall not include projections and pro forma financial information or information of a general economic or general industry nature. As of the **FirstThird** Amendment Effective Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

SECTION 5.15 Intellectual Property; Licenses, Etc. The Borrower and the Restricted Subsidiaries have good and marketable title to, or a valid license or right to use, all patents, trademarks, service marks, trade names, copyrights, technology, software, know-how, licenses and other intellectual property rights (collectively, “*IP Rights*”) that are necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any of its Subsidiaries as currently conducted does not infringe upon, misuse, misappropriate or violate any IP Rights held by any Person except for such infringements, misuses, misappropriations or violations individually or in the aggregate, that would not reasonably be expected to have a Material Adverse Effect. No written claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened against any Loan Party or Subsidiary, that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 5.16 Solvency. After giving effect to the transactions contemplated **by to occur on** the **FirstThird** Amendment **Effective Date (including the Borrowing of FILO Loans)**, the Borrower and its Restricted Subsidiaries, on a Consolidated basis, are Solvent.

SECTION 5.17 OFAC; Sanctions. Neither the Borrower, nor any of its Subsidiaries, nor, to the knowledge of the Borrower and its Subsidiaries, any director, officer, employee, agent, Affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC’s List of Specially Designated nationals, HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction (a “*Sanctioned Person*”). No proceeds of any Loan made or Letter of Credit issued hereunder will be used directly, or to the Borrower’s knowledge, indirectly, to fund any operations in, finance any investments or activities in, or make any payments to, a

Sanctioned Person, or otherwise used in any manner that would result in a violation of any applicable Sanctions by any Person (including any Secured Party or other individual or entity participating in any transaction).

SECTION 5.18 USA PATRIOT Act. To the extent applicable, each of Holdings and its Subsidiaries is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the USA PATRIOT Act. No part of the proceeds of the Loans or any Letters of Credit will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010 or other similar anti-corruption legislation in any jurisdiction.

SECTION 5.19 Collateral Documents. The provisions of the Collateral Documents, together with such filings and other actions required to be, and when, taken hereby or by the applicable Collateral Documents (including the delivery to Collateral Agent of any Pledged Debt and any Pledged Equity required to be delivered pursuant to the applicable Collateral Documents), are, and will be, effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Liens permitted by *Section 9.1* and subject to the Intercreditor Agreement) on all right, title and interest of the respective Loan Parties in the Collateral described therein.

SECTION 5.20 Anti-Corruption Laws.

The Borrower and its Subsidiaries have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws in all material respects.

SECTION 5.21 ~~EEA~~Affected Financial Institution.

No Loan Party is an ~~EEA~~Affected Financial Institution.

ARTICLE VI

FINANCIAL COVENANT

So long as any Lender shall have any Revolving Credit Commitment hereunder, any Loan or other Obligation hereunder (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) Obligations under Secured Hedge Agreements ~~and~~, Cash Management Obligations and Bank Product Obligations) shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the Letter of Credit Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit in form and substance reasonably satisfactory to the Administrative Agent and each applicable Issuer), the Borrower agrees with the Lenders, the Issuers ~~and~~, the Administrative Agent and the FILO Documentation Agent to the following:

SECTION 6.1 Minimum Consolidated Fixed Charge Coverage Ratio.

At any time that a Covenant Trigger Event shall be in effect, the Consolidated Fixed Charge Coverage Ratio of the Borrower and its Restricted Subsidiaries for the Test Period ending on the last day of the most recent Fiscal Quarter for which financial statements of the Borrower and its Restricted Subsidiaries were required to have been delivered pursuant to *Section 7.1(a) or (b)*, as applicable, and each subsequent Test Period during the continuance of such Covenant Trigger Event, shall be not less than 1.0 to 1.0 and the Borrower shall immediately deliver to the Administrative Agent a certificate of the chief financial officer setting forth reasonably detailed calculations of the Consolidated Fixed Charge Coverage Ratio.

ARTICLE VII

REPORTING COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) Obligations under Secured Hedge Agreements ~~and~~, Cash Management Obligations and Bank Product Obligations) shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the Letter of Credit Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit in form and substance reasonably satisfactory to the Administrative Agent), the Borrower shall, and shall (except in the case of the covenants set forth in *Sections 7.1, 7.2 and 7.3*) cause each of the Restricted Subsidiaries to:

SECTION 7.1 Financial Statements, Etc.

Deliver to the Administrative Agent for prompt further distribution to each Lender each of the following and shall take the following actions:

(a) as soon as available, but in any event within ninety-five (95) days (or such longer period as the Administrative Agent and the FILO Documentation Agent may agree) after the end of each Fiscal Year of the Borrower, a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such Fiscal Year, and the related Consolidated statements of income or operations, stockholders' equity and cash flows for such Fiscal Year together with related notes thereto and, so long as provided to the holders of the Borrower's or any of its direct or indirect parent companies' debt securities, management's discussion and analysis describing results of operations, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of Ernst & Young LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any explanatory statement (other than an "emphasis of matter" paragraph) or any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (other than a "going concern" qualification or exception resulting from or relating to (i) an actual or anticipated breach of the financial covenant set forth in Section 6.1, (ii) an upcoming maturity date or (iii) any Unrestricted Subsidiary);

(b) as soon as available, but in any event within fifty (50) days (or such longer period as the Administrative Agent and the FILO Documentation Agent may agree) after the end of each of the first three (3) Fiscal Quarters of each Fiscal Year of the Borrower, a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such Fiscal Quarter, and the

related (i) Consolidated statements of income or operations for such Fiscal Quarter and for the portion of the Fiscal Year then ended and (ii) Consolidated statements of cash flows for the portion of the Fiscal Year then ended, setting forth in each case in comparative form the figures for the corresponding Fiscal Quarter of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes~~;~~ (together with and, so long as provided to the holders of the Borrower's or any of its direct or indirect parent companies' debt securities' management's discussion and analysis describing results of operations);

~~(e) [Reserved];~~

as soon as available, but in any event within thirty (30) days (or such longer period as the Administrative Agent and the FILO Documentation Agent may agree) after the end of each of the first two fiscal months of each fiscal quarter of the Borrower commencing with the first full such fiscal month ending after the Third Amendment Effective Date, a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal month, and the related Consolidated statements of income or operations for such fiscal month and for the portion of the Fiscal Year then ended and only with respect to each fiscal month ending on or after February 28, 2024, setting forth in each case in comparative form the figures for the corresponding fiscal month of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year, in each case, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes;

(c) within ninety (90) days (or such longer period as the Administrative Agent and the FILO Documentation Agent may agree) after the end of each Fiscal Year, a reasonably detailed Consolidated budget for the following Fiscal Year as customarily prepared by management of the Borrower for its internal use (including a projected Consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following Fiscal Year, the related Consolidated statements of projected operations, projected cash flow, projected income ~~and~~, projected Excess Availability and any projected FILO Deficiency Reserves and setting forth the material underlying assumptions applicable thereto) in each case on a monthly basis (collectively, the "Projections"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer of the Borrower stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood that actual results may vary from such Projections and that such variations may be material;

(d) simultaneously with the delivery of each set of Consolidated financial statements referred to in *Sections 7.1(a) ~~and~~, 7.1(b) and 7.1(c)* above, the related consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such Consolidated financial statements; and

(e) quarterly, at a time mutually agreed with the Administrative Agent and the FILO Documentation Agent that is promptly after the delivery of the information required pursuant to clause (a) above and the information delivered pursuant to clause (b) above for each Fiscal Quarter, participate in a conference call for Lenders to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the most recently-ended period for which

financial statements have been delivered, which requirement may be satisfied by including the Lenders ~~and~~, the Administrative Agent and the FILO Documentation Agent on quarterly conference calls with the Term Facility Lenders or the noteholders in respect of any other debt securities of Holdings or the Borrower.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this *Section 7.1* may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any direct or indirect parent of the Borrower that holds all of the Equity Interests of the Borrower (a “*Parent Entity*”) or (B) the Borrower’s or such entity’s Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, with respect to each of clauses (A) and (B), (i) to the extent such information relates to a parent of the Borrower, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the Borrower (or such parent), on the one hand, and the information relating to the Borrower and the Restricted Subsidiaries on a standalone basis, on the other hand and (ii) to the extent such information is in lieu of information required to be provided under *Section 7.1(a)*, such materials are accompanied by a report and opinion of Ernst & Young LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit other than as permitted by *Section 7.1(a)*.

SECTION 7.2 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) concurrently with the delivery of the financial statements referred to in *Section 7.1(a)* and *Section 7.1(b)*, a duly completed Compliance Certificate signed by the chief financial officer of the Borrower; *provided* that if such Compliance Certificate demonstrates an Event of Default of any financial covenant pursuant to *Section 6.1*, any of the Permitted Holders may deliver, prior to or together with such Compliance Certificate, a notice of their intent to cure (a “*Notice of Intent to Cure*”) pursuant to *Section 10.4* to the extent permitted thereunder;

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports, proxy statements and registration statements which Holdings or the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor or with any national securities exchange, as the case may be (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this *Section 7.2*;

(c) promptly after the furnishing thereof, copies of any material statements or material reports furnished to any holder of any class or series of debt securities of any Loan Party having an aggregate outstanding principal amount greater than the Threshold Amount or pursuant to the terms of the Term Facility Credit Agreements, in each case, so long as the aggregate outstanding principal amount thereunder is greater than the Threshold Amount and not otherwise required to be furnished to the Administrative Agent pursuant to any other clause of this *Section 7.2*;

(d) together with the delivery of the financial statements pursuant to *Sections 7.1(a)* and *7.1(b)* and each Compliance Certificate delivered pursuant to *Section 7.2(a)*, (i) a report setting forth the information required by *Section 3.3(c)* of the Security Agreement (or confirming

that there has been no change in such information since the Effective Date or the date of the last such report), (ii) a description of each event, condition or circumstance during the last Fiscal Quarter covered by such Compliance Certificate requiring a mandatory prepayment under *Section 2.9* and (iii) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate or a confirmation that there is no change in such information since the later of the Effective Date and the date of the last such list;

(e) on the date on which the delivery of financial statements is required to be made pursuant to *Section 7.1(a)*, the Borrower shall furnish to the Administrative Agent a description, in detail reasonably satisfactory to the Administrative Agent, of all material insurance coverage maintained by the Loan Parties, together with evidence thereof;

(f) prior to the making of any Specified Payment, a reasonably detailed calculation of the Consolidated Fixed Charge Coverage Ratio and applicable Excess Availability as required pursuant to *clause (b)* of the definition of “Payment Conditions” together with a certification that no Event of Default exists or would arise as a result of the making of the subject Specified Payment, and in the case of a Permitted Acquisition, that the requirements of the definition of “Permitted Acquisition” have been satisfied;

(g) ~~furnish to the Agents~~ (i) prompt written notice of any change (A) in any Loan Party’s corporate name, (B) in any Loan Party’s identity or corporate structure or jurisdiction of formation or (C) in any Loan Party’s Federal Taxpayer Identification Number; and (ii) with the delivery of each Compliance Certificate, written notice of any change from the most recently delivered Compliance Certificate, (A) in the location of any Loan Party’s chief executive office, its principal place of business, or (B) in the location of any office in which any Loan Party maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility);

(h) concurrently with the delivery of the financial statements referred to in *Section 7.1(a)*, *Section 7.1(b)* and *Section 7.1(c)* (if applicable), notice of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof since the date of the most recent financial statements delivered to the Administrative Agent (other than changes made in accordance with GAAP);

(i) concurrently with the delivery of each Borrowing Base Certificate pursuant to *Section 7.4*, notice of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof since the date of the most recent Borrowing Base Certificate delivered to the Administrative Agent but only to the extent that such changes materially affect the calculation of the Borrowing Base and the FILO Borrowing Base (other than changes made in accordance with GAAP);

(j) promptly, such additional information regarding the business, legal, financial or corporate affairs of any Loan Party or any Restricted Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or the FILO Documentation Agent may from time to time on its own behalf or on behalf of any Lender reasonably request; and

(k) promptly following any request therefor, provide information and documentation reasonably requested by the Administrative Agent, the FILO Documentation Agent or any Lender for purposes of compliance with applicable “know your customer” and

anti-money-laundering rules and regulations, including, without limitation, the USA PATRIOT Act and the Beneficial Ownership Regulation.

Documents required to be delivered pursuant to *Section 7.1(a)*~~*or*~~, *(b) or (c)* or *Section 7.2(c)* may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on *Schedule 12.8*; or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender~~and~~, the Administrative Agent and the FILO Documentation Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided that*: (i) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the Issuers materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "*Borrower Materials*") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "*Platform*") and (b) certain of the Lenders (each, a "*Public Lender*") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Subsidiaries, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the Issuers and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in *Section 12.17*); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

SECTION 7.3 Notices.

Promptly after a Responsible Officer of the Borrower obtains actual knowledge thereof, notify the Administrative Agent who shall promptly thereafter notify each Lender:

- (a) of the occurrence of any Default or Event of Default;
- (b) of (i) any dispute, litigation, investigation or proceeding between any Loan Party and any arbitrator or Governmental Authority, (ii) the filing or commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary, including pursuant to any applicable Environmental Laws or in respect of IP Rights, the occurrence of any noncompliance by any Loan Party or any of its Subsidiaries with, or liability

under, any Environmental Law or Environmental Permit, or (iii) the occurrence of any ERISA Event that, in any such case referred to in clauses (i), (ii) or (iii), has resulted or would reasonably be expected to result in a Material Adverse Effect; and

(c) any termination, withdrawal or resignation of Holdings' or Borrower's Registered Public Accounting Firm.

Each notice pursuant to this *Section 7.3* shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to *Section 7.3(a), (b) or (c)* (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

SECTION 7.4 Borrowing Base ~~Certificate~~Certificates; Appraisals; Field Examinations.

(a) Borrower shall provide the Administrative Agent and the FILO Documentation Agent with the following documents in a form and detail to be generally consistent with the form and detail of such documents provided in past practices as soon as possible after the end of each calendar month (commencing with the month ending February 25, 2023) (but in any event within fifteen (15) Business Days after the end thereof) for prompt further distribution to each Lender: a Borrowing Base Certificate setting forth the calculation of the Borrowing Base, the FILO Borrowing Base and ~~of~~ Excess Availability as of the last Business Day of the immediately preceding calendar month, duly completed and executed by a Responsible Officer of the Borrower, together with all schedules required pursuant to the terms of the Borrowing Base Certificate duly completed (such certification, a "*Monthly Borrowing Base Certificate*"); *provided* that the Borrower may elect, at its option, to deliver more frequent Borrowing Base Certificates, in which case such Borrowing Base Certificates shall be computed in accordance with the requirements in respect of Borrowing Base Certificates required to be delivered during the continuance of a Weekly Monitoring Event and the Borrower shall continue to deliver Borrowing Base Certificates on a weekly basis until January 15th of the next succeeding calendar year.

(b) At any time during the occurrence and continuation of a Weekly Monitoring Event, the Borrower shall furnish a Borrowing Base Certificate calculated as of the close of business on the last day of the immediately preceding calendar week, on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day).

(c) The Borrower shall also cooperate with (and cause its Subsidiaries to cooperate with) the Administrative Agent ~~in~~ in connection with appraisals of Inventory that shall be in form and detail and from third-party appraisers reasonably acceptable to (1) the Administrative Agent and (2) if such appraiser is not Hilco, the FILO Documentation Agent (each, an "*Inventory Appraisal*") for the purpose of determining the amount of the Borrowing Base and the FILO Borrowing Base attributable to Inventory; *provided, however*, that (x) the Administrative Agent may (and upon the written request of the FILO Documentation Agent shall) carry out, at the Borrower's expense, (i) one (1) Inventory Appraisal during any twelve month period, (ii) a second Inventory Appraisal during any such twelve month period (I) if requested by the FILO Documentation Agent in writing or (II) at any time on or after the date on which Excess Availability has been less than the greater of (A) \$48,125,000 and (B) 17.5% of the Modified Maximum Credit, in each case, for five (5) consecutive Business Days, the Administrative Agent may carry out, at the Borrower's expense, two (2) (it being agreed and understood, for the avoidance of doubt, that there shall not be more than two Inventory Appraisals in any twelve month period under any circumstance pursuant to this clause (x)(ii)); provided, no second Inventory Appraisal shall be required due to Excess Availability on or prior to the Third

Amendment Effective Date, and (iii) at any time during the continuation of a Specified Event of Default, ~~the Administrative Agent may carry out, at the Borrower's expense,~~ Inventory Appraisals as frequently as determined by the Administrative Agent or the FILO Documentation Agent, each in its reasonable discretion, and (y) in addition to the foregoing *clause (x)*, the Administrative Agent may carry out, at the Lenders' expense, one (1) additional Inventory Appraisal in any twelve month period. The Borrower shall furnish to the Administrative Agent and the FILO Documentation Agent any information that the Administrative Agent or the FILO Documentation Agent may reasonably request regarding the determination and calculation of the Borrowing Base and the FILO Borrowing Base including correct and complete copies of any invoices, underlying agreements, instruments or other documents and the identity of all Account Debtors in respect of Accounts referred to therein. It is understood and agreed that (i) the Inventory Appraisals referred to in this Section 7.4(c) shall be for the benefit of all Lenders (including the FILO Lenders), and the FILO Lenders and the FILO Documentation Agent shall not have a right to separate or independent Inventory Appraisals and (ii) the methodology of each Inventory Appraisal shall be consistent with the appraisal methodology utilized in the most recent Inventory Appraisal completed as of the Third Amendment Effective Date (or the methodology most recently approved by the FILO Documentation Agent), unless any changes in such methodology are approved by the FILO Documentation Agent in its Permitted Discretion. In the event the FILO Documentation Agent disagrees with the results of any Inventory Appraisal solely due to a change in methodology not otherwise approved by the FILO Documentation Agent and such Inventory Appraisal results in a higher Net Recovery Percentage (other than any higher Net Recovery Percentage due to seasonal fluctuations) than the prior Inventory Appraisal, the prior Inventory Appraisal shall continue to be the Inventory Appraisal utilized for all purposes under this Agreement.

(d) The Administrative Agent may (and upon the written request of the FILO Documentation Agent shall) carry out investigations and reviews of each Loan Party's property at the reasonable expense of the Borrower (including field audits conducted by the Administrative Agent) ("*Field Examination*"); *provided, however*, that ~~(x)~~ the Administrative Agent may (and upon the written request of the FILO Documentation Agent shall) carry out, at the Borrower's expense, ~~(x)~~ (i) one (1) Field Examination in any twelve month period, (ii) a second Field Examination during any such twelve month period (I) if requested by the FILO Documentation Agent in writing or (II) at any time on or after the date on which Excess Availability has been less than the greater of (A) \$48,125,000 and (B) 17.5% of the Modified Maximum Credit, in each case, for five (5) consecutive Business Days, ~~the Administrative Agent may carry out, at the Borrower's expense, two (2) Field Examinations in any twelve month period,~~ and (iii) at any time during the continuation of a Specified Event of Default, ~~the Administrative Agent may carry out, at the Borrower's expense,~~ Field Examinations as frequently as determined by the Administrative Agent or the FILO Documentation Agent, each in its reasonable discretion, and (y) in addition to the foregoing *clause (x)*, the Administrative Agent may carry out, at the Lenders' expense, one (1) additional Field Examination in any ~~calendar year~~ twelve month period. The Borrower shall furnish to the Administrative Agent and the FILO Documentation Agent any information that the Administrative Agent or the FILO Documentation Agent may reasonably request regarding the determination and calculation of the Borrowing Base and the FILO Borrowing Base including correct and complete copies of any invoices, underlying agreements, instruments or other documents and the identity of all Account Debtors in respect of Accounts referred to therein. It is understood and agreed that the Field Examinations referred to in this Section 7.4(d) shall be for the benefit of all Lenders (including the FILO Lenders), and the FILO Lenders and the FILO Documentation Agent shall not have a right to separate or independent Field Examinations.

ARTICLE VIII

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Revolving Credit Commitment hereunder or any Loan or other Obligation hereunder (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) Obligations under Secured Hedge Agreements ~~and~~, Cash Management Obligations and Bank Product Obligations) shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the Letter of Credit Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit in form and substance reasonably satisfactory to the Administrative Agent), the Borrower shall, and shall cause each of the Restricted Subsidiaries to:

SECTION 8.1 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization and (b) take all reasonable action to obtain, preserve, renew and keep in full force and effect the rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business, except in the case of *clause (a)* or *(b)* to the extent (other than with respect to the preservation of the existence of Holdings and the Borrower) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or is pursuant to any merger, consolidation, liquidation, dissolution or Disposition permitted by *Article IX*.

SECTION 8.2 Compliance with Laws, Etc.

Comply in all material respects with its Constituent Documents and the requirements of all Laws and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except if the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

SECTION 8.3 Designation of Subsidiaries.

The board of directors of the Borrower may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (i) immediately before and after such designation, no Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, the Net Leverage Ratio for the Test Period immediately preceding such designation for which financial statements have been delivered pursuant to *Section 7.1* is less than or equal to 5.25 to 1.0 (calculated on a Pro Forma Basis) (and, as a condition precedent to the effectiveness of any such designation, the Borrower shall deliver to the Administrative Agent a certificate setting forth in reasonable detail the calculations demonstrating satisfaction of such test) and (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if, after such designation, it would be a "Restricted Subsidiary" for the purpose of any Term Facility or any Junior Financing or any other Indebtedness for borrowed money of any Loan Party in a principal amount in excess of \$45,000,000. The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the fair market value as determined by the Borrower in good faith of the Borrower's or its Subsidiary's (as applicable) Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time and a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value as determined by the

Borrower in good faith at the date of such designation of the Borrower's or its Subsidiary's (as applicable) Investment in such Subsidiary.

Notwithstanding the foregoing, any Unrestricted Subsidiary that has been re-designated a Restricted Subsidiary after the Effective Date may not be subsequently re-designated as an Unrestricted Subsidiary.

SECTION 8.4 Payment of Taxes, Etc.

Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (i) any such tax, assessment, charge or levy is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP or (ii) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

SECTION 8.5 Maintenance of Insurance.

Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried. Each such policy of insurance shall, as appropriate, (i) name the Collateral Agent, on behalf of the Lenders, as an additional insured thereunder as its interests may appear and/or (ii) in the case of each casualty insurance policy, contain a lenders loss payable clause or endorsement reasonably acceptable to the Collateral Agent that names the Collateral Agent, on behalf of the Lenders as the lenders loss payee thereunder (it being agreed and acknowledged that the lenders loss payable clause or endorsement in effect as of the ~~First~~Third Amendment Effective Date is reasonably acceptable to the Collateral Agent).

SECTION 8.6 Inspection Rights.

In addition to the requirements pursuant to *Section 7.4*, permit representatives and independent contractors of the Administrative Agent and the Requisite Lenders to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Requisite Lenders may exercise rights of the Administrative Agent and the Requisite Lenders under this *Section 8.6* and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at the Borrower's expense; *provided further* that when an Event of Default exists, the Administrative Agent or the Requisite Lenders (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at

any time during normal business hours and upon reasonable advance notice. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this *Section 8.6*, none of the Borrower or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any bona fide arm's length third party contract, or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

SECTION 8.7 Books and Records.

Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP shall be made of all material financial transactions and matters involving the assets and business of Holdings, the Borrower or such Restricted Subsidiary, as the case may be.

SECTION 8.8 Maintenance of Properties.

Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted.

SECTION 8.9 Use of Proceeds.

Use the proceeds of the Loans and Letters of Credit only in compliance with (and not in contravention of) applicable Laws, with each Loan Document and with the representations set forth in Sections 5.17 and 5.18 regarding use of proceeds of the Loans and Letters of Credit.

SECTION 8.10 Compliance with Environmental Laws.

Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all Environmental Permits necessary for its operations and properties; and, (c) in each case to the extent required by applicable Environmental Laws, conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all applicable Environmental Laws.

SECTION 8.11 Covenant to Guarantee Obligations and Give Security.

At the Borrower's expense, subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including, upon (x) the formation or acquisition of any new direct or indirect Wholly-Owned Subsidiary that is a Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by any Loan Party, the designation in accordance with *Section 8.3* of any existing direct or indirect Wholly-Owned Subsidiary that is a Material Domestic Subsidiary as a Restricted Subsidiary or any Subsidiary becoming a Wholly-Owned Subsidiary that is a Material

Domestic Subsidiary or (y) the acquisition of any material assets by the Borrower or any other Loan Party or (z) with respect to any Subsidiary at the time it becomes a Loan Party, for any material assets held by such Subsidiary (in each case, other than assets constituting Collateral under a Collateral Document that becomes subject to the Lien created by such Collateral Document upon acquisition thereof (without limitation of the obligations to perfect such Lien)):

(a) within forty-five (45) days after such formation, acquisition or designation or, in each case, such longer period as the Administrative Agent may agree in its reasonable discretion:

(i) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Collateral Agent Security Agreement Supplements, Intellectual Property Security Agreements and other security agreements and documents, as reasonably requested by and in form and substance reasonably satisfactory to the Collateral Agent (consistent with the Security Agreement, Intellectual Property Security Agreements and other Collateral Documents in effect on the ~~First~~Third Amendment Effective Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(ii) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to deliver any and all certificates representing Equity Interests (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank (or any other documents customary under local law) and instruments evidencing the intercompany Indebtedness held by such Material Domestic Subsidiary and required to be pledged pursuant to the Collateral Documents, indorsed in blank to the Collateral Agent;

(iii) (1) take and cause any applicable Material Domestic Subsidiary and each direct or indirect parent of such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to take whatever action (including the filing of UCC financing statements and delivery of stock and membership interest certificates to the extent certificated) may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid Liens required by the Collateral and Guarantee Requirement, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law) and (2) comply with the requirements of *Section 8.12* with respect to all Deposit Accounts; and

(b) within forty-five (45) days after the request therefor by the Administrative Agent (or such longer period as the Administrative Agent may agree in its reasonable discretion), deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this *Section 8.11* as the Administrative Agent may reasonably request.

SECTION 8.12 Cash Receipts.

(a) Use commercially reasonable efforts to enter on or prior to the First Amendment Effective Date (or such longer period following such date as the Administrative Agent may agree in its reasonable discretion), into an effective account control agreement (a “*Deposit Account Control Agreement*”) with each Approved Account Bank, in each case in form reasonably satisfactory to the

Administrative Agent, with respect to each Deposit Account existing as of the First Amendment Effective Date and listed on *Schedule 8.12* attached hereto, but excluding any Excluded Account (collectively, all Deposit Accounts required to become subject to a Deposit Account Control Agreement being referred to as the “*Material Bank Accounts*”).

(b) Each Loan Party shall (i) instruct each Account Debtor or other Person obligated to make a payment to any of them under any Account to make payment, or to continue to make payment, to an Approved Deposit Account, (ii) deposit in (A) a Store Account all Cash Receipts received in the Stores, and (B) an Approved Deposit Account promptly upon receipt all other Cash Receipts (as defined below) received by any Loan Party from any other Person, (iii) deliver to the Administrative Agent, prior to the First Amendment Effective Date, Credit Card Notifications (it being agreed and acknowledged that as of the First Amendment Effective Date the Administrative Agent has received such Credit Card Notifications) and (iv) instruct each depository institution for a Deposit Account (including, without limitation, Store Accounts) to cause all amounts on deposit and available at the close of each Business Day in such Deposit Account to be swept to one of the Loan Parties’ Approved Deposit Accounts no less frequently than on a daily basis, such instructions to be irrevocable unless otherwise agreed to by the Administrative Agent; *provided* that the Loan Parties shall not be required to sweep, and may maintain, an amount not to exceed \$2,000,000 in the aggregate in all of the Store Accounts. So long as no Cash Dominion Period is continuing, the Loan Parties may direct, and shall have sole control over, the manner of disposition of funds in the Approved Deposit Accounts, in each case subject to the other provisions of this Agreement and the other Loan Documents.

(c) Each Credit Card Notification and Deposit Account Control Agreement shall require (without further consent of the Loan Parties), and the Loan Parties shall cause, after the occurrence and during the continuance of a Cash Dominion Period and subject to the Intercreditor Agreement, the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the concentration account maintained at Bank of America (or at another financial institution acceptable to the Administrative Agent in its sole discretion) by and in the name of the Borrower (the “*Concentration Account*”), of all cash receipts and collections, including, without limitation, the following (collectively, the “*Cash Receipts*”):

- (i) all available cash receipts from the sale of Inventory and other Collateral or casualty insurance proceeds arising from any of the foregoing;
- (ii) all proceeds of collections of Accounts (including, without limitation, Credit Card Receivables);
- (iii) the then contents of each Deposit Account (including, without limitation, any Approved Deposit Account subject to a Deposit Account Control Agreement and any Store Account) (net of any minimum balance as may be required to be kept in the subject Deposit Account by the institution at which such Deposit Account is maintained);
- (iv) the cash proceeds of all credit card charges; and
- (v) all cash proceeds of any other Collateral.

(d) The Concentration Account shall at all times be under the sole dominion and control of the Collateral Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Concentration Account, (ii) the funds on deposit in the Concentration Account shall at all times be collateral security for all of the Obligations, and (iii) the funds on deposit in the Concentration Account shall be applied as provided in this Agreement and in the

Intercreditor Agreement. In the event that, notwithstanding the provisions of this *Section 8.12*, any Loan Party receives or otherwise has dominion and control of any such proceeds or collections during a Cash Dominion Period, such proceeds and collections shall be held in trust by such Loan Party for the Collateral Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into the Concentration Account or dealt with in such other fashion as such Loan Party may be instructed by the Administrative Agent. Any amounts received in the Concentration Account at any time when all of the Obligations have been indefeasibly paid in full shall be remitted to the operating account of the Loan Parties maintained with the Administrative Agent.

(e) From and after the First Amendment Effective Date, except as otherwise expressly provided in the Loan Documents, each Loan Party shall maintain all Material Bank Accounts with the Administrative Agent or another financial institution reasonably acceptable to the Administrative Agent that has executed and delivered such Deposit Account Control Agreements in respect of each such Material Bank Account.

(f) The Administrative Agent shall promptly (but in any event shall use its commercially reasonable efforts within one (1) Business Day to) furnish written notice to each Approved Account Bank at which any Approved Deposit Account which is subject to a Deposit Account Control Agreement is maintained of any termination of a Cash Dominion Period.

SECTION 8.13 Further Assurances.

Subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitations in any Collateral Document and in each case at the expense of the Loan Parties:

(a) Promptly upon reasonable request by the Administrative Agent or the Collateral Agent or as may be required by applicable law (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or the Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents;

(b) [Reserved].

ARTICLE IX

NEGATIVE COVENANTS

So long as any Lender shall have any Revolving Credit Commitment hereunder or any Loan or other Obligation hereunder (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) Obligations under Secured Hedge Agreements ~~and~~, Cash Management **Obligations and Bank Product** Obligations) shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the Letter of Credit Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit in form and substance reasonably satisfactory to the Administrative Agent), the Borrower shall not (and, with respect to *Section 9.13*, only Holdings shall not), nor shall the Borrower permit any Restricted Subsidiary to:

SECTION 9.1 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens created pursuant to any Loan Document;
- (b) Liens existing on the ~~Second~~Third Amendment Effective Date and set forth on *Schedule 9.1(b)*;
- (c) Liens for taxes, assessments or governmental charges that are not overdue for a period of more than thirty (30) days or that are being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP;
- (d) statutory or common law Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens or other customary Liens (other than in respect of Indebtedness) in favor of landlords, so long as, in each case, such Liens arise in the ordinary course of business that secure amounts not overdue for a period of more than thirty (30) days or, if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Holdings, the Borrower or any Restricted Subsidiaries;
- (f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;
- (g) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and title defects affecting real property that, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries taken as a whole, or the use of the property for its intended purpose;
- (h) Liens arising from judgments or orders for the payment of money not constituting an Event of Default under *Section 10.1(g)*;
- (i) (i) Liens securing obligations in respect of Indebtedness permitted under *Section 9.3(e)*; *provided* that (A) such Liens attach concurrently with or within two hundred and seventy (270) days after completion of the acquisition, construction, repair, replacement or improvement (as applicable) of the property subject to such Liens, (B) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, replacements thereof and additions and accessions to such property and the proceeds and the products thereof and customary security deposits, (C) such Liens do not at any time extend to or cover any assets

(except for additions and accessions to such assets, replacements and products thereof and customary security deposits) other than the assets subject to, or acquired, constructed, repaired, replaced or improved with the proceeds of such Indebtedness; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender, and (D) if requested by the Administrative Agent, the Loan Parties shall use commercially reasonable efforts to cause the holder of such Lien to enter into a Collateral Access Agreement, and (ii) Liens on assets of Restricted Subsidiaries that are Non-Loan Parties securing Indebtedness of such Restricted Subsidiaries permitted pursuant to *Section 9.3(l)*;

(j) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of the Borrower and its Subsidiaries, taken as a whole, or (ii) secure any Indebtedness;

(k) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(l) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to *Section 9.2(i)* or *Section 9.2(m)* to be applied against the purchase price for such Investment or (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under *Section 9.5*, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(n) Liens on property of any Foreign Subsidiary securing Indebtedness of such Foreign Subsidiary incurred pursuant to *Sections 9.3(b), (l), (r) or (v)*;

(o) Liens in favor of the Borrower or a Restricted Subsidiary securing Indebtedness permitted under *Section 9.3(d)*;

(p) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to *Section 8.3*), in each case after the **First Third** Amendment Effective Date; *provided* that (i) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property of such acquired Restricted Subsidiary), and (ii) the Indebtedness secured thereby is permitted under *Section 9.3(e) or (v)*;

(q) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases (other than Capitalized Leases) or licenses entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(r) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

- (s) Liens deemed to exist in connection with Investments in repurchase agreements under *Section 9.2* and reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts maintained in the ordinary course of business and not for speculative purposes;
- (t) Liens solely on any cash earned money deposits made by the Borrower or any of the Restricted Subsidiaries in connection with any letter of intent or purchase agreement not prohibited hereunder;
- (u) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;
- (v) purported Liens evidenced by the filing of precautionary UCC financing statements or similar public filings;
- (w) Liens securing obligations in respect of Indebtedness permitted under *Section 9.3(p)* and other obligations in respect of any Secured Hedge Agreement and any Cash Management Obligation (in each case, as defined in each of the Term Facility Credit Agreements) permitted under *Section 9.3(p)*, which Liens shall be subject to the terms of the Intercreditor Agreement (or, in the case of any Permitted Refinancing in respect thereof, another intercreditor agreement containing terms that are at least as favorable to the Secured Parties as those contained in the Intercreditor Agreement);
- (x) Liens (i) of a collection bank arising under Section 4-208 of the UCC on the items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of set off) and that are within the general parameters customary in the banking industry;
- (y) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries, taken as a whole;
- (z) the modification, replacement, renewal or extension of any Lien permitted by clauses (b), (i) and (o) of this *Section 9.1*; *provided* that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under *Section 9.3(e)*, and (B) proceeds and products thereof, and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by *Section 9.3*;
- (aa) rights of set-off against credit balances of the Borrower or any of its Subsidiaries with Credit Card Issuers or Credit Card Processors or amounts owing by such Credit Card Issuers or Credit Card Processors to the Borrower or any of its Subsidiaries in the ordinary course of business, but not rights of set-off against any other property or assets of the Borrower or any of its Subsidiaries pursuant to the agreements with such Credit Card Issuers or Credit Card Processors (as in effect on the ~~First~~**Third** Amendment Effective Date) to secure the obligations of the Borrower or any of its Subsidiaries to the Credit Card Issuers or Credit Card Processors as a result of fees and chargebacks;

(bb) without duplication of, or aggregation with, any other Lien permitted under any other clause of this *Section 9.1*, other Liens (not covering Current Asset Collateral unless the Liens thereon are subordinated to the Lien of the Collateral Agent in a manner consistent with the terms of the Intercreditor Agreement) securing Indebtedness permitted under (i) *Section 9.3(s)* (subject to the requirements set forth therein) or (ii) any other clause contained in *Section 9.3* outstanding in an aggregate principal amount not to exceed the greater of \$150,000,000 and 6.50% of Total Assets at any time outstanding;

(cc) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries in the ordinary course of business of the Borrower and such Subsidiary to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises; and

(dd) Liens that are contractual rights of setoff (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the issuance of Indebtedness or (ii) relating to pooled deposit or sweep accounts of Holdings, the Borrower or any of the Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings, the Borrower and the Restricted Subsidiaries.

For the avoidance of doubt, all Liens on Current Asset Collateral that secure Indebtedness for borrowed money shall be subordinated to the Liens of the Collateral Agent in a manner consistent with the terms of the Intercreditor Agreement.

SECTION 9.2 Investments.

Make or hold any Investments, except:

(a) Investments by the Borrower or any of the Restricted Subsidiaries in assets that are cash and Cash Equivalents;

(b) loans or advances to officers, directors and employees of Holdings (or any direct or indirect parent thereof), the Borrower or any of the Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of Holdings (or any direct or indirect parent thereof; *provided* that, to the extent such loans or advances are made in cash, the amount of such loans and advances used to acquire such Equity Interests shall be contributed to Holdings in cash) and (iii) for any other purpose, in an aggregate principal amount outstanding under this clause (b) not to exceed \$22,000,000;

(c) Investments (i) by the Borrower or any Restricted Subsidiary that is a Loan Party in the Borrower or any Restricted Subsidiary that is a Loan Party, (ii) by any Non-Loan Party in any other Non-Loan Party that is a Restricted Subsidiary, (iii) by any Non-Loan Party in the Borrower or any Restricted Subsidiary that is a Loan Party and (iv) without duplication of any other clauses of this *Section 9.2*, by any Loan Party in any Non-Loan Party that is a Restricted Subsidiary; *provided* that (A) any such Investments made pursuant to this *clause (iv)* in the form of intercompany loans shall be evidenced by notes that have been pledged (individually or pursuant to a global note) to the Collateral Agent for the benefit of the Lenders and (B) the aggregate amount of Investments made pursuant to this *clause (iv)* shall not exceed the greater of \$81,000,000 and 3.50% of Total Assets at any time outstanding unless the Payment Conditions

have been met at the time of, and after giving effect to, each such Investment (in which event the limit of the greater of \$81,000,000 and 3.50% of Total Assets shall not apply to such Investment);

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(e) Investments consisting of Liens, Indebtedness, fundamental changes, Dispositions and Restricted Payments permitted under *Sections 9.1, 9.3* (other than *9.3(c)(ii)* or *(d)*), *9.4* (other than *9.4(c)(ii)*, or *(e)*), *9.5* (other than *9.5(d)* or *(e)*) and *9.6* (other than *9.6(d)* or *(g)(iv)*), respectively;

(f) Investments existing on the **SecondThird** Amendment Effective Date or made pursuant to legally binding written contracts in existence on the **SecondThird** Amendment Effective Date, in each case, set forth on *Schedule 9.2(f)* and any modification, replacement, renewal, reinvestment or extension of any of the foregoing; *provided* that the amount of any Investment permitted pursuant to this *Section 9.2(f)* is not increased from the amount of such Investment on the **SecondThird** Amendment Effective Date except pursuant to the terms of such Investment as of the **SecondThird** Amendment Effective Date or as otherwise permitted by another clause of this *Section 9.2*;

(g) Investments in Swap Contracts permitted under *Section 9.3*;

(h) promissory notes and other non-cash consideration that is permitted to be received in connection with Dispositions permitted by *Section 9.5*;

(i) Permitted Acquisitions;

(j) [Reserved];

(k) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment;

(l) loans and advances to Holdings (or any direct or indirect parent thereof) in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made to Holdings (or such direct or indirect parent) in accordance with *Section 9.6(f)* or *(g)*;

(m) without duplication of any other clauses of this *Section 9.2*, other Investments that do not exceed the greater of \$160,000,000 and 7.00% of Total Assets in the aggregate at any time outstanding, determined as of the date of such Investment;

(n) advances of payroll payments to employees in the ordinary course of business;

(o) Investments to the extent that payment for such Investments is made solely with Qualified Equity Interests of Holdings (or any direct or indirect parent thereof)

(p) Investments held by a Restricted Subsidiary acquired after the ~~First~~**Third** Amendment Effective Date or of a Person merged into the Borrower or merged or consolidated with a Restricted Subsidiary in accordance with *Section 9.4* after the ~~First~~**Third** Amendment Effective Date (other than existing Investments in subsidiaries of such Subsidiary or Person, which must comply with the requirements of *Section 9.2(i) or (m)*) to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(q) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers consistent with past practices;

(r) Investments made by any Restricted Subsidiary that is not a Loan Party to the extent such Investments are financed with the proceeds received by such Restricted Subsidiary from an Investment made pursuant to *clauses (c)(iv), (i) or (m)* of this *Section 9.2*;

(s) Guarantees by the Borrower or any of the Restricted Subsidiaries of leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(t) Investments received in connection with (i) a Disposition permitted by *Section 9.5(m)* or (ii) any Restricted Payment permitted by *Section 9.6(k)*; and

(u) without duplication of, or aggregation with, any Investment made under any other clause of this *Section 9.2*, the Borrower and its Restricted Subsidiaries may make other Investments as long as the Payment Conditions are satisfied after giving effect thereto.

SECTION 9.3 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness or issue any Disqualified Equity Interest, other than:

(a) Indebtedness under the Loan Documents;

(b) (i) Indebtedness existing on the ~~Second~~**Third** Amendment Effective Date set forth on *Schedule 9.3(b)* and any Permitted Refinancing thereof and (ii) intercompany Indebtedness outstanding on the ~~Second~~**Third** Amendment Effective Date; *provided* that all such Indebtedness of any Loan Party owed to any Non-Loan Party shall be subject to the Intercompany Subordination Agreement;

(c) (i) Guarantees by the Borrower and the Restricted Subsidiaries in respect of Indebtedness of the Borrower or any of the Restricted Subsidiaries otherwise permitted hereunder (except that a Restricted Subsidiary that is not a Loan Party may not, by virtue of this *Section 9.3(c)*, Guarantee Indebtedness that such Restricted Subsidiary could not otherwise incur under this *Section 9.3*); *provided* that (A) no Guarantee by any Restricted Subsidiary of any Junior Financing shall be permitted unless such Restricted Subsidiary shall have also provided a Guarantee of the Obligations substantially on the terms set forth in the Guaranty, and (B) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guaranty on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness, and (ii) any Guaranty by a Loan Party of Indebtedness of

a Restricted Subsidiary that would have been permitted as an Investment by such Loan Party in such Restricted Subsidiary under *Section 9.2(c)*;

(d) Indebtedness of the Borrower or any of the Restricted Subsidiaries owing to the Borrower or any other Restricted Subsidiary to the extent constituting an Investment permitted by *Section 9.2*; *provided* that (i) all such Indebtedness of any Loan Party owed to any Person that is not a Loan Party shall be subject to the Intercompany Subordination Agreement and (ii) in the event of any such Indebtedness in respect of the sale, transfer or assignment of Current Asset Collateral, such Indebtedness shall be duly noted on the books and records of the Loan Parties as being owing in respect of Current Asset Collateral;

(e) (i) Attributable Indebtedness and other Indebtedness (including Capitalized Leases) of the Borrower and the Restricted Subsidiaries financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets; *provided* that such Indebtedness is incurred concurrently with or within two hundred and seventy (270) days after the applicable acquisition, construction, repair, replacement or improvement and any Permitted Refinancing thereof in an aggregate principal amount pursuant to this sub-clause (i) not to exceed the greater of \$110,000,000 and 4.75% of Total Assets, in each case determined at the date of incurrence, (ii) Attributable Indebtedness arising out of sale-leaseback transactions (other than sale-leaseback transactions with respect to any Designated Assets) with respect to properties acquired after the ~~First~~Third Amendment Effective Date and any Permitted Refinancing thereof in an aggregate amount outstanding pursuant to this sub-clause (ii) at any time not to exceed the greater of (x) \$110,000,000 and (y) 4.75% of Total Assets, in each case determined at the date of incurrence, and (iii) Attributable Indebtedness arising out of sale-leaseback transactions with respect to any Designated Assets, and any Permitted Refinancing thereof;

(f) Indebtedness in respect of Swap Contracts designed to hedge against Holdings, the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes and Guarantees thereof;

(g) Indebtedness representing deferred compensation to employees of the Borrower and its Subsidiaries incurred in the ordinary course of business;

(h) Indebtedness to current or former officers, directors, managers, consultants and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of Holdings (or any direct or indirect parent thereof) permitted by *Section 9.6*;

(i) Indebtedness incurred by the Borrower or any of the Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in each case to the extent constituting indemnification obligations or obligations in respect of purchase price (including earn-outs) or other similar adjustments;

(j) Indebtedness consisting of obligations of the Borrower and the Restricted Subsidiaries under deferred compensation or other similar arrangements with employees incurred by such Person in connection with the Permitted Acquisitions or any other Investment expressly permitted hereunder;

(k) Indebtedness in respect of Cash Management ~~Obligations~~Services, Bank Products and other Indebtedness in respect of netting services, automatic clearinghouse

arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements in the ordinary course of business and any Guarantees thereof;

(l) Indebtedness of the Borrower and the Restricted Subsidiaries in an aggregate principal amount at any time outstanding not to exceed the greater of \$150,000,000 and 6.50% of Total Assets (determined at the time of incurrence); *provided* that a maximum of the greater of \$58,000,000 and 2.50% of Total Assets (determined at the time of incurrence) in aggregate principal amount of such Indebtedness may be incurred by Non-Loan Parties;

(m) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(n) Indebtedness incurred by the Borrower or any of the Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business consistent with past practice in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(o) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of the Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(p) Indebtedness in an aggregate principal amount not to exceed (i) \$900,000,000 plus (ii) the amount of (A) clauses (y) and (z) of the Maximum Incremental Amount (as defined in the Term Facility Credit Agreements as in effect on the ~~First~~Third Amendment Effective Date or, subject to prior consent of the Administrative Agent and the FILO Documentation Agent, as in effect after the ~~First~~Third Amendment Effective Date), (B) Permitted Pari Passu Secured Debt, (C) Secured Obligations under Secured Hedge Agreements and not incurred in violation of *Section 9.3(f)*, (D) Obligations under Secured Cash Management Agreements and (E) Credit Agreement Refinancing Indebtedness (in the case of each of the foregoing *clauses (A), (B), (C), (D) and (E)*, as capitalized terms not defined herein are defined in each of the Term Facility Credit Agreements), in each case, at any time outstanding and in respect of clauses (i) and (ii), any Permitted Refinancing thereof;

(q) Indebtedness (i) of any Person that becomes a Restricted Subsidiary after the ~~Second~~Third Amendment Effective Date, which Indebtedness is existing at the time such Person becomes a Restricted Subsidiary and is not incurred in contemplation of such Person becoming a Restricted Subsidiary that is non-recourse to the Borrower, Holdings or any other Restricted Subsidiary ~~6~~, other than any Subsidiary of such Person that is a Subsidiary on the date such Person becomes a Restricted Subsidiary after the ~~Second~~Third Amendment Effective Date and is either (A) unsecured or (B) secured only by the assets of such Restricted Subsidiary by Liens permitted under *Section 9.1(p)* and, in each case, any Permitted Refinancing thereof, and (ii) of the Borrower or any Restricted Subsidiary incurred or assumed in connection with any Permitted Acquisition that is secured only by Liens permitted under *Section 9.1(p)* (and any Permitted Refinancing of the foregoing) and so long as the aggregate principal amount of such Indebtedness and all Indebtedness resulting from any Permitted Refinancing thereof at any time

outstanding pursuant to this clause (g)(ii) does not exceed (x) \$110,000,000 and (y) 4.75% of Total Assets at any time outstanding;

(r) Indebtedness incurred by a Foreign Subsidiary which, when aggregated with the principal amount of all other Indebtedness of all such Foreign Subsidiaries incurred pursuant to this *clause (r)* and then outstanding, does not exceed the greater of \$58,000,000 and 2.50% of Total Assets (determined at the time of incurrence);

(s) other secured, unsecured or subordinated Indebtedness of the Borrower or any Restricted Subsidiary (and any Permitted Refinancing thereof), so long as (A) the Payment Conditions shall have been satisfied after giving effect thereto, (B) the maturity date and Weighted Average Life to Maturity of such Indebtedness is at least six (6) months after the Latest Maturity Date at the time of incurrence of such Indebtedness, and (C) if such Indebtedness is secured, (i) any such Liens with respect to any Current Asset Collateral shall be junior to the Liens securing the Obligations and (ii) such Indebtedness is subject to an intercreditor agreement containing terms that are at least as favorable to the Secured Parties as those contained in the Intercreditor Agreement;

(t) [Reserved];

(u) Indebtedness in respect of letters of credit issued for the account of any of the Subsidiaries of Holdings to finance the purchase of Inventory so long as (x) such Indebtedness is unsecured, and (y) the aggregate principal amount of such Indebtedness does not exceed the greater of \$81,000,000 and 3.50% of Total Assets at any time;

(v) Indebtedness (i) of any Person that becomes a Restricted Subsidiary after the ~~First~~**Third** Amendment Effective Date, which Indebtedness is existing at the time such Person becomes a Restricted Subsidiary and is not incurred in contemplation of such Person becoming a Restricted Subsidiary that is non-recourse to the Borrower, Holdings or any other Restricted Subsidiary (other than any Subsidiary of such Person that is a Subsidiary on the date such Person becomes a Restricted Subsidiary after the ~~First~~**Third** Amendment Effective Date) and is either (A) unsecured or (B) secured only by the assets of such Restricted Subsidiary by Liens permitted under *Section 9.1(p)* and, in each case, any Permitted Refinancing thereof, and (ii) of the Borrower or any Restricted Subsidiary incurred or assumed in connection with any Permitted Acquisition that is secured only by Liens permitted under *Section 9.1(p)* (and any Permitted Refinancing of the foregoing) and so long as the aggregate principal amount of such Indebtedness and all Indebtedness resulting from any Permitted Refinancing thereof at any time outstanding pursuant to *clause (v) (ii)* does not exceed \$70,000,000; and

(w) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in *clauses (a) through (v)* above.

Notwithstanding the foregoing, no Restricted Subsidiary that is a Non-Loan Party will guarantee any Indebtedness for borrowed money of a Loan Party unless such Restricted Subsidiary becomes a Guarantor.

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving

credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased.

The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

Notwithstanding anything to the contrary contained in this Agreement, Indebtedness incurred pursuant to the Term Facilities (and any Permitted Refinancing thereof) may only be incurred pursuant to *Section 9.3(p)*.

SECTION 9.4 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Division; *provided* that the formation of any Subsidiary that is a Division Successor shall be deemed to constitute the acquisition of a Restricted Subsidiary for all purposes of this *Section 9.4*), except that:

(a) Holdings or any Restricted Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that (x) the Borrower shall be the continuing or surviving Person, (y) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia and (z) in the case of a merger or consolidation of Holdings with and into the Borrower, Holdings shall not be an obligor in respect of any Qualified Holding Company Debt or other Indebtedness that is not permitted to be Indebtedness of the Borrower under this Agreement, shall not be an obligor in respect of any Indebtedness that is not permitted to be Indebtedness of the Borrower under this Agreement, shall have no direct Subsidiaries at the time of such merger or consolidation other than the Borrower and, after giving effect to such merger or consolidation, the direct parent of the Borrower shall expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent;

(b) (i) any Restricted Subsidiary that is not a Loan Party may merge or consolidate with or into any other Restricted Subsidiary of the Borrower that is not a Loan Party, (ii) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary of the Borrower that is a Loan Party, (iii) any merger the sole purpose of which is to reincorporate or reorganize a Loan Party in another jurisdiction in the United States shall be permitted and (iv) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and its Restricted Subsidiaries and is not materially disadvantageous to the Lenders; *provided*, in the case of *clauses (ii) through (iv)* of this *paragraph (b)*, that (A) no Event of Default shall result therefrom, (B) no Change of Control shall result therefrom and (C) the surviving Person (or, with respect to *clause (iv)*, the Person who receives the assets of such dissolving or liquidated Restricted Subsidiary that is a Guarantor) shall be a Loan Party;

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then (i) the transferee must be a Loan Party or (ii) such Investment must be a permitted Investment in a Restricted Subsidiary which is not a Loan Party in accordance with *Section 9.2* (other than *clause (e)* thereof) and must be a permitted Disposition in accordance with *Section 9.5*;

(d) so long as no Default or Event of Default is continuing or would result therefrom, the Borrower may merge or consolidate with any other Person; *provided* that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the “*Successor Borrower*”), (A) the Successor Borrower shall be an entity organized or existing under the laws of the United States, any state thereof, the District of Columbia or any territory thereof, (B) the Successor Borrower shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Guaranty confirmed that its Guarantee of the Obligations shall apply to the Successor Borrower’s obligations under this Agreement, (D) each Loan Party, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement confirmed that its obligations thereunder shall apply to the Successor Borrower’s obligations under this Agreement, and (E) the Borrower shall have delivered to the Administrative Agent an officer’s certificate and an opinion of counsel, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; *provided, further*, that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement;

(e) so long as no Default or Event of Default is continuing or would result therefrom, any Restricted Subsidiary may merge or consolidate with any other Person in order to effect an Investment permitted pursuant to *Section 9.2* (other than *Section 9.2(e)*); *provided* that the continuing or surviving Person shall be the Borrower or a Restricted Subsidiary, which together with each of its Restricted Subsidiaries, shall have complied with the applicable requirements of *Sections 8.11, 8.12 and 8.13*; and

(f) so long as no Default or Event of Default is continuing or would result therefrom, a merger, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to *Section 9.5* (other than *Section 9.5(e)*).

SECTION 9.5 Dispositions. Make any Disposition except:

(a) Dispositions of obsolete, worn out, used or surplus property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful in the conduct of the business of the Borrower and the Restricted Subsidiaries;

(b) Dispositions of inventory and goods held for sale in the ordinary course of business;

(c) Dispositions of property 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 promptly applied to the purchase price of such replacement property; *provided* that to the

extent the property being transferred constitutes Current Asset Collateral, such replacement property shall constitute Current Asset Collateral.

(d) Dispositions of property to the Borrower or a Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party or (ii) such Investment must be a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with *Section 9.2* (other than *Section 9.2(e)*) or (iii) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for fair value and any promissory note or other non-cash consideration received in respect thereof is a permitted investment in a Restricted Subsidiary that is not a Loan Party in accordance with *Section 9.2* (other than *Section 9.2(e)*); *provided* that if the property being disposed of constitutes Current Asset Collateral and is being transferred to a Subsidiary which is not a Subsidiary Guarantor, such disposition shall be made only if the Payment Conditions are satisfied after giving effect thereto;

(e) Dispositions permitted by *Sections 9.2* (other than *Section 9.2(e)*), *9.4* (other than *Section 9.4(g)*) and *9.6* (other than *Section 9.6(d)*) and Liens permitted by *Section 9.1* (other than *Section 9.1(l)(ii)*);

(f) Dispositions of property pursuant to sale-leaseback transactions;

(g) any issuance or sale of Equity Interests in, or sale of Indebtedness or other securities of, an Unrestricted Subsidiary;

(h) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(i) Dispositions of property subject to Casualty Events (as such term is defined in the Term Facility Credit Agreements);

(j) Dispositions of property not otherwise permitted under this *Section 9.5*; *provided* that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default exists), no Default shall exist or would result from such Disposition; (ii) with respect to any Disposition pursuant to this *clause (j)* for a purchase price in excess of \$20,000,000, the Borrower or any of the Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by *Section 9.1* and Liens permitted by *Sections 9.1(a), (m), (s), (t), (x), (w), (dd)(i)* and *(dd)(ii)*); and (iii) if the property continues to be used by the Loan Parties in the conduct of their business and holds any Current Asset Collateral on the premises thereof, and if requested by the Administrative Agent, the Loan Parties shall use commercially reasonable efforts to cause the transferee of such property to enter into a Collateral Access Agreement; *provided, however*, that for the purposes of *clause (ii)*, (A) any liabilities (as shown on the Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by such Restricted Subsidiary from such transferee that are converted by such Restricted Subsidiary

into cash (to the extent of the cash received) within 180 days following the closing of the applicable Disposition and (C) any Designated Non-Cash Consideration received in respect of such Disposition having an aggregate fair market value (as determined by the Borrower in good faith), taken together with all other Designated Non-Cash Consideration received pursuant to this *clause (C)* that is at that time outstanding, not in excess of the greater of \$58,000,000 and 2.50% of Total Assets at the time of the receipt of such Designated Non-Cash Consideration, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash; and (iv) proceeds of such Dispositions are applied in accordance with the Term Facility Credit Agreements;

(k) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(l) bulk sales or other dispositions of the Inventory of a Borrower not in the ordinary course of business in connection with Store closings, at arm's length, *provided, that* such Store closures and related Inventory dispositions shall not exceed (i) in any Fiscal Year, twenty-five percent (25%) of the number of the Borrower's Stores as of the beginning of such Fiscal Year (net of new Store openings) and (ii) in the aggregate from and after the First Amendment Effective Date, fifty percent (50%) of the number of the Borrower's Stores in existence as of the First Amendment Effective Date (net of new Store openings), *provided further* that all sales of Inventory in connection with store closings shall be in accordance with liquidation agreements and with professional liquidators reasonably acceptable to the Administrative Agent [and the FILO Documentation Agent](#), *provided further* that all Net Cash Proceeds received in connection therewith are applied to the Obligations if then required in accordance with *Section 2.9* hereof;

(m) the unwinding of any Swap Contract;

(n) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any IP Rights;

(o) to the extent allowable under Section 1031 of the Code (or comparable or successor provision), any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any of its Restricted Subsidiaries that is not in contravention of *Section 9.7*;

(p) Dispositions of accounts receivable in connection with the collection or compromise thereof, *provided* that no disposition of Eligible Credit Card Receivables [or Eligible Trade Receivables](#) shall be permitted pursuant to this *clause (p)* unless the Borrower shall have (i) delivered to the Administrative Agent [and the FILO Documentation Agent](#) written notice of such disposition in reasonable detail and (ii) if requested by the Administrative Agent [or the FILO Documentation Agent](#), delivered to the Administrative Agent [and the FILO Documentation Agent](#) an updated Borrowing Base Certificate;

(q) sales or other dispositions by the Borrower or any Restricted Subsidiary of assets in connection with the closing or sale of a Store (including a factory Store) in the ordinary course of the business of the Borrower or such Restricted Subsidiary which consist of leasehold interests in the premises of such Store, the equipment and fixtures located at such premises and the books and records relating exclusively and directly to the operations of such Store (but excluding any Current Asset Collateral); *provided* that as to each and all such sales and closings, (A) no Event

of Default shall result therefrom and (B) such sale shall be on commercially reasonable prices and terms in a *bona fide* arm's length transaction;

(r) so long as no Event of Default is continuing, Dispositions of Cash Equivalents; and

(s) Dispositions of Excluded Property by non-Loan Parties and Dispositions of Excluded Property by Loan Parties for fair market value.

provided that (i) any Disposition of any property pursuant to this *Section 9.5* (except pursuant to *Sections 9.5(a), (e), (i), (k), (m)* and *(o)* and except for Dispositions from the Borrower or a Restricted Subsidiary that is a Loan Party to the Borrower or a Restricted Subsidiary that is a Loan Party), shall be for no less than the fair market value of such property at the time of such Disposition as determined by the Borrower in good faith, (ii) in the case of any such Disposition of any Current Asset Collateral the value of which exceeds \$25,000,000, the Borrower shall deliver to Administrative Agent [and the FILO Documentation Agent](#) an updated Borrowing Base Certificate as of the date thereof and giving effect thereto, and (iii) to the extent any Collateral is Disposed of as expressly permitted by this *Section 9.5* to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such Disposition is permitted by this Agreement, the Administrative Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

SECTION 9.6 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower and to its other Restricted Subsidiaries (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any of its other Restricted Subsidiaries and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each of its Restricted Subsidiaries may declare and make dividend payments or other distributions payable solely in the Equity Interests (other than Disqualified Equity Interests not otherwise permitted by *Section 9.3*) of such Person;

(c) [reserved];

(d) to the extent constituting Restricted Payments, Holdings, the Borrower and the Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of *Section 9.2* (other than *Section 9.2(e)*), *9.4* (other than a merger or consolidation of Holdings and the Borrower) or *9.8* (other than *Section 9.8(a), (j)* or *(k)*);

(e) repurchases of Equity Interests in Holdings, the Borrower or any of the Restricted Subsidiaries deemed to occur upon exercise of stock options or warrants or similar rights if such Equity Interests represent a portion of the exercise price of such options or warrants or similar rights;

(f) the Borrower may pay (or make Restricted Payments to allow Holdings or the direct parent of Holdings to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of Holdings (or of any direct or indirect parent thereof) held by any future, present or former employee, director, consultant or distributor (or any spouses, former

spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of Holdings (or the direct or indirect parent of Holdings), the Borrower or any of its Subsidiaries upon the death, disability, retirement or termination of employment of any such Person or otherwise pursuant to any employee or director equity plan, employee or director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, consultant or distributor of Holdings (or the direct or indirect parent of Holdings), the Borrower or any of its Subsidiaries in an aggregate amount after the ~~First~~**Third** Amendment Effective Date together with the aggregate amount of loans and advances to Holdings made pursuant to *Section 9.2(l)* in lieu of Restricted Payments permitted by this *clause (f)* not to exceed \$22,000,000 in any calendar year with unused amounts in any calendar year being carried over to the next two succeeding calendar years; *provided*, that such amount in any calendar year may be increased by an amount not to exceed the cash proceeds of key man life insurance policies received by the Borrower or its Restricted Subsidiaries after the ~~First~~**Third** Amendment Effective Date;

(g) the Borrower may make Restricted Payments to Holdings (or to the direct parent of Holdings):

(i) the proceeds of which will be used to pay (or to make Restricted Payments to allow any direct parent of Holdings to pay) the tax liability to each foreign, federal, state or local jurisdiction in respect of which a consolidated, combined, unitary or affiliated return is filed by Holdings (or the direct parent of Holdings) that includes the activities of the Borrower and/or any of its Subsidiaries, to the extent such tax liability does not exceed the lesser of (A) the taxes that would have been payable by the Borrower and/or its Subsidiaries as a stand-alone group with the Borrower the regarded corporate parent of the group and (B) the actual tax liability of Holdings' consolidated, combined, unitary or affiliated group (or, if Holdings is not the parent of the actual group, the taxes that would have been paid by Holdings, the Borrower and/or the Borrower's Subsidiaries as a stand-alone group with Holdings the regarded corporate parent of the group), reduced by any such taxes paid or to be paid directly by the Borrower or its Subsidiaries;

(ii) the proceeds of which shall be used to pay (or to make Restricted Payments to allow any direct parent of Holdings to pay) the operating costs (including Public Company Costs) and expenses of Holdings (or its direct or indirect parent) incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business, attributable to the ownership or operations of the Borrower and its Subsidiaries;

(iii) the proceeds of which shall be used to pay franchise taxes and other fees, taxes and expenses required to maintain its (or any direct or indirect parent of Holdings') corporate existence;

(iv) to finance any Investment permitted to be made pursuant to *Section 9.2*; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) Holdings and the Borrower shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or a Restricted Subsidiary or (2) the merger (to the extent permitted in *Section 9.4*) of the Person formed or acquired into the Borrower or a Restricted Subsidiary in order to consummate such Permitted Acquisition, in each case, in accordance with the requirements of *Sections 8.11, 8.12 and 9.2*;

(v) the proceeds of which shall be used to pay (or to make Restricted Payments to allow any direct or indirect parent of Holdings to pay) costs, fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering permitted by this Agreement;

(vi) the proceeds of which (A) shall be used to pay customary salary, bonus and other benefits payable to officers and employees of Holdings (or the direct parent of Holdings) to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries or (B) shall be used to make payments permitted under *Sections 9.8(e), (k) and (p)* (but, in the case of this clause (B), only to the extent such payments have not been and are not expected to be made by the Borrower or a Restricted Subsidiary), or (C) shall be used to make payments permitted under *Section 9.8(h)*; and

(vii) the proceeds of which shall be used to pay withholding or other similar taxes payable upon repurchase, retirement or other acquisition or retirement of Equity Interests of Holdings or a Parent Entity or its Subsidiaries or otherwise pursuant to any employee or director equity plan, employee or director stock option or profits interest plan or any other employee or director benefit plan or any agreement;

(h) Holdings, the Borrower or any of the Restricted Subsidiaries may pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition;

(i) the declaration and payment of dividends on the Borrower's common stock following the first public offering of the Borrower's common stock or the common stock of any of its direct or indirect parents after the First Amendment Effective Date, of the greater of (i) up to 6% per annum of the net proceeds received by or contributed to the Borrower in or from any such public offering, other than public offerings with respect to the Borrower's common stock registered on Form S-4 or Form S-8 and (ii) an amount equal to 7% of the Market Capitalization of the applicable public company parent of the Borrower;

(j) repurchases of Equity Interests (i) deemed to occur on the exercise of options by the delivery of Equity Interests in satisfaction of the exercise price of such options and (ii) in consideration of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing), including deemed repurchases in connection with the exercise of stock options;

(k) without duplication of any other clauses of this *Section 9.6*, other Restricted Payments that, together with any prepayment, redemption, defeasance or other satisfaction of any Indebtedness made pursuant to *Section 9.11(ii)*, do not exceed the greater of \$100,000,000 and 4.30% of Total Assets (determined at the time of such Restricted Payment) in the aggregate at any time outstanding, so long as the Payment Conditions shall have been satisfied after giving effect thereto;

(l) payments or distributions of a Restricted Payment within 60 days after the date of declaration thereof if at the date of declaration such Restricted Payment would have been permitted hereunder;

(m) the Borrower may (or may make Restricted Payments to permit any Parent Entity to) (i) redeem, repurchase, retire or otherwise acquire in whole or in part any Equity Interests of the Borrower or any Restricted Subsidiary or any Equity Interests of any Parent Entity (“*Treasury Equity Interests*”), in exchange for, or with the proceeds (to the extent contributed to Holdings or the Borrower substantially concurrently) of the sale or issuance (other than to the Borrower or any Restricted Subsidiary) of, other Equity Interests or rights to acquire its Equity Interests (“*Refunding Equity Interests*”) and (ii) declare and pay dividends on any Treasury Equity Interests out of any such proceeds;

(n) redemptions in whole or in part of any of its Equity Interests for another class of its Equity Interests (other than Disqualified Equity Interests, except to the extent issued by the Borrower to a Restricted Subsidiary) or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests (other than Disqualified Equity Interests, except to the extent issued by the Borrower to a Restricted Subsidiary); and

(o) other Restricted Payments so long as the Payment Conditions shall have been satisfied.

SECTION 9.7 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the [Third Amendment](#) Effective Date or any business reasonably related or ancillary thereto.

SECTION 9.8 Transactions with Affiliates.

Enter into any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, in excess of \$12,500,000, other than:

(a) transactions between or among (i) the Borrower or any of the Restricted Subsidiaries or any entity that becomes a Restricted Subsidiary as a result of such transaction, and (ii) the Loan Parties,

(b) transactions on terms substantially as favorable to such Loan Party or such Restricted Subsidiary as would be obtainable by such Loan Party or such Restricted Subsidiary at the time in a comparable arm’s-length transaction with a Person other than an Affiliate,

(c) [reserved],

(d) [reserved],

(e) (x) so long as no Event of Default has occurred and is continuing or would result therefrom, the payment of management, consulting, monitoring, advisory and other fees to the Sponsor pursuant to the Sponsor Management Agreement (plus any unpaid management, consulting, monitoring, advisory and other fees accrued in any prior year) and any Sponsor Termination Fees pursuant to the Sponsor Management Agreement; *provided*, that any such management, consulting, monitoring, advisory and other fees not paid due to the existence of any such Event of Default or otherwise deferred (i) shall continue to accrue notwithstanding the existence of any such Event of Default and (ii) may be paid when no such Event of Default has occurred and is continuing or would immediately arise as a result of such payment and (y)

indemnities and expenses to the Sponsor pursuant to the Sponsor Management Agreement (plus any unpaid indemnities and expenses accrued in any prior year),

(f) employment and severance arrangements between Holdings, the Borrower and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and arrangements,

(g) the non-exclusive licensing of trademarks, copyrights or other IP Rights in the ordinary course of business to permit the commercial exploitation of IP Rights between or among Affiliates and Subsidiaries of Holdings or the Borrower,

(h) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, officers and employees of Holdings and the Restricted Subsidiaries or any direct or indirect parent of Holdings in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries,

(i) any agreement, instrument or arrangement as in effect as of the ~~First~~**Third** Amendment Effective Date and set forth on *Schedule 9.8*, or any amendment thereto (so long as any such amendment is not adverse to the Lenders in any material respect as compared to the applicable agreement as in effect on the ~~First~~**Third** Amendment Effective Date),

(j) Restricted Payments permitted under *Section 9.6*,

(k) so long as no Specified Event of Default has occurred and is continuing or would result therefrom, customary payments by the Borrower and any of the Restricted Subsidiaries to the Sponsor made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions or divestitures), which payments are approved by the majority of the members of the board of directors or a majority of the disinterested members of the board of directors of Holdings in good faith; provided, that any such customary payments not paid due to the existence of any such Specified Event of Default or otherwise deferred (i) shall continue to accrue (to the extent applicable) notwithstanding the existence of any such Specified Event of Default and (ii) may be paid when no such Specified Event of Default has occurred and is continuing or would immediately arise as a result of such payment,

(l) transactions in which the Borrower or any of the Restricted Subsidiaries, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of *clause (b)* of this *Section 9.8*,

(m) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of Holdings to any Permitted Holder or to any former, current or future director, manager, officer, employee or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof to the extent otherwise permitted by this Agreement and to the extent such issuance or transfer would not give rise to a Change of Control,

(n) investments by the Sponsor or the Co-Investors in securities of Holdings, the Borrower or any of the Restricted Subsidiaries so long as (A) the investment is being offered

generally to other investors on the same or more favorable terms and (B) the investment constitutes less than 5.0% of the proposed or outstanding issue amount of such class of securities,

(o) payments to or from, and transactions with, joint ventures (to the extent any such joint venture is only an Affiliate as a result of Investments by the Borrower and the Restricted Subsidiary in such joint venture) in the ordinary course of business to the extent otherwise permitted under *Section 9.2*,

(p) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to shareholders of Holdings or any direct or indirect parent thereof pursuant to the stockholders agreement or the registration and participation rights agreement entered into on the First Amendment Effective Date in connection therewith,

(q) the entering into of any tax sharing agreement or arrangement and any payments pursuant thereto, to the extent permitted by *Section 9.6(g)(i)*,

(r) the payment of any dividend or distribution within sixty (60) days after the date of declaration thereof, if at the date of declaration (i) such payment would have complied with the provisions of this Agreement and (ii) no Event of Default occurred and was continuing, and

(s) to the extent not otherwise prohibited under this Agreement, payments by Holdings, the Borrower or any of its Restricted Subsidiaries in respect of any of their respective Indebtedness or Equity Interests that are payable to holders of such Indebtedness or Equity Interests generally (including Affiliates that may from time to time own such Indebtedness or Equity Interests).

SECTION 9.9 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that prohibits, restricts, imposes any condition on or limits the ability of (a) any Restricted Subsidiary that is not a Loan Party to make Restricted Payments to (directly or indirectly) or to make or repay loans or advances to any Loan Party or to Guarantee the Obligations of any Loan Party under the Loan Documents or (b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lenders with respect to the Revolving Facility, the FILO Facility and the Obligations under the Loan Documents; *provided* that the foregoing *clauses (a) and (b)* shall not apply to Contractual Obligations that:

(i) (x) exist on the ~~First~~Third Amendment Effective Date and (to the extent not otherwise permitted by this *Section 9.9*) are listed on *Schedule 9.9* hereto and (y) to the extent Contractual Obligations permitted by *clause (x)* are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation,

(ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such Contractual Obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary,

(iii) represent Indebtedness of a Restricted Subsidiary that is not a Loan Party that is permitted by *Section 9.3*,

(iv) (A) are customary restrictions that arise in connection with any (x) any Lien permitted by *Sections 9.1(a), (l), (s), (t), (w), (x) and (dd)* and relate to the property subject to such Lien or (y) Disposition permitted by *Section 9.5* applicable pending such Disposition solely to the assets subject to such Disposition,

(v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under *Section 9.2* and applicable solely to such joint venture entered into in the ordinary course of business,

(vi) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under *Section 9.3* but solely to the extent any negative pledge relates to the property financed by or the subject of such Indebtedness and the proceeds and products thereof and, in the case of the Term Facilities and any Permitted Refinancing thereof, permit the Liens securing the Obligations without restriction (subject to the Intercreditor Agreement),

(vii) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto,

(viii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to *Sections 9.3(e), (m)(i), (p), (r) or (u)* to the extent that such restrictions apply only to the property or assets securing such Indebtedness or to the Restricted Subsidiary party to such Indebtedness,

(ix) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary,

(x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business,

(xi) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business,

(xii) are restrictions contained in the Term Facility Credit Agreements and the Term Facility Documentation, and any documentation governing a Permitted Refinancing of any of the foregoing, or

(xiii) arise in connection with cash or other deposits permitted under *Section 9.1*, or

(xiv) comprise restrictions imposed by any agreement governing Indebtedness entered into after the **First Third** Amendment Effective Date and permitted under *Section 9.3* that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for Indebtedness of such type, so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder.

SECTION 9.10 Accounting Changes; Fiscal Year

Make any change in Fiscal Year; *provided, however*, that Holdings and the Borrower may, upon written notice to the Administrative Agent, change its Fiscal Year to any other fiscal year

reasonably acceptable to the Administrative Agent, in which case, Holdings, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

SECTION 9.11 Prepayment, Etc. of Indebtedness.

Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled principal and interest and mandatory prepayments of principal and interest shall be permitted) any Indebtedness constituting Junior Financing (and excluding, for the avoidance of doubt, the Term Facilities and any Permitted Refinancing thereof) or the FILO Loans, except (i) ~~reserved~~ so long as the Payment Conditions are satisfied after giving effect thereto or as otherwise provided in Section 2.8, any prepayment, redemption, defeasance or other satisfaction of such partial prepayment of FILO Loans; (ii) so long as the Payment Conditions are satisfied after giving effect thereto, any prepayment, redemption, defeasance or other satisfaction of any Indebtedness that, together with any Restricted Payment made pursuant to *Section 9.6(k)*, do not exceed the greater of \$100,000,000 and 4.30% of Total Assets (determined at the time of such Restricted Payment) in the aggregate at any time outstanding; (iii) the refinancing of any Indebtedness with the Net Cash Proceeds of, or in exchange for, any Permitted Refinancing, to the extent not required to be applied to prepayments pursuant to the Term Facilities; (iv) the conversion (or exchange) of any Indebtedness to Equity Interests (other than Disqualified Equity Interests) or Indebtedness of Holdings or any of its direct or indirect parents; (v) the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness of the Borrower or any Restricted Subsidiary owed to Holdings, the Borrower or a Restricted Subsidiary or the prepayment, redemption, purchase, defeasance or other satisfaction of any Indebtedness with the proceeds of any other Indebtedness otherwise permitted by *Section 9.3*; (vi) any Permitted Refinancing of any Indebtedness; (vii) any prepayment, redemption, purchase, defeasance or other satisfaction with the Net Cash Proceeds of any Permitted Equity Issuance; and (viii) the prepayment of Indebtedness incurred pursuant to *clauses (e), (f), (g), (h), (k) and (v) of Section 9.3*;

SECTION 9.12 Modification of Debt Agreements.

Amend, modify or change in any manner (i) materially adverse to the interest of the Lenders any term or condition of any Material Indebtedness (other than as a result of a Permitted Refinancing thereof and in any event excluding the Term Facilities and any Permitted Refinancing thereof and any Indebtedness hereunder) without the consent of the Administrative Agent (not to be unreasonably withheld, conditioned or delayed) or (ii) with respect to the Term Facility Documentation or any amendment to any Permitted Refinancing thereof to the extent that such amendment, modification or change would (A) shorten the maturity date of any Term Facility or such refinancing Indebtedness to a date which is prior to ninety-one (91) days after the Latest Maturity Date, (B) [reserved], or (C) violate the Intercreditor Agreement.

SECTION 9.13 Holdings. In the case of Holdings, conduct, transact or otherwise engage in any business or operations other than the following (and activities incidental thereto): (i) its ownership of the Equity Interests of the Borrower, (ii) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (iii) the performance of its obligations with respect to the Loan Documents, any Term Facility or any Qualified Holding Company Debt, (iv) any public offering of its common stock or any other issuance of its Equity Interests or making payments or restricted payments with any amounts received in any transaction permitted under *Section 9.6*, (v) the incurrence of Qualified Holding Company Debt, the issuance of securities, and the incurrence of Qualified Equity Interests, (vi) making contributions to the capital of its Subsidiaries, (vii)

guaranteeing the obligations of its Subsidiaries in each case solely to the extent such obligations of the Borrower and its Subsidiaries are permitted hereunder, (viii) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Borrower, (ix) holding any cash or property received in connection with Restricted Payments made by the Borrower in accordance with *Section 9.6* pending application thereof by Holdings, (x) providing indemnification to officers and directors, (xi) making investments in Cash Equivalents in the ordinary course of business, and (xii) activities incidental to the businesses or activities described in *clauses (i) to (xi)* of this *Section 9.13*.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1 Events of Default.

Each of the events referred to in *clauses (a) through (m)* of this *Section 10.1* shall constitute an “*Event of Default*”:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within three (3) Business Days after the same becomes due, any interest on any Loan, or (iii) within five (5) Business Days after the same becomes due, any other amount payable hereunder or with respect to any other Loan Document; or

(b) Specific Covenants.

(i) The Borrower, any Restricted Subsidiary or, in the case of *Section 9.13*, Holdings, fails to perform or observe any term, covenant or agreement contained in (A) *Article VI*; *provided*, that, any failure to comply with *Article VI* shall be subject to cure to the extent provided in *Section 10.4*, (B) *Section 7.1(a)*, *Section 7.1(b)*, *Section 7.1(c)*, *Section 7.1(d)*, *Section 7.2(a)*, *Section 7.3(a)*, *Section 8.1(a)*, *Section 8.5*, *Section 8.9* or (C) *Article IX*;

(ii) during the continuance of any Cash Dominion Period, the Borrower or any other Loan Party fails to perform or observe (or to cause to be performed or observed) any covenant or agreement contained in *Section 8.12*; or

(iii) the Borrower or any other Loan Party fails to perform or observe (or to cause to be performed or observed) any covenant or agreement contained in *Section 7.4(a)* and such failure continues for five (5) Business Days; or

(iv) the Borrower or any other Loan Party fails to perform or observe (or to cause to be performed or observed) any covenant or agreement contained in *Section 7.4(b)*, and such failure continues for two (2) Business Days; or

(v) the Borrower or any other Loan Party fails to perform or observe (or to cause to be performed or observed) any covenant or agreement contained in *Section 7.4(c)* or *Section 7.4(d)*, as applicable, and, in either case, such failure continues for five (5) Business Days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in *Section 10.1(a)* or *(b)* above), and, for the purposes of clarity, including any failure to perform or observe any covenant or agreement contained in *Section 8.12* other than during the continuance of a Cash Dominion Period, contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent or the FILO Documentation Agent; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be untrue in any material respect when made or deemed made; or

(e) Cross-Default. Any Loan Party or any Restricted Subsidiary (A) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount (individually or in the aggregate with all other Indebtedness as to which such a failure shall exist) of not less than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts and not as a result of any default thereunder by any Loan Party) the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; *provided* that this *clause (e)(B)* shall not apply to (i) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness or (ii) the conversion of, or the satisfaction of any condition to the conversion of, any Indebtedness that is convertible or exchangeable for Equity Interests; *provided further* that such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Aggregate Commitments or acceleration of the Loans pursuant to *Section 10.2*; *provided* that no such event under the Term Facilities (other than a payment default or any default relating to insolvency or any proceeding under any Debtor Relief Law) shall constitute an Event of Default under this *Section 10.1(e)* until the earliest to occur of (x) the acceleration of the Indebtedness under any Term Facility and (y) the exercise of any remedies by any Term Facility Administrative Agent or collateral agent or any lenders under such Term Facility in respect of any Collateral; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Material Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is

instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Judgments. There is entered against any Loan Party or any Material Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied or failed to acknowledge coverage thereof) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive calendar days; or

(h) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in liability of any Loan Party or their respective ERISA Affiliates under Title IV of ERISA in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect, (ii) any Loan Party or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect, or (iii) with respect to a Foreign Plan a termination, withdrawal or noncompliance with applicable law or plan terms that would reasonably be expected to result in a Material Adverse Effect; or

(i) Invalidity of Loan Documents. Any material provision of any Loan Document at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under *Section 9.4* or *9.5*) or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Loan Document; or

(j) Collateral Documents. Any Collateral Document after delivery thereof pursuant to *Section 4.1* or *8.11* shall for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction permitted under *Section 9.4* or *9.5*) cease to create, or any Lien purported to be created by any Collateral Document shall be asserted in writing by any Loan Party not to be, a valid and perfected lien, with the priority required by the Collateral Documents (or other security purported to be created on the applicable Collateral) on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under *Section 9.1*, except to the extent that any such loss of perfection or priority results from the failure of the Administrative Agent or the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file UCC continuation statements and except as to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

(k) Junior Financing Documentation. (i) Any of the Obligations of the Loan Parties under the Loan Documents for any reason shall cease to be "Senior Indebtedness" (or any comparable term) or "Senior Secured Financing" (or any comparable term) under, and as defined in any Junior Financing Documentation governing Junior Financing subordinated in right of payment to the Obligations under the Loan Documents with an aggregate principal amount of not less than the Threshold Amount or (ii) the subordination provisions set forth in any Junior

Financing Documentation governing Junior Financing subordinated in right of payment to the Obligations under the Loan Documents with an aggregate principal amount of not less than the Threshold Amount shall, in whole or in part, cease to be effective or cease to be legally valid, binding and enforceable against the holders of any such Junior Financing, if applicable; or

- (l) Change of Control. There occurs any Change of Control.

SECTION 10.2 Remedies upon Event of Default.

(a) If any Event of Default occurs and is continuing, the Administrative Agent may, and, at the request of the Requisite Lenders shall, take any or all of the following actions:

- (i) declare Revolving Credit Commitments of each Lender and any obligation of the Issuers to make L/C Credit Extensions to be terminated, whereupon such Revolving Credit Commitments and obligation shall be terminated;
- (ii) declare the unpaid principal amount of all outstanding Loans (including any FILO Prepayment Premium that shall have been capitalized and added to the principal amount of the FILO Loans pursuant to the FILO Fee Letter), all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;
- (iii) require that the Borrower Cash Collateralize the Letter of Credit Obligations (in an amount equal to the then Outstanding Amount thereof); and
- (iv) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code ~~of the United States~~, the Revolving Credit Commitments of each Lender and any obligation of the Issuers to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans (including any FILO Prepayment Premium that shall have been capitalized and added to the principal amount of the FILO Loans pursuant to the FILO Fee Letter) and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the Letter of Credit Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

If any FILO Specified Event of Default occurs and is continuing and the FILO Standstill Period has expired, the Administrative Agent, at the written request of the FILO Documentation Agent, shall, within a reasonable time after receipt of such request (but in any event within two (2) Business Days with respect to clause (i) below, it being agreed that if the Administrative Agent fails to take such requested action described in clause (i) below within such two (2) Business Day period, the FILO Documentation Agent may take such action directly) take any or all of the following actions:

declare the unpaid principal amount of all outstanding FILO Loans (including any FILO Prepayment Premium that shall have been capitalized and added to the principal amount of the FILO Loans pursuant to the FILO Fee Letter), all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder

or under any other Loan Document in respect of the FILO Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

exercise on behalf of itself and the FILO Lenders all rights and remedies available to it and the FILO Lenders under the Loan Documents or applicable Law, including commencing and prosecuting any suits, actions or proceedings at law or in equity in any court of competent jurisdiction and collecting the Collateral or any portion thereof and enforcing any other right in respect of any Collateral, all in such manner as the Administrative Agent may determine in its reasonable discretion; provided, however, that none of the FILO Lenders or the FILO Documentation Agent will request or direct the Administrative Agent to commence or continue the exercise of any secured creditor remedies or direct or request the Administrative Agent to seek or continue any rights and remedies under this Agreement, any of the other Loan Documents or applicable Law on behalf of the FILO Lenders so long as the Administrative Agent is diligently pursuing in good faith the exercise of its rights and remedies against all or a material portion of the Collateral, including through actions taken by the Loan Parties with the consent of the Administrative Agent.

~~(b)~~ The Borrower hereby irrevocably waives the right to direct the application of any and all payments in respect of the Obligations and any proceeds of Collateral after the occurrence and during the continuance of an Event of Default and agrees that during the continuance of a Specified Event of Default, the Administrative Agent may in its sole discretion, or upon the written direction of the Requisite Lenders, deliver a notice to each Approved Account Bank instructing them to cease complying with any instructions from any Loan Party and to transfer all funds therein to the Administrative Agent and the Administrative Agent shall apply all payments in respect of any Obligations and all funds on deposit in the Concentration Account and all other proceeds of Collateral in the order specified in *Section 10.3* hereof.

~~(e)~~ Notwithstanding anything to the contrary, if the only Events of Default then having occurred and continuing are the failure to comply with *Section 6.1* with respect to the Test Period most recently ended, then the Administrative Agent may not take any of the actions set forth in *subclauses (i), (ii), (iii) and (iv) of Section 10.2(a)* or subclauses (i) and (ii) of Section 10.2(b) during the period commencing on the date that the Administrative Agent receives a Notice of Intent to Cure and ending on the Cure Expiration Date with respect thereto in accordance with and to the extent permitted by *Section 10.4*.

SECTION 10.3 Application of Funds. After the exercise of remedies provided for in *Section 10.2* (or after the Loans have automatically become immediately due and payable and the Letter of Credit Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to *Section 10.2*), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, ratably, pay any fees, indemnities, or expense reimbursements then due to the Administrative Agent, the FILO Documentation Agent or any Issuer from the Borrower (other than in connection with Cash Management Obligations, Bank Product Obligations or Obligations in respect of Secured Hedge Agreements);

Second, ratably, to pay any fees or expense reimbursements then due to the Revolving Credit Lenders from the Borrower (other than in connection with Cash Management Obligations, Bank Product Obligations or Obligations in respect of Secured Hedge Agreements);

Third, ~~ratably,~~ to pay interest due and payable in respect of any Revolving Loans (including any Swing Loans) and any Protective Advances, ~~ratably~~;

Fourth, ratably, to pay the principal of the Protective Advances and the Swing Loans;

Fifth, ~~ratably,~~ to pay principal on the Revolving Loans (other than the Protective Advances and Swing Loans) and unreimbursed Letter of Credit Borrowings, ~~ratably~~;

Sixth, to pay an amount to the Administrative Agent equal to 103% of the Letter of Credit Obligations on such date, to be held in the Concentration Account as cash collateral for such Obligations;

Seventh, to pay ~~any amounts owing with respect to Obligations in respect of Secured Hedge Agreements and~~ Cash Management Obligations, ratably among the Cash Management Banks in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, ratably, to pay (i) Bank Product Obligations in an amount equal to the sum of (A) without duplication of clause (ii) (A) below, the Bank Product / Swap Obligations Cap, plus (B) such other amounts in respect of Bank Product Obligations for which the Administrative Agent has implemented a Bank Product Reserve (so long as such Bank Product Reserve was established prior to the occurrence of, and not in contemplation of, an Event of Default) and (ii) obligations of any Loan Party arising under any Secured Hedge Agreement then due to the Hedge Banks in an amount equal to the sum of (A) without duplication of clause (i)(A) above, the Bank Product / Swap Obligations Cap, plus (B) such other amounts in respect of obligations of any Loan Party arising under any Secured Hedge Agreement for which the Administrative Agent has implemented a Swap Obligations Reserve (so long as such Swap Obligations Reserve was established prior to the occurrence of, and not in contemplation of, an Event of Default), in each case of clause (i) and clause (ii), ratably among the Bank Product Providers and Hedge Banks in proportion to the respective amounts described in this clause Eighth held by them;

Ninth, ratably, to pay any fees or expense reimbursements then due to the FILO Lenders from the Borrower;

Tenth, to pay interest due and payable in respect of any FILO Loans;

Eleventh, to pay principal on the FILO Loans (including any FILO Prepayment Premium that shall have been capitalized and added to the principal amount of the FILO Loans pursuant to the FILO Fee Letter);

Twelfth, to payment of all other Revolving Obligations (including Bank Product Obligations and obligations of any Loan Party arising under any Secured Hedge Agreement not otherwise paid pursuant to clause Eighth above), ratably among the Persons to whom such other Revolving Obligations are owed in proportion to the respective amounts described in this clause Twelfth held by them;

~~Eighth~~ Thirteenth, to the payment of any other Obligation due to the Administrative Agent, the FILO Documentation Agent or any Lender by the Borrower, ratably among the Persons to whom such other Obligations are owed in proportion to the respective amounts described in this clause Thirteenth held by them;

~~Ninth~~ Fourteenth, as provided for under the Intercreditor Agreement; and

~~Tenth~~~~Fifteenth~~, after all of the Obligations have been paid in full, to the Borrower or as the Borrower shall direct or as otherwise required by Law.

Subject to *Sections 2.4, 2.16, 8.12 and 10.5*, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause *Sixth* above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as cash collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above and, if no Obligations remain outstanding, to the Borrower.

Notwithstanding the foregoing, if sufficient funds are not available to fund all payments to be made in respect of any Secured Obligation described in any of *clauses First* through ~~Eighth~~~~Thirteenth~~ above, the available funds being applied with respect to any such Secured Obligation (unless otherwise specified in such clause) shall be allocated to the payment of such Secured Obligation ratably, based on the proportion of the Administrative Agent's, ~~the FILO Documentation Agent's~~ and each Lender's or Issuer's interest in the aggregate outstanding Secured Obligations described in such clauses; *provided, however*, that payments that would otherwise be allocated to the Lenders shall be allocated *first* to repay Protective Advances and Swing Loans *pro rata* until such Protective Advances and Swing Loans are paid in full and *then* to repay the Loans. The order of priority set forth in *clauses First* through ~~Eighth~~~~Thirteenth~~ above may at any time and from time to time be changed by the agreement of all directly affected Lenders without necessity of notice to or consent of or approval by the Borrower, any Secured Party that is not a Lender or Issuer or by any other Person that is not a Lender or Issuer. The order of priority set forth in *clauses First* through ~~Eighth~~~~Thirteenth~~ above may be changed only with the prior written consent of the Administrative Agent in addition to that of all directly affected Lenders. Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to the Obligations otherwise set forth above in this Section.

SECTION 10.4 Borrower's Right to Cure.

(a) Notwithstanding anything to the contrary contained in *Section 10.1*, in the event of any Event of Default under any covenant set forth in *Article VI* and until the expiration of the tenth (10th) Business Day after the date on which the Consolidated Fixed Charge Coverage Ratio calculation would be required to be delivered pursuant to *Section 6.1* or *Section 7.2(a)* (such date, the "*Cure Expiration Date*"), following delivery of a Notice of Intent to Cure in accordance herewith, the Borrower may designate any portion of the Net Cash Proceeds of any issuance of common Equity Interests of the Borrower or any cash capital contribution to the common equity of the Borrower as an increase to Consolidated EBITDA with respect to such applicable quarter; *provided* that all such Net Cash Proceeds to be so designated (i) are actually received by the Borrower as cash common equity (including through capital contribution of such Net Cash Proceeds to the Borrower) after the date of such notice and before the Cure Expiration Date and (ii) the aggregate amount of such Net Cash Proceeds or cash capital contribution that are so designated shall not exceed 100% of the aggregate amount necessary to cure such Event of Default under *Article VI* for any applicable period.

(b) Upon receipt by the Borrower of any such designated Net Cash Proceeds or cash capital contribution (the "*Cure Amount*") in accordance with this *Section 10.4*, Consolidated EBITDA for any period of calculation which includes the last Fiscal Quarter of the Test Period ending immediately prior to the date on which such Cure Amount was received shall be increased, solely for the purpose of calculating any financial ratio set forth in *Article VI*, by an amount equal to the Cure Amount. The resulting increase to Consolidated EBITDA and any reduction in Indebtedness, if applicable, from designation of a Cure Amount shall not result in any adjustment to Consolidated EBITDA or any other

financial definition for any purpose under this Agreement other than for purposes of calculating the financial ratio set forth in *Article VI* and for additional clarification shall not adjust the calculation of Consolidated EBITDA for purposes of determining the Net Leverage Ratio or Consolidated Fixed Charge Coverage Ratio (other than for purposes of actual compliance with *Article VI* as of the end of any applicable Test Period).

(c) If, after giving effect to the foregoing recalculations, the Borrower shall then be in compliance with the requirements of *Article VI*, the Borrower shall be deemed to have satisfied the requirements of *Article VI* as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable existing breach or default of *Article VI* shall be deemed cured for this purpose of the Agreement.

(d) In each period of four Fiscal Quarters, there shall be at least two (2) Fiscal Quarters for which Consolidated EBITDA is not increased by exercise of a cure pursuant to *Section 10.4(a)*. Consolidated EBITDA may not be increased by exercise of a cure pursuant to *Section 10.4(a)* more than four (4) times during the term hereof.

SECTION 10.5 Actions in Respect of Letters of Credit; Cash Collateral.

(a) At any time (i) upon the Revolving Credit Termination Date, (ii) after the Revolving Credit Termination Date when the aggregate funds on deposit in the Concentration Account to Cash Collateralize Letter of Credit Obligations shall be less than 103% of the Letter of Credit Obligations and (iii) as may be required by *Section 2.9* or *Section 2.16*, the Borrower shall pay to the Administrative Agent in Same Day Funds at the Administrative Agent's office referred to in *Section 12.8*, for deposit in the Concentration Account, (x) in the case of *clauses (i) and (ii)* above, the amount required to that, after such payment, the aggregate funds on deposit in the Concentration Account counts equals or exceeds 103% of the sum of all outstanding Letter of Credit Obligations and (y) in the case of *clause (iii)* above, the amount required by *Section 2.9*. The Administrative Agent may, from time to time after funds are deposited in the Concentration Account, apply funds then held in the Concentration Account to the payment of any amounts, in accordance with *Section 2.9* and *Section 10.2(bc)*, as shall have become or shall become due and payable by the Borrower to the Issuers or Lenders in respect of the Letter of Credit Obligations. The Administrative Agent shall promptly give written notice of any such application; *provided, however*, that the failure to give such written notice shall not invalidate any such application. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(b) *Application.* Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this *Section 10.5* or *Sections 2.4, 2.9, 2.13* or *10.2* in respect of Letters of Credit or Swing Loans shall be held and applied to the satisfaction of the specific Letter of Credit Obligations, Swing Loans, 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 be provided for herein.

(c) *Release.* Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or 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 12.2(b)(vi)*) or (ii) the Administrative Agent's good faith determination that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default or Event of Default (and following application as provided in this *Section 10.5* may be otherwise applied in accordance with *Section 10.3*), and (y) the Person providing Cash Collateral and the applicable Issuer or Swing Loan Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

SECTION 10.6 Post-Petition Financings; Insolvency Proceedings. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, if any Loan Party shall be subject to any Insolvency Proceeding;

(a) Conforming Post-Petition Financings. If the Administrative Agent or any Revolving Credit Lender shall seek to provide any Loan Party with, or consent to a third party providing, any Post-Petition Financing, with such Post-Petition Financing to be secured by all or any portion of the Collateral (including assets that, but for the application of Section 552 of the Bankruptcy Code or other applicable Law, would be Collateral), each of the FILO Secured Parties agrees and confirms that it shall be deemed to have consented to such Post-Petition Financing and to the Liens securing the same (or securing any claim for diminution in value in connection therewith) and that it shall not object to any such Post-Petition Financing or to the Liens securing the same (or securing any claim for diminution in value in connection therewith) (nor support any other Person objecting to such Post-Petition Financing or to the Liens securing the same (or securing any claim for diminution in value in connection therewith) or request the Administrative Agent make any such objection), on any grounds whatsoever so long as (i) the Administrative Agent retains its Lien on the Collateral to secure the FILO Obligations, subordinate to the Liens securing such Post-Petition Financing which satisfies the terms and conditions of this Section 10.6 (and any Lien securing any claim for diminution in value in connection therewith), but otherwise with the same relative priority vis-a-vis other liens in the Collateral as existed immediately prior to the commencement of such Insolvency Proceeding; provided that, if in connection with any Post-Petition Financing provided, or consented to, by the Administrative Agent or any Revolving Credit Lender, any Liens on the Collateral held by the Administrative Agent, or any Liens securing such Post-Petition Financing, are subject to a surcharge or are subject to a Carve Out, court ordered charge, fee or other similar interest or right, and so long as the amount of such surcharge, Carve Out, court ordered charge, fee or other similar interest or right is reasonable under the circumstances, then the Liens of the Administrative Agent on the Collateral securing the FILO Obligations shall also be subordinated to such surcharge, claim, Carve Out, court ordered charge, fee or other similar interest or right to the same extent as the Revolving Obligations and/or Post-Petition Financing, as applicable, (ii) the aggregate principal amount of the unfunded commitments and loans and letter of credit accommodations outstanding under any such Post-Petition Financing, together with the aggregate Revolving Credit Outstandings (giving effect to any repayments), does not exceed the Maximum Revolving Insolvency Amount, (iii) the agent under such Post-Petition Financing shall implement, and maintain, at all times, a reserve against all borrowing bases under such Post-Petition Financing in the amount of the Carve Out, (iv) the agent under such Post-Petition Financing shall implement, and maintain, at all times, a reserve against all borrowing bases under such Post-Petition Financing in the amount of the FILO Deficiency Reserve, consistent with the terms of this Agreement, (v) such Post-Petition Financing shall not compel any Loan Party to seek confirmation of a specific plan of reorganization, unless the FILO Obligations shall be indefeasibly paid in full in cash on the effective date thereof, and (vi) such Post-Petition Financing shall be subject to the same rights of the FILO Documentation Agent and the FILO Lenders with respect to amendments, waivers and modifications as set forth in Section 12.1 with respect to this

Agreement and the other Loan Documents (a Post-Petition Financing complying with the provisions of this paragraph referred to herein as a “Conforming Post-Petition Financing”).

(b) *Other Post-Petition Financing Offers.* The FILO Secured Parties hereby agree that they shall not, and shall not permit any Affiliate controlled by any of them to, (i) provide or offer to provide any Post-Petition Financing to the Loan Parties or (ii) except in the case of a Conforming Post-Petition Financing provided in accordance with Section 10.6(a), endorse, or support any other Person in, the provision of any Post-Petition Financing to the Loan Parties in any Insolvency Proceeding with respect to a Loan Party.

(c) *Roll-up Post-Petition Financings.* The Administrative Agent and the Revolving Credit Lenders hereby agree that, to the extent any Post-Petition Financing offered by the Administrative Agent or any Revolving Credit Lender includes a “roll up” or refinancing of any portion of the Revolving Loans, (i) the FILO Lenders may offer and/or request a “roll up” or refinancing of the FILO Loans on a ratable basis with the Revolving Loans that will be subject to the “roll up” or refinancing in connection with such Post-Petition Financing and (ii) neither the Administrative Agent nor any Revolving Credit Lender shall object (or support any other Person in objecting) to such request by any FILO Lender; *provided that, to the extent such FILO Loans are “rolled up” or refinanced in connection with such Post-Petition Financing, the Maximum Revolving Insolvency Amount shall be deemed increased by the amount of such FILO Loans that are “rolled up” or refinanced by such Post-Petition Financing.*

(d) *Adequate Protection.* All adequate protection granted to the Administrative Agent in any Insolvency Proceeding with respect to a Loan Party, including all Liens granted to the Administrative Agent in any such Insolvency Proceeding as adequate protection, are intended to be for the benefit of all Secured Parties and shall be subject to Section 10.3, subject to any court order affecting the rights and interests of the parties hereto not in conflict with the terms hereof. Without limiting the foregoing, the FILO Documentation Agent, on behalf of the FILO Secured Parties, shall have the right to seek adequate protection for the FILO Loans solely in the form of payment of interest at the then applicable interest rate (including the FILO Applicable Margin) for the FILO Loans and reimbursement of reasonable expenses of the FILO Documentation Agent; *provided, however, that the Administrative Agent, on behalf of the Revolving Secured Parties, may contest (or support any other Person contesting) any request by any FILO Secured Parties for such adequate protection from proceeds of Collateral unless each of the following conditions is satisfied: (i) such payments are approved by a final order of the applicable U.S. Bankruptcy Court (or other court of competent jurisdiction) approving a Post-Petition Financing consented to by the Administrative Agent, (ii) the Administrative Agent and the other Secured Parties (other than the FILO Secured Parties) are also receiving adequate protection payments covering their interest, fees and expenses, (iii) the amount of all such payments is added to the Maximum Revolving Insolvency Amount, and (iv) the FILO Secured Parties agree to pay over an amount not to exceed the payments so received if the Revolving Obligations and all obligations under such Post-Petition Financing are not paid in full in such Insolvency Proceeding.*

(e) *Relief from Stay.* Each of the FILO Secured Parties agrees not to (i) seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency Proceeding with respect to a Loan Party, without the prior written consent of the Administrative Agent, or (ii) oppose any request by the Administrative Agent, any other Secured Party (other than any FILO Secured Party), or, in the case of any Conforming Post-Petition Financing, any Person providing such Post-Petition Financing, for relief from the automatic stay or any other stay in any such Insolvency Proceeding.

(f) *Judgment Liens.* Each of the FILO Secured Parties agrees that, in the event FILO Secured Party becomes a judgment lien creditor in respect of any Collateral securing the Obligations, such judgment lien shall be subordinated to any Lien on such Collateral securing the Revolving Obligations on the same basis and to the same extent as the Liens on the Collateral of the Administrative Agent securing the FILO Obligations are subordinated (including with respect to the proceeds thereof being subject to Section 10.3) to those Liens securing the Revolving Obligations.

(g) *Intercreditor Agreement Controls.* For the avoidance of doubt in the event of any inconsistency between this Section 10.6 and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall govern and control.

SECTION 10.7 *Separate Classification.* Whether or not it is held that the Revolving Obligations and the FILO Obligations together constitute only one secured claim (rather than separate classes of secured claims), the FILO Secured Parties hereby agree that in any Insolvency Proceeding with respect to a Loan Party, all payments and distributions shall be applied as if the Revolving Obligations and the FILO Obligations were separate classes of secured claims against the Loan Parties in respect of the Collateral with the effect that the Revolving Secured Parties and the FILO Secured Parties shall be entitled to receive payment of all amounts owing to them as set forth pursuant to the priorities in Section 10.3 (whether or not allowed in such Insolvency Proceeding, and including in respect of post-petition interest and expenses) that would be owing to them as if the Revolving Obligations and the FILO Obligations were so classified as a separate claim and secured by a separate Lien, and any payments or proceeds of Collateral otherwise received or receivable shall be turned over to the appropriate Secured Party to the extent necessary to effectuate the intent of this Section 10.7.

SECTION 10.8 *Avoidance and Reinstatement.* If a Revolving Secured Party or a FILO Secured Party receives payment or property on account of any Revolving Obligations or FILO Obligations, respectively, and the payment is subsequently invalidated, avoided, declared to be fraudulent or preferential, set aside or otherwise required to be transferred to a trustee, receiver or the estate of any Loan Party (in each instance, to the extent required by applicable law, a "Recovery"), then, to the extent of the Recovery, the applicable Obligations intended to have been satisfied by the payment will be reinstated as Revolving Obligations or FILO Obligations, as applicable, as of the date of such payment, and no payment with respect to, or discharge of the Revolving Obligations or FILO Obligations, as applicable, will be deemed to have occurred for all purposes hereunder. If this Agreement is terminated prior to a Recovery, this Agreement will be reinstated in full force and effect, and such prior termination will not diminish, release, discharge, impair, or otherwise affect the obligations of the Loan Parties from the date of reinstatement. Upon such reinstatement of any Obligations, each applicable Secured Party will disgorge and deliver to the Administrative Agent any Collateral or proceeds thereof received in payment of, or to discharge, such Obligations to effect the reinstatement required pursuant to the terms hereof. No Secured Party may benefit from a Recovery, and any distribution made to a Secured Party as a result of a Recovery will be paid over to the Administrative Agent for application to the Obligations in accordance with Section 10.3 (after application to any Post-Petition Financing that is a Conforming Post-Petition Financing or is otherwise consented to by the FILO Documentation Agent).

SECTION 10.9 *Payments Over.* In the event that, notwithstanding the provisions of this Article X, payments or proceeds of Collateral shall be received by any Secured Party in violation of the priorities set forth herein, such payments or proceeds of Collateral shall be held in

trust for the benefit of and shall be paid over to or delivered to the Administrative Agent upon the Administrative Agent's or the Requisite Lenders' written demand.

SECTION 10.10 Subrogation. Until the Revolving Obligations are paid in full, the FILO Secured Parties shall have no right of subrogation to the rights of the Revolving Secured Parties to receive payments or distributions of cash or property applicable to the Revolving Obligations. For purposes of such subrogation, no payments or distributions to the Revolving Secured Parties of any cash or property to which the FILO Secured Parties would be entitled except for the provisions of this Agreement, and no payment over to the Revolving Secured Parties pursuant to this Agreement by the FILO Secured Parties, as between any Loan Party, its creditors (other than the Revolving Secured Parties), and the FILO Secured Parties, shall be deemed to be a payment by the Loan Parties to or on account of the FILO Obligations.

SECTION 10.11 Credit Bidding. The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Requisite Lenders, to credit bid all or any portion of the Obligations (including 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 and/or 1129 of the Bankruptcy Code, or any other applicable Laws, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Laws; provided that the consent of the FILO Documentation Agent shall be required to credit bid all or any portion of the FILO Obligations. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would 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) in the asset or assets so purchased (or in the equity interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid, (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the 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 Requisite Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Requisite Lenders contained in Section 12.1), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any equity interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, 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 debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the equity interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had

been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Notwithstanding anything to the contrary set forth in the foregoing paragraph, each of the Secured Parties hereby agrees that the Administrative Agent may, on behalf of itself and the other Revolving Secured Parties, credit bid the Revolving Obligations in accordance with Section 363(k) of the Bankruptcy Code (or any similar provision of other applicable Law, including the Uniform Commercial Code), and each FILO Secured Party agrees not to object to (and shall be deemed to consent to) such credit bid, so long as such credit bid does not exceed the amount of the Revolving Obligations. Each of the Secured Parties hereby agrees that the FILO Documentation Agent may direct the Administrative Agent to, on behalf of the FILO Secured Parties, credit bid the FILO Obligations in accordance with Section 363(k) of the Bankruptcy Code (or any similar provision of other applicable Law, including the Uniform Commercial Code), and the Administrative Agent agrees to take such direction from the FILO Documentation Agent and to not object thereto (and shall be deemed to consent thereto), in each case, so long as such credit bid does not exceed the amount of the FILO Obligations and all Revolving Obligations shall be paid in full in cash upon the effectiveness of any such sale under Section 363 of the Bankruptcy Code (or any similar provision of other applicable Law) (and any such credit bid of the FILO Obligations shall provide for the same). The Secured Parties hereby agree that, in the event the Administrative Agent takes any action to credit bid the FILO Obligations upon the direction of the FILO Documentation Agent on behalf of the FILO Secured Parties, the Administrative Agent shall be entitled to all of the benefits of *Article XI* in connection with such action.

SECTION 10.12 FILO Purchase Option.

(a) If any Purchase Option Event shall occur, the FILO Lenders shall have the right, but not the obligation, to purchase all, but not less than all, of the Revolving Obligations; provided that such option shall expire if the FILO Documentation Agent on behalf of the electing FILO Lenders fails to deliver a written notice (a “Purchase Notice”) to the Administrative Agent within ten (10) Business Days following the date the FILO Documentation Agent obtains knowledge of the occurrence of a Purchase Option Event (or, in the case of a Purchase Option Event arising under clause (g) of such defined term, five (5) Business Days), which Purchase Notice shall (i) identify the applicable FILO Lenders committing to such purchase (the “Purchasing Creditors”) and indicate the percentage of the Revolving Obligations to be purchased by each Purchasing Creditor (which aggregate commitments must add up to one hundred percent (100%) of the Revolving Obligations) and (ii) confirm that the offer contained therein is irrevocable. Upon receipt of such Purchase Notice by the Administrative Agent, the Purchasing Creditors shall have from the date of delivery thereof to and including the date that is ten (10) Business Days after the Purchase Notice was received by the Administrative Agent (or such later date as may be agreed by the Administrative Agent in its sole discretion) to purchase all (but not less than all) of the Revolving Obligations (the date of such purchase, the “Purchase Date”).

(b) On the Purchase Date, the Administrative Agent and the Revolving Secured Parties shall, subject to any required approval of any Governmental Authority, if any, sell to the Purchasing Creditors all (but not less than all) of the Revolving Obligations. On such Purchase Date, the Purchasing Creditors shall (i) pay to the Administrative Agent, for the benefit of the Revolving Secured Parties, as directed by the Administrative Agent, in immediately available funds the full amount of all Revolving Obligations, together with all accrued and unpaid interest and fees, all in the amounts specified by the Administrative Agent and determined in good faith in accordance with the Loan Documents or other applicable documents, (ii) furnish such amount of cash collateral in immediately available funds as the Administrative Agent determines is reasonably

necessary to secure the Revolving Credit Parties on terms reasonably satisfactory to the Administrative Agent in connection with any (x) asserted indemnification claims, and (y) all Revolving Obligations in respect of or relating to Letters of Credit but not in any event in an amount greater than 103% thereof, and (iii) agree to reimburse the Revolving Secured Parties for any loss, cost, damage or expense resulting from the granting of provisional credit for any checks, wire or ACH transfers that are reversed or not final or other payments provisionally credited to the Revolving Obligations and as to which the Administrative Agent and the other Revolving Secured Parties have not yet received final payment as of the Purchase Date. Such purchase price shall be remitted by wire transfer in immediately available funds to such bank account of the Administrative Agent (for the benefit of the applicable Secured Parties) as the Administrative Agent shall have specified in writing to the FILO Documentation Agent. Interest and fees shall be calculated to but excluding the Purchase Date if the amounts so paid by the applicable Purchasing Creditors to the bank account designated by the Administrative Agent are received in such bank account prior to 2:00 p.m., and interest shall be calculated to and including such Purchase Date if the amounts so paid by the Purchasing Creditors to the bank account designated by the Administrative Agent are received in such bank account after 2:00 p.m. Notwithstanding anything to the contrary contained in the Loan Documents, the Loan Parties hereby consent to and approve the assignment of the Revolving Obligations contemplated by this Section.

(c) Any purchase pursuant to the purchase option described in this Section shall, except as provided below, be expressly made without representation or warranty of any kind by the Administrative Agent or the other Revolving Secured Parties as to the Obligations, the Collateral or otherwise, and without recourse to the Administrative Agent and the other Revolving Secured Parties as to the Obligations, the Collateral or otherwise, except that the Administrative Agent and each of the other Revolving Secured Parties, as to itself only, shall represent and warrant only as to (i) the principal amount of the Obligations being sold by it, (ii) that such Person has not created any Lien on, or sold any participation in, any Obligations being sold by it, and (iii) that such Person has the right to assign the Obligations being assigned by it.

(d) In connection with any purchase of Revolving Obligations pursuant to this Section, each Revolving Secured Party agrees to enter into and deliver to the Purchasing Creditors on the Purchase Date, as a condition to closing, an assignment agreement substantially in the form of Exhibit A to this Agreement or any other form approved by the Administrative Agent and, at the expense of the Loan Parties, each of the Revolving Secured Parties shall deliver all possessory Collateral (if any), together with any necessary endorsements and other documents (including any applicable stock powers or note powers), then in such Secured Party's possession or in the possession of its agent or bailee, or turn over control as to any pledged Collateral, deposit accounts or securities accounts of which such Secured Party or its agent or bailee then has control, as the case may be, to the FILO Documentation Agent to act as the successor Administrative Agent and Collateral Agent and otherwise take such actions as may be reasonably appropriate to effect an orderly transition to the FILO Documentation Agent to act as the successor Administrative Agent and Collateral Agent. Upon the consummation of the purchase of the Revolving Obligations pursuant to this Section, the Administrative Agent shall be deemed to have resigned as an "agent" or "administrative agent" or "collateral agent" (or any similar role) for the Secured Parties, under the Loan Documents; provided the Administrative Agent (and all other agents under this Agreement) shall be entitled to all of the rights and benefits of a former "agent" or "administrative agent" or "collateral agent" under this Agreement.

(e) Notwithstanding the foregoing purchase of the Revolving Obligations by the Purchasing Creditors, the Revolving Secured Parties shall continue to have recourse to the Loan

ARTICLE XI

THE ADMINISTRATIVE AGENT

SECTION 11.1 Appointment and Authorization.

(a) Each of the Lenders and the Issuers hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each of the FILO Lenders hereby irrevocably appoints 1903P Loan Agent, LLC (and its successors and permitted assigns in such capacity) to act on its behalf as the FILO Documentation Agent hereunder and under the other Loan Documents and authorizes the FILO Documentation Agent to take such actions on its behalf and to exercise such powers as are delegated to the FILO Documentation Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this *Article XI* (other than *Sections 11.6* and *11.11*) are solely for the benefit of the Administrative Agent, the FILO Documentation Agent, the Lenders and the Issuers, and the Borrower shall not have rights as a third party beneficiary of any such provision.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank, Cash Management Bank and/or ~~Cash Management~~Bank Product Bank) and the Issuers hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender and such 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, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to *Section 11.5* for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this *Article XI* and *Article XII* (including, without limitation, *Sections 11.3, 11.13, 12.3, 12.4* and *12.5*, 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. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto (including the Intercreditor Agreement), as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

SECTION 11.2 Rights as a Lender.

Any Person serving as an Agent (including 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 an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Person serving as an Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the

financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

SECTION 11.3 Exculpatory Provisions. Neither the Administrative Agent nor any other Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, an Agent (including the Administrative Agent and the FILO Documentation Agent):

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise as directed in writing by the Requisite Lenders, the Requisite Revolving Credit Lenders or the FILO Documentation Agent, as applicable (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as an Agent or any of its Affiliates in any capacity.

The 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 Requisite Lenders, the Requisite Revolving Credit Lenders or the FILO Documentation Agent, as applicable (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in *Sections 12.1* and *12.2*) or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein.

The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or an Issuer. Upon the occurrence of a Default or an Event of Default, the Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Requisite Lenders, the Requisite Revolving Credit Lenders or the FILO Documentation Agent, as applicable in accordance with the terms of this Agreement. Unless and until the Administrative Agent shall have received such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default

as it shall deem advisable in the best interest of the Secured Parties. In no event shall the Administrative Agent be required to comply with any such directions to the extent that the Administrative Agent believes that its compliance with such directions would be unlawful.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into (i) any recital 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 or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in *Article IV* or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, or (vii) to inspect the properties, books or records of any Loan Party or any Affiliate thereof.

SECTION 11.4 Reliance by the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the applicable Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), 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.

The Administrative Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Requisite Lenders, the Requisite Revolving Credit Lenders or the FILO Documentation Agent, as applicable, as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders or the FILO Lenders, as applicable, against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Requisite Lenders, the Requisite Revolving Credit Lenders or the FILO Documentation Agent, as applicable (or such greater number of Lenders as may be expressly required hereby in any instance), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders; *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law.

SECTION 11.5 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Agent-Related Persons. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Agent-Related Persons of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

SECTION 11.6 Resignation of Administrative Agent and Collateral Agent.

(a) The Administrative Agent or the Collateral Agent may at any time give notice of its resignation to the Lenders, the Issuers and the Borrower. Upon receipt of any such notice of resignation, the Requisite Lenders shall have the right, with the consent of the Borrower at all times other than during the existence of an Event of Default (which consent of the Borrower shall not be unreasonably withheld or delayed), to appoint a successor, which shall be a Lender or a bank with an office in the United States, or an Affiliate of any such Lender or bank with an office in the United States. If no such successor shall have been so appointed by the Requisite Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent or Collateral Agent, as applicable, gives notice of its resignation, then the retiring Administrative Agent or Collateral Agent, as applicable, may on behalf of the Lenders and the Issuers, appoint a successor Administrative Agent or Collateral Agent, as applicable, meeting the qualifications set forth above; *provided* that if the Administrative Agent or the Collateral Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent or Collateral Agent, as applicable, shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent or the Collateral Agent on behalf of the Lenders or the Issuers under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor of such Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuer directly, until such time as the Requisite Lenders appoint a successor Administrative Agent as provided for above in this *Section 11.6*. Upon the acceptance of a successor's appointment as Administrative Agent or Collateral Agent, as applicable, hereunder and upon the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Requisite Lenders may request, in order to (i) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents or (ii) otherwise ensure that the Collateral and Guarantee Requirement is satisfied, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent or Collateral Agent, as applicable, and the retiring Administrative Agent or Collateral Agent, as applicable, shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this *Section 11.6*). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and *Sections 12.3, 12.4 and 12.5* 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 Agent was acting as Administrative Agent or Collateral Agent, as applicable.

(b) Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as an Issuer and Swing Loan Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuer and Swing Loan Lender, (ii) the retiring Issuer and Swing Loan Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuer shall issue letters of credit in substitution for the Letters of Credit issued by Bank of America, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuer to effectively assume the obligations of the retiring Issuer with respect to such Letters of Credit.

SECTION 11.7 Non-Reliance on Administrative Agent and Other Lenders; Disclosure of Information by Agents.

Each Lender and each Issuer acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to each Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective 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 and the other Loan Parties hereunder. Each Lender and each Issuer also represents that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Agent-Related Persons and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, 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 and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person.

SECTION 11.8 No Other Duties; Other Agents, Arrangers, Managers, Etc.

Anything herein to the contrary notwithstanding, none of the Arrangers, Co-Syndication Agents or the Co-Documentation Agents 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 the Administrative Agent, the Collateral Agent or a Lender hereunder and such Persons shall have the benefit of this *Article XI*. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any agency or fiduciary or trust relationship with any Lender, Holdings, the Borrower or any of their respective Subsidiaries. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

SECTION 11.9 Intercreditor Agreement. The Administrative Agent and the Collateral Agent are authorized to enter into the Intercreditor Agreement, and the parties hereto acknowledge that the Intercreditor Agreement is binding upon them. Each Lender (a) hereby consents to the subordination

of the Liens on the Collateral other than the Current Asset Collateral securing the Obligations on the terms set forth in the Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and (c) hereby authorizes and instructs the Administrative Agent and the Collateral Agent to enter into the Intercreditor Agreement or other intercreditor agreement contemplated hereunder or under any Loan Document with the collateral agent or other representative of the holders of Indebtedness that is secured by a Lien on Collateral that is not prohibited (including with respect to priority) under this Agreement and to subject the Liens on the Collateral securing the Obligations to the provisions thereof. The foregoing provisions are intended as an inducement to the Secured Parties to extend credit to the Borrower and such Secured Parties are intended third-party beneficiaries of such provisions and the provisions of the Intercreditor Agreement.

SECTION 11.10 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, the Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letter of Credit Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuers and the Administrative Agent under Sections 2.12, 12.3 and 12.4) 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 each Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Sections 2.12, 12.3 and 12.4.

Nothing contained herein shall be deemed to authorize the Administrative Agent to credit bid any of the Obligations without the consent of the Requisite Lenders (which credit bid shall be made in accordance with Section 10.11) or authorize or consent to or accept or adopt on behalf of any Lender or any Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or any Issuer in any such proceeding.

SECTION 11.11 Collateral and Guaranty Matters.

Each of the Lenders (including in its capacities as a potential Cash Management Bank ~~and a potential~~, Bank Product Bank and/or Hedge Bank) and the Issuers irrevocably authorizes the

Administrative Agent (including in its capacity as Collateral Agent) to, and the Administrative Agent agrees that it will:

(a) release any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (x) obligations and liabilities under Secured Hedge Agreements ~~and~~, Cash Management Obligations and Bank Product Obligations as to which arrangements satisfactory to the applicable Hedge Bank ~~or~~, Cash Management Bank or Bank Product Bank, respectively, shall have been made and (y) contingent indemnification obligations not yet accrued and payable) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements reasonably satisfactory to the Administrative Agent and each applicable Issuer shall have been made), (ii) at the time the property subject to such Lien is transferred or to be transferred as part of or in connection with any transfer permitted hereunder or under any other Loan Document to any Person other than Holdings, the Borrower or any of its Domestic Subsidiaries that are Guarantors, (iii) subject to *Section 12.1*, if the release of such Lien is approved, authorized or ratified in writing by the Requisite Lenders, or (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below;

(b) release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by *Section 9.1(i)*;

(c) release any Guarantor from its obligations under the Guaranty if (i) in the case of any Subsidiary, such Person ceases to be a Restricted Subsidiary as a result of a transaction or designation permitted hereunder or (ii) in the case of Holdings, as a result of a transaction permitted hereunder; *provided* that no such release shall occur if such Guarantor continues to be a guarantor in respect of any Term Facility or any Junior Financing; and

(d) if any Guarantor shall cease to be a Material Domestic Subsidiary (as certified in writing by a Responsible Officer of the Borrower), and the Borrower notifies the Administrative Agent in writing that it wishes such Guarantor to be released from its obligations under the Guaranty and provides the Administrative Agent and the Collateral Agent such certifications or documents as either such Agent shall reasonably request, (i) release such Subsidiary from its obligations under the Guaranty and (ii) release any Liens granted by such Subsidiary or Liens on the Equity Interests of such Subsidiary; *provided* that no such release shall occur if such Subsidiary continues to be a guarantor in respect of any Term Facility or any Junior Financing.

Upon request by the Administrative Agent at any time, the Requisite Lenders will confirm in writing the Collateral 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 11.11*. In each case as specified in this *Section 11.11*, the applicable Agent will (and each Lender irrevocably authorizes the applicable Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this *Section 11.11*.

SECTION 11.12 Secured Cash Management Agreements, Secured Bank Product Agreements and Secured Hedge Agreements.

(a) Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Cash Management Bank, [Bank Product Bank](#) or Hedge Bank that obtains the benefits of *Section 10.3*, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral 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) 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 XI* to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements, [Secured Bank Product Agreements](#) and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank, [Bank Product Bank](#) or Hedge Bank, as the case may be.

(b) Each Secured Party hereby agrees (i) that, after the occurrence and during the continuance of a Cash Dominion Period (and thereafter at such frequency as the Administrative Agent may reasonably request in writing), it will provide to the Administrative Agent, promptly upon the written request of the Administrative Agent, a summary of all Obligations owing to it under this Agreement and (ii) that the benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not an Agent, a Lender or an Issuer party hereto as long as, by accepting such benefits, such Secured Party agrees, as among Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by Agent, shall confirm such agreement in a writing in form and substance reasonably acceptable to Agent) this *Article XI* and *Sections 3.1, Sections 12.4, 12.6, 12.19, 12.23 and 12.26* and the Intercreditor Agreement, and the decisions and actions of any Agent and the Requisite Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders or other parties hereto as required herein) to the same extent a Lender is bound; *provided, however*, that, notwithstanding the foregoing *clause (ii)*, (x) such Secured Party shall be bound by the provisions set forth above only to the extent of liabilities, reimbursement obligations, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements with respect to or otherwise relating to the Liens and Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of pro rata share or similar concept, (y) each of the Agents, the Lenders and the Issuers party hereto shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (z) such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

SECTION 11.13 Indemnification of Agents.

Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Administrative Agent and each other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so), pro rata, and hold harmless the Administrative Agent and each other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) from and against any and all Indemnified Liabilities incurred by it; provided that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction; provided that no action taken in

accordance with the directions of the Requisite Lenders, [the Requisite Revolving Credit Lenders or the FILO Documentation Agent, as applicable](#) (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this *Section 11.13*. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this *Section 11.13* applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower, *provided* that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto, *provided further* that the failure of any Lender to indemnify or reimburse the Administrative Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this *Section 11.13* shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent, the Swing Loan Lender or any Issuer.

SECTION 11.14 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, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) 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 Aggregate Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Aggregate Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with

respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Aggregate Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with 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 not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Aggregate Commitments and this Agreement (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).

SECTION 11.15 Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender or any other Secured Party, whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Secured Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Secured Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Secured Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Secured Party promptly upon determining that any payment made to such Secured Party comprised, in whole or in part, a Rescindable Amount.

ARTICLE XII

MISCELLANEOUS

SECTION 12.1 Amendments, Etc. Subject to *Section 3.3* ~~(e)~~ and except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Requisite Lenders and the Borrower or the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that, no such amendment, waiver or consent shall:

(a) extend or increase the Revolving Credit Commitment or FILO Commitment of any Lender without the written consent of each Lender directly affected thereby (it being understood that (i) a waiver of any condition precedent set forth in *Section 4.2* and (ii) the waiver of any Default, mandatory prepayment or mandatory reduction of the Revolving Credit

Commitments shall not constitute an extension or increase of any Revolving Credit Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under *Section 2.6* or *2.10* (or change the format of any such interest payment, including any change that would result in interest that is payable in cash being payable in-kind or for other non-cash consideration) without the written consent of each Lender directly affected thereby, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans or any condition precedent set forth in *Section 4.2* shall not constitute a postponement of any date scheduled for the payment of principal or interest;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or Letter of Credit Borrowing, or (subject to *clause (iii)* of the ~~second~~third proviso to this *Section 12.1*) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby (it being understood that any change to any component of “Excess Availability” shall not constitute a reduction in the rate of interest); *provided* that only the consent of (i) the Requisite Revolving Credit Lenders (and not the Requisite Lenders) shall be necessary to amend the definition of “Default Rate”, or to waive any obligation of the Borrower to pay interest at the Default Rate; as it relates to the Revolving Obligations (except that any increase in such Default Rate in excess of 2.00% shall also require the consent of the FILO Documentation Agent), and (ii) the FILO Documentation Agent (and not the Requisite Lenders) shall be necessary to amend the definition of “Default Rate”, or to waive any obligation of the Borrower to pay interest at the Default Rate, as it relates to the FILO Obligations (except that any increase in such Default Rate in excess of 2.00% shall also require the consent of the Requisite Revolving Credit Lenders);

(d) change (i) any provision of this *Section 12.1*, without the written consent of each Lender affected thereby, (ii) the definition of “Requisite Lenders”, “~~Supermajority Lenders~~” or without the written consent of each Lender, (iii) the definition of “Requisite Revolving Credit Lenders” or “Supermajority Revolving Credit Lenders”, without the written consent of each Revolving Credit Lender (and not the Requisite Lenders), or (iv) any other provision specifying the number of Lenders or portion of the Loans or Revolving Credit Commitments required to take any action under the Loan Documents, without the written consent of each Lender affected thereby (and not the Requisite Lenders);

(e) other than in a transaction permitted under *Section 9.4* or *9.5*, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(f) other than in a transaction permitted under *Section 9.4* or *9.5*, release all or substantially all of the aggregate value of the Guaranty, without the written consent of each Lender;

(g) change the definition of the term “Borrowing Base” or any component definition thereof, but excluding the definition of “Credit Card Advance Rate”, “Trade Receivables Advance Rate”, “Letter of Credit Advance Rate”, “Inventory Advance Rate” or “In-Transit Advance Rate”, in each case the amendment or modifications of which shall be subject to *clause (h)* below, if as a result thereof the amounts available to be borrowed by the Borrower would be increased, without the written consent of the Supermajority Revolving Credit Lenders (and not the Requisite Lenders), *provided* that the foregoing shall not limit the discretion of the Administrative Agent or the FILO Documentation Agent to change, establish or eliminate any

Availability Reserves, Inventory Reserves, Receivables Reserves or Shrink Reserves without the consent of any Lenders; ~~or~~

(h) increase the numerical percentage contained in Credit Card Advance Rate, Trade Receivables Advance Rate, Letter of Credit Advance Rate, Inventory Advance Rate or In-Transit Advance Rate without the written consent of each Lender; *provided* that the foregoing shall not limit the discretion of the Administrative Agent or the FILO Documentation Agent to change, establish or eliminate any Availability Reserves, Inventory Reserves, Receivables Reserves or Shrink Reserves without the consent of any Lenders;

(i) except as provided by operation of applicable Law or in the Intercreditor Agreement, without the prior written consent of all Lenders directly affected thereby, (i) subordinate the Obligations hereunder to any other Indebtedness, or (ii) subordinate the Liens granted hereunder or under the other Loan Documents to any other Lien;

(j) change the order of the application of funds specified in *Section 10.3* without the written consent of each ~~Lender~~ directly affected ~~thereby~~ Lender; or

(k) change or amend any provision of Section 2.18 without the written consent of each Revolving Credit Lender (and not the Requisite Lenders);

provided further that, in addition to the written consent of the Requisite Lenders, the written consent of the FILO Documentation Agent shall be required for any waiver, amendment or consent that:

(1) except in connection with, and solely with respect to, a Conforming Post-Petition Financing, (i) except as contemplated by *Section 2.15* as of the Third Amendment Effective Date, increases the Aggregate Commitments or (ii) adds new tranches of Indebtedness under any Loan Document that, in the case of this clause (ii), are senior in right of repayment to, or *pari passu* in right of repayment with, the FILO Loans;

(2) other than in connection with the provision of a Conforming Post-Petition Financing to implement the Insolvency Increase Amount, (i) changes the definition of "Borrowing Base" (or any component definition thereof), or increases the advance rates applied to eligible assets in the Borrowing Base, if as a result thereof the amounts available to be borrowed by the Borrower would be increased, (ii) changes the definitions of "Excess Availability", "Global Borrowing Base", "Maximum Credit", "Modified Borrowing Base" or "Modified Maximum Credit", or (iii) changes the definition of "FILO Borrowing Base" (or any component definition thereof); *provided* that the foregoing shall not limit the discretion of the Administrative Agent or the FILO Documentation Agent to change, establish or eliminate any Availability Reserves, Inventory Reserves, Receivables Reserves or Shrink Reserves without the consent of any Lenders;

(3) (i) changes the definition of "FILO Deficiency Reserve" or ceases to deduct from the Borrowing Base (or fails to establish or maintain) the FILO Deficiency Reserve or (ii) amends, modifies or waives any of the provisions of *Section 2.19*;

(4) amends, modifies or waives (i) any of the provisions of *Section 6.1* or the definition of "Covenant Trigger Event" or (ii) the last paragraph of *Section 4.2*;

(5) changes the definitions of “Protective Advances” or “Unintentional Overadvance”;

(6) (i) changes the definitions of “Carve Out”, “Conforming Post-Petition Financing”, “Post-Petition Financing”, “Insolvency Increase Amount” or “Maximum Revolving Insolvency Amount” or (ii) changes, modifies or waives any of the provisions of Sections 10.6 through 10.12;

(7) changes, modifies or waives (i) any of the provisions of Section 7.4 or the definition of “Weekly Monitoring Event”, in each case, in a manner which is more favorable to the Loan Parties, or (ii) any of the provisions of Section 8.12 or the definition of “Cash Dominion Period”, in each case, in a manner which is more favorable to the Loan Parties;

(8) (i) changes the definitions of “FILO Specified Event of Default” or “FILO Standstill Period” or (ii) changes, modifies or waives any of the provisions of (x) Section 10.1 in any manner which would also constitute a waiver of any FILO Specified Event of Default or (y) Section 10.2(b) or (d);

(9) changes the definitions of (i) “Cash Management Agreement”, “Cash Management Bank”, “Cash Management Obligations”, “Cash Management Reserve”, “Cash Management Services” or “Secured Cash Management Agreement”, (ii) “Hedge Bank”, “Secured Hedge Agreement”, “Swap Contract” or “Swap Obligations Reserve”, (iii) “Bank Product Agreement”, “Bank Product Bank”, “Bank Product Reserve”, “Bank Product Obligations”, “Bank Products” or “Secured Bank Product Agreement”, (iv) “Obligations”, “Revolving Obligations”, “FILO Obligations” or “Secured Obligations” or (v) “Availability Reserves”, “Dilution Reserve”, “Inventory Reserves”, “Receivables Reserves” or “Shrink Reserves”;

(10) changes the definition of “Eligible Assignee” (or any component definition thereof), or changes, modifies or waives any of the provisions of Section 12.2, in a manner which would directly make assignments of the FILO Loans more restrictive or would permit the Loan Parties or their Affiliates to be Eligible Assignees;

(11) changes, modifies or waives any of the provisions of (i) Section 2.1(d) or Section 2.10 in any manner that relates to the FILO Obligations or (ii) Section 9.11 or the definition of “Payment Conditions” in any manner that would further restrict prepayment of the FILO Loans; or

(12) changes, modifies or waives any of the provisions of the Intercreditor Agreement in a manner that is adverse to the FILO Lenders as a Class (but not, for the avoidance of doubt, any amendment that treats the FILO Lenders in the same manner as the Revolving Credit Lenders); provided, the Borrower shall provide at least two (2) Business Days’ (or such shorter time as agreed by the FILO Documentation Agent) advance notice to the FILO Documentation Agent of proposed changes, modifications and waivers of any of the provisions of the Intercreditor Agreement;

and *provided further* that (i) no amendment, waiver or consent shall, unless in writing and signed by each Issuer in addition to the Lenders required above, affect the rights or duties of an Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Loan Lender in addition

to the Lenders required above, affect the rights or duties of the Swing Loan Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; ~~and~~ (iv) *Section 12.2(g)* may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; ~~and~~ (v) the consent of Requisite Revolving Credit Lenders shall be required with respect to any amendment that by its terms adversely affects the rights of the Lenders under such Revolving Facility in respect of payments hereunder in a manner different than such amendment affects other Revolving Loan; ~~(vi) no amendment, waiver or consent shall, unless in writing and signed by the FILO Documentation Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the FILO Documentation Agent under this Agreement or any other Loan Document; and (vii) the Fee Letter and the FILO Fee Letter, respectively, may be amended, or rights or privileges thereunder waived, in a writing executed by only the respective parties 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 Revolving Credit Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything to the contrary contained in *Section 12.1*, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement or any other Loan Document, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Requisite Lenders, the Borrower may replace such non-consenting Lender in accordance with *Section 3.7*; *provided* that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

No Lender or Issuer consent is required to effect any amendment or supplement to any Intercreditor Agreement or any other intercreditor agreement that is for the purpose of adding the holders of Permitted Pari Passu Secured Debt (as defined in any of the Term Loan Facility Agreements) (or a debt representative with respect to any Indebtedness with respect to which it is a representative or agent) as parties thereto, as expressly contemplated by the terms of such intercreditor agreement (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing).

Notwithstanding this Section 12.1 or anything else to the contrary in this Agreement or any other Loan Document, each FILO Secured Party agrees that it will not raise any objection to, or oppose, and shall be deemed to have consented to, the release of any Loan Party from its

obligations under any Loan Document or to any private or public sale or other disposition of all or any portion of the Collateral (and any post-petition or post-filing assets subject to adequate protection Liens or comparable Liens under any applicable Law in favor of the Administrative Agent) free and clear of any Liens and other claims (a) at any time after the occurrence and during the continuance of an Event of Default under this Agreement if the Administrative Agent has consented to such release or such sale or other disposition; provided, however, that after the occurrence and during the continuance of an Event of Default under this Agreement and prior to the commencement of any Insolvency Proceeding with respect to any Loan Party, any such release and/or any such sale or other disposition by the Administrative Agent shall be made in accordance with applicable Law and the Administrative Agent shall provide not less than five (5) Business Days' prior written notice to the FILO Documentation Agent of any proposed release and/or sale or other disposition, or (b) under Section 363 of the Bankruptcy Code (or other similar provision of any applicable Law), in each case under the foregoing clauses (a) and (b), if the Administrative Agent has consented to such release any/or such sale or other disposition, and in connection with each of the foregoing clauses (a) and (b), each FILO Secured Party shall be deemed to have consented to such release any/or such sale or other disposition and hereby irrevocably authorizes the Administrative Agent to release any Lien on any of the Collateral in connection therewith; provided that any Lien of the Administrative Agent on such Collateral attaches to the net proceeds of such release and/or such sale or other disposition of the Collateral received by the Administrative Agent and that all proceeds of the Collateral received by the Administrative Agent from such release and/or such sale or other disposition are, after application to any Conforming Post-Petition Financing, applied in accordance with Section 10.3.

SECTION 12.2 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 Holdings nor the Borrower may, except as permitted by Section 9.4, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section, or (iv) to an SPC in accordance with the provisions of subsection (g) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuers and the 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 Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and the Loans (including for purposes of this subsection (b), participations in Letter of Credit Obligations and in Swing 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 Revolving Credit Commitment and the Loans of any Class at the time

owing to it 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 *subsection (b)(i)(A)* of this Section, the aggregate amount of the Revolving Credit Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Revolving Credit Commitment is not then in effect (or with respect to FILO Loans), the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$1,000,000 unless each of the Administrative Agent and, so long as no Event of Default under *Section 10.1(a)* or *(f)*, solely with respect to the Borrower, has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); *provided, however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) *Proportionate Amounts.* Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans or the Revolving Credit Commitment assigned, except that this *clause (ii)* shall not apply to rights in respect of the Swing Loan Lender’s rights and obligations in respect of Swing Loans;

(iii) *Required Consents.* No consent shall be required for any assignment except to the extent required by *subsection (b)(i)(B)* of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld) shall be required unless (1) an Event of Default under *Section 10.1(a)* or, solely with respect to the Borrower, *Section 10.1(f)*, has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required 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;

(C) the consent of the Issuers (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Loan Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment;

(iv) *Assignment and Assumption.* The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; *provided, however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in

the case of any assignment. The Eligible Assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. All assignments shall be by novation.

(v) *No Assignment to Certain Persons.* No such assignment shall be made (A) to Holdings, the Borrower or any of the Borrower's Affiliates or Subsidiaries (including the Sponsor), or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this *clause (B)*, (C) to a natural person or an investment vehicle of a natural person or (D) any Disqualified Institution to the extent that the list of Disqualified Institutions has been provided to all Public Lenders on the Platform.

(vi) *Certain Additional Payments.* In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to *clause (c)* of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of *Sections 3.1, 3.4, 3.5, 12.3, 12.4 and 12.5* with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Revolving Credit Note or FILO Note, as applicable, the Borrower (at its expense) shall execute and deliver a Revolving Credit Note or FILO Note, as applicable, to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with *subsection (d)* of this Section.

(c) *Register.* The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Credit Commitments of,

and principal amounts (and related interest amounts) of the Loans and Letter of Credit Obligations owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. This *Section 12.2(c)* and *Section 2.7* shall be construed so that all Loans are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or an investment vehicle of a natural person, any Disqualified Institution to the extent that the list of Disqualified Institutions has been provided to all Public Lenders on the Platform, a Defaulting Lender or the Borrower or any of the Borrower’s Affiliates or Subsidiaries) (each, a “Participant”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and/or the Loans (including such Lender’s participations in Letter of Credit Obligations and/or Swing Loans) owing to it); *provided* that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents, the other Lenders and the Issuers shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to *Section 12.1* (other than *clause (d)* thereof) that directly affects such Participant. Subject to *subsection (e)* of this Section, the Borrower agrees that each Participant shall be entitled (through the applicable Lender) to the benefits of *Sections 3.1, 3.4 and 3.5* (subject to the requirements and limitations of such Sections (including the limitation in the definition of “Excluded Taxes”), and *Sections 3.6(a) and 3.7*, as if the Participant were a Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to *subsection (b)* of this Section. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of *Section 12.6* as though it were a Lender, *provided* such Participant agrees to be subject to *Section 12.7* as though it were a Lender.

(e) *Limitations upon Participant Rights.* A Participant shall not be entitled to receive any greater payment under *Section 3.1, 3.4 or 3.5* than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower’s prior written consent. A Participant shall not be entitled to the benefits of *Section 3.1* unless the Borrower is notified of the participation sold to such Participant, the applicable Lender (acting solely for this purpose as a non-fiduciary agent of the Borrower) maintains a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations issued thereunder relating to the exemption from withholding for portfolio interest on which is entered 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 this Agreement (the

“Participant Register”) and such Participant agrees, for the benefit of the Borrower, to comply and does in fact comply with *Section 3.1* as though it were a Lender. 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 or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury regulations. Unless otherwise required by the IRS, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the IRS. 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.

(f) Any Lender may, at any time, pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Revolving Credit Note or FILO Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a “Granting Lender”) may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an “SPC”) the option to provide all or any part of any ~~Revolving~~ Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any ~~Revolving~~ Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such ~~Revolving~~ Loan, the Granting Lender shall be obligated to make such ~~Revolving~~ Loan pursuant to the terms hereof or, if it fails to do so, to make such payment to the Administrative Agent as is required under *Section 2.13(e)*. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under *Sections 3.1, 3.4* and *3.5*, but such obligations under *Section 3.1* as to an SPC will only exist if the SPC satisfies the requirements of *Section 3.1* as if it were a Lender), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a ~~Revolving~~ Loan by an SPC hereunder shall utilize the Revolving Credit Commitment or FILO Commitment, as applicable, of the Granting Lender to the same extent, and as if, such ~~Revolving~~ Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding under the laws of the United States or any State thereof. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any ~~Revolving~~ Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of ~~Revolving~~ Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(h) *Resignation as Issuer or Swing Loan Lender after Assignment.* Notwithstanding anything to the contrary contained herein, if at any time Bank of America or any other Issuer assigns all of its Revolving Credit Commitment and Revolving Loans pursuant to *subsection (b)* above, Bank of America or the applicable Issuer may, (i) upon thirty (30) days' notice to the Borrower and the Lenders, resign as Issuer and/or (ii) if applicable, upon thirty (30) days' notice to the Borrower, resign as Swing Loan Lender. In the event of any such resignation as Issuer or Swing Loan Lender, the Borrower shall be entitled to appoint from among the Lenders a successor Issuer or Swing Loan Lender hereunder; *provided, however*, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America or the applicable Issuer as Issuer or (as applicable) Swing Loan Lender, as the case may be. If Bank of America or the applicable Issuer resigns as Issuer, it shall retain all the rights, powers, privileges and duties of an Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuer and all Letter of Credit Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in unreimbursed amounts under Letters of Credit pursuant to *Section 2.4*). If Bank of America resigns as Swing Loan Lender, it shall retain all the rights of the Swing Loan Lender provided for hereunder with respect to Swing Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Loans pursuant to *Section 2.3*. Upon the appointment of a successor Issuer and/or Swing Loan Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuer or Swing Loan Lender, as the case may be, and (b) the successor 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 Bank of America or the applicable Issuer to effectively assume the obligations of Bank of America or the applicable Issuer with respect to such Letters of Credit.

(i) Notwithstanding the foregoing, no Disqualified Institution that purports to become a Lender hereunder (notwithstanding the provisions of this Agreement that prohibit Disqualified Institutions from becoming Lenders) shall be entitled to any of the rights or privileges enjoyed by the other Lenders with respect to voting, information and lender meetings. In addition, if any assignment or participation is made to any Disqualified Institution without the Borrower's express prior written consent (which consent shall state expressly that the Borrower acknowledges that the assignee Lender is a Disqualified Institution) in violation of clause (v) of *Section 12.2(b)*, the Borrower may, in addition to any other rights and remedies that it may have against such Disqualified Institution, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) in the case of outstanding Loans held by Disqualified Institutions, purchase or prepay such Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in *Section 12.2*), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(a) Notwithstanding anything herein to the contrary, the provisions of this *Section 12.2* shall not apply retroactively to disqualify any person that has previously acquired an assignment or interest in any of the Loans with respect to amounts previously acquired to the extent such party was not a Disqualified Institution at the time of the applicable assignment but for only so long as such person continues to hold such Loans.

SECTION 12.3 Costs and Expenses.

The Borrower agrees (a) to pay or reimburse the Administrative Agent, the FILO Documentation Agent and the Arrangers for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, and in the case of legal fees and expenses, limited to all Attorney Costs of Morgan, Lewis & Bockius LLP (as counsel to the Administrative Agent), all Attorney Costs of Choate, Hall & Stewart LLP (as counsel to the FILO Documentation Agent) and, if reasonably necessary, one local counsel in each relevant jurisdiction material to the interests of the Lenders taken as a whole, and (b) to pay or reimburse the Administrative Agent, the Issuers and the Lenders for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and in the case of legal fees and expenses, limited to all Attorney Costs of one counsel to the Administrative Agent, the Issuers and the Lenders taken as a whole and all Attorney Costs of one counsel to the FILO Secured Parties taken as a whole selected by the FILO Documentation Agent (and, if reasonably necessary, ~~(x)~~ one local counsel in any relevant material jurisdiction and ~~(y)~~ in the event of any conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Lenders similarly situated taken as a whole of the affected parties) (including, during the continuance of an Event of Default and after working in good faith to use one counsel, if reasonably necessary in the event of any conflict of interest between the FILO Documentation Agent and any FILO Secured Parties, one additional counsel in each relevant jurisdiction to each group of affected FILO Secured Parties similarly situated taken as a whole of such affected parties; provided that no amounts received on account of the Obligations shall be applied, pursuant to Section 10.3 or otherwise, to pay such additional legal fees and expenses of counsel to such affected FILO Secured Parties under this clause (y) until all other FILO Obligations have been paid in full))). The agreements in this *Section 12.3* shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this *Section 12.3* shall be paid promptly following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail and such supporting material as the Borrower may reasonably request. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

SECTION 12.4 Indemnities.

The Borrower shall indemnify and hold harmless the Agents, each Lender, each Issuer, the Arrangers and their respective Affiliates, directors, officers, employees, agents, partners, trustees or advisors and other representatives (collectively the “*Indemnitees*”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnatee in any way relating to or arising out of or in connection with (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant jurisdiction that is material to the interest of the Lenders, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Indemnitees similarly situated taken as a whole) (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in

connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (ii) any Revolving Credit Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by an 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 (iii) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower, any Subsidiary or any other Loan Party, or any Environmental Liabilities arising out of the activities or operations of the Borrower, any Subsidiary or any other Loan Party, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnatee is a party thereto (all the foregoing, collectively, the “*Indemnified Liabilities*”); *provided that* such indemnity shall not, as to any Indemnatee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnatee or of any affiliate, director, officer, employee or agent of such Indemnatee, (y) a material breach of any obligations under any Loan Document by such Indemnatee or of any Related Indemnified Person, in each case as determined by a final, non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnatee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under the [Revolving Facility or the FILO](#) Facility and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates. To the extent that the undertakings to indemnify and hold harmless set forth in this *Section 12.4* may be unenforceable in whole or in part because they are violative of any applicable law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnatee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, nor shall any Indemnatee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Effective Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnatee to a third party). In the case of an investigation, litigation or other proceeding to which the indemnity in this *Section 12.4* applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnatee or any other Person, whether or not any Indemnatee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this *Section 12.4* shall be paid within twenty (20) Business Days after written demand therefor. The agreements in this *Section 12.4* shall survive the resignation of the Administrative Agent, the Collateral Agent, the Swing Loan Lender or any Issuer, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This *Section 12.4* shall not apply to Taxes, which shall be governed by *Section 3.1*. This *Section 12.4* also shall not apply to Other Taxes or to Taxes covered by *Section 3.4*.

SECTION 12.5 Limitation of Liability.

The Loan Parties agree that no Indemnatee shall have any liability (whether in contract, tort or otherwise) to any Loan Party or any of their respective Subsidiaries or any of their respective equity holders or creditors for or in connection with the transactions contemplated hereby and in the other Loan Documents, except to the extent such liability is determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnatee’s gross negligence or willful misconduct or bad faith or breach by such Indemnatee of its material obligations under this Agreement. In no event,

shall any party hereto or any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including, without limitation, any loss of profits, business or anticipated savings). Each party hereto hereby waives, releases and agrees (each for itself and on behalf of its Subsidiaries) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

SECTION 12.6 Right of Set-off.

If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such other Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of *Section 2.16* and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 12.7 Sharing of Payments.

If, other than as expressly provided elsewhere herein, any Lender shall obtain payment in respect of any principal of or interest on account of the Loans made by it, or the participations in Letter of Credit Obligations and Swing Loans held by it (in each case, whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in Letter of Credit Obligations or Swing Loans held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment of principal of or interest on such Loans or such participations, as the case may be, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in *Section 12.14* (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The provisions of this Section shall not be construed to apply to the application of Cash Collateral provided for in *Sections 10.3* and *10.5*. For

avoidance of doubt, the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of set-off, but subject to *Section 12.6*) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this *Section 12.7* and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this *Section 12.7* shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

SECTION 12.8 Notices and Other Communications; Facsimile Copies.

(a) *General.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in *subsection (b)* below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Holdings, the Borrower, the Administrative Agent, the FILO Documentation Agent, an Issuer or the Swing Loan Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on *Schedule 12.8*; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in *subsection (b)* below shall be effective as provided in such *subsection (b)*.

(b) *Electronic Communications.* Notices and other communications to the Lenders and the Issuers hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender or Issuer pursuant to *Article II* if such Lender or Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such *Article* by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

(c) *Receipt.* Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an

acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing *clause (i)* of notification that such notice or communication is available and identifying the website address therefor.

(d) *The Platform.* THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Agent-Related Persons or any Arranger (collectively, the “*Agent Parties*”) have any liability to Holdings, the Borrower, any Lender, any Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to Holdings, the Borrower, any Lender, any Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(e) *Change of Address.* Each of Holdings, the Borrower, the Administrative [Agent, the FILO Documentation](#) Agent, each Issuer and the Swing Loan Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, each Issuer and the Swing Loan Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(f) *Reliance by Administrative [Agent, FILO Documentation](#) Agent, Issuers and Lenders.* The Administrative Agent, [the FILO Documentation Agent](#), the Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic Notices of Borrowing or Swing Loan Requests) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation

thereof. The Borrower shall indemnify the Administrative Agent, the FILO Documentation Agent, each Issuer, each Lender and the Agent-Related Persons of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

SECTION 12.9 No Waiver; Cumulative Remedies.

No failure by any Lender ~~or~~, the Administrative Agent or the FILO Documentation Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

SECTION 12.10 [Reserved].

SECTION 12.11 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower, Holdings and the Administrative Agent and the Administrative Agent shall have been notified by each Lender, Swing Loan Lender and each Issuer that each such Lender, Swing Loan Lender and Issuer has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, Holdings, each Agent and each Lender and their respective successors and assigns.

SECTION 12.12 Governing Law; Submission to Jurisdiction; Service of Process.

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) THE BORROWER AND HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO AGREES THAT THE ADMINISTRATIVE AGENT AND THE LENDERS (BUT NOT THE BORROWER OR HOLDINGS) RETAINS THE RIGHT TO BRING PROCEEDINGS AGAINST THE BORROWER OR HOLDINGS IN THE COURTS OF ANY OTHER JURISDICTION IN

CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY LOAN DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

(c) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH 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) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN *SECTION 12.8*. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 12.13 Waiver of Jury Trial.

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

SECTION 12.14 Marshaling; Payments Set Aside.

None of the Administrative Agent, the FILO Documentation Agent, any Lender or any Issuer shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent 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 set-off had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

SECTION 12.15 Execution in Counterparts.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in *Sections 4.1* and *4.3*, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 12.16 Electronic Execution of Assignments and Certain Other Documents.

The words “execute,” “execution,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Notice of Borrowing, Swing Loan Request, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the 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; *provided* that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “*Communication*”), including Communications required to be in writing, may, if agreed by the Administrative Agent, be in the form of an Electronic Record and may be executed using Electronic Signatures, including, without limitation, facsimile and/or .pdf. The Loan Parties agree that any Electronic Signature (including, without limitation, facsimile or .pdf) on or associated with any Communication shall be valid and binding on the Loan Parties to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of the Loan Parties enforceable against the Loan Parties in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered to the Administrative Agent. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each Lender may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“*Electronic Copy*”), which shall be deemed created in the ordinary course of the Administrative Agent’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record.

Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; *provided*, further, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, each Secured Party shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (b) upon the request of the Administrative Agent any Electronic Signature shall be promptly followed by a manually executed, original counterpart. For purposes hereof, “Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

SECTION 12.17 Confidentiality.

Each of the Administrative [Agent, the FILO Documentation Agent](#), the Lenders and the Issuers agrees to maintain the confidentiality of the Information in accordance with its customary procedures (set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates’ respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); *provided* that the Administrative Agent, [the FILO Documentation Agent](#) or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable prior to any such disclosure by such Person unless such notification is prohibited by applicable Laws, or except in connection with any request as part of a regulatory examination, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, *provided* that the Administrative Agent, [the FILO Documentation Agent](#) or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of such disclosure unless such notification is prohibited by law, rule or regulation or except in connection with any request as part of a regulatory examination, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions at least as restrictive as those of this *Section 12.17*, 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 or any Eligible Assignee invited to be an Additional Lender (other than to a Disqualified Institution; *provided* that the list of Disqualified Institutions may be provided) or (ii) any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower; (h) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to the Loan Parties received by it from the Administrative Agent, [the FILO Documentation Agent](#) or such Lender); or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative [Agent, the FILO Documentation Agent](#), any Issuer, any Lender, or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary thereof, and which source is not known by such Agent or Lender to be subject to a confidentiality restriction in respect thereof in favor of the Borrower or any Affiliate of the Borrower.

For purposes of this Section, “*Information*” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent, [the FILO Documentation Agent](#) or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof, it being understood that all information received from Holdings, the

Borrower or any Subsidiary after the Effective Date, shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, [the FILO Documentation Agent](#) and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

SECTION 12.18 Use of Name, Logo, etc.

Each Loan Party consents to the publication in the ordinary course by Administrative Agent, [the FILO Documentation Agent](#) or the Arrangers of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan Party's name, product photographs, logo or trademark. Such consent shall remain effective until revoked by such Loan Party in writing to the Administrative Agent, [the FILO Documentation Agent](#) and the Arrangers. The Administrative [Agent, the FILO Documentation Agent](#) and the Arrangers reserve the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

SECTION 12.19 USA PATRIOT Act Notice; Foreign Asset Control Regulations.

Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

Neither the advance of the Loans nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the "*Foreign Assets Control Regulations*") or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "*Executive Order*") or the USA PATRIOT Act. Furthermore, none of the Loan Parties or their Affiliates (a) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person" or in any manner violative of any such order.

SECTION 12.20 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Agents and the Arrangers are arm's-length commercial transactions between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Agents and the Arrangers, on the other hand, (B) each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and Holdings is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agents, the Arrangers and each Lender 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, Holdings or any of their respective Affiliates, or any other Person and (B) none of the Agents, the Arrangers nor any Lender has any obligation to the Borrower, Holdings or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents, the Arrangers, the Lender and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings their respective Affiliates, and none of the Agents, the Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents, the Arrangers nor any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 12.21 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this *Section 12.21*, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the applicable Issuer or the Swing Loan Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

SECTION 12.22 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent, the FILO Documentation Agent, each Issuer and each Lender, regardless of any investigation made by the Administrative Agent, the FILO Documentation Agent, any Issuer or any Lender or on their behalf and notwithstanding that the Administrative Agent, the FILO Documentation Agent, any Issuer or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

SECTION 12.23 Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party under any of

the Loan Documents or the Secured Hedge Agreements (including the exercise of any right of set-off, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent (which shall not be withheld in contravention of *Section 11.4*). The provision of this *Section 12.23* are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

SECTION 12.24 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "*Maximum Rate*"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 12.25 Time of the Essence.

Time is of the essence in the Loan Documents.

SECTION 12.26 No Strict Construction.

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

SECTION 12.27 Intercreditor Agreement.

Each of Holdings, the Borrower, the Agents, the Issuers and the Lenders acknowledge that the exercise of certain of the Administrative Agents' rights and remedies hereunder may be subject to, and restricted by, the provisions of the Intercreditor Agreement. Except as specified herein, nothing contained in the Intercreditor Agreement shall be deemed to modify any of the provisions of this Agreement and the other Loan Documents, which, as among the Loan Parties, the Agents, the Issuers and the Lenders shall remain in full force and effect. In the event of any inconsistency between the provisions of this Agreement or any other Loan Document and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall govern and control.

SECTION 12.28 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a security interest under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of

its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under the Guaranty voidable under applicable Laws relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this *Section 12.28* shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

SECTION 12.29 Acknowledgment 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 the parties, each party hereto (including each Secured Party) acknowledges that, with respect to any Secured Party that is an Affected Financial Institution, any liability of such Secured Party arising under a 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 each party hereto 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 liability which may be payable to it by such Secured Party; and

(b) the effects of any Bail-in Action on any such liability, including (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 any Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of any Write-Down and Conversion Powers.

SECTION 12.30 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "*QFC Credit Support*", and each such QFC, a "*Supported QFC*"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "*U.S. Special Resolution Regimes*") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "*Covered Party*") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered

Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

SECTION 12.31 Amendment and Restatement.

This Agreement is an amendment and restatement of the Original Credit Agreement, it being acknowledged and agreed that as of the Effective Date all obligations outstanding under or in connection with the Original Credit Agreement and any of the other Loan Documents (such obligations, collectively, the “*Existing Obligations*”) constitute obligations under this Agreement. This Agreement is in no way intended to constitute a novation of the Original Credit Agreement or the Existing Obligations. With respect to (i) any date or time period occurring and ending prior to the Effective Date, the Original Credit Agreement and the other Loan Documents shall govern the respective rights and obligations of any party or parties hereto also party thereto and shall for such purposes remain in full force and effect; and (ii) any date or time period occurring or ending on or after the Effective Date, the rights and obligations of the parties hereto shall be governed by this Agreement (including, without limitation, the exhibits and schedules hereto) and the other Loan Documents. From and after the Effective Date, any reference to the Original Credit Agreement in any of the other Loan Documents executed or issued by and/or delivered to any one or more parties hereto pursuant to or in connection therewith shall be deemed to be a reference to this Agreement, and the provisions of this Agreement shall prevail in the event of any conflict or inconsistency between such provisions and those of the Original Credit Agreement.

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