IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
BASIC FUN, INC., *et al.*,[1]	Case No. 24-11432 (CTG)
Debtors.	(Jointly Administered)
	Re: Docket Nos. 202, 221

PLAN SUPPLEMENT FOR FIRST AMENDED COMBINED DISCLOSURE STATEMENT AND CHAPTER 11 PLAN OF REORGANIZATION OF BASIC FUN, INC., ET AL.

PLEASE TAKE NOTICE that on September 27, 2024, the Debtors filed the *First Amended Disclosure Statement and Chapter 11 Plan of Basic Fun, Inc., et al.* [Docket No. 221] (as modified, amended, or supplemented from time to time, the "**Combined Plan and Disclosure Statement**").

PLEASE TAKE FURTHER NOTICE that on September 30, 2024, the Court entered the *Order (I) Approving the Adequacy of the Disclosures in the First Amended Combined Plan and Disclosure Statement on an Interim Basis, (II) Scheduling the Confirmation Hearing and Deadline for Filing Objections, (III) Establishing Procedures for the Solicitation and Tabulation of Votes to Accept or Reject the First Amended Combined Plan and Disclosure Statement, (IV) Approving the Form of Ballot and Solicitation Package, and (V) Approving the Notice Provisions* [Docket No. 227] (the "**Confirmation Scheduling Order**").

PLEASE TAKE FURTHER NOTICE that as contemplated by the Combined Plan and Disclosure Statement and the Confirmation Scheduling Order, the Debtors hereby file the Combined Plan and Disclosure Statement Supplement in accordance with Article XVI.C of the Combined Plan and Disclosure Statement, which consists of the following documents that contemplate the occurrence of certain restructuring transactions in conjunction with the Debtors' reorganization (collectively, the "**Restructuring Transaction Documents**"): (i) the Financial Projections[2] of Basic Fun, Inc., et al., in substantially the form attached hereto as **Exhibit 1**; (ii) the Senior Exit Facility Agreement, in substantially the form attached hereto as **Exhibit 2**; and (iii) the Mezzanine Exit Facility Agreement, in substantially the form attached hereto as **Exhibit 3**. Additionally, **Exhibit 4** hereto identifies the members of the new Advisory Committee and the boards of directors (or equivalents) of Basic Fun and Holdco.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or United Kingdom registration number, as applicable, are: Basic Fun, Inc. (9742), Basic Fun Holdco, LLC (0066), TGS Acquisition, LLC (3011), TBDUM, LLC (9615), and K'NEX UK Limited (1398). The location of the Debtors' principal place of business and the Debtors' mailing address is 301 Yamato Road, Suite 4200, Boca Raton, Florida 33431.

[2] Capitalized terms not defined herein shall have their meanings ascribed to them in the Combined Plan and Disclosure Statement.

PLEASE TAKE FURTHER NOTICE that the Debtors intend to execute the Restructuring Transaction Documents in substantially the forms attached hereto as **Exhibit 2** through **Exhibit 3**, but reserve the right to amend, modify, and supplement such documents and all exhibits contained therein to the extent necessary for the successful consummation of the Debtors' reorganization and restructuring transaction in accordance with the terms of the Combined Plan and Disclosure Statement.

PLEASE TAKE FURTHER NOTICE that the Debtors further reserve all rights to amend, modify, or supplement the Combined Plan and Disclosure Statement Supplement, and any of the documents contained therein to and through the Effective Date in accordance with the terms of the Combined Plan and Disclosure Statement.

Dated: October 4, 2024
Wilmington, Delaware

Respectfully submitted,

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Exhibit 1

Financial Projections

Feasibility Analysis[1]

Section 1129(a)(11) of the Bankruptcy Code requires that, in order for a plan to be confirmed, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or need for further reorganization of the debtor unless contemplated by the plan.

In order to establish the feasibility of the Combined Plan and Disclosure Statement for purposes of section 1129(a)(11) of the Bankruptcy Code, the Debtors and their management team ("**Management**") with the assistance of its financial advisors, have developed financial projections (the "**Financial Projections**") to support the feasibility of the Combined Plan and Disclosure Statement, which were prepared as of October 4, 2024.

The Financial Projections were prepared in good faith by Management with the assistance of its financial advisors and are based on several assumptions made by Management, within the bounds of their knowledge of the Debtors' business and operations, with respect to the future performance of the Debtors' operations. In addition, the Financial Projections contain statements that constitute "forward-looking statements" within the meaning of the Securities Act and the Exchange Act, as amended by the Private Securities Litigation Reform Act of 1995. Forward-looking statements in these projections include the intent, belief, or current expectations of the Debtors and members of its Management concerning the timing of, completion of, and scope of the current restructuring, the Combined Plan and Disclosure Statement, the Debtors' strategic business plan, bank financing, debt and equity market conditions, and the Debtors' future liquidity, as well as the assumptions upon which such statements are based. Although Management has prepared the Financial Projections in good faith and believes the assumptions to be reasonable, it is important to note that the Debtors can provide no assurance that such assumptions will be realized. Because future events and circumstances may well differ from those assumed and unanticipated events or circumstances may occur, the Debtors expect that the actual and projected results will differ, and the actual results may be materially greater or less than those contained in the Financial Projections and from those contemplated by such forward-looking statements. No representations can be made as to the accuracy of the Financial Projections or the Debtors' ability to achieve the projected results. Therefore, the Financial Projections may not be relied upon as a guarantee or as any other form of assurance as to the actual results that will occur. The inclusion of the Financial Projections herein should not be regarded as an indication that the Debtors considered or consider the Financial Projections to reliably predict future performance. Accordingly, in deciding whether to vote to accept or reject the Combined Plan and Disclosure Statement, creditors should review the Financial Projections in conjunction with a review of the risk factors set forth in the Combined Plan and Disclosure Statement and the assumptions and risks described herein, including all relevant qualifications and footnotes.

AS ILLUSTRATED BY THE FINANCIAL PROJECTIONS, THE DEBTORS BELIEVE THEY WILL HAVE SUFFICIENT LIQUIDITY TO PAY AND SERVICE THEIR DEBT OBLIGATIONS, AND TO OPERATE THEIR BUSINESSES. THE DEBTORS BELIEVE THAT CONFIRMATION AND CONSUMMATION OF THE PLAN ARE NOT LIKELY TO

[1] Capitalized terms not defined herein shall have their meanings ascribed to them in the Combined Plan and Disclosure Statement.

BE FOLLOWED BY THE LIQUIDATION OR FURTHER REORGANIZATION OF THE DEBTORS. ACCORDINGLY, THE DEBTORS BELIEVE THAT THE PLAN SATISFIES THE FEASIBILITY REQUIREMENT OF BANKRUPTCY CODE SECTION 1129(a)(11).

The Financial Projections were not prepared with a view toward compliance with published rules of the SEC or the American Institute of Certified Public Accountants regarding projections. The Debtors' independent auditor has not examined, compiled, or performed any procedures with respect to the prospective financial information contained in this exhibit and, accordingly, it does not express an opinion or any other form of assurance on such information or its achievability. The Debtors' independent auditor assumes no responsibility for and denies any association with the prospective financial information.

Accordingly, neither the Debtors nor the Reorganized Debtors intend to and disclaim any obligation to: (1) furnish updated Financial Projections to Holders of Claims or Interests prior to the Effective Date or to any other party after the Effective Date, except as required by the Combined Plan and Disclosure Statement; (2) include any such updated information in any documents that may be required to be filed with the SEC; or (3) otherwise make such updated information publicly available. The Debtors do not intend to update or otherwise revise the Financial Projections to reflect circumstances that may occur after their preparation, or to reflect the occurrence of unanticipated events, even if any or all of the underlying assumptions are shown to be in error. Additional information relating to the principal assumptions used in preparing the Financial Projections are set forth below.

THE FINANCIAL PROJECTIONS ARE BASED UPON A NUMBER OF SIGNIFICANT ASSUMPTIONS. ACTUAL OPERATING RESULTS AND VALUES MAY VARY SIGNIFICANTLY FROM THESE FINANCIAL PROJECTIONS.

Safe Harbor Under the Private Securities Litigation Reform Act of 1995

The Financial Projections contain certain statements that are "forward-looking" within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements in the Financial Projections include the intent, belief, or current expectations of the Debtors and Management with respect to the timing of, completion of, and scope of the current restructuring, Combined Plan and Disclosure Statement, Debtors' business plan, and market conditions, and the Debtors' future liquidity, as well as the assumptions upon which such statements are based. While the Debtors believe that the expectations are based upon reasonable assumptions within the bounds of their knowledge of their business and operations, parties in interest are cautioned that any such forward-looking statements are not guarantees of future performance, involve risks and uncertainties, and that actual results may differ materially from those contemplated by such forward-looking statements.

Summary of Significant Assumptions

The Debtors, with the assistance of various Professionals, including their financial advisors, prepared the Financial Projections for Q4 2024 and Fiscal Years 2025 and 2026 (the "**Projection Period**"). The Financial Projections are based on numerous assumptions with respect to the future performance of the Reorganized Debtors' operations. Although these Financial

Projections have been prepared in good faith and are believed to be reasonable, the Debtors can provide no assurance that such assumptions will be realized. As described in detail in Article IV(E) of the Combined Plan and Disclosure Statement, a variety of risk factors could affect the Reorganized Debtors' financial results and should be considered. The Financial Projections should be reviewed in conjunction with a review of these assumptions, including the qualifications and notes herein.

General Assumptions

The Financial Projections are based upon the Debtors' operating budget and projections for the period from Q4 2024 through Fiscal Year 2026, in conjunction with current relevant industry outlooks. The Financial Projections were prepared using a "bottoms-up" approach, incorporating multiple sources of detailed information, including consumer-level forecasts, originations, yield and operating expense data, and separate projections for each of the Debtors' U.S. and Canada direct lending geographies. The operating assumptions assume the Combined Plan and Disclosure Statement will be confirmed by October 21, 2024.

The Financial Projections reflect numerous assumptions made by Management with respect to industry performance, general business, economic, market and financial conditions, and other matters, all of which are difficult to predict and many of which are beyond the Debtors' control. Therefore, although the Financial Projections are necessarily presented with numerical specificity, the actual results achieved during the projection periods presented will likely vary from the projected results. These variations may be material. Accordingly, no definitive representation can be or is being made with respect to the accuracy of the Financial Projections or the ability of the Reorganized Debtors to achieve the projected results.

Summary Projected Income Statement

($ in millions)	Notes	Q4-24	FY2025	FY2026
Gross Revenue		$52.5	$210.5	$221.0
Discounts & Allowances		(4.2)	(14.6)	(15.3)
Net Revenue	[1]	**$48.4**	**$195.9**	**$205.7**
Costs of Goods Sold		(25.9)	(102.3)	(106.3)
Gross Profit	[2]	**$22.4**	**$93.6**	**$99.4**
% - Margin		*46.4%*	*47.8%*	*48.3%*
Operating Expenses	[3]	(20.6)	(79.0)	(82.3)
Other (Income)/Expenses[(1)]	[4]	(2.7)	(9.8)	(8.1)
Income Taxes	[5]	0.0	(0.1)	(0.1)
Net Income		**($0.8)**	**$4.7**	**$8.9**
% - Margin		*NM*	*2.4%*	*4.3%*
Other Income/(Expenses)[(2)]		0.3	9.8	8.1
Bankruptcy Costs		2.5	-	-
Income Taxes		(0.0)	0.1	0.1
Adj. EBITDA		**$2.0**	**$14.6**	**$17.1**
% - Margin		*4.2%*	*7.5%*	*8.3%*

(1) FY2024 includes estimated one-time expenses related to the Chapter 11 bankruptcy process as well as a one-time gain on the extinguishment of debt related to the Chapter 11 bankruptcy process.
(2) Includes add-backs for one-time items related to the Chapter 11 bankruptcy process, depreciation & amortization, interest, and certain other items

Summary Projected Balance Sheet

($ in millions)	Notes	Q4-24	FY2025	FY2026
Cash and Cash Equivalents[(1)]	[1]	$3.0	$3.0	$3.0
Accounts Receivable	[2]	43.9	46.1	48.4
Inventory	[3]	28.9	29.8	31.0
Other Receivables		0.0	0.0	0.0
Prepayments & Deposits	[4]	6.0	6.8	7.2
Total Current Assets		**$81.8**	**$85.8**	**$89.7**
Intangible Assets	[5]	$3.8	$2.8	$2.0
Goodwill	[6]	13.3	9.7	7.0
Long-Term Receivables		0.1	0.1	0.1
Right of Use Asset (ASC 842)	[7]	6.8	6.8	6.8
PP&E	[8]	1.8	2.2	2.5
Total Assets		**$107.6**	**$107.3**	**$108.0**
Accounts Payable	[9]	$25.5	$19.9	$20.7
Taxes & Witholding Tax Payable		(0.1)	(0.1)	(0.1)
Other Accrued Expenses	[10]	7.0	7.3	7.5
Provisions		13.1	13.1	13.1
Exit Senior Facility	[11]	21.1	21.4	12.2
Short-Term Lease Liability (ASC 842)	[12]	1.2	1.2	1.2
Total Current Liabilities		**$67.8**	**$62.8**	**$54.6**
Notes Payable - BF, LP	[13]	49.4	49.4	49.4
Exit Mezzanine First-Out Facility	[14]	12.5	12.5	12.5
Exit Mezzanine Last-Out Facility	[15]	4.0	4.0	4.0
Long-Term Lease Liability (ASC 842)	[12]	6.2	6.2	6.2
Total Liabilities		**$139.9**	**$134.8**	**$126.7**
Total Shareholder's Equity	[16]	**($32.2)**	**($27.6)**	**($18.7)**
Total Liabilities & Shareholder's Equity		**$107.6**	**$107.3**	**$108.0**

(1) Reflects minimum Cash and Cash Equivalents of $3 million. The Exit Senior Facility sweeps collections on a daily basis to pay down the outstanding debt balance. Cash and Cash Equivalents plus availability under the $50 million Exit Senior Facility provides for adequate liquidity to operate the business through the seasonal peak and trough periods.

Summary Projected Cash Flow Statement

($ in millions)	Notes	Q4-24	FY2025	FY2026
Net Income		($0.8)	$4.7	$8.9
Non-Cash Adjustments[(1)]	[1]	(0.7)	5.9	4.8
Increase/(Decrease) Changes in Working Capital	[2]	0.6	(9.4)	(2.8)
Cash from Operating Activities		**($0.8)**	**$1.2**	**$10.9**
PP&E		($0.3)	($1.6)	($1.7)
Cash from Investing Activities		**($0.3)**	**($1.6)**	**($1.7)**
Exit Senior Facility		$1.1	$0.4	($9.3)
Exit Mezzanine First-Out Facility		(4.0)	-	-
Exit Mezzanine Last-Out Facility		4.0	-	-
Cash from Financing Activities		**$1.1**	**$0.4**	**($9.3)**
Total Change In Cash		**$0.0**	**$0.0**	**$ -**

(1) Includes an adjustment for debt extinguishment related to the Chapter 11 bankruptcy process, depreciation & amortization, and PIK interest.

NOTES TO FINANCIAL PROJECTIONS

Notes to the Summary Projected Income Statement

Note 1 – Net Revenue

Net Revenue reflects the Debtors' Gross Revenue, sales of toys from owned and licensed brand portfolio, less Discounts and Allowances. The Company offers various discounts, rebates, allowances, returns and markdowns to its customers, all of which are considered when determining the transaction price. Discounts and allowances are accounted for as a reduction in revenue in the same period the related revenues are recorded. Management makes estimates in the determination of discounts and allowances based on the overall business environment, historical trends and information from customers.

During FY2024, Net Revenue is projected to grow approximately 28% YoY, primarily due to increased sales from some of the Company's newest brands. In FY2025 and FY2026, Net Revenue is projected to grow modestly at approximately 5% YoY.

Note 2 – Cost of Goods Sold / Gross Margin

Cost of Goods includes both the cost of merchandise and freight expense. Consolidated gross margin as a percentage of Net Revenue is projected at approximately 46% during Q4-24.

This is forecasted to modestly improve to approximately 48% during FY2025 and FY2026, primarily due to the Company's continued focus on margin improvement, including the expansion of exclusive higher margin product lines within the portfolio and negotiated vendor concessions, among other things.

Note 3 – Operating Expenses

Operating Expenses consist largely of Licensing (Royalty), Selling, Marketing, and Payroll Expenses. As a percent of Net Revenue, Operating Expenses are projected to be approximately 43% in Q4-24 and decrease to approximately 40% in FY2025 and FY2026. The improvement is a conservative estimate of future expense savings.

Note 4 – Other (Income)/Expenses

Other (Income)/Expenses includes Depreciation & Amortization, Interest (Income)/Expenses, Other (Income)/Expenses as well as the Q4-24 estimated one-time expenses process and one-time gain on the extinguishment of debt related to the Chapter 11 bankruptcy.

Depreciation & Amortization represents depreciation of property, plant and equipment and amortization of intangible assets. Interest (Income)/Expense over the projection period is based upon the Debtors' current and anticipated capital structure immediately before and following the consummation of the Plan and is made up of cash interest and fees on long-term debt.

Note 5 – Income Taxes

Income Taxes are calculated following the Income Taxes topic of the Codification (ASC 740). The Company is a limited liability company, however, has elected to be taxed as a C-Corporation and thus, there is a provision for U.S. Federal and State income taxes. The current provision for income taxes is based on current U.S. Federal, state and local statutory rates which are adjusted based on changes in tax laws and significant fluctuations in taxable income. The actual amount of Income Taxes could vary significantly pending the final tax analysis of the reorganization and fresh-start accounting adjustments. Tax calculations are based on a multitude of factors, and the preliminary estimates are subject to material change.

Notes to the Summary Projected Balance Sheet

Note 1 – Cash and Cash Equivalents

Cash and Cash Equivalents are considered to be all short-term highly liquid investments with an original maturity of three months or less. The Company maintains its cash and cash equivalent balances in several financial institutions located in the United States, Canada, Europe, and Hong Kong.

Note 2 – Accounts Receivable

Accounts Receivable are recorded at the invoiced amount and do not bear interest. The Company's customer base is comprised mainly of retailers. Accounts Receivable are presented net of an allowance for credit losses and reserves for sales discounts and allowances. Credit is granted to customers on an unsecured basis. Credit limits and payment terms are established based on evaluations made on an ongoing basis throughout the fiscal year, including the financial performance, cash generation, financing availability, and liquidity status of each customer. Payment terms are normally 30 to 90 days. The Company determines the allowance for credit losses based on management's assessment of the business environment, customers' financial condition, historical collection experience, accounts receivable aging and customer disputes.

Note 3 – Inventory

Inventory consist of finished goods available for resale and work in process. Inventory are stated at the lower of cost and net realizable value, with cost determined under the first-in, first-out (FIFO) method. For work-in-process inventory, the Company uses standard costs to approximate actual costs under the FIFO method. The Company evaluates its inventories to identify excess and obsolete merchandise based on business trends and records corresponding adjustments to inventory reserves when necessary.

Note 4 – Prepayments & Deposits

Prepayments & Deposits are recorded when royalty fees are paid in advance for certain licensing agreements.

Note 5 – Intangible Assets

Intangible Assets include acquired trade names, trademarks and product rights that have definite lives of 10 years.

Note 6 – Goodwill

Goodwill represents the excess of purchase price over the value assigned to the net tangible and identifiable intangible assets of the businesses acquired.

Note 7 – Right of Use Asset (ASC 842)

Right of Use Asset (ASC 842) are recognized as the Company's right to use an underlying asset for the lease term for the Company leases for office space, showroom space, and equipment from third parties.

Note 8 – PP&E

PP&E is stated at cost and net of accumulated depreciation and include tools and molds, office and computer equipment, furniture and fixtures, vehicles, and leasehold improvements.

Note 9 – Accounts Payable

Accounts Payable represents outstanding merchandise and non-merchandise payables to third-party trade vendors and service providers.

Note 10 – Other Accrued Expenses

Other Accrued Expenses are recorded for the estimated shortfall in achieving the minimum guaranteed royalty amounts for certain licensing agreements.

Note 11 – Exit Senior Facility

Exit Senior Facility is a $50.0 million revolving credit facility which will be entered upon emergence as contemplated under the Restructuring Support Agreement. The facility has a tenor of 3 years post-closing and carries an interest rate of SOFR plus 4.25%.

Note 12 – Short-Term/Long-Term Lease Liability (ASC 842)

Short-Term/Long-Term Lease Liability (ASC 842) are recognized as the Company's obligation to make lease payments arising from the Company leases for office space, showroom space, and equipment from third parties.

Note 13 – Notes Payable - BF, LP

Notes Payable - BF, LP represents the prepetition notes between Basic Fun, Inc. and Basic Fun Holdco, LLC. that will remain outstanding post-emergence.

Note 14 – Exit Mezzanine First-Out Facility

Exit Mezzanine First-Out Facility is outstanding at $12.5 million and will be present upon emergence as contemplated under the Restructuring Support Agreement. The facility has a tenor of 3 years and 90 days post-closing and carries an interest rate of 12.5% cash pay or 16.0% Payment-in-Kind.

Note 15 – Exit Mezzanine Last-Out Facility

Exit Mezzanine Last-Out Facility is outstanding at approximately $4.0 million and will be present upon emergence as contemplated under the Restructuring Support Agreement. The facility has a tenor of 3 years and 90 days post-closing and carries an interest rate of 8.0% cash pay or 8.0% Payment-in-Kind.

Note 16 – Total Shareholder's Equity

Total Shareholder's Equity represents the Debtors' net book value of shareholders' equity. The projections do not reflect the full potential impact of fresh-start accounting; as such, these balances are highly preliminary and illustrative.

Notes to the Summary Projected Cash Flow Statement

Note 1 – Non-Cash Adjustments

Non-Cash Adjustments includes an adjustment for debt extinguishment related to the Chapter 11 bankruptcy process, depreciation & amortization, and PIK interest.

Note 2 – Changes in Working Capital

Changes in Working Capital represents the Debtors' change in working capital, primarily consisting of changes in Accounts Receivable, Long-term Receivables, Inventory, Other Receivables, Payments & Deposits, Accounts Payable, Taxes Payable, Withholding Tax Payable, Other Accrued Expenses, Provision for Allowances & Deductions, and Provision for Royalties & Commission.

Exhibit 2

Senior Exit Facility Agreement

LOAN AND SECURITY AGREEMENT

Dated as of [•], 2024

among

GREAT ROCK CAPITAL PARTNERS MANAGEMENT, LLC
(as Agent)

THE LENDERS FROM TIME TO TIME PARTY HERETO
(as Lenders)

BASIC FUN, INC.

and

ANY OTHER PERSON THAT AT ANY TIME AFTER THE DATE HEREOF BECOMES A BORROWER
(as Borrowers)

and

BASIC FUN HOLDCO, LLC
(as Holdings)

EACH OTHER SUBSIDIARY OF HOLDINGS,

and

ANY OTHER PERSON THAT AT ANY POINT AFTER THE DATE HEREOF BECOMES A GUARANTOR
(as Guarantors)

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Exhibit A Form of Notice of Borrowing
Exhibit B Closing Checklist
Exhibit C-1 [Reserved]
Exhibit C-2 Form of Revolving Loan Borrowing Base Certificate
Exhibit C-3 [Reserved]
Exhibit D Form of Account Debtor Notification
Exhibit E Form of Compliance Certificate
Exhibit F Form of Assignment and Acceptance
Exhibit G Form of Perfection Certificate
Exhibit H Form of U.S. Tax Compliance Certificates

LOAN AND SECURITY AGREEMENT

This Loan and Security Agreement (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "**Agreement**") is entered into as of [•], 2024 by and among (1) **GREAT ROCK CAPITAL PARTNERS MANAGEMENT, LLC**, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, together with its successors and assigns, if any, in such capacity, "**Agent**"), (2) the lenders from time to time party hereto (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a "**Lender**"), (3) **BASIC FUN HOLDCO, LLC**, a Delaware limited liability company and a debtor and debtor-in-possession in the Chapter 11 Cases (as defined herein) ("**Holdings**"), (4) **BASIC FUN, INC.**, a Delaware corporation ("**Basic Fun**" and together with any Subsidiary of Basic Fun that is a Borrower and any other Person that at any time after the date hereof becomes a Borrower, each, a "**Borrower**" and collectively, jointly and severally, "**Borrowers**"), and (5) and any Subsidiary of Basic Fun that is a Guarantor and any other Person that at any time after the date hereof becomes a Guarantor (together with Holdings, each, a "**Guarantor**" and collectively, jointly and severally, the "**Guarantors**"). The Schedules and Exhibits to this Agreement are an integral part of this Agreement and are incorporated herein by reference.

W I T N E S S E T H :

WHEREAS, capitalized terms used herein and not otherwise defined elsewhere in this Agreement will have the meanings given to such terms in **Schedule B** hereof;

WHEREAS, on June 28, 2024 (the "**Petition Date**"), Basic Fun and certain of its affiliates and subsidiaries (each a "**Chapter 11 Debtor**" and collectively, the "**Chapter 11 Debtors**") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"), which cases were requested to be jointly administered under Case No. 24-11432 (CTG) (collectively, the "**Chapter 11 Cases**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**");

WHEREAS, the Borrowers have requested that the Lenders provide the Borrowers the Revolving Loans described herein to (i) pay transaction fees and expenses of the Loan Parties and (ii) finance the ongoing general corporate needs of the Loan Parties, and the Revolving Lenders have agreed to extend Revolving Loans to the Borrowers in an aggregate principal amount not to exceed the Revolving Loan Commitments; and

WHEREAS, to provide security for the repayment of the Revolving Loans and the satisfaction of all other Obligations owing to the Lenders, the Loan Parties have agreed to grant in favor of the Agent (for the benefit of the Lenders) first-priority Liens on the Collateral.

NOW, THEREFORE, subject to the terms and conditions set forth herein, (i) the Lenders are willing to make available (or be deemed to make available) the Revolving Loans to the Borrowers and (ii) the Agent is willing to serve as Agent for the Lenders. Accordingly, the parties agree as follows:

1. LOANS.

1.1 Reserved.

1.2 Revolving Loans.

(a) Subject to the terms and conditions of this Agreement, on one or more borrowing dates occurring on or after the Closing Date, each Lender with a Revolving Loan Commitment agrees

(severally, not jointly or jointly and severally), to make revolving loans (collectively, the "**Revolving Loans**") to Borrower in an aggregate principal amount not to exceed such Lender's Pro Rata Share of any amount equal to the lesser of: (i) the aggregate amount of the Revolving Loan Commitments then in effect and (ii) the Revolving Loan Borrowing Base as of such date (based upon the most recent Revolving Loan Borrowing Base Certificate delivered by the Borrowers to Agent).

(b) Subject to the terms and conditions of this Agreement and the borrowing limits set forth in clause (a) above, any principal amount of any Revolving Loan that is repaid or prepaid may be reborrowed until the Maturity Date. All principal of, interest on, and other amounts payable in respect of the Revolving Loans shall constitute Obligations hereunder. The Revolving Loans shall be made in and repayable in Dollars.

1.3 Reserved.

1.4 Repayment. The principal amount of the Revolving Loans may be repaid at any time during the term of this Agreement. The outstanding unpaid principal balance and all accrued and unpaid interest on the Revolving Loans shall be due and payable on the earlier of (i) the Maturity Date and (ii) the date of the acceleration of the Revolving Loans in accordance with the terms hereof. Without prejudice to Agent's or any Lender's rights and remedies, the Revolving Loan Commitments may not be reduced or terminated by the Borrowers except pursuant to Section 1.12(h).

1.5 Reserves. Agent may from time to time establish (a) reserves with respect to the Revolving Loan Borrowing Base that Agent deems necessary or appropriate, in its Permitted Discretion to establish and maintain for (i) past due sums that any Loan Party or its Subsidiaries are required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay (provided that other than with respect to insurance, such failure has continued for thirty (30) days or more after written notice from Agent), and (ii) amounts owing by any Loan Party to any Person to the extent secured by a Lien on, or trust over, any of the Collateral, which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for ad valorem, excise, sales, or other taxes where given priority under applicable law in and to such item of the Collateral) and/or (b) such reserves with respect to the Revolving Loan Borrowing Base as Agent from time to time determines in its Permitted Discretion as being appropriate to reflect the impediments to Agent's ability to realize upon the Collateral and/or to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Revolving Loan Borrowing Base (collectively, "**Reserves**"). Agent shall provide email notice advising the Borrowers of such Reserves prior to or simultaneously with the imposition of such Reserves; provided, however, that Agent shall have no liability for failing to provide such email notice. In no event shall the establishment of a Reserve in respect of a particular actual or contingent liability obligate Agent or any Lender to make advances to pay such liability or otherwise obligate Agent or any Lender with respect thereto.

1.6 Protective Advances. Any contrary provision of this Agreement or any other Loan Document notwithstanding, after the occurrence and during the continuance of a Default or Event of Default, Agent is hereby authorized by the Borrowers, regardless of (a) whether any of the other applicable conditions precedent set forth in Sections 1.9 and 1.10 have not been satisfied or the commitment of the Lenders to make Loans hereunder has been terminated for any reason, or (b) any other contrary provision of this Agreement, to make advances to the Borrowers on behalf of Lenders which Agent, in its sole discretion deems necessary (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations or the realization of the Collateral, or (iii) to pay any other amount chargeable to the Borrowers pursuant to the

terms of this Agreement (the "**Protective Advances**"). Any contrary provision of this Agreement or any other Loan Document notwithstanding, Agent may direct the proceeds of any Protective Advance to the Borrowers or to such other Person as Agent determines in its Permitted Discretion. All Protective Advances shall be payable immediately upon demand, and shall constitute Obligations hereunder, and shall bear interest at the rate applicable from time to time to the Revolving Loans. The provisions of this Section 1.6 are for the exclusive benefit of Agent and the Lenders and are not intended to benefit any Loan Party in any way.

1.7 Notice of Borrowing; Manner of Borrowing. The Borrowers may request a Revolving Loan by delivering to Agent, in writing or via an Approved Electronic Communication, a Notice of Borrowing, substantially in the form of **Exhibit A** hereto (such request a "**Notice of Borrowing**") no later than 11:00 a.m. Eastern Time at least three (3) Business Days prior to the proposed date of borrowing (or such later date as may be approved by Agent and the applicable Lenders), which must be a Business Day. Agent shall promptly notify each Lender with a Revolving Loan Commitment of the Borrowers' request for such Revolving Loan. Subject to the terms and conditions of this Agreement, including Sections 1.3, 1.9 and 1.10, each Revolving Lender with a Revolving Loan Commitment shall deliver its Pro Rata Share of the Revolving Loan to Agent in accordance with Agent's wire transfer instructions set forth in **Annex A** ("**Agent's Account**") no later than 12:00 p.m. Eastern Time on the borrowing date. After Agent's receipt of the proceeds of the Revolving Loan from the Lenders, subject to the terms and conditions of this Agreement, including Sections 1.3, 1.9 and 1.10, Agent shall make the proceeds thereof available to the Borrowers by transferring immediately available funds equal to such proceeds received by Agent for credit to any account of any Borrower at a bank in the United States of America as the Borrowers may specify (provided, that such account must be one identified on Section 3 of the Disclosure Schedule and approved by Agent as an account to be used for funding of loan proceeds). Revolving Loans may not be made more than two (2) times per week and each Revolving Loan shall be made in an aggregate minimum amount of $250,000 and integral multiples of $50,000 in excess of that amount.

1.8 Independent Obligations. The Revolving Loans shall be made by the Revolving Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (a) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make Loans (or other extension of credit) hereunder, nor shall any commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (b) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

1.9 Conditions of Making any Revolving Loans on the Closing Date. Each Lender's obligation to make its portion of any Revolving Loan on the Closing Date is subject to the following conditions precedent (as well as any other conditions set forth in this Agreement or any other Loan Document), all of which must be satisfied in a manner reasonably acceptable to Agent and each Lender (and as applicable, pursuant to documentation which in each case is in form and substance reasonably acceptable to Agent and each Lender) as of the Closing Date:

(a) each applicable Loan Party shall have duly executed and/or delivered, or, as applicable, shall have caused such other applicable Persons to have duly executed and/or delivered, to Agent (for itself and on behalf of each Lender), the form and substance of which shall be reasonably satisfactory to Agent, together with copies of all necessary consents and approvals required to be obtained in connection therewith:

(i) the agreements, instruments, documents and/or certificates listed on the closing checklist attached hereto as **Exhibit B**;

(ii) a duly executed Perfection Certificate;

(iii) a duly executed Revolving Loan Borrowing Base Certificate;

(b) all Collateral Documents (including, without limitation, Control Agreements for the Loan Parties' deposit accounts at City National Bank) that are necessary to perfect Agent's Liens in and to the Collateral (other than those permitted to be delivered in accordance with the timeframe set forth on Schedule G) have been duly executed and delivered by the parties thereto, and received by Agent;

(c) the Subordination Agreement shall have been duly executed and delivered by the parties thereto and Agent shall have received true, correct and complete copies of the Subordinated Debt Documents;

(d) Agent and each Lender shall have completed their business and legal due diligence pertaining to the Loan Parties, their respective businesses and assets, including [(i) receipt of a field examination and review of Loan Parties' and their respective Subsidiaries' books and records and verification of the Loan Parties' representations and warranties to Agent and Lenders, (ii) receipt of appraisals of the Inventory and Intellectual Property of the Loan Parties, and] (iii) a review of Loan Parties' and their respective Subsidiaries' material agreements relating to Indebtedness, in each case, with results thereof satisfactory to each of Agent and each Lender in its sole discretion;

(e) Agent and each Lender shall have received such payoff letters, UCC-3s, and release documents as it shall have reasonably requested to evidence the release of the Lien of any existing lender securing the Indebtedness of any Loan Party and its Subsidiaries to be refinanced on the Closing Date (including, without limitation, the Indebtedness under the Prepetition RBC Credit Agreement and DIP Credit Agreement);

(f) Agent shall have received results of searches or other evidence reasonably satisfactory to Agent (in each case dated as of a date reasonably satisfactory to Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Liens and Liens for which termination statements and releases, satisfactions and discharges of any mortgages, or subordination agreements satisfactory to Agent are being tendered concurrently with such extension of credit or other arrangements satisfactory to Agent for the delivery of such termination statements and releases, satisfactions and discharges have been made;

(g) the Borrowers shall have paid to Agent and each Lender all fees due on the Closing Date (including, without limitation, the fees set forth in the Fee Letter), and shall have paid or reimbursed Agent for all of Agent's costs, charges and expenses incurred through the Closing Date;

(h) (i) the Confirmation Order shall be in full force and effect and shall not have been reversed or modified, stayed, or subject to a motion to stay, (ii) Agent shall have received a copy of the Confirmation Order, certified as true, correct and complete by the clerk of the Bankruptcy Court, (iii) the Confirmation Order and the Plan of Reorganization shall each be in full force and effect and shall be in form and substance reasonably satisfactory to Agent, (iv) all documents executed in connection with the implementation of the Plan of Reorganization shall be in accordance with the Plan of Reorganization and, if so required thereunder, shall be in form and substance reasonably satisfactory to the Administrative Agent in its Permitted Discretion, (v) all motions and proposed orders to be filed with the Bankruptcy Court in connection with this Agreement and the Plan of Reorganization shall be in form and substance reasonably satisfactory to the Administrative Agent in its Permitted Discretion and (vi) all conditions precedent to the effectiveness of the Plan of Reorganization shall have been satisfied or waived by the Agent, and the Effective Date and substantial consummation of the Plan of Reorganization shall have occurred;

(i) Agent and each Lender shall have received legal opinions with respect to such matters as Agent or any Lender may request, in form and substance reasonably satisfactory to Agent;

(j) there shall not have occurred any Material Adverse Effect since December 31, 2023 (other than the commencement of the Chapter 11 Cases and the circumstances giving rise thereto);

(k) each of the representations and warranties of each Loan Party contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (or to the extent any representations or warranties are expressly made solely as of an earlier date, such representations and warranties shall be true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which shall be true and correct in all respects) as of such earlier date), both before and after giving effect to the effectiveness of the making of the Revolving Loans on the Closing Date;

(l) no Default or Event of Default shall be in existence, both before and after giving effect to the making of such Revolving Loan;

(m) Agent and Lenders shall have received investment committee approval for the transactions contemplated by this Agreement;

(n) Agent shall have received executed licensor agreements, in form and substance satisfactory to Agent, from the following licensors of intellectual property to the Loan Parties:

Hasbro (3), LPS, Tonka, Vault

CLOUDCO ENTERTAINMENT

NATIONAL FOOTBALL LEAGUE

(o) Agent shall have received a duly executed Notice of Borrowing, substantially in the form of **Exhibit A** hereto.

1.10 Conditions of Making Each Revolving Loan after the Closing Date. Each Lender's obligation to make its portion of any Revolving Loan or other extension of credit under this Agreement after the Closing Date is subject to the following conditions precedent (as well as any other conditions set forth in this Agreement or any other Loan Document), all of which must be satisfied in a manner reasonably acceptable to Agent (and as applicable, pursuant to documentation which in each case is in form and substance acceptable to Agent), as of the day that such Loan or other extension of credit is made:

(a) at and as of the date of such Revolving Loan, each of the representations and warranties of each Loan Party contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (or to the extent any representations or warranties are expressly made solely as of an earlier date, such representations and warranties shall be true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which shall be true and correct in all respects) as of such earlier date), both before and after giving effect thereto;

(b) no Default or Event of Default shall be in existence, both before and after giving effect to the making of such Revolving Loan;

(c) since the Closing Date, there shall not have occurred any Material Adverse Effect;

(d) the Agent, for the benefit of the Lenders, shall have valid, binding, enforceable, non-avoidable, and fully perfected first priority Liens on, and security interests in, the Collateral;

(e) Agent shall have received a duly executed Notice of Borrowing, substantially in the form of **Exhibit A** hereto; and

(f) Agent and each Revolving Lender shall have received a duly executed Revolving Loan Borrowing Base Certificate, evidencing that after giving pro forma effect to the proposed borrowing of Revolving Loans, the aggregate amount of outstanding Revolving Loans on such date will not exceed the Revolving Loan Borrowing Base reflected in such Revolving Loan Borrowing Base Certificate.

1.11 Repayments.

(a) **Maturity Date Payments**. The Borrowers, jointly and severally, promise to pay the Obligations (including principal, interest, fees, costs, and expenses) in Dollars in full in cash on the Maturity Date.

(b) **Currency Due**. If, notwithstanding the terms of this Agreement or any other Loan Document, Agent or any Lender receives any payment from or on behalf of the Borrowers or any other Person in a currency other than the Currency Due, Agent or such Lender may convert the payment (including the monetary proceeds of realization upon any Collateral and any funds then held in a cash collateral account) into the Currency Due at an exchange rate selected by Agent or such Lender in the manner contemplated by Section 6.3(b) and the Borrowers shall, jointly and severally, reimburse Agent or such Lender, as the case may be, on demand for all reasonable costs, fees and expenses they incur with respect thereto. To the extent permitted by law, the obligation shall be satisfied only to the extent of the amount actually received by Lender upon such conversion.

(c) **Crediting Payments**. The receipt of any payment item by Agent shall not be required to be considered a payment on account unless such payment item is a wire transfer of immediately available federal funds made to Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then the Borrowers shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 2:00 p.m. Eastern time. If any payment item is received into Agent's Account on a non-Business Day or after 2:00 p.m. Eastern time on a Business Day (unless Agent, in its sole discretion, elects to credit it on the date received), it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

1.12 Prepayments/Voluntary Termination/Application of Prepayments.

(a) **Dispositions**. Within three (3) Business Days after the date of receipt by any Loan Party or any of its Subsidiaries of the Net Cash Proceeds of any voluntary or involuntary non-ordinary course sale or disposition by any Loan Party or any of its Subsidiaries (including Net Cash Proceeds of insurance or arising from casualty losses or condemnations and payments in lieu thereof) of assets or other property during any Fiscal Year which, such assets or other property have an aggregate fair market value, together with all other such sales, dispositions, casualty losses or condemnations of assets or property in excess of $250,000 in the aggregate during such Fiscal Year, the Borrowers shall, jointly and severally, prepay the outstanding principal amount of the Revolving Loans, in an amount equal to 100% of such excess Net Cash Proceeds (including condemnation awards and payments in lieu thereof) received by such Person in connection with such sales or dispositions (including condemnation awards and payments in lieu

thereof) received by such Person in connection with such sales or dispositions. Nothing contained in this Section 1.12(a) shall permit any Loan Party or any of its Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 5.29.

(b) **Extraordinary Receipts**. Within three (3) Business Days after the date of receipt by any Loan Party or any of its Subsidiaries of Extraordinary Receipts, Borrowers shall, jointly and severally, prepay the outstanding principal amount of the Revolving Loans, in an amount equal to 100% of such Extraordinary Receipts, net of any reasonable expenses incurred in collecting such Extraordinary Receipts, in an amount equal to 100% of such Extraordinary Receipts, net of any reasonable expenses incurred in collecting such Extraordinary Receipts.

(c) **Indebtedness**. Concurrently with the issuance or incurrence by any Loan Party or any of its Subsidiaries of Indebtedness (other than Permitted Indebtedness), the Borrowers shall, jointly and severally, prepay the outstanding principal amount of the Revolving Loans, in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such issuance or incurrence. The provisions of this Section 1.12(c) shall not be deemed to be implied consent to any such incurrence otherwise prohibited by the terms of this Agreement.

(d) **[Reserved]**.

(e) **[Reserved]**.

(f) **Exposure**. If, at any time the aggregate outstanding principal amount of the Revolving Loans on such date exceeds the Revolving Loan Borrowing Base reflected in the Revolving Loan Borrowing Base Certificate most recently delivered by the Borrowers to Agent, then the Borrowers shall, within one (1) Business Day, repay, jointly and severally, the outstanding amount of the Revolving Loans in an aggregate amount equal to the amount of such excess.

(g) **Optional Partial Prepayments of the Loans**. The Borrowers may, upon at least five (5) Business Days prior written notice to Agent, jointly and severally, prepay the outstanding amounts under the Revolving Loans in part or in whole. Each prepayment made pursuant to this Section 1.12(g) shall be accompanied by the payment of accrued interest to the date of such payment on the amount prepaid.

(h) **Voluntary Termination of Facility**. The Borrowers may, on at least fifteen (15) days prior and irrevocable written notice received by Agent, terminate this Agreement and any commitments hereunder by repaying all of the outstanding Obligations in full in cash, including all principal, interest and fees with respect to the Revolving Loans and any Protective Advances. From and after such date of termination, no Lender shall have any obligation whatsoever to extend any extensions of credit hereunder and all of its lending commitments hereunder (if any) shall be terminated. Any payment pursuant to this Section 1.12(h) shall be accompanied by payment by Borrowers, jointly and severally, of the Prepayment Fee then required as a result of such prepayment pursuant to the terms of the Fee Letter under the heading entitled "Prepayment Fee".

1.13 Obligations Unconditional.

(a) The payment and performance of all Obligations shall constitute the absolute and unconditional obligations of each Loan Party, and shall be independent of any defense or rights of set-off, recoupment or counterclaim which any Loan Party or any other Person might otherwise have against Agent or any Lender or any other Person. All payments required (other than by Agent or any Lender) by this Agreement and/or the other Loan Documents shall be made in Dollars (unless payment in a different

currency is expressly provided otherwise in the applicable Loan Document) and without abatement, diminution or set-off.

(b) If, at any time and from time to time after the Closing Date (or at any time before or after the Closing Date with respect to (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith, or (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case for purposes of this clause (ii) pursuant to Basel III, regardless of the date enacted, adopted or issued), (A) any change in any existing law, regulation, treaty or directive or in the interpretation or application thereof, (B) any new law, regulation, treaty or directive enacted or application thereof, or (C) compliance by Agent or any Lender with any request or directive (whether or not having the force of law) from any Governmental Authority, central bank or comparable agency (1) subjects Agent or any Lender to any Taxes (other than (i) any Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (iii) Connection Income Taxes), or (2) imposes on Agent or any Lender any other condition or increased cost (other than Taxes) in connection with the transactions contemplated thereby or participations therein, and the result of any of the foregoing is to increase the cost (other than Taxes) to Agent or any such Lender or to reduce any amount receivable hereunder or under any other Loan Documents (other than as a result of Taxes), then, in any such case, the Borrowers shall within fifteen (15) days after demand pay to Agent or such Lender, jointly and severally, when notified to do so by Agent or such Lender, any additional amounts necessary to compensate Agent or such Lender, for such additional cost or reduced amount as reasonably determined by Agent or such Lender. Each such notice of additional amounts payable pursuant to this Section 1.13(b) submitted by Agent or any Lender to Borrower shall, absent manifest error, be final, conclusive and binding for all purposes.

(c) This Section 1.13 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

(d) Notwithstanding any provisions to the contrary in the Loan Documents, if Borrowers are required to make any payments, increased amounts payable or otherwise compensate any Lender pursuant to this Section 1.13, Borrowers shall have the right to prepay the Loans in full. Any payment pursuant to this Section 1.13 shall be accompanied by payment by Borrowers, jointly and severally, of the Prepayment Fee then required as a result of such prepayment pursuant to the terms of the Fee Letter under the heading entitled "Prepayment Fee".

1.14 Reversal of Payments. To the extent that any payment or payments made to or received by Agent or any Lender pursuant to this Agreement or any other Loan Document are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to any trustee, receiver or other similar Person under any state, federal or other bankruptcy or other such applicable law, then, to the extent thereof, such amounts (and all Liens, rights and remedies therefor) shall be revived as Obligations (secured by all such Liens) and continue in full force and effect under this Agreement and under the other Loan Documents as if such payment or payments had not been received by Agent or such Lender. This Section 1.14 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

1.15 Fundings by Lenders and Settlement Among Lenders.

(a) Agent shall advise each applicable Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's Pro Rata Share of the Revolving Loan requested by the Borrowers no later than noon (Eastern time) on the date of funding of such Revolving Loan, and each such Lender shall pay Agent on such date such Lender's pro rata share of such requested Revolving Loan, in same day funds,

by wire transfer to Agent's Account, or such other account as may be identified in writing by Agent to Lenders from time to time; provided, that no Lender shall have an obligation to make any Revolving Loan, if (i) one or more of the applicable conditions precedent set forth in Section 1.9 or Section 1.10 will not be satisfied on the requested date for the applicable Revolving Loan unless such condition has been waived, or (ii) the requested Revolving Loan would exceed the borrowing availability under the applicable Commitments on such requested date for the applicable Revolving Loan.

(b) Unless Agent shall have been notified in writing by any Lender prior to any advance to the Borrowers that such Lender will not make the amount which would constitute its Pro Rata Share of the borrowing on such date available to Agent, Agent may assume that such Lender shall make such amount available to Agent on a Settlement Date, and in reliance upon such assumption, Agent may make available to the Borrowers a corresponding amount. A certificate of Agent submitted to any Lender with respect to any amount owing under this subsection shall be conclusive, absent manifest error. If such Lender's Pro Rata Share of such borrowing is not in fact made available to Agent by such Lender on the Settlement Date, Agent shall be entitled to recover from the Borrowers, on demand, such Lender's Pro Rata Share of such borrowing, together with interest thereon (for the account of Agent) at the rate per annum applicable to such borrowing, without prejudice to any rights which Agent may have against such Lender under Section 10.11 hereof. Nothing contained herein shall be deemed to obligate Agent to make available to the Borrowers the full amount of a requested advance when Agent has any notice (written or otherwise) that any of the Lenders will not advance its Pro Rata Share thereof. It is understood that for purposes of advances to the Borrowers and for purposes of this Section 1.15(b), Agent will be using the funds of Agent, and pending settlement, all interest accruing on such advances shall be payable to Agent.

(c) On each Settlement Date, Agent and the Lenders shall each remit to the other, in immediately available funds, all amounts necessary so as to ensure that, as of the Settlement Date, the Lenders shall have advanced their respective Pro Rata Share of all outstanding Loans. Each Lender's obligation to make the settlements pursuant to this Section 1.15(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right which any such Lender or Borrower may have against Agent, the other Borrowers, any other Lender or any other person, (ii) the occurrence or continuance of a Default or Event of Default, (iii) any adverse change in the condition (financial or otherwise) of the Borrowers, or any of them, (iv) any breach of this Agreement or any other Loan Document by the Borrowers, or any of them, or any other Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

2. INTEREST AND FEES; LOAN ACCOUNT.

2.1 Interest.

(a) Applicable Interest Rate. Each Revolving Loan shall bear interest at a per annum rate equal to Term SOFR plus 4.25% (or, at any time any such Revolving Loan that is a Term SOFR Loan is converted to a loan bearing interest at the Base Rate in accordance with Section 2.1(d), Section 2.1(e) or Section 2.1(f) below, the Base Rate plus 3.25%), and accrued interest shall be payable (x) on the first Business Day of each calendar month in cash in arrears, (y) upon any repayment or prepayment of the Revolving Loans in accordance with Sections 1.4, 1.11 or 1.12, and (z) on the Maturity Date; provided, that after (i) the occurrence and during the continuation of an Event of Default and (ii) written notice to the Loan Parties (other than with respect to an Event of Default under Section 7.1(f), (g) or (h)), the Revolving Loans shall bear interest at a rate per annum equal to 2.00% in excess of the rate otherwise applicable thereto (the "**Default Rate**"), and all such interest shall be payable on demand. Notwithstanding the foregoing or anything else herein, the interest due and payable on the Revolving Loans shall be calculated based on the greater of (x) the Term SOFR plus 4.25% (or, at any time any such Revolving Loan that is a Term SOFR Loan is converted to a loan bearing interest at the Base Rate in accordance with Section 2.1(d),

Section 2.1(e) or Section 2.1(f) below, the Base Rate plus 3.25%) assuming an outstanding principal balance of Revolving Loans in an amount equal to 25% of the Revolving Loan Commitments (regardless of any termination thereof) and (y) the Term SOFR plus 4.25% (or, at any time any such Revolving Loan that is a Term SOFR Loan is converted to a loan bearing interest at the Base Rate in accordance with Section 2.1(d), Section 2.1(e) or Section 2.1(f) below, the Base Rate plus 3.25%) based on the actual amount of outstanding principal balance of Revolving Loans that were outstanding each day during the applicable period. Changes in the interest rate for any Term SOFR Loan shall be effective as of the first day of each thirty (30)-day Interest Period.

(b) [Reserved].

(c) The Revolving Loans shall bear interest at Term SOFR for successive thirty (30)-day Interest Periods unless and until converted to loans bearing interest at the Base Rate in accordance with Section 2.1(d), Section 2.1(e) or Section 2.1(f) below.

(d) Term SOFR may be adjusted by Agent on a prospective basis to take into account any increased costs due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of maintaining loans under this Agreement bearing interest based on Term SOFR. In any such event, Agent shall give the Borrowers notice of such a determination and adjustment and, within five (5) days after its receipt of the notice from Agent, the Borrowers may, by notice to Agent (A) require Agent to furnish to the Borrowers a statement setting forth the basis for adjusting Term SOFR and the method for determining the amount of such adjustment or (B) repay the portion of the Loans bearing interest based upon Term SOFR with respect to which such adjustment is made. Upon any such repayment, the Borrowers shall also pay accrued interest on the amount so repaid.

(e) If Agent or any Revolving Lender determines that any law has made it unlawful, or that any governmental authority has asserted that it is unlawful, for Agent or such Revolving Lender or its applicable lending office to maintain any Loan with interest determined by reference to Term SOFR, or to determine or charge interest rates based upon Term SOFR, or any governmental authority has imposed material restrictions on the authority of Revolving Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, upon notice thereof by Agent or such Revolving Lender to the Borrowers, any obligation of Revolving Lenders to maintain any Term SOFR Loan shall be suspended until Agent or such Revolving Lender notifies the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall, within five (5) days after demand from Agent, repay the Term SOFR Loans or convert the Term SOFR Loans to loans bearing interest at the Base Rate, either on the last day of the Interest Period therefor, if Revolving Lenders may lawfully continue to maintain such Term SOFR Loans to such day, or immediately, if Revolving Lenders may not lawfully continue to maintain such Term SOFR Loans until Agent and Revolving Lenders determine that it is no longer illegal for Agent and Revolving Lenders to determine or charge interest rates based upon Term SOFR. Upon any such repayment or conversion, the Borrowers shall also pay accrued interest on the amount so repaid or converted.

(f) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, but without limiting Section 2.1(e), if Agent determines (which determination shall be conclusive and binding upon all parties hereto absent manifest error), or the Borrowers or Revolving Lenders notify Agent (with, in the case of the Revolving Lenders, a copy to the Borrowers) that the Borrowers or Revolving Lenders (as applicable) have determined (which determination likewise shall be conclusive and binding upon all parties hereto absent manifest error), that:

(i) adequate and reasonable means do not exist for ascertaining Term SOFR for any Interest Period because Term SOFR is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the SOFR Administrator or a Governmental Authority having jurisdiction over Agent has made a public statement identifying a specific date after which Term SOFR shall no longer be made available, or used for determining the interest rate of loans; provided, that, at the time of such statement, there is no successor administrator that is satisfactory to Agent and the Borrowers, that will continue to provide Term SOFR after such specific date (such specific date, the "**Scheduled Unavailability Date**"); or

(iii) syndicated loans currently being executed, or that include language similar to that contained in this Section 2.1(f), are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace Term SOFR;

then, reasonably promptly after such determination by Agent or receipt by Agent of such notice, as applicable, Agent and the Borrowers may amend this Agreement to replace Term SOFR with (A) one or more other SOFR-Based Rates or (B) another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmarks (such as the margin applicable thereto) which adjustment or method for calculating such adjustment shall be published on an information service as selected by Agent (in consultation with the Borrowers) from time to time in its reasonable discretion and may be periodically updated (the "**Adjustment**"; and any such proposed rate, a "**Term SOFR Successor Rate**"). Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after Agent shall have posted such proposed amendment to all Lenders and the Borrowers unless, prior to such time, the Borrowers or the Revolving Lenders have delivered to Agent written notice that the Borrowers or such Revolving Lenders, as the case may be, (1) in the case of an amendment to replace Term SOFR with a rate described in clause (A), object to the Adjustment; or (2) in the case of an amendment to replace Term SOFR with a rate described in clause (B), object to such amendment; provided, that for the avoidance of doubt, in the case of clause (1), the Revolving Lenders shall not be entitled to object to any other SOFR-Based Rate contained in any such amendment. Such Term SOFR 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 Agent, such Term SOFR Successor Rate shall be applied in a manner as otherwise reasonably determined by Agent (in consultation with the Borrowers). If no Term SOFR Successor Rate has been determined and the circumstances under clause (f)(i) above exist or the Scheduled Unavailability Date has occurred (as applicable), Agent will promptly so notify the Borrowers and each Lender. Thereafter, the obligation of the Lenders to make or maintain Term SOFR Loans shall be suspended (to the extent of the affected Term SOFR Loans or Interest Period). Upon receipt of such notice, the Borrowers may revoke any pending request for a borrowing of Term SOFR Loans (to the extent of the affected Term SOFR Loans or Interest Period) or, failing that, will be deemed to have converted such request into a request for Base Rate Loans in the amount specified therein. Notwithstanding anything else herein, any definition of Term SOFR Successor Rate shall provide that in no event shall such Term SOFR Successor Rate be less than the Floor for purposes of this Agreement. In connection with the implementation of a Term SOFR Successor Rate, 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.

Anything to the contrary contained herein notwithstanding, no Revolving Lender is required actually to match fund any Obligation as to which interest accrues based on Term SOFR.

2.2 Fees.

(a) The Borrowers shall, jointly and severally, pay Agent the fees set forth in the Fee Letter on the dates set forth therein, which fees are in addition to all fees and other sums payable by the Borrowers or any other Person to Agent and Lenders under this Agreement or under any other Loan Document, and, in each case are not refundable once paid.

(b) Reserved.

2.3 Computation of Outstanding Principal, Interest and Fees. All interest and fees shall be calculated daily on the outstanding monetary Obligations based on the actual number of days elapsed in a year of three hundred sixty (360) days. Anything to the contrary herein notwithstanding, for the purpose of calculating the outstanding principal amount of any Loans, any payment shall be deemed received by Agent on any Business Day only if it is received into Agent's Account no later than 2:00 p.m. Eastern time on such Business Day. If any payment item is received in Agent's Account after 2:00 p.m. Eastern Time on any Business Day or on any non-Business Day, such payment item shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day. For the purpose of the calculation of interest on the Loans, all payments made by or on account of the Borrowers no later than 2:00 p.m. Eastern time on a Business Day shall be deemed to have been applied to the Loans two (2) Business Days after receipt of such payments by Agent on such Business Day. Each determination by Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.4 Loan Account; Monthly Accountings. Agent shall maintain a loan account for the Borrowers reflecting the outstanding Revolving Loans and any Protective Advances, along with interest accrued thereon and such other items reflected therein (the "**Loan Account**"), and shall provide the Borrowers with a monthly accounting reflecting the activity in the Loan Account. Each accounting shall be deemed correct, accurate and binding on the Borrowers and an account stated (except for reverses and reapplications of payments made and corrections of errors discovered by Agent), unless the Borrowers notify Agent in writing to the contrary within sixty (60) days after such account is rendered, describing the nature of any alleged errors or omissions. However, Agent's failure to maintain the Loan Account or to provide any such accounting shall not affect the legality or binding nature of any of the Obligations.

2.5 Further Obligations; Maximum Lawful Rate. With respect to all monetary Obligations for which the interest rate is not otherwise specified herein (whether such Obligations arise hereunder or under any other Loan Document, or otherwise), such Obligations shall bear interest at the rate(s) in effect from time to time with respect to the Loans and shall be payable upon demand by Agent. In no event shall the interest charged with respect to any Loan or any other Obligation exceed the maximum amount permitted under applicable law. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable or other amounts hereunder or under any other Loan Document (the "**Stated Rate**") would exceed the highest rate of interest or other amount permitted under any applicable law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest and other amounts payable shall be equal to the Maximum Lawful Rate; provided, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, the Borrowers shall, to the extent permitted by applicable law, continue to pay interest and such other amounts at the Maximum Lawful Rate until such time as the total interest and other such amounts received is equal to the total interest and other such amounts which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable or such other amounts payable. Thereafter, the interest rate and such other amounts payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest or other such amounts received by any Lender exceed the amount which it could lawfully have

received had the interest and other such amounts been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest or other such amounts hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the portion of the Loans or to other Obligations (other than interest) payable to such Lender hereunder, and if no such principal or other Obligations are then outstanding, such excess or part thereof remaining shall be promptly paid to the Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate divided by the number of days in the year in which such calculation is made.

2.6 Joint and Several Liability; Contribution.

(a) The Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; provided, however, that any references herein to "any Borrower," "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of the Borrowers under this Agreement, whether specifically specified to be liable as such or not. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 7 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 7 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by the Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "Fraudulent Conveyance" means a fraudulent conveyance under Section 548 of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) The Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; provided, however, that in the event

any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and provided, further, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.6(c) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.6(c) until the Obligations have been paid and satisfied in full. As used in this Section 2.6(c), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Loan Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.6(c), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to $0 through contributions and reimbursements made under the terms of this Section 2.6(c) or otherwise.

3. SECURITY INTEREST GRANT / POSSESSORY COLLATERAL / FURTHER ASSURANCES.

3.1 Grant of Security Interest. To secure the full payment and performance of all of the Obligations (whether now existing or hereafter arising), each Loan Party (other than the UK Loan Party) hereby collaterally assigns to Agent and grants to Agent a continuing security interest in all of such Loan Party's right, title, and interest in and to the following properties, assets and rights, and in all similar properties, assets and rights that such Loan Party has or is deemed by law to have rights in or the power to convey rights in, whether tangible or intangible, real or personal, now or hereafter owned, existing, acquired or arising and wherever now or hereafter located, and whether or not eligible for lending purposes: (i) all Accounts, (ii) all Goods whose sale, lease or other disposition by any Loan Party has given rise to Accounts and have been returned to, or repossessed or stopped in transit by, any Loan Party; (iii) all Chattel Paper (including Electronic Chattel Paper), Instruments, Documents, drafts (as defined in the UCC), promissory notes (as defined in the UCC), and General Intangibles (including all Intellectual Property including patents, patent applications, industrial designs, trademarks, trademark applications, trade names, trade secrets, goodwill, copyrights, copyright applications, registrations, domain names, URLs, social media accounts, licenses and other similar agreements granting or receiving rights or interests in Intellectual Property, software, franchises, customer lists, tax refund claims, claims against carriers and shippers, guarantee claims, contracts rights, choses in action, payment intangibles, security interests, security deposits and rights to indemnification); (iv) all Inventory; (v) all Goods (other than Inventory), Equipment, Health-Care-Insurance Receivables, Rolling Stock, vehicles, and Fixtures; (vi) all Investment Property, including, without limitation, all rights, privileges, authority, and powers of each Loan Party as an owner or as a holder of Pledged Equity, including in each case, without limitation, all economic rights, all control rights, authority and powers, and all status rights of each Loan Party as a member, equity holder or shareholder, as applicable, of each Issuer; (vii) all Deposit Accounts, bank accounts, deposits and cash; (viii) all letters of credit (as defined in the UCC) and all Letter-of-Credit Rights; (ix) all Commercial Tort Claims listed in Section 2 of the Disclosure Schedule; (x) all Supporting Obligations; (xi) any other property of any Loan Party now or hereafter in the possession, custody or control of Agent, any Lender, or any agent or any

parent, Affiliate or Subsidiary of Agent, any Lender or Participant with any Lender in the Loans, for any purpose (whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise); and (xii) all additions and accessions and fixtures to, substitutions for, and replacements, products and Proceeds of the foregoing property, including proceeds of all insurance policies insuring the foregoing property, and all of each Loan Party's books and records relating to any of the foregoing and to any Loan Party's business.

Notwithstanding the foregoing, in no event shall the Collateral include Excluded Property and no security interest is hereby granted in any Excluded Property. For purposes hereof "**Excluded Property**" means, (a) any rights or interests of a Loan Party in or under any license, contract, permit, Instrument, Investment Property or franchise to which such Loan Party is a party or any of its rights or interests thereunder to the extent, but only to the extent, that a grant of a security interest to Agent therein would, under the terms of such license, contract, permit, Instrument, Investment Property or franchise, (i) result in a breach of the terms of, (ii) constitute a default under or (iii) be prohibited by applicable law or regulation under, in each case, such license, contract, permit, Instrument, Investment Property or franchise (other than to the extent that any such term or prohibition would be rendered ineffective pursuant to the UCC or any other applicable law (including the United States Bankruptcy Code or any other Debtor Relief Laws) or principles of equity); provided, that immediately upon the ineffectiveness, lapse or termination of any such provision the Collateral shall include, and such Loan Party shall be deemed to have granted a security interest to Agent in, all such rights and interests as if such provision had never been in effect; (b) any United States intent-to-use trademark application to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law; provided, that upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral; (c) any fee owned real property subject to a Permitted Lien or with a fair market value of less than $500,000; (d) any commercial tort claim with asserted damages less than $250,000, as determined in good faith by the Borrowers; (e) Excluded Accounts; (f) property owned by any Loan Party that is subject to a purchase money Lien or leased by any Loan Party that is subject to a Capitalized Lease, in each case, permitted under this Agreement if the agreement pursuant to which such Lien is granted (or in the document providing for such Capitalized Lease) prohibits or requires the consent of any Person other than a Loan Party or one of its Affiliates which has not been obtained as a condition to the creation of any other Lien on such property, but only to the extent, and for as long as, such prohibition or requirement of consent is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other applicable law; (g) assets to the extent a security interest in such assets would result in more than *de minimis* adverse Tax consequences to Holdings or any of its Subsidiaries (as reasonably determined by the Borrowers and Agent); and (h) those assets as to which Agent and the Borrowers reasonably agree that the cost of obtaining such security interest or perfection thereon are excessive in relation to the benefit to the Lenders of the security to be afforded thereby.

3.2 Possessory Collateral. Promptly, but in any event no later than five (5) Business Days after any Loan Party's receipt of any portion of the Collateral evidenced by any (i) Instrument (other than checks in the ordinary course of business), Document or Tangible Chattel Paper with a value exceeding $250,000 in the aggregate and (ii) any Investment Property consisting of certificated securities, such Loan Party shall deliver the original thereof to Agent together with an appropriate endorsement or other specific evidence of collateral assignment thereof to Agent (in form and substance reasonably acceptable to Agent). If an endorsement or assignment of any such items shall not be made for any reason, Agent is hereby irrevocably authorized, as attorney and agent-in-fact (coupled with an interest) for each Loan Party, to, upon written notice to such Loan Party, endorse or assign the same on such Loan Party's behalf to appropriately evidence such collateral assignment and grant of security interest.

3.3 Further Assurances.

(a) Each Loan Party will, at the time that any Loan Party forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Closing Date, within thirty (30) days of such event (or such later date as permitted by Agent in its sole discretion) (a) cause such new Subsidiary (i) to become a Guarantor (or, if approved by Agent, a Borrower) and to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary, (b) upon written request from Agent, provide, or cause the applicable Loan Party to provide, to Agent a pledge agreement and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary in form and substance reasonably satisfactory to Agent (which pledge, if reasonably requested by Agent, shall be governed by the laws of the jurisdiction of such Subsidiary), and (c) provide to Agent all other documentation, including Collateral Documents reasonably requested by Agent. Any pledge agreement, guaranty agreement or security agreement executed or issued pursuant to this Section 3.3 shall constitute a Loan Document.

(b) Each Loan Party will, and will cause each of its Subsidiaries which are Loan Parties to, at any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, control agreements, Mortgages, and all other documents (the "**Additional Documents**") that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to better perfect the security interests granted to Agent in the Collateral and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable law, if any Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time following the request to do so, each Loan Party hereby authorizes Agent and hereby grants a power of attorney to Agent (which power is coupled with an interest) to execute any such Additional Documents in the applicable Loan Party's name and authorizes Agent to, upon providing written notice to the Borrowers, file such executed Additional Documents in any appropriate filing office.

(c) Each Loan Party shall, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver (and/or use commercially reasonable efforts to cause such other applicable Person to take, execute, acknowledge and deliver) all such further acts, documents, agreements and instruments as Agent may request that are reasonably necessary in order to (a) carry out the intent and purposes of the Loan Documents and the transactions contemplated thereby, (b) establish, create, preserve, protect and perfect a first priority lien (subject only to Permitted Liens) in favor of Agent in all Collateral (wherever located) from time to time owned by the Loan Parties, (c) cause each Loan Party to guarantee all of the Obligations, all pursuant to documentation that is in form and substance reasonably satisfactory to Agent in its Permitted Discretion and (d) facilitate the collection of the Collateral. Without limiting the foregoing, each Loan Party shall, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver (and/or use commercially reasonable efforts to cause such other applicable Person to take, execute, acknowledge and deliver) to Agent all promissory notes, security agreements, agreements with landlords, mortgagees and processors and other bailees, subordination and intercreditor agreements and other agreements, instruments and documents, in each case in form and substance reasonably acceptable to Agent in its Permitted Discretion, as Agent may reasonably request from time to time to perfect, protect, and maintain Agent's security interests in the Collateral, including the required priority thereof, and to fully carry out the transactions contemplated by the Loan Documents.

3.4 Financing Statements. Each Loan Party authorizes Agent to file, transmit, or communicate, as applicable, from time to time, Uniform Commercial Code financing statements, along with amendments and modifications thereto, in all filing offices selected by Agent, listing such Loan Party as the debtor and Agent as the secured party, and describing the collateral covered thereby in such manner

as Agent may elect, including using descriptions such as "all present and after acquired personal property of debtor" or "all assets of debtor" or words of similar effect.

4. CERTAIN PROVISIONS REGARDING ACCOUNTS, INVENTORY, COLLECTIONS, APPLICATIONS OF PAYMENTS, INSPECTION RIGHTS, AND APPRAISALS.

4.1 Blocked Accounts. Each Loan Party hereby represents and warrants that all Deposit Accounts and all other depositary and other accounts maintained by each Loan Party as of the Closing Date are described in Section 3 of the Disclosure Schedule, which description includes for each such account the name of the Loan Party maintaining such account, the name of the financial institution at which such account is maintained, the account number, and the purpose of such account. Other than with respect to the Loan Parties' deposit accounts at City National Bank, on or prior to the date that is sixty (60) after the Closing Date, the Loan Parties shall deliver to Agent, Control Agreements, each in form and substance reasonably satisfactory to Agent, with respect to all such existing Deposit Accounts (other than an Excluded Account). After the Closing Date, to the extent any Loan Party shall open any new Deposit Accounts or any other depositary or other accounts, such Loan Party shall (a) provide Agent with written notice of the opening of such account and, upon written request from Agent, deliver to Agent an updated Section 3 of the Disclosure Schedule to reflect such Deposit Accounts or other accounts, as applicable, within ten (10) Business Days after the opening of such account, and (b) deliver a Control Agreement, in form and substance reasonably satisfactory to Agent, with respect to such Deposit Account (other than an Excluded Account) or other account(s) within twenty (20) Business Days after the opening thereof. Each Loan Party will, at its expense, establish (and revise from time to time as Agent may reasonably require) procedures reasonably acceptable to Agent, for the collection of checks, wire transfers and all other proceeds of all of such Loan Party's Accounts and other Collateral ("**Collections**"), which shall include the prompt depositing of all Collections received by such Loan Party into one or more bank or lockbox accounts maintained in the name of such Loan Party for the benefit of Agent (each, a "**Blocked Account**"), under an arrangement reasonably acceptable to Agent with a depository bank reasonably acceptable to Agent, pursuant to which all funds deposited into each Blocked Account are to be transferred to Agent on each Business Day. Subject to Section 4.2, amounts transferred to Agent shall be applied to the Revolving Loans on the Business Day of receipt by Agent in its general account, but for interest calculation purposes credited to the outstanding Revolving Loan balance on the second (2nd) Business Day after receipt by Agent. Each Loan Party agrees to execute, and to cause its depository banks and other account holders to execute, such Control Agreements as Agent shall require from time to time in connection with the foregoing, all in form and substance reasonably acceptable to Agent. The Loan Parties hereby acknowledge, confirm and agree that the implementation of the cash management arrangements contemplated herein is a contractual right provided to Agent and the Lenders hereunder in order for Agent and the Lenders to manage and monitor their collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, Agent and Lenders are relying on the Loan Parties' acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to them and in particular that any accommodations of credit are being provided by Agent and Lenders strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder and the Loan Parties hereby further acknowledge, confirm and agree Agent and Lenders shall have the contractual right to continue to apply the contemplated cash management arrangements contemplated herein notwithstanding any default, termination or non-renewal of this Agreement or any of the credit facilities contemplated herein or any stay of proceedings or filing in connection with any proceeding under any Debtor Relief Laws as a matter of, and shall be considered and deemed to be a matter of, replacing and monitoring Agent's and Lenders' Collateral and not as an enforcement of any of their security or Liens.

4.2 Application of Payments. All amounts paid to or received by Agent in respect of the monetary Obligations, from whatever source (whether from the Borrowers or any other Loan Party pursuant to such other Loan Party's guaranty of the Obligations, any realization upon any Collateral, or otherwise) shall, unless otherwise set forth herein or unless an Application Event has occurred and is continuing, be apportioned ratably among the Lenders and all payments of fees and expenses received by Agent (other than fees or expenses that are for Agent's separate account) shall, unless an Application Event has occurred and is continuing, be apportioned ratably among the Lenders having a Pro Rata Share of the type of commitment or Obligation to which a particular fee or expense relates; provided that amounts transferred to Agent from Blocked Accounts as described in Section 4.1 above shall be applied to the Revolving Loans as described in Section 4.1. At any time that an Application Event has occurred and is continuing, all amounts paid to or received by Agent in respect of the monetary Obligations, all proceeds of Collateral, from whatever source (whether from the Borrowers or any other Loan Party pursuant to such other Loan Party's guaranty of the Obligations, any realization upon any Collateral, or otherwise) and all distributions under any plan of reorganization, shall be applied as follows:

(i) FIRST, to reimburse Agent for all fees and out-of-pocket costs and expenses, and all indemnified losses, incurred by Agent which are reimbursable to Agent in accordance with this Agreement and/or any of the other Loan Documents,

(ii) SECOND, to any accrued but unpaid interest on any Protective Advances,

(iii) THIRD, to the outstanding principal of any Protective Advances,

(iv) FOURTH, ratably to reimburse each Revolving Lender for all fees and out-of-pocket costs and expenses, and all indemnified losses, incurred by such Revolving Lender which are reimbursable to such Revolving Lender in accordance with this Agreement and/or any of the other Loan Documents,

(v) FIFTH, ratably to any unpaid accrued interest on the Revolving Loans,

(vi) SIXTH, to the outstanding principal of each Revolving Loan, together with a concurrent and equivalent reduction of the Revolving Loan Commitments,

(vii) SEVENTH, ratably to the payment of any other outstanding Obligations; and after payment in full in cash of all of the outstanding monetary Obligations, any further amounts paid to or received by Agent or any Lender in respect of the Obligations (so long as no monetary Obligations are outstanding) shall be paid over to the Borrowers or such other Person(s) as may be legally entitled thereto.

For purposes of determining the initial Revolving Loan Borrowing Base, such amounts will be credited to the Loan Account and the Collateral balances to which they relate upon Agent's receipt of an advice from Agent's Bank (set forth in Annex A) that such items have been credited to Agent's Account (or upon Agent's deposit thereof at Agent's Bank in the case of payments received by Agent in kind), in each case subject to final payment and collection. However, for purposes of computing interest on the Obligations, such items shall be deemed applied by Agent two (2) Business Days after Agent's receipt of advice of deposit thereof at Agent's Bank.

Each Lender agrees that any payments or distributions in respect of the Obligations received by such Lender in violation of this Agreement shall be as promptly as practicable paid over to the Agent, for the benefit of the other Lenders due such amounts, in the same form as received, with any necessary endorsements, to be applied in accordance with this Section 4.2, and each Lender hereby authorizes the

Agent to make any such endorsements as agent for such other Lenders (which authorization, being coupled with an interest, is irrevocable).

Any distributions received by the Agent in a form other than cash will be held by the Agent as Collateral and, at such time as such non-cash proceeds, amounts or assets, are monetized and reduced to cash, will be applied in the order of application set forth in Section 4.2. The Agent will not have any duty or obligation to take actions to monetize such non-cash distributions unless the Agent is otherwise required to do so in accordance with the terms of the Loan Documents.

4.3 Notification; Verification. Agent or its designee may (a) from time to time: (i) verify directly with the Account Debtors of the Loan Parties (or by any reasonable manner and through any reasonable medium Agent considers advisable in the exercise of its Permitted Discretion) the validity, amount and other matters relating to the Accounts and Chattel Paper of the Loan Parties, by means of mail, telephone or otherwise, either in the name of the applicable Loan Party or Agent or such other name as Agent may choose, (ii) verify directly with insurers and taxing authorities the amount due to the Loan Parties and tax status of the Loan Parties, and (b) from time to time after the occurrence and during the continuance of an Event of Default (i) notify Account Debtors of the Loan Parties that Agent has a security interest in the Accounts of the Loan Parties and (ii) cause the Loan Parties to direct all Account Debtors to forward all payments to the Blocked Account. Agent or its designee may, from time to time after the occurrence and during the continuance of an Event of Default: (A) require any Loan Party to cause all invoices and statements which it sends to Account Debtors or other third parties to be marked, in a manner reasonably satisfactory to Agent, to reflect Agent's security interest therein and payment instructions reasonably acceptable to Agent; (B) direct such Account Debtors to make payment thereof directly to Agent; such notification to be sent on the letterhead of such Loan Party and substantially in the form of **Exhibit D** hereto; and (C) demand, collect or enforce payment of any Accounts and Chattel Paper (but without any duty to do so). Each Loan Party hereby authorizes Account Debtors to make payments directly to Agent and to rely on notice from Agent without further inquiry. Agent may on behalf of each Loan Party endorse all items of payment received by Agent that are payable to such Loan Party for the purposes described above.

4.4 Power of Attorney.

Each Loan Party hereby grants to Agent an irrevocable power of attorney, coupled with an interest, authorizing and permitting Agent (acting through any of its officers, employees, attorneys or agents), at Agent's option (and solely with respect to any actions taken by Agent under Section 4.4(a) below, in the exercise of its Permitted Discretion), but without obligation, with or without notice to such Loan Party, and at such Loan Party's expense, to do any or all of the following, in such Loan Party's name or otherwise:

(a) After the occurrence and during the continuance of an Event of Default, (i) execute on behalf of such Loan Party any documents that Agent may deem advisable in order to perfect, protect and maintain Agent's security interests, and priority thereof, in the Collateral (including such financing statements and continuation financing statements, and amendments or other modifications thereto, as Agent shall deem necessary or appropriate); (ii) endorse such Loan Party's name on all checks and other forms of remittances received by Agent; (iii) pay any sums required on account of such Loan Party's taxes or to secure the release of any Liens therefor; (iv) pay any amounts necessary to obtain, or maintain in effect, any of the insurance described in Section 5.14; (iv) receive and otherwise take control in any manner of any cash or non-cash items of payment or proceeds of Collateral; (v) receive, open and process all mail addressed to such Loan Party at any post office box/lockbox maintained by Agent for such Loan Party or at any other business premises of Agent with Collections to be promptly transferred to the Blocked Account and any mail unrelated to Collections to be promptly remitted to such Loan Party along with copies of all other mail addressed to such Loan Party and received by Agent; and (vi) endorse or assign to Agent on such

Loan Party's behalf any portion of Collateral evidenced by an agreement, Instrument or Document if an endorsement or assignment of any such items is not made by such Loan Party; and

(b) After the occurrence and during the continuance of an Event of Default and subject to the terms and conditions of Section 7 of this Agreement: (i) execute on behalf of such Loan Party any document exercising, transferring or assigning any option to purchase, sell or otherwise dispose of or lease (as lessor or lessee) any real or personal property which is part of the Collateral or in which Agent has an interest; (ii) execute on behalf of such Loan Party any invoices relating to any Accounts, any draft against any Account Debtor, any proof of claim in bankruptcy, any notice of Lien or claim, and any assignment or satisfaction of mechanic's, materialman's or other Lien; (iii) execute on behalf of such Loan Party any notice to any Account Debtor; (iv) pay, contest or settle any Lien, charge, encumbrance, security interest and adverse claim in or to any of the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (v) grant extensions of time to pay, compromise claims relating to, and settle Accounts, Chattel Paper and General Intangibles for less than face value and execute all releases and other documents in connection therewith; (vi) file, submit, settle and adjust, and give releases of, any insurance claim that relates to any of the Collateral and obtain payment therefor; (vii) instruct any third party having custody or control of any Collateral or books or records belonging to, or relating to, such Loan Party to give Agent the same rights of access and other rights with respect thereto as Agent has under this Agreement or any other Loan Document; (viii) change the address for delivery of such Loan Party's mail; (ix) vote any right or interest with respect to any Investment Property which constitutes Collateral; and (x) instruct any Account Debtor to make all payments due to such Loan Party directly to Agent.

Any and all sums paid, and any and all costs, expenses, liabilities, obligations and reasonable, documented and out of pocket attorneys' fees incurred, by Agent with respect to the foregoing shall be added to and become part of the Obligations, shall be payable on demand, and shall bear interest at a rate equal to the highest interest rate applicable to any of the Obligations at such time. Each Loan Party agrees that Agent's rights under the foregoing power of attorney and/or any of Agent's other rights under this Agreement or the other Loan Documents shall not be construed to indicate that Agent is in control of the business, management or properties of such Loan Party.

4.5 Disputes. Each Loan Party shall promptly notify Agent of any dispute or claim relating to its Accounts and Chattel Paper that is in an amount in excess of $250,000. Each Loan Party agrees that it will not, without Agent's prior written consent which shall not be unreasonably withheld, conditioned or delayed, compromise or settle any of its Accounts or Chattel Paper for less than the full amount thereof, grant any extension of time for payment of any of its Accounts or Chattel Paper, release (in whole or in part) any Account Debtor or other person liable for the payment of any of its Accounts or Chattel Paper or grant any credits, discounts, allowances, deductions, return authorizations or the like with respect to any of its Accounts or Chattel Paper that individually has a value in excess of $250,000; except (unless otherwise directed by Required Lenders during the existence of a Default or an Event of Default) such Loan Party may take any of such actions in the ordinary course of its business consistent with past practices.

4.6 Inventory; Equipment.

(a) **Returns.** No Loan Party will accept returns of any Inventory from any Account Debtor except in the ordinary course of its business. In the event the value of returned Inventory in any one calendar month exceeds $250,000 (collectively for all Loan Parties), the Borrowers will immediately notify Agent (which notice shall specify the value of all such returned Inventory, the reasons for such returns, and the locations and the condition of such returned Inventory).

(b) **Third Party Locations**. No Loan Party will, without Agent's written consent, at any time, store any Inventory, Equipment or other Collateral with a value in excess of $250,000 at any

third-party location other than as set forth in Section 1(d) of the Disclosure Schedule, except for Inventory, Equipment, or vehicles stored at a third party location for no more than five (5) days in the ordinary course of business.

(c) **Sale on Return, etc.** No Loan Party will, without Agent's prior written consent, at any time, sell or hold any Inventory on a sale-or-return, guaranteed sale, consignment, or other contingent basis except in the ordinary course of its business.

(d) **Fair Labor Standards Act**. Each Loan Party represents and warrants, and covenants that at all times, all of the Inventory of each Loan Party has been, at all times will be, produced only in compliance in all material respects with the Fair Labor Standards Act of 1938 and all rules, regulations and orders promulgated thereunder.

4.7 Access to Collateral, Books and Records. At reasonable times and, so long as no Event of Default has occurred and is continuing, with reasonable prior notice, Agent and/or its representatives or agents shall have the right to inspect the Collateral, and the right to examine and copy each Loan Party's books and records. Each Loan Party agrees to give Agent access to any or all of such Loan Party's, and each of its Subsidiaries', premises to enable Agent to conduct such inspections and examinations upon reasonable prior notice and during normal business hours. Such inspections and examinations shall be at the Borrowers' expense, plus reasonable and documented out-of-pocket expenses; provided, however, that so long as no Event of Default has occurred and is continuing, the Borrowers shall be required to compensate Agent for no more than one (1) such inspection per calendar year. Upon the occurrence and during the continuance of an Event of Default, Agent may, at the Borrowers' expense, use each Loan Party's personnel, computer and other equipment, programs, printed output and computer readable media, supplies and premises for the collection, sale or other disposition of Collateral to the extent Agent, in its reasonable discretion, deems appropriate. Each Loan Party hereby irrevocably authorizes all accountants and other financial professional third parties to disclose and deliver to Agent, upon the occurrence and during the continuation of an Event of Default, at the Borrowers' expense, all financial information, books and records, work papers, management reports and other information in their possession regarding the Loan Parties.

4.8 Appraisals and Field Exams. Each Loan Party will permit Agent and each of its representatives or agents to conduct appraisals, field examinations, audits, and valuations (including, without limitation, environmental assessments) (collectively, "**Assessments**") of the Collateral at such times and intervals as Agent may reasonably designate; provided that so long as no Event of Default has occurred and is continuing, such Assessments shall only occur only one (1) time per any nine (9) consecutive month period. Such appraisals, field examinations, audits, and valuations shall be at the Borrowers' expense.

5. REPRESENTATIONS, WARRANTIES AND COVENANTS.

To induce Agent and each Lender to enter into this Agreement, each Loan Party represents, warrants and covenants as follows (it being understood and agreed that (a) each such representation and warranty will be made as of the date hereof and be deemed remade as of each date on which any Loan or any other extension of credit is made (except to the extent any such representation or warranty expressly relates only to any earlier and/or specified date, in which case such representation or warranty will be made as of such earlier and/or specified date), and (b) unless otherwise expressly set forth, each such covenant shall continuously apply with respect to all times commencing on the date hereof and continuing until the Termination Date):

5.1 Existence and Authority. Each Loan Party is duly organized, incorporated, validly existing and in good standing under the laws of its jurisdiction of organization or incorporation (which

jurisdiction is identified in Section 1(a) of the Disclosure Schedule) and is qualified to do business in each jurisdiction in which the operation of its business requires that it be qualified (which each such jurisdiction, as of the Closing Date, is identified in Section 1(a) of the Disclosure Schedule), except where the failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect such Person's valid existence and good standing in its jurisdiction of organization and, except as could not reasonably be expected to result in a Material Adverse Effect, good standing with respect to all other jurisdictions in which it is qualified to do business and any rights, franchises, permits, licenses, accreditations, authorizations, or other approvals material to their businesses. Subject to the entry of the Orders and subject to the terms thereof, each Loan Party has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby. The execution, delivery and performance by each Loan Party of this Agreement and all of the other Loan Documents to which such Loan Party is a party have been duly and validly authorized, do not violate such Loan Party's Organic Documents or any material provisions of any law or any court order which is binding upon any Loan Party or its property, do not constitute grounds for acceleration of any Indebtedness of any Loan Party or any of its Subsidiaries, and do not require the consent of any Person (except for consents which have already been obtained and are in full force and effect). Subject to the entry of the Confirmation Order, and subject to the terms thereof, no Loan Party is required to obtain any government approval, consent, or authorization from, or to file any declaration or statement with (other than in connection with perfecting security interests), any Governmental Authority in connection with or as a condition to the execution, delivery or performance of any of the Loan Documents. This Agreement and each of the other Loan Documents have been duly executed and delivered by, and are enforceable against each of the Loan Parties who have signed them, in accordance with their respective terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). As of the Closing Date, Section 1(f) of the Disclosure Schedule sets forth the ownership of the Borrowers and their respective Subsidiaries.

5.2 Names; Trade Names and Styles. The name of each Loan Party set forth on Section 1(b) of the Disclosure Schedule is its correct and complete legal name as of the date hereof and, except as listed on Section 1(b) of the Disclosure Schedule, no Loan Party has used any other name at any time in the past five (5) years. Listed in Section 1(b) of the Disclosure Schedule are all prior names used by each Loan Party at any time in the past five (5) years and all of the present and prior trade names used by any Loan Party at any time in the past five (5) years. The Borrowers shall give Agent at least five (5) days' prior written notice (and will deliver an updated Section 1(b) of the Disclosure Schedule to reflect the same) before they or any other Loan Party changes its legal name or does business under any other name.

5.3 Title to Collateral; Third Party Locations; Permitted Liens.

(a) Each Loan Party has, and except as expressly permitted by Section 5.29(d) at all times will continue to have, good and marketable title to all of the Collateral. The Collateral now is, and at all times will remain, free and clear of any and all Liens, except for Permitted Liens. Each Loan Party will at all times defend the Collateral against all claims of others. All of the locations leased by the Loan Parties as of the Closing Date are identified in Section 1(c) of the Disclosure Schedule. The Loan Parties (a) shall use commercially reasonable efforts to deliver to Agent (unless waived by Agent in its sole discretion) a Collateral Access Agreement in form and substance reasonably satisfactory to Agent for any leased or subleased locations that serve as the Loan Parties' respective headquarters facilities and (b) shall use commercially reasonable efforts to deliver to Agent (unless waived by Agent in its sole discretion) a Collateral Access Agreement in form and substance reasonably satisfactory to Agent with respect to any

other Real Property lease or sublease under which any Loan Party is or will be a lessee or sublessee for any location at which any Collateral is located, provided that the Loan Parties shall not be required to deliver Collateral Access Agreements to Agent for any leased or subleased location at which Collateral having a value of less than $250,000 is located, so long as the aggregate amount of Collateral at all locations of the Loan Parties that are not covered by Collateral Access Agreements pursuant to this proviso does not exceed $250,000 at any time. Except for warehouses as to which the Loan Parties have delivered to Agent a Collateral Access Agreement in form and substance reasonably satisfactory to Agent and except as excused in the following sentence, no Loan Party is or will at any time be a bailor of any Collateral at any warehouse or otherwise. Prior to causing or permitting any Collateral to at any time be located upon premises in which any third party (including any landlord, warehouseman or otherwise) has an interest except for Collateral which is (i) out for repair, or (ii) in transit, so long as the aggregate amount of Collateral located on premises in which any third party has an interest pursuant to the foregoing clauses (i)-(ii) does not exceed $250,000 at any time. Loan Parties shall notify Agent and the applicable Loan Party shall use commercially reasonable efforts to cause each such third party to execute and deliver to Agent, in form and substance reasonably acceptable to Agent, such waivers, Collateral Access Agreements, and subordination agreements as Agent shall specify, so as to, among other things, ensure that Agent's rights in the Collateral are, and will at all times continue to be, superior to the rights of any such third party and that Agent has access to such Collateral. Each applicable Loan Party will keep at all times in full force and effect, and will comply in all respects at all times with the terms of, any lease of Real Property where any of the Collateral now or in the future may be located, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

(b) Agent's Liens are validly created, perfected (other than (i) in respect of motor vehicles that are subject to a certificate of title, (ii) money, (iii) letter-of-credit rights (other than supporting obligations), (iv) commercial tort claims (other than those that, by the terms of this Agreement, are required to be perfected), (v) Excluded Accounts, (vi) Excluded Property, and (vii) other assets which are not required to be perfected under the terms of this Agreement or any other Loan Document) and first priority Liens, subject only to the Permitted Liens.

5.4 Accounts and Chattel Paper; Inventory.

(a) As of each date of delivery of a Revolving Loan Borrowing Base Certificate, all Accounts and Chattel Paper of each Loan Party are genuine and in all material respects what they purport to be, arise out of a completed, bona fide and unconditional and non-contingent sale and delivery of goods or rendition of services by the Loan Parties in the ordinary course of its business and in accordance, in all material respects, with the terms and conditions of all purchase orders, contracts or other documents relating thereto, to the knowledge of the Loan Parties each Account Debtor thereunder had the capacity to contract at the time any contract or other document giving rise to such Accounts and Chattel Paper were executed, and the transactions giving rise to such Accounts and Chattel Paper comply in all material respects with all applicable laws and governmental rules and regulations.

(b) As to any Accounts that are identified by the Borrowers as Eligible Accounts in a Revolving Loan Borrowing Base Certificate, such Accounts are not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Accounts.

(c) As to any Inventory that is identified by the Borrowers as Eligible Inventory in a Revolving Loan Borrowing Base Certificate submitted to Agent, such Inventory is not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Inventory.

5.5 Electronic Chattel Paper. To the extent that any Loan Party obtains or maintains Electronic Chattel Paper with a value in excess of $250,000 in the aggregate, such Loan Party shall at all

times create, store and assign the record or records comprising the Electronic Chattel Paper in such a manner that (a) a single authoritative copy of the record or records exists which is unique, identifiable and except as otherwise provided below, unalterable, (b) the authoritative copy identifies Agent as the assignee of the record or records, (c) the authoritative copy is communicated to and maintained by Agent or its designated custodian, (d) copies or revisions that add or change an identified assignee of the authoritative copy can only be made with the participation of Agent, (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy and (f) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

5.6 Capitalization; Investment Property.

(a) Sections 1(f) and 1(g) of the Disclosure Schedule set forth all Investment Property owned by each Loan Party, except in each case for Permitted Investments.

(b) None of the Pledged Equity has been issued or otherwise transferred in violation of the Securities Act, or other applicable laws of any jurisdiction to which such issuance or transfer may be subject.

(c) The Pledged Equity pledged by each Loan Party hereunder constitutes all of the issued and outstanding Equity Interests of each Issuer owned by such Loan Party.

(d) All of the Pledged Equity has been duly and validly issued and is fully paid and non-assessable, and the holders thereof are not entitled to any preemptive, first refusal, or other similar rights. There are no outstanding options, warrants or similar agreements, documents, or instruments with respect to any of the Pledged Equity.

(e) Each Loan Party has taken all necessary actions to enable and empower Agent and the Lenders to exercise and enforce their rights and remedies hereunder in respect of the Pledged Equity and other Investment Property that constitutes Collateral.

(f) Each Loan Party will take any and all actions reasonably requested by Agent, from time to time, to (i) cause Agent to obtain exclusive control of any Investment Property that constitutes Collateral in a manner reasonably acceptable to Agent and (ii) obtain from any Issuers and such other Persons as Agent shall specify, for the benefit of Agent, written confirmation of Agent's exclusive control over such Investment Property and take such other actions as Agent may request to perfect Agent's security interest in any Investment Property that is or is intended to constitute Collateral. For purposes of this Section 5.6, Agent shall have "exclusive control" of Investment Property if (A) such Investment Property consists of certificated securities and the applicable Loan Party delivers such certificated securities to Agent (with all appropriate endorsements), or (B) such Investment Property consists of security entitlements and either (1) Agent becomes the entitlement holder thereof or (2) the appropriate securities intermediary agrees, pursuant to documentation in form and substance satisfactory to Agent, that it will comply with entitlement orders originated by Agent without further consent by the applicable Loan Party. Each Loan Party that is a limited liability company or a partnership hereby represents and warrants that, as of the Closing Date, it has not, and, at no time after the date hereof, will, elect pursuant to the provisions of Section 8-103 of the UCC to provide that its Equity Interests are securities governed by Article 8 of the UCC; provided, however that a Loan Party may elect to opt into Article 8 of the UCC to provide that its Equity Interests or securities if (i) such Loan Party provides Agent with at least five (5) days advance written notice of its intent to opt into Article 8 of the UCC and (ii) such Loan Party complies with clause (A) of this subsection (f).

(g) No Loan Party owns, or has any present intention of acquiring, any "margin security" or any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of

the Federal Reserve System (herein called "margin security" and "margin stock"). None of the proceeds of the Loans will be used, directly or indirectly, for the purpose of purchasing or carrying, or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry, any margin security or margin stock or for any other purpose which might constitute the transactions contemplated hereby a "purpose credit" within the meaning of said Regulations T, U or X, or cause this Agreement to violate any other regulation of the Board of Governors of the Federal Reserve System or the Exchange Act, or any rules or regulations promulgated under such statutes. None of the Loan Parties is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

(h) [Reserved].

(i) [Reserved].

(j) In the case of any Loan Party which is an Issuer, such Issuer agrees that the terms of Section 7.3(g)(iii) of this Agreement shall apply to such Loan Party with respect to all actions that may be required of it pursuant to such Section 7.3(g)(iii) regarding the Investment Property issued by it.

5.7 Commercial Tort Claims. No Loan Party has any Commercial Tort Claims with a value in excess of $250,000 or choses in action pending as of the Closing Date other than those listed in Section 2 of the Disclosure Schedule, and each Loan Party shall promptly (but in no case later than five (5) Business Days thereafter) notify Agent in writing upon incurring or otherwise obtaining a Commercial Tort Claim with a value in excess of $250,000 or chose in action after the Closing Date against any third party in an amount in excess of $250,000. Such notice shall constitute such Loan Party's authorization to amend such Section 2 to add such Commercial Tort Claim or chose in action and shall automatically be deemed to amend such Section 2 to include such Commercial Tort Claim or chose in action.

5.8 Jurisdiction of Organization; Location of Collateral. Sections 1(c) and 1(d) of the Disclosure Schedule set forth as of the Closing Date (i) each place of business of each Loan Party (including its chief executive office), (ii) all locations where all Inventory, Equipment, and other Collateral owned by each Loan Party is kept, and (iii) whether each such Collateral location and/or place of business (including each Loan Party's chief executive office) is owned by a Loan Party or leased (and if leased, specifies the complete name and notice address of each lessor). As of the Closing Date, no Collateral is located outside the United States or in the possession of any lessor, bailee, warehouseman or consignee, except as expressly indicated in Sections 1(c) and 1(d) of the Disclosure Schedule. Each Loan Party will give Agent at least fifteen (15) days' prior written notice before changing its jurisdiction of organization, opening any additional place of business, changing its chief executive office or the location of its books and records, or moving any of the Collateral (except Collateral which is (i) out for repair, or (ii) in transit) to a location other than one of the locations set forth in Sections 1(c) and 1(d) of the Disclosure Schedule, and will execute and deliver all financing statements, Collateral Access Agreements, Mortgages, and all other agreements, instruments and documents which Agent shall reasonably require in connection therewith prior to making such change, all in form and substance reasonably satisfactory to Agent. Without the prior written consent of Agent, no Loan Party will at any time (i) change its jurisdiction of organization or (ii) allow any Collateral located within the United States of America to subsequently be moved outside of the continental United States of America.

5.9 Financial Statements and Reports; Solvency.

(a) All financial statements delivered to Agent or any Lender by or on behalf of any Loan Party have been, and at all times will be, prepared in conformity with GAAP in all material respects, subject to, in the case of unaudited interim financial statements, normal year-end audit adjustments and lack

of footnote disclosures, and completely and fairly reflect in all material respects the financial condition of each Loan Party covered thereby, at the times and for the periods therein stated.

(b) (i) The fair saleable value of all of the assets and properties of all Loan Parties taken as a whole exceeds the aggregate liabilities (including known contingent liabilities) and Indebtedness of all Loan Parties taken as a whole, (ii) each Loan Party, individually, is solvent and able to pay its debts as they come due, and all Loan Parties taken as a whole, are solvent and able to pay their debts as they come due, (iii) each Loan Party, individually, has sufficient capital to carry on its business as now conducted and as proposed to be conducted, and all Loan Parties taken as a whole, have sufficient capital to carry on their business as now conducted and as proposed to be conducted, (iv) no Loan Party is contemplating either the liquidation of all or any substantial portion of its assets or property, or the filing of any petition under any state, provincial, federal, or other bankruptcy, or insolvency law, and (v) no Loan Party has knowledge of any Person contemplating the filing of any such petition or other applicable enforcement proceeding against any Loan Party.

5.10 Tax Returns and Payments; Pension Contributions.

(a) Each Loan Party has timely filed all federal tax returns, material state and local income, and other material tax returns and reports required to be filed by applicable law or extensions thereof, has timely paid all federal and other material applicable Taxes, including any material applicable business, municipal or property tax affecting any Real Property owned by a Loan Party, assessments, fees, and other governmental charges owing by such Loan Party and will timely pay all such items in the future as they became due and payable, in each case, except Taxes, assessments, fees and other governmental charges that that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are being maintained in accordance with GAAP.

(b) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other applicable laws. Each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or can rely on a favorable opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, and to the best knowledge of each Loan Party, nothing has occurred that would cause the loss of such Plan's tax-qualified status. There are no pending or, to the best knowledge of any Loan Party, claims threatened in writing, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to result in liabilities individually or in the aggregate in excess of $250,000 on any Loan Party. There has been no non-exempt prohibited transaction or, to the best knowledge of each Loan Party, violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in liabilities individually or in the aggregate in excess of $250,000. No ERISA Event has occurred, and no Loan Party is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan, in each case that could reasonably be expected to result in liabilities individually or in the aggregate in excess of $250,000. Each Loan Party and, to the best knowledge of each Loan Party, each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained, in each case except as could not reasonably be expected to result in liabilities individually or in the aggregate in excess of $250,000. As of the most recent valuation date for any Pension Plan, the present value of all accumulated benefit obligations under such Pension Plan did not exceed the fair market value of the assets of such Pension Plan allocable to such accrued benefits (determined using the assumptions applicable thereto promulgated under Section 430 of the Code) and no Loan Party knows of any facts or circumstances that could reasonably be expected to cause the accumulated benefit obligations

for any such plan to not exceed the fair market value of the assets of such plan; no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid, except as could not reasonably be expected to result in liabilities individually or in the aggregate in excess of $250,000. No Loan Party nor, to the best knowledge of any Loan Party, any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA except as could not reasonably be expected to result in liabilities individually or in the aggregate in excess of $250,000. No Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan except as could not reasonably be expected to result in liabilities individually or in the aggregate in excess of $250,000.

5.11 Compliance with Laws; Intellectual Property; Licenses; Pensions.

(a) Each Loan Party has complied, and will continue at all times to comply, with all provisions of all applicable laws and regulations, including those relating to the ownership, use or operations of real or personal property, the conduct and licensing of each Loan Party's business, ERISA and other employee matters, and safety and environmental matters, except, in each case, where any non-compliance would not reasonably be expected to result in a Material Adverse Effect.

(b) No Loan Party has received written notice of default or violation, nor is any Loan Party in default or violation, with respect to any judgment, order, writ, injunction, decree, demand or assessment issued by any court or any federal, state, local, municipal or other Governmental Authority relating to any aspect of any Loan Party's business, affairs, properties or assets, which, in either case, could reasonably be expected to result in a Material Adverse Effect. As of the Closing Date, no Loan Party has received written notice of or been charged with, or is, to the knowledge of any Loan Party, under investigation with respect to, any violation in any material respect of any provision of any applicable law. No Loan Party has received written notice of any Loan Party or any Real Property owned, leased or used in the operation of the business being subject to any federal, state or local investigation to determine whether any remedial action is needed to address the generation, use, storage, handling, management, transportation or disposal of Hazardous Materials or an environmental release (as that term is defined under Environmental Laws) at, on, or under any Real Property currently leased, owned or used by a Loan Party nor is a Loan Party liable for any environmental release identified or under investigation at, on or under any Real Property previously owned, leased or used by a Loan Party which, in each case, could reasonably be expected to result in a Material Adverse Effect. No Loan Party has any contingent liability with respect to any environmental release, environmental pollution or Hazardous Material on any Real Property now or previously owned, leased or operated by it which, in each case, could reasonably be expected to result in a Material Adverse Effect.

(c) No Loan Party owns any registered Intellectual Property, applications to register Intellectual Property or internet domain names, except as set forth in Section 4 of the Disclosure Schedule. Except as set forth in Section 4 of the Disclosure Schedule, none of the Intellectual Property owned by any Loan Party has been granted on an exclusive basis to any third party, including through any licensing or franchise agreement pursuant to which such Loan Party is the licensor or franchisor. Except as set forth in Section 4 of the Disclosure Schedule, no Loan Party has received any right, license, or interest in any Intellectual Property owned by any third party that is material to the conduct of the business of such Loan Party. Each Loan Party shall notify Agent in writing within thirty (30) days after the end of each Fiscal Quarter of any additional Intellectual Property, applications to register Intellectual Property or internet domain names acquired or created after the Closing Date and shall submit to Agent a supplement to Section 4 of the Disclosure Schedule to reflect such additional rights (provided, that such Loan Party's failure to do so shall not impair Agent's security interest therein). Each Loan Party shall execute a separate security

agreement granting Agent a security interest in such Intellectual Property (whether owned on the Closing Date or thereafter), in form and substance reasonably acceptable to Agent and suitable for registering such security interest in such Intellectual Property with the United States Patent and Trademark Office, and/or the United States Copyright Office, as applicable (provided, that such Loan Party's failure to do so shall not impair Agent's security interest therein). To the Borrowers' knowledge, each Loan Party owns or has, and will at all times continue to own or have, the valid right to use all material patents, industrial designs, trademarks, copyrights, software, computer programs, equipment designs, network designs, equipment configurations, technology and other Intellectual Property used, marketed and sold in such Loan Party's business, and each Loan Party is in compliance, and will continue at all times to comply, with all licenses, user agreements and other such agreements regarding the use of Intellectual Property, except in each case to the extent the failure to do so would not reasonably be expected to result in a Material Adverse Effect. As of the Closing Date, no Loan Party has any knowledge that, or has received any notice claiming that such Loan Party or any product manufactured sold or offered for sale by such Loan Party or any Intellectual Property used by such Loan Party infringes upon, misappropriates, or violates or has infringed upon, misappropriated, or violated the Intellectual Property rights of any other Person. As of the Closing Date, no Loan Party has any knowledge that any other Person infringes, misappropriates or violates any Intellectual Property owned by such Loan Party. Each Loan Party has taken reasonable steps to maintain the confidentiality of and otherwise protect the trade secrets owned by such Loan Party. With respect to Intellectual Property material to the conduct of each Loan Party's business, such Loan Party will protect and, if consistent with good business judgment, diligently enforce and defend such Intellectual Property, at such Loan Party's expense.

(d) Each Loan Party has and will continue at all times to have, all material federal, state, local and other material licenses and permits required to be maintained in connection with such Loan Party's business operations and its ownership, use and operation of any Real Property, and all such licenses and permits necessary for the operation of the business are valid and will remain and in full force and effect. Each Loan Party has, and will continue at all times to have, complied with the requirements of such licenses and permits except, in each case, where any non-compliance would not reasonably be expected to result in a Material Adverse Effect, and as of the Closing Date no Loan Party has received written notice of any pending or threatened proceedings for the suspension, termination, revocation or limitation thereof. As of the Closing Date, no Loan Party is aware of any facts or conditions that could reasonably be expected to cause or permit any of such licenses or permits to be voided, revoked or withdrawn in any material respect.

(e) In addition to and without limiting the generality of clause (a) above, each Loan Party shall (i) comply in all material respects with applicable provisions of ERISA and the Code with respect to all Plans, (ii) without the prior written consent of Agent and the Required Lenders, not take any action or fail to take action the result of which could result in a Loan Party incurring a material liability to the PBGC or to a Multiemployer Plan (other than to pay contributions or premiums payable in the ordinary course), (iii) not participate in any non-exempt prohibited transaction that could result in other than a de minimis civil penalty, excise tax, fiduciary liability or correction obligation under ERISA or the Code, and (iv) furnish to Agent upon Agent's reasonable written request such additional information about any Plan for which any Loan Party could reasonably expect to incur any material liability. With respect to each Pension Plan (other than a Multiemployer Plan) except as could not reasonably be expected to result in a Material Adverse Effect on the Loan Parties, the Loan Parties and the ERISA Affiliates shall (y) satisfy in full and in a timely manner, without incurring any late payment or underpayment charge or penalty and without giving rise to any Lien, all of the contribution and funding requirements of the Code and of ERISA, and (z) pay, or cause to be paid, to the PBGC in a timely manner, without incurring any late payment or underpayment charge or penalty, all premiums required pursuant to ERISA.

(f) Each Loan Party has complied, and will continue at all times to comply with all provisions of all applicable Environmental Laws relating to the ownership, use or operations of real or

personal property, including obtaining and maintaining compliance with all permits required under Environmental Laws for the operation of the business, except in each case to the extent the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

5.12 Litigation.

As of the Closing Date, Section 1(e) of the Disclosure Schedule discloses all (a) claims, proceedings, or litigation pending, (b) to each Loan Party's knowledge, investigations pending, and (c) to each Loan Party's knowledge, claims, proceedings, litigation or investigations threatened in writing against any Loan Party. Except for the Chapter 11 Cases, there is no claim, suit, litigation, proceeding or investigation pending, or, to each Loan Party's knowledge, threatened by or against or affecting any Loan Party in any court or before any Governmental Authority (or any basis therefor known to any Loan Party) which may result in any Material Adverse Effect, or in any material impairment in the ability of any Loan Party to carry on its business in substantially the same manner as it is now being conducted.

5.13 Use of Proceeds.

All proceeds of the Loans shall be used solely (a) to pay the fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents and the transactions contemplated hereby and thereby, (b) to refinance and discharge in full the obligations of the Loan Parties and their Subsidiaries under the Prepetition RBC Credit Agreement and the DIP Credit Agreement and (c) to finance the ongoing general corporate needs of the Loan Parties. All proceeds of the Loans will be used solely for lawful business purposes.

5.14 Insurance.

(a) Each Loan Party will at all times carry property, liability and other insurance (including, without limitation, workmen's compensation, public liability, cybersecurity, cyber liability and business interruption insurance), with insurers reasonably acceptable to Agent, in such form and amounts, and with such deductibles and other provisions, as are usually obtained by companies engaged in the same or similar business as such Loan Parties and which are reasonably satisfactory to Agent, and the Borrowers will provide Agent with evidence reasonably satisfactory to Agent that such insurance is, at all times, in full force and effect. A true and complete listing of such insurance as of the Closing Date, including issuers, coverages and deductibles, is set forth in Section 5 of the Disclosure Schedule. Each property insurance policy shall name Agent as loss payee and shall contain a lender's loss payable endorsement in form reasonably acceptable to Agent, each liability insurance policy shall name Agent as an additional insured, and each business interruption insurance policy shall be collaterally assigned to Agent, all in form and substance reasonably satisfactory to Agent. All policies of insurance shall provide that they may not be cancelled or changed without at least thirty (30) days' prior written notice to Agent, and shall otherwise be in form and substance reasonably satisfactory to Agent. The Borrowers shall advise Agent promptly of any policy cancellation, non-renewal, reduction, or material amendment with respect to any insurance policies maintained by any Loan Party or any receipt by any Loan Party of any notice from any insurance carrier regarding any intended or threatened cancellation, non-renewal, reduction or material amendment of any of such policies, and the Borrowers shall promptly deliver to Agent copies of all notices and related documentation received by any Loan Party in connection with the same.

(b) The Borrowers shall deliver to Agent no later than fifteen (15) days prior to the expiration of any then current insurance policies, insurance certificates evidencing renewal of all such insurance policies required by this Section 5.14. The Borrowers shall deliver to Agent, upon Agent's request, certificates evidencing such insurance coverage in such form as Agent shall specify. If any Loan Party fails to provide Agent with a certificate of insurance or other evidence of the continuing insurance

coverage required by this Agreement within the time period set forth in the first sentence of this Section 5.14(b), Agent may purchase insurance required by this Agreement at the Borrowers' expense. This insurance may, but need not, protect any Loan Party's interests.

(c) If at any time the area in which any Real Property Collateral is located is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such total amount and on terms that are reasonably satisfactory to Agent and all Lenders from time to time, and otherwise comply with the Flood Laws or as is otherwise reasonably satisfactory to Agent and all Lenders.

5.15 Financial, Collateral and Other Reporting / Notices. Each Loan Party has kept and will at all times keep adequate records and books of account with respect to its business activities and the Collateral in which proper entries are made in accordance with GAAP in all material respects. Each Loan Party will cause to be prepared and furnished to Agent and each of the Lenders, in each case in a form and in such detail as is reasonably acceptable to Agent the following items (the items to be provided under this Section 5.15 shall be delivered to Agent (i) in writing or in another form of Approved Electronic Communication, and (ii) no later than the deadline specific set forth therein; provided, however, if the deadline falls on a non-Business Day, the deadline shall be automatically extended to the next Business Day immediately following such deadline):

(a) **Annual Financial Statements**. No later than one hundred and twenty (120) days after the end of each Fiscal Year, (i) unqualified, audited financial statements of Borrowers and each of their Subsidiaries as of the end of such Fiscal Year, including balance sheet, income statement, and statement of cash flow for such Fiscal Year, in each case on a consolidated basis, audited and certified (without qualification) by a firm of independent certified public accountants of recognized standing selected by Borrowers but acceptable to Agent in its Permitted Discretion, together with a copy of any management letter issued in connection therewith and (ii) internally prepared financial statements of Borrowers and each of their Subsidiaries as of the end of such Fiscal Year, including balance sheet, income statement, and statement of cash flow for such Fiscal Year, in each case on a consolidating basis. Concurrently with the delivery of such financial statements, Borrowers shall deliver to Agent a Compliance Certificate, indicating whether Borrowers are in compliance with each of the covenants specified in Section 5.27, and setting forth a detailed calculation of such covenants and indicating whether any Default or Event of Default is then in existence.

(b) **Interim Financial Statements**. Not later than thirty (30) days after the end of each month hereafter, including the last month of each Fiscal Year, unaudited interim financial statements of Borrowers and each of their Subsidiaries as of the end of such month and of the portion of such Fiscal Year then elapsed, including balance sheet, income statement, statement of cash flow, and results of their respective operations during such month and the then-elapsed portion of the Fiscal Year, together with comparative figures for the same periods in the immediately preceding Fiscal Year and the corresponding figures from the budget for the Fiscal Year covered by such financial statements, in each case on a consolidated and consolidating basis, certified by an Authorized Officer of Borrowers as prepared in accordance with GAAP subject to normal year-end audit adjustments and the lack of footnote disclosures, and fairly presenting the consolidated financial position and results of operations (including management discussion and analysis of such results) of Borrowers and each of their Subsidiaries for such month and period subject only to changes from ordinary course year-end audit adjustments and except that such statements need not contain footnotes. Concurrently with the delivery of such financial statements for the last month of any fiscal quarter, Borrowers shall deliver to Agent a Compliance Certificate, indicating whether Borrowers are in compliance with each of the covenants specified in Section 5.27 and setting forth a detailed calculation of such covenants, and indicating whether any Default or Event of Default is then in existence.

(c) **Revolving Loan Borrowing Base / Collateral Reports / Financial Statements / Other Items**. The Borrowers shall deliver to Agent and each of the Lenders the items described on Schedule D hereto by the respective dates set forth therein.

(d) **Projections, Etc**. Not later than forty-five (45) days prior to the end of each Fiscal Year, monthly business projections for the following Fiscal Year for the Loan Parties on a consolidated and consolidating basis, which projections shall include for each such period Revolving Loan Borrowing Base projections, profit and loss projections, balance sheet projections, income statement projections, EBITDA projections and cash flow projections, together with appropriate supporting details and a statement of underlying assumptions used in preparing such projections.

(e) **Shareholder Reports, Etc.** To the extent the following are not publicly available on the Borrowers' website or on the website of the Securities and Exchange Commission, promptly after the sending or filing thereof, as the case may be, copies of any proxy statements, financial statements or reports which each Loan Party has made available to its shareholders and copies of any regular, periodic and special reports or registration statements which any Loan Party files with the Securities and Exchange Commission or any other applicable Governmental Authority, including any Governmental Authority which may be substituted therefor, or any applicable national securities exchange (collectively, the "**Shareholder Reports**"). Notwithstanding the forgoing, each Loan Party reserves the right to exclude from the Shareholder Reports any portion of materials relating thereto (i) if such Loan Party determines in good faith (based on advice of counsel) that such exclusion is reasonably necessary to preserve the attorney-client privilege or (ii) if disclosure to the Agent or any Lender (or their representatives or agents) is prohibited by law, fiduciary duty or any binding agreement.

(f) **Notification of Certain Changes**. The Borrowers will promptly (and in no case later than five (5) Business Days the occurrence of any of the following), notify Agent and each of the Lenders in writing of: (i) the occurrence of any Default or Event of Default, (ii) the occurrence of any event that has had, or could reasonably be expected to have, a Material Adverse Effect, (iii) any change in any Loan Party's Senior Officers or directors, (iv) any material investigation, action, suit, proceeding or claim (or any material development with respect to any existing investigation, action, suit, proceeding or claim) relating to any Loan Party, any officer or director of a Loan Party, the Collateral or which may result in a material adverse impact upon any Loan Party's business, assets or financial condition, (v) any violation or asserted violation of any applicable law (including OSHA or any Environmental Laws), if an adverse resolution could have a Material Adverse Effect or otherwise result in material liability to any Loan Party, (vi) any material loss or damage to the Collateral, (vii) [reserved], (viii) any actual or alleged breaches of any Material Contract or termination or threat in writing to terminate any Material Contract or any material amendment to or modification of a Material Contract in a manner that could reasonably be expected to have a Material Adverse Effect, and (ix) any change in any Loan Party's certified independent accountant. In the event of each such notice under this Section 5.15(b), the Borrowers shall give notice to Agent (which Agent will then furnish to the Lenders) of the action or actions that each Loan Party has taken, is taking, or proposes to take with respect to the event or events giving rise to such notice obligation.

(g) **Other Information**. Promptly upon request, such other data and information (financial and otherwise) as Agent or any Lender, from time to time, may reasonably request, bearing upon or related to the Collateral or each Loan Party's business or financial condition or results of operations.

5.16 Litigation Cooperation. Should any third-party suit, regulatory action, or any other judicial, administrative, or similar proceeding be instituted by or against Agent or any Lender with respect to any Collateral or in any manner relating to any Loan Party, this Agreement, any other Loan Document or the transactions contemplated hereby, each Loan Party shall, without expense to any Lender, make available each Loan Party, such Loan Party's officers, employees and agents, and any Loan Party's books

and records, without charge, to the extent that Agent or such Lender may deem them reasonably necessary in order to prosecute or defend any such suit or proceeding.

5.17 Maintenance of Collateral. Subject to Section 5.29(d), each Loan Party will maintain all of the Collateral in good working condition, ordinary wear and tear excepted, and no Loan Party will knowingly use the Collateral for any unlawful purpose.

5.18 Material Contracts. Except as expressly disclosed in Section 1(h) of the Disclosure Schedule, as of the Closing Date, no Loan Party is (a) party to any contract or agreement, the breach, nonperformance or cancellation of which could reasonably be expected to result in a Material Adverse Effect (each such contract and agreement, a "**Material Contract**"), (b) in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Material Contract or (c) in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Material Contract. As of the Closing Date, the Borrowers have delivered to Agent and the Lenders a complete and correct copy of each Material Contract, including all schedules and exhibits thereto. Each Material Contract is the legal, valid and binding obligation of each Loan Party who is a party thereto, and to the knowledge of the Borrowers, each other party thereto, enforceable against each such Loan Party in accordance with its terms, in each case, except (i) as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting generally the enforcement of creditors' rights, and (ii) the availability of the remedy of specific performance or injunctive or other equitable relief is subject to the discretion of the court before which any proceeding therefor may be brought.

5.19 No Default. No Default or Event of Default has occurred and is continuing**.**

5.20 No Material Adverse Change. Since December 31, 2023, no Material Adverse Effect has occurred (other than the commencement of the Chapter 11 Cases and the circumstances giving rise thereto).

5.21 Full Disclosure. No written report, notice, certificate, information or other statement delivered or made (including, in electronic form) by or on behalf of any Loan Party or any of their respective Affiliates to Agent or any Lender in connection with this Agreement or any other Loan Document contains or will at any time contain any untrue statement of a material fact, or omits or will at any time omit to state any material fact necessary to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading. Except for matters of a general economic or political nature which do not affect any Loan Party uniquely, there is no fact presently known to any Loan Party which has not been disclosed to Agent, which has had or could reasonably be expected to have individually or in the aggregate, a Material Adverse Effect.

5.22 Sensitive Payments. No Loan Party (a) has made or will at any time make any contributions, payments or gifts to or for the private use of any governmental official, employee or agent where either the payment or the purpose of such contribution, payment or gift is illegal under the applicable laws of the United States or the jurisdiction in which made or any other applicable jurisdiction, (b) has established or maintained or will at any time establish or maintain any unrecorded fund or asset for any purpose or made any false or artificial entries on its books, (c) has made or will at any time make any payments to any Person with the intention that any part of such payment was to be used for any purpose other than that described in the documents supporting the payment, or (d) has engaged in or will at any time engage in any "trading with the enemy" or other transactions violating any rules or regulations of the Office of Foreign Assets Control or any similar applicable laws, rules or regulations.

5.23 OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws.

(a) No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (i) is a Sanctioned Person or a Sanctioned Entity, (ii) has any assets located in Sanctioned Entities, or (iii) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each Loan Party and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each Loan Party and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is, and during the past five (5) years has at all times been, in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of the Loans will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person (including any Lender or other individual or entity participating in any transaction).

(b) Each Loan Party will, and will cause each of its Subsidiaries to comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each Loan Party and its Subsidiaries shall implement and maintain in effect policies and procedures designed to ensure compliance by Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

5.24 Reserved.

5.25 Reserved.

5.26 Covenant to Guarantee Obligations and Give Security.

(a) Upon the formation or acquisition of any new direct or indirect Subsidiary after the Closing Date by any Loan Party, then the Loan Parties shall, at the Loan Parties' expense:

(i) As promptly as possible but in any event within thirty (30) days (or such later date as may be agreed upon by Agent) after any Person becomes a Subsidiary, the Borrowers shall (i) provide Agent with written notice thereof setting forth information in reasonable detail describing the material assets of such Person and (ii) cause each such Subsidiary to execute and deliver to Agent a joinder to this Agreement (a "Joinder Agreement") and a joinder to any of the other Loan Documents, as specified by and in form and substance reasonably satisfactory to Agent, pursuant to which such Subsidiary agrees to be bound by the terms and provisions hereof and thereof, which shall be accompanied by appropriate organizational resolutions, other organizational documentation and legal opinions in form and substance reasonably satisfactory to Agent and its counsel. In connection therewith, Agent shall have received all documentation and other information regarding such newly formed or acquired Subsidiaries as may be required to comply with the applicable "know your customer" rules and regulations, including the USA PATRIOT Act. Each such Person delivering a Joinder Agreement (x) shall automatically become a Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (y) will grant Liens to Agent, for the benefit of Agent and the other Lenders, in any property of such Loan Party which constitutes Collateral.

(ii) Each Loan Party will cause, and will cause each other Loan Party to cause, all of its owned property (whether personal, tangible, intangible, or mixed) to be subject at all times to first priority, perfected Liens in favor of Agent for the benefit of the other Lenders to secure the Obligations in accordance with the terms and conditions of the Loan Documents, subject in any case to Permitted Liens.

(iii) Without limiting the foregoing, each Loan Party will, and will cause each such applicable Subsidiary to, execute and deliver, or cause to be executed and delivered, to Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings and other documents as Administrative Agent may reasonably request), which may be required by applicable law or which Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all in form and substance reasonably satisfactory to Agent and all at the expense of the Loan Parties.

(iv) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, Agent may (but shall not be obligated to) determine in its Permitted Discretion that the cost to the Loan Parties of granting and perfecting any Lien is disproportionate to the benefit to be realized by Agent and the other Lenders by perfecting a Lien in a given asset or group of assets included in the Collateral and, in such case, Agent shall be permitted to, without the consent of the Lenders or Required Lenders, waive any requirement of perfection of any such Lien required under the Loan Documents

5.27 Financial Covenants. Each Loan Party shall at all times comply with the Financial Covenants described on **Schedule E**.

5.28 Post-Closing Requirements. The Loan Parties shall satisfy the requirements set forth on Schedule G to this Agreement on or before the date set forth therein for each such requirement or such later date as consented to by Agent in its reasonable discretion.

5.29 Negative Covenants. No Loan Party shall, and no Loan Party shall permit any other Loan Party or its Subsidiaries to:

(a) merge, amalgamate or consolidate with another Person, divide, form any new Subsidiary or acquire any interest in any Person except: (i) the formation of any wholly-owned Subsidiary, to the extent such new Subsidiary becomes a Guarantor pursuant to Section 5.26 hereof, and (ii) any merger, amalgamation or consolidation between Loan Parties (other than Holdings); provided, that a Borrower must be the surviving entity of any such merger, amalgamation or consolidation to which it is a party;

(b) acquire any assets or Equity Interests except (i) in the ordinary course of business, (ii) acquisitions made by any Loan Party from any other Loan Party, (iii) acquisitions of cash or Permitted Investments, and (iv) Permitted Acquisitions;

(c) [reserved];

(d) sell, transfer, return, or dispose of any Collateral or other assets, except that each Loan Party or Subsidiary may (i) sell finished goods, slow-moving, obsolete and other Inventory in the ordinary course of its business, (ii) sell used, worn-out or obsolete Equipment no longer used or useful in the ordinary course of business, so long as such Equipment is not included in the Revolving Loan Borrowing Base, (iii) sell Equipment included in the Revolving Loan Borrowing Base to the extent that the proceeds of such sale are reasonably promptly applied to the purchase price of replacement Equipment, (iv) sell non-inventory assets and property in an aggregate amount not to exceed $250,000 per fiscal year, subject to Section 1.12(a), (v) use cash to purchase goods or services in the ordinary course of business or transfer cash and Permitted Investments in a manner and pursuant to transactions that are otherwise permitted under this Section 5.29, (vi) license, on a non-exclusive basis, patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business, (vii) sell or discount, in each case without recourse, accounts receivable (other than Eligible Accounts), arising in the ordinary course of business, but

only in connection with the compromise or collection thereof as otherwise permitted by the terms hereof, (viii) suffer dispositions of Collateral or other assets as a result of any involuntary loss, damage or destruction of property or any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property, (ix) lease or sublease assets in the ordinary course of business, in an aggregate amount not to exceed $250,000 at any one time, (x) grant Permitted Liens, make loans, advances or investments permitted by clause (e) below, and make dividends or distributions permitted by clause (i) below, (xi) permit the lapse of registered patents, trademarks, copyrights and other intellectual property of such Loan Party to the extent not economically desirable in the conduct of its business or abandon any patent, trademark, copyright or other intellectual property of such Loan Party in the ordinary course of business, in each case so long as any such copyrights are not material revenue generating copyrights and such lapse or abandonment is not materially adverse to the interests of Agent and the Lenders, (xii) transfer assets to any other Loan Party (other than Holdings) and (xiii) if such Subsidiary is not a Loan Party, transfer assets to any other Subsidiary that is not a Loan Party;

(e) make any loans or advances to, or investments in, any Affiliate or other Person in the form of money or other assets; other than (i) loans to and investments in the Borrowers and other Loan Parties (other than Holdings), (ii) loans and investments by any Subsidiary that is not a Loan Party in any other Subsidiary, (iii) investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business, (iv) advances made in connection with purchases of goods or services in the ordinary course of business, (v) investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of insolvency proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries, (vi) Equity Interests or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Loan Party or its Subsidiaries (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims, (vii) guarantees permitted under the definition of Permitted Indebtedness, (viii) deposits of cash made in the ordinary course of business to secure performance of operating leases, (ix) non-cash loans and advances to employees, officers, and directors of a Loan Party or any of its Subsidiaries for the purpose of purchasing Equity Interests in Holdings, so long as the proceeds of such loans or advances are used in their entirety to purchase such Equity Interests, in an aggregate amount not to exceed $250,000 at any one time, (x) loans and advances to employees and officers of a Loan Party or any of its Subsidiaries in the ordinary course of business and in an aggregate amount not to exceed $250,000 at any one time, (xi) investments of cash or Permitted Investments, (xii) investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business, (xii) investments disclosed in Section 1(f) of the Disclosure Schedule and (xiii) other than with respect to any loans or investments referred to in the immediately preceding clauses (i)-(xii), loans and investments so long as (A) no Event of Default has occurred, is continuing or would result after giving pro forma effect to the making of such loan or investment and (B) such loans or investments are for reasonably necessary business purposes and in an aggregate amount not to exceed $250,000 during the term of this Agreement;

(f) incur any Indebtedness other than the Obligations and Permitted Indebtedness;

(g) create, incur, assume or suffer to exist or permit or file any motion seeking any Lien, other than in favor of Agent to secure the Obligations, on any of its properties or assets whether now or hereafter owned, other than Permitted Liens;

(h) guaranty or otherwise become liable with respect to the obligations of any Person other than (i) the Obligations and (ii) guarantees in respect of Permitted Indebtedness;

(i) pay or declare any dividends or other distributions on any Loan Party's stock or other Equity Interests other than (i) dividends payable solely in capital stock or other Equity Interests of such Loan Party, (ii) dividends and distributions to a Loan Party other than Holdings, and (iii) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, distributions by Loan Parties and their Subsidiaries to enable Holdings to make, and Holdings may make, distributions to any parent company thereof (A) in an amount sufficient to pay franchise, excise and similar Taxes and other fees required to maintain the legal existence of the Loan Parties (or such parent company) to the extent actually used to pay such Taxes, costs and expenses, and (B) in an amount sufficient to pay out-of-pocket legal, accounting, appraisal and filing costs and other expenses in the nature of overhead (including director and manager fees and reimbursement of out-of-pocket expenses) in the ordinary course of business of the Loan Parties and directly attributable to ownership of the Loan Parties, in the case of clauses (A) and (B) in an aggregate amount not to exceed $250,000 in any fiscal year;

(j) redeem, retire, purchase or otherwise acquire, directly or indirectly, any of a Loan Party's capital stock or other Equity Interests;

(k) [reserved];

(l) liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except for (i) the liquidation or dissolution of non-operating Subsidiaries of any Loan Party with nominal assets and nominal liabilities or (ii) the liquidation or dissolution of a Loan Party (other than Holdings or any Borrower) or any of its Subsidiaries so long as all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Loan Party or Subsidiary are transferred to a Loan Party that is not liquidating or dissolving;

(m) engage, directly or indirectly, in a business other than the business which is being conducted on the date hereof or any business reasonably related, incidental or ancillary thereto, wind up its business operations or cease substantially all, or any material portion, of its normal business operations, or suffer any material disruption, interruption or discontinuance of a material portion of its normal business operations, other than to the extent permitted by clause (l) above;

(n) (i) pay any principal or other amount on any Indebtedness that is contractually subordinated to the Obligations (including the Subordinated Debt) in violation of the applicable subordination or intercreditor agreement, or (ii) optionally prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of any Loan Party or its Subsidiaries, other than the Obligations in accordance with this Agreement, or (iii) modify, or permit the modification of, any provisions of any loan documents governing Indebtedness if (A) such modification would be restricted by a subordination or intercreditor agreement to which Agent and the holders of such Indebtedness are a party or (B) such modification would be materially adverse to Agent or any Lender;[1]

(o) enter into any transaction with an Affiliate other than (i) transactions with Affiliates for the purchase or sale of Inventory or services in the ordinary course of business on an arm's length basis pursuant to terms that are no less favorable to such Loan Party or Subsidiary than the terms upon which such transactions would have been made had they been made to or with a Person that is not an Affiliate, (ii) the transactions contemplated by this Agreement, (iii) transactions permitted by clauses (a), (i) and (j) above, (iv) transactions existing on the Closing Date and described on Section 8 of the Disclosure Schedule, (v) transactions among Loan Parties not prohibited hereunder and (vi) payment of customary fees and reasonable out of pocket costs to, and indemnities for the benefit of, directors, officers and employees of Holdings, the Borrowers and their Subsidiaries in the ordinary course of business to the extent

[1] NTD: Business teams to discuss permissibility of payments of Subordinated Debt.

attributable to the ownership or operation of the Borrowers and their Subsidiaries; provided however, that nothing in this clause (vi) shall permit the payment of any management, advisory or similar fees;

(p) change its jurisdiction of organization or enter into any transaction which has the effect of changing its jurisdiction of organization except as provided for in Section 5.8;

(q) agree, consent, permit or otherwise undertake to amend or otherwise modify any of the terms or provisions of any Loan Party's Organic Documents, except for such amendments or other modifications required by applicable law or that are not materially adverse to Agent or Lenders, and then, only to the extent such amendments or other modifications are fully disclosed in writing to Agent no less than five (5) Business Days prior to being effectuated;

(r) agree, consent, permit or otherwise undertake to amend or otherwise modify any of the terms or provisions of the Subordinated Debt without the prior written consent of the Agent, or any such amendment or modification is permitted pursuant to the Subordination Agreement and then then, only to the extent such amendment or other modification is fully disclosed in writing to Agent no less than five (5) Business Days prior to being effectuated;

(s) enter into or assume any agreement prohibiting the creation or assumption of any Lien on the Collateral to secure the Obligations upon its properties or assets, whether now owned or hereafter acquired, except (i) pursuant to this Agreement and the other Loan Documents, (ii) pursuant to any document or instrument governing Indebtedness incurred pursuant to clauses (b) or (c) of the definition of Permitted Indebtedness (provided that any such restriction contained therein relates only to the asset or assets financed thereby), (iii) customary restrictions in connection with any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien), (iv) agreements that do not prohibit, restrict or impose any condition upon the ability of Agent or Lenders to exercise any right or remedy with respect to any Lien created on the Collateral to secure the Obligations pursuant to the Loan Documents, (v) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property or consignments or similar arrangements for personal property entered into in the ordinary course of business, and (vi) Liens constituting customary rights of set-off, revocation, refund or chargeback under deposit agreements or under the Uniform Commercial Code or common law of banks or other financial institutions where any Loan Party or any of its Subsidiaries maintains deposits in the ordinary course of business;

(t) create or otherwise cause or suffer to exist or become effective any encumbrance or restriction (other than any Loan Documents) of any kind on the ability of any such Person to pay or make any dividends or distributions to the Loan Parties, to pay any of the Obligations, to make loans or advances or to transfer any of its property or assets to the Loan Parties, except customary terms and conditions in respect of any Permitted Indebtedness or Permitted Liens;

(u) use any part of the proceeds of the Loans directly or indirectly, or otherwise to make any payments to a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person;

(v) repay any obligation under this Agreement using any funds sourced or derived, in whole or in part, from activities (i) in violation of Sanctions or (ii) between a Loan Party and a Sanctioned Person or Sanctioned Entity;

(w) use any part of the proceeds of the Loans directly or indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws;

(x) file any motion or application with the Bankruptcy Court with regard to actions taken outside the ordinary course of business of the Loan Parties without consulting with the Lenders and providing the Lenders two (2) Business Days' (or as soon thereafter as is practicable) notice and the opportunity to review and comment on each such motion.

5.30 Lender Calls. Each Loan Party shall participate and will cause their key management personnel to participate in meetings with the Administrative Agent and Lenders periodically during each year, which meetings shall be telephonic or virtual and held at such times as may be reasonably requested by Agent.

5.31 Employee and Labor Matters. There is (a) no unfair labor practice complaint pending or, to the knowledge of the Borrowers, threatened against any Loan Party or its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened in writing against any Loan Party or its Subsidiaries which arises out of or under any collective bargaining agreement and that could reasonably be expected to result in a Material Adverse Effect, (b) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against any Loan Party or its Subsidiaries that could reasonably be expected to result in a Material Adverse Effect, or (c) to the knowledge of the Borrowers, after due inquiry, no union representation question existing with respect to the employees of any Loan Party or its Subsidiaries and no union organizing activity taking place with respect to any of the employees of any Loan Party or its Subsidiaries which, in each case, could reasonably be expected to result in a Material Adverse Effect. None of any Loan Party or its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law. All material payments due from any Loan Party or its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of the Loan Parties, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

5.32 Holdings. Holdings shall not (a) incur any liabilities, other than (i) liabilities under the Loan Documents, (ii) Tax liabilities, (iii) corporate, administrative and operating expenses in the ordinary course of business and (iv) those activities incidental to its activities permitted pursuant to clause (c) hereof, (b) own or acquire any assets, other than (i) the Equity Interests of any other Loan Party, and (ii) cash and Permitted Investments, but only to the extent that the same are subject to a Control Agreement in favor of Agent to the extent required hereunder, (c) engage in any trade or business, other than (i) owning the Equity Interests of the Loan Parties and activities incidental thereto, (ii) acting as a Guarantor under the Loan Documents and granting to Agent, a Lien on certain Collateral, (iii) corporate and administrative functions and other activities incidental thereto (including maintaining its corporate or limited liability company existence, filing Tax reports, and paying Taxes and other customary obligations related thereto in the ordinary course of business (and contesting any Taxes), preparing reports to Governmental Authorities and to its shareholders, and holding director and shareholder meetings) including indemnification of its members or owners pursuant to its organizational documents and activities relating to its employees, directors, officers and consultants (including activities related to the establishment and implementation of stock option and other employee incentive and benefit plans and loans and advances to employees, directors and officers as permitted under this Agreement and maintaining deposit accounts holding cash and Permitted Investments in connection with the conduct of its business), (iv) the maintenance of its capital structure including the issuance of Equity Interests and entering into those agreements and arrangement incidental thereto, and (v) performing its obligations under the Loan Documents, (d) merge, amalgamate or consolidate with another Person, or (e) sell, transfer or dispose of any of its assets.

6. RELEASE, LIMITATION OF LIABILITY AND INDEMNITY.

6.1 Release. Each Borrower and each other Loan Party on behalf of itself and its successors, assigns, heirs, and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent and each Lender and any and all Participants, their successors and assigns, their Affiliates, their respective directors, officers, employees, attorneys, advisors and agents and any other Person affiliated with or representing Agent or such Lender (collectively, the "**Released Parties**") of and from any and all liability, including all actual or potential claims, demands or causes of action of any kind, nature or description whatsoever, whether arising in law or equity or under contract or tort or under any state or federal law or otherwise which the Borrowers or any other Loan Party or any of their successors, assigns, or other legal representatives has had, now has or has made claim to have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever, including any liability arising from acts or omissions pertaining to the transactions contemplated by this Agreement and the other Loan Documents, whether based on errors of judgment or mistake of law or fact, from the beginning of time to and including the Closing Date, whether such claims, demands and causes of action are matured or known or unknown (except any liability arising solely as the result of the gross negligence or willful misconduct of such Released Parties, as finally determined by a court of competent jurisdiction). Notwithstanding any provision in this Agreement to the contrary, this Section 6.1 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Loans. Such release is made on the date hereof and remade upon the date of making of any Loan or any other extension of credit hereunder.

6.2 Limitation of Liability. In no circumstance will any of the Released Parties be liable for lost profits or other special, punitive or consequential damages absent gross negligence, willful misconduct or bad faith made by or on behalf of such Released Party. Notwithstanding any provision in this Agreement to the contrary, this Section 6.2 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

6.3 Indemnity/Currency Indemnity.

(a) Each Loan Party hereby agrees to indemnify each Released Party and hold it harmless from and against any and all claims, debts, liabilities, losses, demands, obligations, actions, causes of action, fines, penalties, reasonable and documented out-of-pocket costs and expenses (including attorneys' fees and consultants' fees), of every nature, character and description (including, without limitation, natural resources damages, property damage and claims for personal injury), which such Released Party may sustain or incur based upon or arising out of any of the transactions contemplated by this Agreement or any other Loan Documents or any of the Obligations, or any other matter, including any breach of any covenant or representation or warranty relating to any Environmental Law or the release or presence of Hazardous Materials on any Collateral, cause or thing whatsoever occurred, done, omitted or suffered to be done by Agent or any Lender relating to any Loan Party or the Obligations (except any such amounts sustained or incurred solely as the result of the gross negligence, bad faith, or willful misconduct of such Released Party, as finally determined by a court of competent jurisdiction). Notwithstanding any provision in this Agreement to the contrary, this Section 6.3 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations. This Section 6.3 shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(b) If, for the purposes of obtaining or enforcing judgment in any court in any jurisdiction with respect to this Agreement or any other Loan Document, it becomes necessary to convert into the currency of such jurisdiction (the "**Judgment Currency**") any amount due under this Agreement or under any other Loan Document in any currency other than the Judgment Currency (the "**Currency**

Due") (or for the purposes of Section 1.11(b)), then, to the extent permitted by law, conversion shall be made at the exchange rate reasonably selected by Agent on the Business Day before the day on which judgment is given (or for the purposes of Section 1.11(b), on the Business Day on which the payment was received by Agent or Lenders). In the event that there is a change in such exchange rate between the Business Day before the day on which the judgment is given and the date of receipt by Agent or Lenders of the amount due, each Loan Party shall to the extent permitted by law, on the date of receipt by Agent or such Lenders, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any as may be necessary to ensure that the amount received by Agent or such Lenders on such date is the amount in the Judgment Currency which (when converted at such exchange rate on the date of receipt by Agent or Lenders in accordance with normal banking procedures in the relevant jurisdiction) is the amount then due under this Agreement or such other Loan Document in the Currency Due. If the amount of the Currency Due (including any Currency Due for purposes of Section 1.11(b)) which Agent or such Lenders are so able to purchase is less than the amount of the Currency Due (including any Currency Due for purposes of Section 1.11(b)) originally due to it, each Loan Party shall to the extent permitted by law jointly and severally indemnify and save Agent or such Lenders harmless from and against loss or damage arising as a result of such deficiency except to the extent of liabilities resulting from the gross negligence, bad faith, or willful misconduct of Agent or such Lenders or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein.

7. EVENTS OF DEFAULT AND REMEDIES.

7.1 Events of Default. The occurrence of any of the following events shall constitute an "**Event of Default**":

(a) if any warranty, representation, statement, report or certificate made or delivered to Agent or any Lender by or on behalf of any Loan Party is untrue or misleading in any material respect when made or deemed made;

(b) if any Loan Party fails to pay, when due and payable, (i) any principal payment of the Obligations whether at the due date thereof or at a date fixed for prepayment or otherwise or (ii) any interest payment or any other Obligations whether at the due date thereof or at a date fixed for prepayment or otherwise, and such failure is not remedied within three (3) Business Days;

(c) (i) if any Loan Party defaults in the due observance or performance of any covenant, condition or agreement contained in (i) Section 4.1, 4.7, 4.8, 5.3, or 5.17 of this Agreement, and in each case such failure shall continue for five (5) days or (ii) Section 3.2, 5.1 (limited to the second sentence of Section 5.1), 5.2 (limited to the last sentence of Section 5.2), 5.9, 5.13, 5.14, 5.15, 5.18, 5.23, 5.26, 5.27, 5.28, 5.29, 5.30 or 5.32 of this Agreement;

(ii) if any Loan Party defaults in the due observance or performance of any covenant, condition or agreement contained in any provision of this Agreement or any other Loan Document and not addressed in Sections 7.1(a), (b) or (c)(i), and such default is not remedied within thirty (30) days;

(d) if one or more judgments aggregating in excess of $1,000,000 is obtained against any Loan Party or any of its Subsidiaries which is not covered by independent third-party insurance and remains unstayed for more than sixty (60) days or is enforced;

(e) any default with respect to any Indebtedness (other than the Obligations) of any Loan Party or any of its Subsidiaries that is in an aggregate amount in excess of $1,000,000 if (i) such

default shall consist of the failure to pay such Indebtedness when due, whether by acceleration or otherwise, and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument evidencing or governing such Indebtedness or (ii) the effect of such default is to permit the holder, after the applicable grace period, if any, specified in the agreement or instrument evidencing or governing such Indebtedness, with or without notice or lapse of time or both, to accelerate the maturity of any such Indebtedness or to cause such Indebtedness to become due prior to the stated maturity thereof (without regard to the existence of any subordination or intercreditor agreements);

(f) the wind-up, dissolution (except as permitted under Section 5.29), termination of existence, insolvency or business failure or suspension or cessation of business of any Loan Party or any of its Subsidiaries;

(g) if any Loan Party or any of its Subsidiaries shall apply for or consent to the appointment of a receiver, interim receiver, receiver and manager, monitor, trustee, custodian, or liquidator of it or any of its properties, make a general assignment for the benefit of creditors, be adjudicated bankrupt or insolvent or, other than with respect to the Chapter 11 Cases, be the subject of any order under the Bankruptcy Code, any Debtor Relief Law or under any bankruptcy or insolvency law of a foreign jurisdiction, or, other than with respect to the Chapter 11 Cases, file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or, other than with respect to the Chapter 11 Cases, an answer admitting the material allegations of a petition filed against it in any proceeding under any such law, or take or permit to be taken any action in furtherance of or for the purpose of effecting any of the foregoing;

(h) the commencement of an involuntary case or other involuntary proceeding against any Loan Party or any of its Subsidiaries seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar applicable law, including any Debtor Relief Law or seeking the appointment of a trustee, receiver, interim receiver, receiver and manager, monitor, liquidator, custodian or other similar official of it or any substantial part of its property and the same is not dismissed within sixty (60) days, or, other than with respect to the Chapter 11 Cases, if an order for relief is entered against any Loan Party under any bankruptcy, insolvency or other similar applicable law, including any Debtor Relief Law as now or hereafter in effect, it being understood that Lenders shall have no obligation to make Loans to the Borrowers during such sixty (60) day period;

(i) the actual or attempted revocation or termination of, or limitation or denial of liability under, any guaranty of any of the Obligations, or any security document securing any of the Obligations, by any Loan Party;

(j) [reserved];

(k) if there is any actual indictment or conviction of any Loan Party or any of its Subsidiaries under any criminal statute in each case related to a felony committed in the direct conduct of such Loan Party's or such Subsidiary's business;

(l) if any Change of Control occurs;

(m) [reserved];

(n) if any Lien purported to be created by any Loan Document shall cease to be a valid perfected first priority Lien (subject only to any priority accorded by law or agreement to Permitted Liens or as otherwise permitted by the Loan Documents) on any material portion of the Collateral, or any Loan

Party shall assert in writing that any Lien purported to be created by any Loan Document is not a valid perfected first priority lien (subject only to any priority accorded by law or agreement to Permitted Liens or as otherwise permitted by the Loan Documents) on the assets or properties purported to be covered thereby;

(o) [reserved];

(p) if any of the Loan Documents or Lien thereunder shall cease to be in full force and effect (other than as a result of the discharge thereof in accordance with the terms thereof or by written agreement of all parties thereto);

(q) [reserved];

(r) [reserved];

(s) (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party or any Subsidiary under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of $500,000, (ii) the existence of any Lien under Section 430(k) or Section 6321 of the Code or Section 303(k) or Section 4068 of ERISA on any assets of a Loan Party, or (iii) a Loan Party or, to the knowledge of a Loan Party, any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of $100,000; or

(t) if any Loan Party or any of its Subsidiaries is enjoined, restrained or in any way prevented by any Governmental Authority from conducting any material part of its business;

then, upon an Event of Default, subject to the Orders, and at any time thereafter during the continuance of such Event of Default, the Agent, at the request of the Required Lenders (or automatically upon the occurrence of any Event of Default under Section 7.1(g) or Section 7.1(h)), shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitments, (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued payments and all other liabilities of the Borrowers accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrowers, anything contained herein or in any other Loan Document to the contrary notwithstanding, and (iii) exercise on behalf of itself and the other Lenders all rights and remedies available to it and the other Lenders under the Loan Documents or applicable law. Subject to the terms hereof and of the other Loan Documents, the Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and the Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

7.2 Remedies with Respect to Lending Commitments/Acceleration/Etc. Upon the occurrence and during the continuance of an Event of Default, Agent may, in Agent's sole discretion, and Agent shall at the direction of the Required Lenders (i) terminate all or any portion of its commitment to lend to or extend credit to the Borrowers under this Agreement and/or any other Loan Document without prior notice to any Loan Party, and/or (ii) demand payment in full of all or any portion of the Obligations (whether or not payable on demand prior to such Event of Default), together with the Prepayment Fee as defined in the Fee Letter, and/or (iii) take any and all other and further actions and avail itself of any and

all rights and remedies available to Agent under this Agreement, any other Loan Document, under law and/or in equity. Notwithstanding the foregoing sentence, upon the occurrence of any Event of Default described in Section 7.1(g) or Section 7.1(h), without notice, demand or other action by Agent or any Lender all of the Obligations (including without limitation the Prepayment Fee) shall immediately become due and payable whether or not payable on demand prior to such Event of Default.

7.3 Remedies with Respect to Collateral. Without limiting any rights or remedies Agent may have pursuant to this Agreement, the other Loan Documents, under applicable law or otherwise, upon the occurrence and during the continuance of an Event of Default:

(a) **Any and All Remedies.** Agent may take any and all actions and avail itself of any and all rights and remedies available to Agent under this Agreement, any other Loan Document, under law or in equity, and the rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by applicable law or otherwise.

(b) **Collections; Modifications of Terms.** Agent may and at the direction of the Required Lenders shall (i) notify all appropriate parties that the Collateral, or any part thereof, has been assigned to Agent; (ii) demand, sue for, collect and give receipts for and take all necessary or desirable steps to collect any Collateral or Proceeds in its or any Loan Party's name, and apply any such collections against the Obligations as Agent may elect; (iii) take control of any Collateral and any cash and non-cash Proceeds of any Collateral; (iv) enforce, compromise, extend, renew settle or discharge any rights or benefits of each Loan Party with respect to or in and to any Collateral, or deal with the Collateral as Agent may deem advisable; and (v) make any compromises, exchanges, substitutions or surrenders as Agent deems necessary or proper in its reasonable discretion, including extending the time of payment, permitting payment in installments, or otherwise modifying the terms or rights relating to any of the Collateral, all of which may be effected without notice to, consent of, or any other action of any Loan Party and without otherwise discharging or affecting the Obligations, the Collateral or the security interests granted to Agent under this Agreement or any other Loan Document.

(c) **Insurance.** Agent may file proofs of loss and claim with respect to any of the Collateral with the appropriate insurer, and may endorse in its own and each Loan Party's name any checks or drafts constituting Proceeds of insurance. Any Proceeds of insurance received by Agent may be applied by Agent against payment of all or any portion of the Obligations as Agent may elect in its reasonable discretion.

(d) **Possession and Assembly of Collateral**. Agent may take possession of the Collateral and/or without removal render each Loan Party's Equipment unusable. Upon Agent's request, each Loan Party shall assemble the Collateral and make it available to Agent at a place or places to be designated by Agent.

(e) **Set-off; Sharing of Payments**.

(i) Agent, each Lender and each Affiliate (including each branch office thereof) of any of them (each such Person who is authorized to set off at the applicable time, a "**Setting Off Person**") is hereby authorized, without notice or demand (each of which is hereby waived by each Loan Party), at any time and from time to time upon the occurrence and during the continuance of any Event of Default and to the fullest extent permitted by applicable requirements of law, to set off and apply any and all deposits (whether general or special, time or demand, provisional or final) at any time held and other Indebtedness, claims or other obligations at any time owing by the Setting Off Person to or for the credit or the account of any Loan Party against any Obligation of any Loan Party now or hereafter existing, whether or not any demand was made under any Loan Document with respect to such Obligation of the Setting Off

Person or its Affiliates; provided, that if any Defaulting Lender shall exercise any such right of setoff, (A) all amounts so set off shall be paid over promptly to Agent for further application in accordance with the provisions of Sections 4.2 and 10.22 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Agent and the applicable Lenders, and (B) the Defaulting Lender shall provide promptly to Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Agent and each applicable Lender agrees promptly to notify the Borrowers and Agent after any such setoff and application; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights under this Section 7.3(e) are in addition to any other rights and remedies (including other rights of setoff) that Agent, the Lenders and their Affiliates may have.

(ii) If any Lender, directly or through an Affiliate or branch office thereof, obtains any payment of any Obligation of any Loan Party (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral or "proceeds" (as defined under the applicable UCC) of Collateral) other than pursuant to Section 4.2 and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, Agent in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Lenders such participations in their Obligations as necessary for such Lender to share such excess payment with such Lenders to ensure such payment is applied as though it had been received by Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of the Borrowers, applied to repay the Obligations in accordance herewith); provided, however, that (A) if such payment is rescinded or otherwise recovered from such Lender in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender without interest and (B) such Lender shall, to the fullest extent permitted by applicable requirements of law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of the applicable Loan Party in the amount of such participation.

(f) **Disposition of Collateral.**

(i) *Sale, Lease, etc. of Collateral*. Agent may, without demand, advertising or notice, all of which each Loan Party hereby waives (except as the same may be required by the UCC or other applicable law and is not waivable under the UCC or such other applicable law), at any time or times in one or more public or private sales or other dispositions, for cash, on credit or otherwise, at such prices and upon such terms as determined by Agent (provided such price and terms are commercially reasonable within the meaning of the UCC to the extent such sale or other disposition is subject to the UCC requirements that such sale or other disposition must be commercially reasonable) (A) sell, lease, license or otherwise dispose of any and all Collateral, and/or (B) deliver and grant options to a third party to purchase, lease, license or otherwise dispose of any and all Collateral. Agent may sell, lease, license or otherwise dispose of any Collateral in its then-present condition or following any preparation or processing deemed necessary by Agent in its reasonable discretion. Agent may be the purchaser at any such public or private sale or other disposition of Collateral, and in such case Agent may make payment of all or any portion of the purchase price therefor by the application of all or any portion of the Obligations due to Agent and Lenders to the purchase price payable in connection with such sale or disposition. Agent may, if it deems it reasonable, postpone or adjourn any sale or other disposition of any Collateral from time to time by an announcement at the time and place of the sale or disposition to be so postponed or adjourned without being required to give a new notice of sale or disposition; provided, however, that Agent shall provide the applicable Loan Party with written notice of the time and place of such postponed or adjourned sale or disposition. Each Loan Party hereby acknowledges and agrees that Agent's compliance with any requirements of applicable law in connection with a sale, lease, license or other disposition of Collateral will not be considered to adversely affect the commercial reasonableness of any sale, lease, license or other disposition of such Collateral. Agent is hereby granted a license or other right to use, without liability for

royalties or any other charge, each Loan Party's Intellectual Property, whether owned by such Loan Party or with respect to which such Loan Party has rights under a license, sublicense or other agreement, as it pertains to the Collateral.

(ii) *Deficiency*. Each Loan Party shall remain liable for all amounts of the Obligations remaining unpaid as a result of any deficiency of the Proceeds of the sale, lease, license or other disposition of Collateral after such Proceeds are applied to the Obligations as provided in this Agreement.

(iii) *Warranties; Sales on Credit*. Agent may sell, lease, license or otherwise dispose of the Collateral without giving any warranties and may specifically disclaim any and all warranties, including but not limited to warranties of title, possession, merchantability and fitness. Each Loan Party hereby acknowledges and agrees that Agent's disclaimer of any and all warranties in connection with a sale, lease, license or other disposition of Collateral will not be considered to adversely affect the commercial reasonableness of any such disposition of the Collateral. If Agent sells, leases, licenses or otherwise disposes of any of the Collateral on credit, the Borrowers will be credited only with payments actually made in cash by the recipient of such Collateral and received by Agent and applied to the Obligations. If any Person fails to pay for Collateral acquired pursuant to this Section 7.3(f) on credit, Agent may re-offer the Collateral for sale, lease, license or other disposition.

(g) **Investment Property; Voting and Other Rights; Irrevocable Proxy.**

(i) All rights of each Loan Party to exercise any of the voting and other consensual rights which it would otherwise be entitled to exercise in accordance with the terms hereof with respect to any Investment Property, and to receive any dividends, payments and other distributions which it would otherwise be authorized to receive and retain in accordance with the terms hereof with respect to any Investment Property, shall immediately, at the election of Agent (without requiring any notice) cease, and all such rights shall thereupon become vested solely in Agent, and Agent (personally or through an agent) shall thereupon be solely authorized and empowered, without notice (unless otherwise specified), to (a) transfer and register in its name, or in the name of its nominee, the whole or any part of the Investment Property, it being acknowledged by each Loan Party that any such transfer and registration may be effected by Agent through its irrevocable appointment as attorney-in-fact pursuant to Section 7.3(g)(ii) and Section 4.4 of this Agreement, (b) exchange certificates and/or instruments representing or evidencing Investment Property for certificates and/or instruments of smaller or larger denominations, (c) upon written notice to the Borrowers, exercise the voting and all other rights as a holder with respect to all or any portion of the Investment Property (including, without limitation, all economic rights, all control rights, authority and powers, and all status rights of each Loan Party as a member or as a shareholder (as applicable) of the Issuer), (d) collect and receive all dividends and other payments and distributions made thereon, (e) notify the parties obligated on any Investment Property to make payment to Agent of any amounts due or to become due thereunder, (f) endorse instruments in the name of each Loan Party to allow collection of any Investment Property, (g) enforce collection of any of the Investment Property by suit or otherwise, and surrender, release, or exchange all or any part thereof, or compromise or renew for any period (whether or not longer than the original period) any liabilities of any nature of any Person with respect thereto, (h) consummate any sales of Investment Property or exercise any other rights as set forth in Section 7.3(f) hereof, (i) otherwise act with respect to the Investment Property as though Agent was the outright owner thereof, and (j) exercise any other rights or remedies Agent may have under the UCC, other applicable law, or otherwise.

(ii) EACH LOAN PARTY HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS AGENT AS ITS PROXY AND ATTORNEY-IN-FACT FOR SUCH LOAN PARTY WITH RESPECT TO ALL OF EACH SUCH LOAN PARTY'S INVESTMENT PROPERTY WITH THE RIGHT, UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF

DEFAULT, WITHOUT NOTICE, TO TAKE ANY OF THE FOLLOWING ACTIONS: (A) TRANSFER AND REGISTER IN AGENT'S NAME, OR IN THE NAME OF ITS NOMINEE, THE WHOLE OR ANY PART OF THE INVESTMENT PROPERTY, (B) VOTE THE PLEDGED EQUITY, WITH FULL POWER OF SUBSTITUTION TO DO SO, (C) RECEIVE AND COLLECT ANY DIVIDEND OR ANY OTHER PAYMENT OR DISTRIBUTION IN RESPECT OF, OR IN EXCHANGE FOR, THE INVESTMENT PROPERTY OR ANY PORTION THEREOF, TO GIVE FULL DISCHARGE FOR THE SAME AND TO INDORSE ANY INSTRUMENT MADE PAYABLE TO ANY LOAN PARTY FOR THE SAME, (D) EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES, AND REMEDIES (INCLUDING ALL ECONOMIC RIGHTS, ALL CONTROL RIGHTS, AUTHORITY AND POWERS, AND ALL STATUS RIGHTS OF EACH LOAN PARTY AS A MEMBER OR AS A SHAREHOLDER (AS APPLICABLE) OF THE ISSUER) TO WHICH A HOLDER OF THE PLEDGED COLLATERAL WOULD BE ENTITLED (INCLUDING, WITH RESPECT TO THE PLEDGED EQUITY, GIVING OR WITHHOLDING WRITTEN CONSENTS OF MEMBERS OR SHAREHOLDERS, CALLING SPECIAL MEETINGS OF MEMBERS OR SHAREHOLDERS, AND VOTING AT SUCH MEETINGS), AND (E) TAKE ANY ACTION AND TO EXECUTE ANY INSTRUMENT WHICH AGENT MAY DEEM NECESSARY OR ADVISABLE TO ACCOMPLISH THE PURPOSES OF THIS AGREEMENT. THE APPOINTMENT OF AGENT AS PROXY AND ATTORNEY-IN-FACT IS COUPLED WITH AN INTEREST AND SHALL BE VALID AND IRREVOCABLE UNTIL (X) ALL OF THE OBLIGATIONS HAVE BEEN INDEFEASIBLY PAID IN FULL IN CASH IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN UNASSERTED CONTINGENT INDEMNIFICATION AND UNASSERTED EXPENSE REIMBURSEMENT OBLIGATIONS IN EACH CASE NOT YET DUE AND PAYABLE), (Y) AGENT HAS NO FURTHER OBLIGATIONS UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, AND (Z) THE COMMITMENTS UNDER THIS AGREEMENT HAVE EXPIRED OR HAVE BEEN TERMINATED (IT BEING UNDERSTOOD AND AGREED THAT SUCH OBLIGATIONS WILL BE AUTOMATICALLY REINSTATED IF AT ANY TIME PAYMENT, IN WHOLE OR IN PART, OF ANY OF THE OBLIGATIONS IS RESCINDED OR MUST OTHERWISE BE RESTORED OR RETURNED BY AGENT FOR ANY REASON WHATSOEVER, INCLUDING, WITHOUT LIMITATION, AS A PREFERENCE, FRAUDULENT CONVEYANCE, OR OTHERWISE UNDER ANY BANKRUPTCY, INSOLVENCY, OR SIMILAR LAW, ALL AS THOUGH SUCH PAYMENT HAD NOT BEEN MADE; IT BEING FURTHER UNDERSTOOD THAT IN THE EVENT PAYMENT OF ALL OR ANY PART OF THE OBLIGATIONS IS RESCINDED OR MUST BE RESTORED OR RETURNED, ALL REASONABLE OUT-OF-POCKET COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ALL REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS) INCURRED BY AGENT IN DEFENDING AND ENFORCING SUCH REINSTATEMENT SHALL HEREBY BE DEEMED TO BE INCLUDED AS A PART OF THE OBLIGATIONS). SUCH APPOINTMENT OF AGENT AS PROXY AND AS ATTORNEY-IN-FACT SHALL BE VALID AND IRREVOCABLE AS PROVIDED HEREIN NOTWITHSTANDING ANY LIMITATIONS TO THE CONTRARY SET FORTH IN ANY ORGANIC DOCUMENTS OF ANY LOAN PARTY, ANY ISSUER, OR OTHERWISE.

(iii) In order to further effect the foregoing transfer of rights in favor of Agent, upon the occurrence and during the continuance of an Event of Default, each Loan Party hereby authorizes and instructs each Issuer of Investment Property pledged by such Loan Party to comply with any instruction received by such Issuer from Agent without any other or further instruction from such Loan Party, and each Loan Party acknowledges and agrees that each Issuer shall be fully protected in so complying, and to pay any dividends, distributions, or other payments with respect to any of the Investment Property directly to Agent.

(iv) Upon exercise of the proxy set forth herein, all prior proxies given by any Loan Party with respect to any of the Pledged Equity or other Investment Property, as applicable (other

than to Agent), are hereby revoked, and no subsequent proxies (other than to Agent) will be given with respect to any of the Pledged Equity or any of the other Investment Property, as applicable, unless Agent otherwise subsequently agrees in writing. Agent, as proxy, will be empowered and may exercise the irrevocable proxy to vote the Pledged Equity and/or the other Investment Property at any and all times during the existence of an Event of Default, including, without limitation, at any meeting of shareholders or members, as the case may be, however called, and at any adjournment thereof, or in any action by written consent, and may waive any notice otherwise required in connection therewith. To the fullest extent permitted by applicable law, Agent shall have no agency, fiduciary, or other implied duties to any Loan Party, any Issuer, or any other Person when acting in its capacity as such proxy or attorney-in-fact. Each Loan Party hereby waives and releases any claims that it may otherwise have against Agent with respect to any breach, or alleged breach, of any such agency, fiduciary, or other duty.

(v) Any transfer to Agent or its nominee, or registration in the name of Agent or its nominee, of the whole or any part of the Investment Property shall be made solely for purposes of effectuating voting or other consensual rights with respect to the Investment Property in accordance with the terms of this Agreement and is not intended to effectuate any transfer of ownership of any of the Investment Property. Notwithstanding the delivery by Agent of any instruction to any Issuer or any exercise by Agent of an irrevocable proxy or otherwise, Agent shall not be deemed the owner of, or assume any obligations or any liabilities whatsoever of the owner or holder of, any Investment Property unless and until Agent expressly accepts such obligations in a duly authorized and executed writing and agrees in writing to become bound by the applicable Organic Documents or otherwise becomes the owner thereof under applicable law (including through a sale as described in Section 7.3(f) hereof). The execution and delivery of this Agreement shall not subject Agent to, or transfer or pass to Agent, or in any way affect or modify, the liability of any Loan Party under the Organic Documents of any Issuer or any related agreements, documents, or instruments or otherwise. In no event shall the execution and delivery of this Agreement by Agent, or the exercise by Agent of any rights hereunder or assigned hereby, constitute an assumption of any liability or obligation whatsoever of any Loan Party to, under, or in connection with any of the Organic Documents of any Issuer or any related agreements, documents, or instruments or otherwise.

(h) **Election of Remedies**. Agent, acting upon the instructions of the Required Lenders, shall have the right to determine which rights, security, Liens and/or remedies Agent may at any time pursue, foreclose upon, relinquish, subordinate, modify or take any other action with respect to, without in any way impairing, modifying or affecting any of Agent's other rights, security, Liens or remedies with respect to such property, or any of Agent's rights or remedies under this Agreement or any other Loan Document.

(i) **Agent's Obligations**. Each Loan Party agrees that Agent shall not have any obligation to preserve rights to any Collateral against prior parties or to marshal any Collateral of any kind for the benefit of any other creditor of any Loan Party or any other Person. Agent shall not be responsible to any Loan Party or any other Person for loss or damage resulting from Agent's failure to enforce its Liens or collect any Collateral or Proceeds or any monies due or to become due under the Obligations or any other liability or obligation of any Loan Party to Agent.

(j) **Waiver of Rights by Loan Parties.** Except as otherwise expressly provided for in this Agreement or by non-waivable applicable law, each Loan Party waives: (i) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Agent on which any Loan Party may in any way be liable, and hereby ratifies and confirms whatever Agent may do in this regard, (ii) all rights to notice and a hearing prior to Agent's taking possession or control of, or to Agent's replevy, attachment or levy upon, the Collateral or any bond or

security which might be required by any court prior to allowing Agent to exercise any of its remedies and (iii) the benefit of all valuation, appraisal, marshalling and exemption laws.

8. LOAN GUARANTY.

8.1 Guaranty. Each Loan Party hereby agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Agent and the Lenders, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, all of the Obligations and all reasonable and documented costs and expenses, including all court costs and reasonable, documented and out-of-pocket attorneys' and paralegals' fees and expenses paid or incurred by Agent or any Lender in endeavoring to collect all or any part of the Obligations from, or in prosecuting any action against, the Borrowers or any other Loan Party of all or any part of the Obligations (and such costs and expenses paid or incurred shall be deemed to be included in the Obligations). Each Loan Party further agrees that the Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any branch or Affiliate of Agent or any Lender that extended any portion of the Obligations.

8.2 Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Party waives any right to require Agent or any Lender to sue or otherwise take action against the Borrowers, any other Loan Party, or any other Person obligated for all or any part of the Obligations, or otherwise to enforce its payment against any Collateral securing all or any part of the Obligations.

8.3 No Discharge or Diminishment of Loan Guaranty.

(a) Except as otherwise expressly provided for herein, the obligations of each Loan Party hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of all of the applicable Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of the applicable Obligations, by operation of law or otherwise; (ii) any change in the corporate or other company existence, structure or ownership of the Borrowers or any other Loan Party; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrowers or any other Loan Party, or their assets or any resulting release or discharge of any obligation of any Borrower or any other Loan Party; or (iv) the existence of any claim, setoff or other rights which any Loan Party may have at any time against the Borrowers, any other Loan Party, Agent, any Lender or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Loan Party hereunder are not subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by the Borrowers or any other Loan Party, of the Obligations or any part thereof.

(c) Further, the obligations of any Loan Party hereunder are not discharged or impaired or otherwise affected by: (i) the failure of Agent or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for all or any part of the Obligations or all or any part of any obligations of any Loan Party; (iv) any action or failure to act by Agent or any Lender with respect to any Collateral; or (v) any default, failure or delay, willful or otherwise, in the payment or

performance of any of the Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of all of the Obligations).

8.4 Defenses Waived. To the fullest extent permitted by applicable law, each Loan Party hereby waives any defense based on or arising out of any defense of any Loan Party or the unenforceability of all or any part of the Obligations from any cause, or the cessation from any cause of the liability of any Loan Party, other than the indefeasible payment in full in cash of all of the Obligations. Without limiting the generality of the foregoing, each Loan Party irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against the Borrowers, any other Loan Party, or any other Person. Each Loan Party confirms that it is not a surety under any federal or state law and shall not raise any such law as a defense to its obligations hereunder. Agent may, at its election, foreclose and/or sell on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any Collateral, compromise or adjust any part of the Obligations, make any other accommodation with the Borrowers or any other Loan Party or exercise any other right or remedy available to it against the Borrowers or any other Loan Party, without affecting or impairing in any way the liability of any Loan Party under this Loan Guaranty except to the extent the applicable Obligations have been fully and indefeasibly paid in cash. To the fullest extent permitted by applicable law, each Loan Party waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Party against the Borrowers or any other Loan Party or any security. Without limiting anything herein, to the fullest extent permitted by applicable law, each Loan Party hereby further waives:

(i) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document, including any increase in the Obligations resulting from the extension of additional credit;

(iii) any taking, exchange, release or non-perfection of any Lien in and to any Collateral, or any taking, release, amendment, waiver, supplement, restatements, extension, novation, renewal, replacements, or continuation of, or consent to departure from any other guaranty, for all or any of the Obligations;

(iv) the existence of any claim, set-off, defense or other right that any Loan Party may have at any time against any Person, including Agent or any Lender;

(v) any defense, set-off, counterclaim or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity or enforceability of the Obligations or any security therefor; and

(vi) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

8.5 Rights of Subrogation. No Loan Party will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification that it has against the Borrowers or any other Loan Party, or any Collateral, until the Termination Date.

8.6 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of the Borrowers or any other Person, each Loan Party's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not Agent or any Lender is in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrowers, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Obligations shall nonetheless be payable by the Loan Parties forthwith on demand by Agent. This Section 8.6 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

8.7 Information. Each Loan Party assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that each Loan Party assumes and incurs under this Loan Guaranty, and agrees that neither Agent nor any Lender shall have any duty to advise any Loan Party of information known to it regarding those circumstances or risks.

8.8 Termination. To the maximum extent permitted by law, each Loan Party hereby waives any right to revoke this Loan Guaranty as to future Obligations. If such a revocation is effective notwithstanding the foregoing waiver, each Loan Party acknowledges and agrees that (a) no such revocation shall be effective until written notice thereof has been received by Agent, (b) no such revocation shall apply to any Obligations in existence on the date of receipt by Agent of such written notice (including any subsequent continuation, extension, or renewal thereof, or change in the interest rate, payment terms, or other terms and conditions thereof), (c) no such revocation shall apply to any Obligations made or created after such date to the extent made or created pursuant to a legally binding commitment of any Lender, (d) no payment by the Borrowers any other Loan Party, or from any other source, prior to the date of Agent's receipt of written notice of such revocation shall reduce the maximum obligation of any Loan Party hereunder, and (e) any payment, by the Borrowers or from any source other than a Loan Party which has made such a revocation, made subsequent to the date of such revocation, shall first be applied to that portion of the Obligations as to which the revocation is effective and which are not, therefore, guarantied hereunder, and to the extent so applied shall not reduce the maximum obligation of any Loan Party hereunder.

8.9 Maximum Liability. The provisions of this Loan Guaranty are severable, and in any action or proceeding involving any federal or state corporate law or other law governing business entities, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Loan Party under this Loan Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Loan Party's liability under this Loan Guaranty, then, notwithstanding any other provision of this Loan Guaranty to the contrary, the amount of such liability shall, without any further action by the Loan Parties or Agent or Lenders, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Loan Party's "**Maximum Liability**"). This Section with respect to the Maximum Liability of each Loan Party is intended solely to preserve the rights of Agent and Lenders to the maximum extent not subject to avoidance under applicable law, and no Loan Party nor any other Person shall have any right or claim under this Section with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Loan Party hereunder shall not be rendered voidable under applicable law. Each Loan Party agrees that the Obligations may at any time and from time to time exceed the Maximum Liability of each Loan

Party without impairing this Loan Guaranty or affecting the rights and remedies of Lender hereunder; provided, that nothing in this sentence shall be construed to increase any Loan Party's obligations hereunder beyond its Maximum Liability.

8.10 Contribution. In the event any Loan Party shall make any payment or payments under this Loan Guaranty or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations under this Loan Guaranty (such Loan Party a "**Paying Guarantor**"), each other Loan Party (each a "**Non-Paying Guarantor**") shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor's "Applicable Percentage" of such payment or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Section 8.10, each Non-Paying Guarantor's "Applicable Percentage" with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (i) such Non-Paying Guarantor's Maximum Liability as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor's Maximum Liability has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from the Borrowers after the date hereof (whether by loan, capital infusion or by other means) to (ii) the aggregate Maximum Liability of all Loan Parties hereunder (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Loan Party, the aggregate amount of all monies received by such Loan Parties from the Borrowers after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Loan Party's several liability for the entire amount of the applicable Obligations (up to such Loan Party's Maximum Liability). Each of the Loan Parties covenants and agrees that its right to receive any contribution under this Loan Guaranty from a Non-Paying Guarantor shall be subordinate and junior in right of payment to the payment in full in cash of all of the applicable Obligations. This provision is for the benefit of Agent, the Lenders and the Loan Parties and may be enforced by any one, or more, or all of them in accordance with the terms hereof.

8.11 Liability Cumulative. The liability of each Loan Party under this Section 8 is in addition to and shall be cumulative with all liabilities of each Loan Party to Agent and each Lender under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

9. PAYMENTS FREE OF TAXES; OBLIGATION TO WITHHOLD; PAYMENTS ON ACCOUNT OF TAXES.

(a) Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall to the extent permitted by applicable laws be made free and clear of and without deduction or withholding for any Taxes.

(b) If any Loan Party shall be required by applicable law to withhold or deduct any Taxes from any payment (as determined by such Loan Party or other applicable withholding agent), then (i) such Loan Party (or other applicable withholding agent) shall withhold or make such deductions as are required by applicable law, (ii) such Loan Party (or other applicable withholding agent) shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the applicable law, and (iii) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the Loan Parties shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made. Upon request by Agent or other Recipient, the Borrowers shall deliver to Agent or such other Recipient, as the case may be, the original or a certified copy of a receipt

issued by such Governmental Authority evidencing such payment of Indemnified Taxes, a copy of any return required by applicable law to report such payment or other evidence of such payment reasonably satisfactory to Agent or such other Recipient, as the case may be.

(c) Without limiting the provisions of subsections (a) and (b) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(d) Without limiting the provisions of subsections (a) through (c) above, each Loan Party shall, and does hereby, on a joint and several basis indemnify Agent and each other Recipient (and their respective directors, officers, employees, affiliates and agents) and shall make payment in respect thereof within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes and Other Taxes (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid or incurred by Agent or any other Recipient on account of, or in connection with any Loan Document or a breach by a Loan Party thereof, and any penalties, interest and related reasonable out-of-pocket expenses and losses arising therefrom or with respect thereto (including the fees, charges and disbursements of any external counsel or other tax advisor for Agent or any other Recipient (or their respective directors, officers, employees, affiliates, and agents)), whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to the Borrowers shall be conclusive absent manifest error. Notwithstanding any provision in this Agreement to the contrary, this Section 9 shall remain operative even after the Termination Date and shall survive the payment in full of all of the Obligations.

(e) If Agent, any Lender or any Participant is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document, Agent and each Lender, as applicable, shall deliver to the Borrowers and Agent and each such Participant shall deliver to such Lender granting the participation, at the time or times prescribed by applicable laws or reasonably requested by the Borrowers, Agent or such Lender granting the participation, such properly completed and executed documentation as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, Agent and each Lender shall deliver to the Borrowers and Agent (as applicable) and each Participant shall deliver to Agent and such Lender granting the participation, at the time or times prescribed by applicable laws or reasonably requested by the Borrowers, Agent or such Lender granting the participation, such properly completed and executed documentation prescribed by applicable laws or by the taxing authorities of any jurisdiction or such other reasonably requested information as will enable the Borrowers, Agent or such Lender granting the participation, as the case may be, to determine (i) whether or not payments made hereunder or under any other Loan Document are subject to Taxes (including backup withholding) or information reporting requirements, (ii) if applicable, the required rate of withholding or deduction, and (iii) such Lender's, Agent's or Participant's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Recipient by the Loan Parties pursuant to this Agreement or otherwise to establish such Recipient's status for withholding tax purposes in the applicable jurisdiction. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 9(f)(i), (ii), (iii), (iv) and (v)) shall not be required if in the Lender's, Agent's or Participant's reasonable judgment such completion, execution or submission would subject such Lender, Agent or Participant to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender, Agent or Participant (this provision shall be referred to as the "**Lender Documentation Exception**").

(f) Without limiting the generality of the foregoing, if any Borrower is a resident for tax purposes in the United States:

(i) Each Lender (or Participant) that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to such Borrower and Agent (or Lender granting a participation as applicable) (in such number of copies as shall be requested by the recipient) on or about the date on which such Lender (or Participant) becomes a Lender (or Participant) under this Agreement (and from time to time thereafter upon the reasonable request of such Borrower) an executed original of IRS Form W-9 or such other documentation or information prescribed by applicable law or reasonably requested by such Borrower or Agent (or the Lender granting a participation) certifying that such Lender (or Participant) is exempt from U.S. federal backup withholding tax;

(ii) Each Lender (or Participant) that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code (a "**Non-U.S. Recipient**") shall deliver to such Borrower (and the Lender granting a participation in case the Non-U.S. Recipient is a Participant) and Agent on or prior to the date on which such Non-U.S. Recipient becomes a party to this Agreement or a Participant (and from time to time thereafter upon the reasonable request of such Borrower, the Lender granting the participation or Agent but only if such Non-U.S. Recipient is legally entitled to do so), whichever of the following is applicable: (A) in the case of a Non-U.S. Recipient claiming the benefits of an income tax treaty to which the United States is a party, (x) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty; (B) executed originals of IRS Form W-8ECI; (C) to the extent such Non-U.S. Recipient is not the beneficial owner, executed originals of IRS Form W-8IMY accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit H-2** or **Exhibit H-3**, IRS Form W-9, or other certification documents from each beneficial owner, as applicable; provided that if the Non-U.S. Recipient is a partnership and one or more direct or indirect partners of such Non-U.S. Recipient are claiming the portfolio interest exemption, such Non-U.S. Recipient may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit H-4** on behalf of each such direct and indirect partner; (D) each Non-U.S. Recipient claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, shall provide (1) a certificate substantially in the form of **Exhibit H-1** to the effect that such Non-U.S. Recipient is not (x) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (y) a "10 percent shareholder" of such Borrower within the meaning of section 881(c)(3)(B) of the Code, or (z) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (2) executed originals of IRS Form W-8BEN or W-8BEN-E; and (E) executed originals of any other form prescribed by applicable law (including FATCA) as a basis for claiming exemption from or a reduction in United States Federal withholding tax together with such supplementary documentation as may be prescribed by applicable law to permit such Borrower or any Lender granting a participation, to determine the withholding or deduction required to be made;

(iii) Each Recipient shall promptly notify such Borrower (or any Lender granting a participation) and Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction. Each Recipient agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and Agent in writing of its legal inability to do so;

(iv) If a payment made to a Recipient under any Loan Document would be subject to United States federal income withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Recipient shall deliver to the Borrowers and Agent (or, in the case of a Participant, to the Lender granting the participation only) at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or Agent (or, in the case of a

Participant, the Lender granting the participation) such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by the Borrowers or Agent (or, in the case of a Participant, the Lender granting the participation) as may be necessary for Agent or the Loan Parties to comply with their obligations under FATCA and to determine that such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (f), "FATCA" shall include any amendments made to FATCA after the date of this Agreement; and

(iii) Agent and any successor thereto shall deliver to Borrower on or prior to the date on which it becomes Agent under this Agreement (and from time to time thereafter upon request of Borrower) (i) if Agent (or such successor to Agent) is a "United States person" (within the meaning of Section 7701(a)(30) of the Internal Revenue Code) executed copies of IRS Form W-9 certifying that it is not subject to U.S. federal backup withholding, or (ii) if Agent (or such successor to Agent) is not a United States person, (A) executed copies of IRS Form W-8ECI with respect to any amounts payable under any Loan Document to Agent for its own account, and (B) executed copies of IRS Form W-8IMY with respect to any amounts payable under any Loan Document to Agent for the account of others, certifying that it is a "U.S. branch" and that the payments it receives for the account of others are not effectively connected with the conduct of its trade or business within the United States and that it is using such form as evidence of its agreement with Borrower to be treated as a United States person (and Borrower and Agent agree to so treat Agent as a United States person with respect to such payments as contemplated by Treasury Regulations Section 1.1441-1(b)(2)(iv)(A)).

(g) Each Participant shall provide documentation, pursuant to Section 9(f) or 9(g), if applicable, to its participating Lender. Each Borrower agrees that each Participant shall be entitled to the benefits of this Section 9 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 9 with respect thereto.

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

(i) [Reserved].

(j) For purposes of this Section, the term "applicable law" includes FATCA.

10. GENERAL PROVISIONS.

10.1 Notices.

(a) **Notice by Approved Electronic Communications.**

Agent and each Lender and each of their respective Affiliates is authorized to transmit, post or otherwise make or communicate, in its sole discretion (but shall not be required to do so), by Approved Electronic Communications in connection with this Agreement or any other Loan Document and the transactions contemplated therein. Each of the Loan Parties and Agent hereby acknowledges and agrees that the use of Approved Electronic Communications is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing Agent and each of its Affiliates to transmit Approved Electronic Communications. None of Agent or any of its Affiliates or related persons warrants the accuracy, adequacy or completeness of any electronic platform or electronic transmission and disclaims all liability for errors or omissions therein. No warranty of any kind is made by Agent or any of its Affiliates or related persons in connection with any electronic platform or electronic transmission, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects. Each Borrower and each other Loan Party executing this Agreement agrees that Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Approved Electronic Communication or otherwise required for any Approved Electronic Communication.

No Approved Electronic Communications shall be denied legal effect merely because it is made electronically. Approved Electronic Communications that are not readily capable of bearing either a signature or a reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such Approved Electronic Communication, an E-Signature, upon which Agent and the Loan Parties may rely and assume the authenticity thereof. Each Approved Electronic Communication containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original. Each E-Signature shall be deemed sufficient to satisfy any requirement for a "signature" and each Approved Electronic Communication shall be deemed sufficient to satisfy any requirement for a "writing," in each case including pursuant to this Agreement, any other Loan Document, the Uniform Commercial Code, the Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural law governing such subject matter. Each party or beneficiary hereto agrees not to contest the validity or enforceability of an Approved Electronic Communication or E-Signature under the provisions of any applicable law requiring certain documents to be in writing or signed; provided, that nothing herein shall limit such party's or beneficiary's right to contest whether an Approved Electronic Communication or E-Signature has been altered after transmission.

(b) **All Other Notices.**

All notices, requests, demands and other communications under or in respect of this Agreement or any transactions hereunder, other than those approved for or required to be delivered by Approved Electronic Communications, shall be in writing and shall be personally delivered or mailed (by prepaid registered or certified mail, return receipt requested), sent by prepaid recognized overnight courier service, or by email to the applicable party at its address or email address indicated below,

If to Agent:

Great Rock Capital Partners Management, LLC

285 Riverside Avenue
Westport, CT 06880
Attention: Tom Keefe
Email: Keefe@greatrockcapital.com

with a copy to:

Paul Hastings LLP
515 S. Flower Street, 25th Floor
Los Angeles, CA 90071
Attention: Jennifer B. Hildebrandt
Email: jenniferhildebrandt@paulhastings.com

If to any Lender, to the address set forth on **Schedule F** for such Lender.

If to the Borrowers or any other Loan Party:

Basic Fun, Inc.
301 Yamato Road, Suite 4200
Boca Raton, FL 33431.
Attention: Frank McMahon
Email: Frank.McMahon@basicfun.com
with a copy to:

Polsinelli PC
1401 Eye Street N.W., Suite 800
Washington, D.C. 20005
Attention: Mark B. Joachim
Email: mjoachim@polsinelli.com

or, as to each party, at such other address as shall be designated by such party in a written notice to the other party delivered as aforesaid. All such notices, requests, demands and other communications shall be deemed given (a) when personally delivered, (b) three (3) Business Days after being deposited in the mails with postage prepaid (by registered or certified mail, return receipt requested), (c) one (1) Business Day after being delivered to the overnight courier service, if prepaid and sent overnight delivery, addressed as aforesaid and with all charges prepaid or billed to the account of the sender, or (d) when sent by email transmission to an email address designated by such addressee and the sender receives a confirmation of transmission.

10.2 Severability. If any provision of this Agreement or any other Loan Document is held invalid or unenforceable, either in its entirety or by virtue of its scope or application to given circumstances, such provision shall thereupon be deemed modified only to the extent necessary to render same valid, or not applicable to given circumstances, or excised from this Agreement or such other Loan Document, as the situation may require, and this Agreement and the other Loan Documents shall be construed and enforced as if such provision had been included herein as so modified in scope or application, or had not been included herein or therein, as the case may be.

10.3 Integration. This Agreement and the other Loan Documents represent the final, entire and complete agreement between each Loan Party party hereto and thereto, Agent and Lenders and supersede all prior and contemporaneous negotiations, oral representations and agreements, all of which are merged

and integrated into this Agreement. THERE ARE NO ORAL UNDERSTANDINGS, REPRESENTATIONS OR AGREEMENTS BETWEEN THE PARTIES THAT ARE NOT SET FORTH IN THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

10.4 Waivers. The failure of Agent or any Lender at any time or times to require any Loan Party to strictly comply with any of the provisions of this Agreement or any other Loan Documents shall not waive or diminish any right of Agent or any Lender later to demand and receive strict compliance therewith. Any waiver of any default shall not waive or affect any other default, whether prior or subsequent, and whether or not similar. None of the provisions of this Agreement or any other Loan Document shall be deemed to have been waived by any act or knowledge of Agent or any Lender or its agents or employees, but only by a specific written waiver signed by an authorized officer of Agent and any such Lender (or Agent on behalf thereof) and delivered to the Borrowers. Once an Event of Default shall have occurred, it shall be deemed to continue to exist and not be cured or waived unless specifically cured pursuant to the terms of this Agreement or waived in writing by an authorized officer of Agent and the Required Lenders and delivered to the Borrowers. Each Loan Party waives demand, protest, notice of protest and notice of default or dishonor, notice of payment and nonpayment, release, compromise, settlement, extension or renewal of any commercial paper, Instrument, Account, General Intangible, Document, Chattel Paper, Investment Property or guaranty at any time held by Lender on which such Loan Party is or may in any way be liable, and notice of any action taken by Agent or any Lender, unless expressly required by this Agreement, and notice of acceptance hereof.

10.5 Amendment and Certain Voting Rights.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed by Agent, the Required Lenders (or by Agent with the consent of the Required Lenders), and the Borrowers, and then such waiver shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all the Lenders directly affected thereby (or by Agent with the consent of all the Lenders directly affected thereby), in addition to Agent, the Required Lenders (or by Agent with the consent of the Required Lenders), and the Borrowers, do any of the following:

(i) increase or extend the Commitment of such Lender (or reinstate any Commitments previously terminated);

(ii) reduce the principal of, or the rate of interest specified herein (it being agreed that waiver of the default interest margin shall only require the consent of Required Lenders) or the amount of interest or principal payable in cash specified herein on the Loans of such Lender, or of any fees or other amounts payable hereunder or under any other Loan Document for such Lender, other than in connection with the Agent's making of a "credit bid" as contemplated by Section 10.11(d), which shall only require the consent of the Required Lenders;

(iii) amend this Section 10.5 or, subject to the terms of this Agreement, the definition of Pro Rata Share or any provision providing for consent or other action by all Lenders; or

(iv) amend or modify Section 4.2;

it being agreed that all Lenders shall be deemed to be directly affected by an amendment or waiver of the type described in the preceding clauses (iii) and (iv).

(b) No amendment, waiver or consent shall, unless in writing and signed by Agent, in addition to the Required Lenders, affect the rights or duties of Agent under this Agreement or any other Loan Document.

(c) Notwithstanding anything to the contrary contained in this Section 10.5 or any other provision of this Agreement or any other Loan Document, Agent and the Borrowers may amend or modify this Agreement and any other Loan Document (without the consent of any Lender) to (i) cure any ambiguity, omission, defect or inconsistency therein, and (ii) grant a new Lien for the benefit of Agent and Lenders, extend an existing Lien over additional assets for the benefit of the Lenders or join additional Persons as Loan Parties.

(d) Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder; except, that any of the matters governed by Section 10.5(a)(i) through (iii) that affect such Defaulting Lender may not be amended without the consent of such Defaulting Lender.

(e) In the event that (i) Agent or the Borrowers request the consent of a Lender pursuant to this Section 10.5 with respect to any action to be taken by Lenders or Agent hereunder that requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby, and such consent is denied by such Lender but otherwise obtained from the Required Lenders but not of all Lenders or all Lenders affected thereby, (ii) any Lender (other than Agent) makes any request for increased costs pursuant to Section 1.13(b) or (iii) any Lender (other than Agent) invokes the Lender Documentation Exception, then Agent or the Borrowers may, at its or their option, require such Lender to assign its interest in the Loans and its Revolving Loans Commitment to Agent or to another Lender or to any other Person designated by Agent or Borrowers and reasonably acceptable to Agent (the "**Designated Lender**"), for a price equal to (A) the then outstanding principal amount thereof plus (B) accrued and unpaid interest and fees due such Lender, which interest and fees shall be paid when collected from the Borrowers. In the event Agent or the Borrowers elects to require any Lender to assign its interest to Agent or to the Designated Lender, Agent or Borrowers will so notify such Lender in writing within thirty (30) days following such Lender's denial, and such Lender will assign its interest to Agent or the Designated Lender no later than five (5) Business Days following receipt of such notice pursuant to the applicable documentation executed by such Lender, Agent or the Designated Lender, as appropriate, and Agent.

(f) The Required Lenders may object to or oppose or direct the Agent to object to or oppose (or support any Person in objecting to or opposing) a credit bid of the Obligations made in accordance with the Bankruptcy Code or any similar provisions of any other Debtor Relief Law. The Agent may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate a credit bid.

(g) Without limiting any other provision of this Agreement, the Agent, upon the instruction of the Required Lenders, shall have the exclusive right to take enforcement actions and/or exercise secured creditor remedies with respect to the Collateral without any consultation with or the consent of any Lender. In connection with any such enforcement action or exercise of remedies, the Agent, upon the instruction of the Required Lenders, may enforce the provisions of the Loan Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to dispose of Collateral, to incur expenses in connection with such disposition, and to exercise all the rights and remedies of a secured creditor under applicable law. Each Lender agrees that it will not take any action that would restrain, hinder, limit, delay, or otherwise interfere with any enforcement action or exercise of secured creditor remedies by the Agent, or that is otherwise not prohibited hereunder, including any disposition of the Collateral, whether by foreclosure or otherwise. Each Lender waives any and all

rights it may have to object to the manner in which the Agent at the direction of the Required Lenders seeks to enforce or collect the Obligations or the Liens securing the Obligations granted in any of the Collateral, regardless of whether any action or failure to act by or on behalf of the Agent is adverse to the interest of such Lender. Each Lender waives any and all rights it has or may have to oppose, object to, or seek to restrict the Agent from exercising its rights to set off or credit bid the Obligations upon the instructions of the Required Lenders.

10.6 Time of Essence. Time is of the essence in the performance by each party hereto of each and every obligation under this Agreement and the other Loan Documents.

10.7 Expenses, Fees and Costs Reimbursement. The Borrowers hereby agree to promptly pay, jointly and severally, all reasonable and documented out of pocket costs and expenses of Agent and each Lender (including Agent's and such Lender's underwriting fees and the out of pocket reasonable and documented fees, costs and expenses of legal counsel to, and appraisers, accountants, consultants and other professionals and advisors retained by or on behalf of, Agent or such Lender, all of which shall be reasonable, prior to the occurrence and continuance of an Event of Default) in connection with: (a) all loan proposals and commitments pertaining to the transactions contemplated hereby (whether or not such transactions are consummated), (b) the examination, review, due diligence investigation, documentation, negotiation, and closing of the transactions contemplated by the Loan Documents (whether or not such transactions are consummated), (c) the creation, perfection and maintenance of Liens pursuant to the Loan Documents, (d) the performance by Agent or any Lender of its rights and remedies under the Loan Documents, (e) the Chapter 11 Cases, the administration of the Loans and this Agreement (including usual and customary fees for wire transfers and other transfers or payments received by Agent on account of any of the Obligations) and the other Loan Documents, (f) any amendments, modifications, consents and waivers to and/or under any and all Loan Documents (whether or not such amendments, modifications, consents or waivers are consummated), (g) any periodic public record searches reasonably conducted by or at the reasonable request of Agent (including, title investigations and public records searches), pending litigation and tax lien searches and searches of applicable corporate, limited liability company, partnership and related records concerning the continued existence, organization and good standing of certain Persons, (h) protecting, storing, insuring, handling, maintaining, auditing, examining, valuing or selling any Collateral, (i) any litigation, dispute, suit or proceeding relating to any Loan Document, and (j) any workout, collection, and other enforcement proceedings under any and all of the Loan Documents (it being agreed that such costs and expenses may include the costs and expenses of workout consultants, investment bankers, financial consultants, appraisers, valuation firms, field examiners and other professionals and advisors retained by or on behalf of Agent or Lenders), and, without limitation of the foregoing, all out of pocket costs and expenses of each Lender in connection with such Lender's reservation of funds in anticipation of the funding of the Loans to be made hereunder. Any fees, costs and expenses owing by the Borrowers or any other Loan Party hereunder shall be due and payable within five (5) Business Days after being invoiced with supporting documentation.

10.8 Benefit of Agreement; Assignability; Servicer

(a) **General**. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, beneficiaries and representatives of the Borrowers, each other Loan Party party hereto, Agent and each Lender; provided, that (a) neither the Borrowers nor any other Loan Party may assign or transfer any of its rights under this Agreement without the prior written consent of Agent, and any prohibited assignment shall be void, and (b) assignments by any Revolving Lender shall be subject to Sections 10.8(b) through 10.8(d). No consent by Agent or any Lender to any assignment shall release any Loan Party from its liability for any of the Obligations.

(b) **Lender Assignments**. Each Revolving Lender may sell, transfer, negotiate or assign all or a portion of its rights and obligations hereunder (including all or a portion of its Revolving Loan Commitments and its rights and obligations with respect to its portion of the Revolving Loans) (each a "**Sale**") to:

(i) any existing Revolving Lender;

(ii) any Affiliate or Approved Fund of any existing Revolving Lender;

(iii) any other Person acceptable to (x) Agent and (y) which acceptance shall not be unreasonably withheld or delayed, the Borrowers; provided, however, that:

(A) in the event an Event of Default has occurred and is continuing, the consent of the Borrowers shall not be required for any Sale;

(B) the consent of the Borrowers shall be deemed to have been given unless an objection is delivered to Agent within ten (10) Business Days after written notice of a proposed Sale is delivered to the Borrowers; and

(C) for each Revolving Loan, the aggregate outstanding principal amount (determined as of the effective date of the applicable Sale) of the Revolving Loan and the Revolving Loan Commitments subject to any such Sale shall be in a minimum amount of $1,000,000, unless such Sale is made to an existing Revolving Lender or an Affiliate or Approved Fund of any existing Revolving Lender, is of the assignor's (together with its Affiliates and Approved Funds) entire interest in such facility or is made with the prior consent of Agent.

Notwithstanding the foregoing, Agent's refusal to accept a Sale to a Loan Party, a Subsidiary or Affiliate of a Loan Party, or the imposition of conditions or limitations (including limitations on voting) upon Sales to such Persons, shall not be deemed to be unreasonable. No assignment hereunder shall be permitted if to any Ineligible Assignee.

(c) **Procedure.** The parties to each Sale made in reliance on clause (b) above (other than those described in clause (e) below) shall execute and deliver to Agent an Assignment and Acceptance evidencing such Sale, together with any existing promissory note subject to such Sale (or any affidavit of loss therefor acceptable to Agent), any Tax forms required to be delivered pursuant to Section 9 and payment of an assignment fee in the amount of $3,500 to Agent, unless waived or reduced by Agent; provided, that (i) if a Sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such Sale, and (ii) if a Sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such assignee, then only one assignment fee of $3,500 (unless waived or reduced by Agent) shall be due in connection with such Sale. Upon receipt of all the foregoing, and conditioned upon such receipt and, if such Sale is made in accordance with Section 10.9, upon Agent consenting to such Sale, from and after the effective date specified in the Assignment and Acceptance, Agent shall record or cause to be recorded in the Register the information contained in such Assignment and Acceptance.

(d) **Effectiveness**. Subject to the Register recording requirements by Agent relating to an Assignment and Acceptance pursuant to Section 10.9, (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents have been assigned to such assignee pursuant to such Sale, shall have the rights and obligations of a Lender, (ii) any applicable note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Sale, relinquish its rights (except for those surviving the termination of the Commitments and the payment in full of the Obligations) and be released from its obligations under the Loan Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of a Sale covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto).

(e) **Pledges.** Notwithstanding any provision of this Agreement or any other Loan Document to the contrary, any Lender may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement and the other Loan Documents to secure obligations of such Lender, including any pledge or grant to secure obligations to a Federal Reserve Bank.

10.9 Recordation of Sale. In respect of any Sale of all or any portion of any Lender's interest in this Agreement and/or any other Loan Documents at any time and from time to time, the following provisions shall be applicable:

(a) The Borrowers, or any agent appointed by the Borrowers, shall maintain a register (the "**Register**") in which there shall be recorded the name and address of each Person holding any portion of the Loans or any commitment to lend hereunder, and the principal amount and stated interest payable to such Person hereunder or committed by such Person under such Person's lending commitment. Borrowers hereby irrevocably appoint Agent as the Borrowers' non-fiduciary agent for the purpose of maintaining the Register.

(b) In connection with any Sale as aforesaid, the transferor/assignor shall deliver to Agent then maintaining the Register an Assignment and Acceptance executed by the transferor/assignor and the transferee/assignee, setting forth the specifics of the subject transaction, including but not limited to the amount and nature of Obligations and/or lending commitments being transferred or assigned (and being assumed, as applicable), and the proposed effective date of such transfer or assignment and the related assumption (if applicable).

(c) Subject to receipt of any required tax forms reasonably required by Agent, Agent shall record the Sale in the Register. Anything contained in this Agreement or other Loan Document to the contrary notwithstanding, no Sale shall be effective until it is recorded in the Register pursuant to this Section 10.9(c). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error; and the Borrowers, Agent and each Lender shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement and the other Loan Documents. The Register shall be available for inspection by the Borrowers and each Lender at any reasonable time and from time to time upon reasonable prior notice.

10.10 Participations. Anything in this Agreement or any other Loan Document to the contrary notwithstanding, any Lender may, at any time and from time to time, without in any manner affecting or impairing the validity of any Obligations, sell to one or more Persons participating interests in its portion of the Loans, commitments and/or other interests hereunder and/or under any other Loan Document (any such Person, a "**Participant**"). In the event of a sale by any Lender of a participating interest to a Participant, (a) such Lender's obligations hereunder and under the other Loan Documents shall remain unchanged for all purposes, (b) the Borrowers and such Lender shall continue to deal solely and directly

with each other in connection with such Lender's rights and obligations hereunder and under the other Loan Documents and (c) all amounts payable by the Borrowers shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender; provided, however, a Participant shall be entitled to the benefits of Section 9 (subject to the obligations and limitations contained therein) as if it were a Lender if the Participant complies with Section 9(e). The Borrowers agree that if amounts outstanding under this Agreement or any other Loan Document are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement and the other Loan Documents to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; provided, that such right of set-off shall not be exercised without the prior written consent of such Lender and shall be subject to the obligation of each Participant to share with such Lender its share thereof. The Borrowers also agree that each Participant shall be entitled to the benefits of Section 10.9 as if it were a Lender. Notwithstanding the granting of any such participating interests: (i) the Borrowers shall look solely to the applicable Lender for all purposes of this Agreement, the other Loan Documents and the transactions contemplated hereby, (ii) the Borrowers shall at all times have the right to rely upon any amendments, waivers or consents signed by any Lender as being binding upon all of the Participants, and (iii) all communications in respect of this Agreement and such transactions shall remain solely among the Borrowers, Agent and the Lenders (exclusive of Participants) hereunder. Each Lender granting a participation hereunder shall maintain, as a non-fiduciary agent of the Borrowers, a register ("**Participant Register**") as to the participations granted and transferred under this Section containing the same information specified in Section 10.9 on the Register as if each Participant were a Lender to the extent required to cause the Loans to be in registered form under Section 5f.103-1(c) of the United States Treasury Regulations or otherwise for the purposes of Sections 163(f), 165(j), 871, 881, and 4701 of the Code. The Register (and the Participant Register) is intended to cause each Loan to be in registered form under Section 5f.103-1(c) of the United States Treasury Regulations or otherwise for the purposes of Sections 163(f), 165(j), 871, 881, and 4701 of the Code. 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.

10.11 Agent Provisions.

(a) **Appointment and Duties**.

(i) Each Lender hereby appoints Great Rock Capital Partners Management, LLC (together with any successor Agent pursuant to Section 10.11(j)) as Agent hereunder and authorizes Agent to (A) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Loan Party, (B) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Agent under such Loan Documents and (C) exercise such powers as are reasonably incidental thereto.

(ii) Without limiting the generality of clause (a)(i) above, Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (A) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in Sections 7.1(g) or 7.1(h) or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to Agent or any Lender is hereby authorized to make such payment to Agent, (B) file and prove claims and file other documents necessary or desirable to allow the claims of Agent and the Lenders with respect to any Obligation in any proceeding described in Section 7.1(g) or (h) or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Person), (C) act as collateral agent for Agent and each Lender for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (D) manage, supervise and

otherwise deal with the Collateral, (E) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (F) except as may be otherwise specified in any Loan Document, exercise all remedies given to Agent and the other Lenders with respect to the Loan Parties and/or the Collateral, whether under the Loan Documents, applicable requirements of law or otherwise and (G) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver.

(iii) Under the Loan Documents, Agent (A) is acting solely on behalf of the Lenders (except to the limited extent provided in Section 10.9 with respect to the Register), with duties that are entirely administrative in nature, notwithstanding the use of the defined term "Agent" or the terms "agent" and "collateral agent" and similar terms in any Loan Document to refer to Agent, which terms are used for title purposes only, (B) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Person and (C) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and Agent and each Lender by accepting the benefits of the Loan Documents hereby waives and agrees not to assert any claim against Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (A) through (C) above.

(b) **Binding Effect**. Agent and each Lender, by accepting the benefits of the Loan Documents, agrees that (i) any action taken by Agent or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders.

(c) **Use of Discretion.**

(i) Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (A) under any Loan Document or (B) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(ii) Notwithstanding clause (c)(i) above, Agent shall not be required to take, or to omit to take, any action (A) unless, upon demand, Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to Agent, any other Person) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against Agent or any Related Person thereof or (B) that is, in the opinion of Agent or its counsel, contrary to any Loan Document or applicable requirement of law.

(d) **Exclusive Right to Enforce Rights and Remedies**. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Agent in accordance with the Loan Documents for the benefit of the Lenders. In the event of a foreclosure, sale or similar enforcement action by Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to section 363(k), section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or other Debtor Relief Laws), Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities) may be the purchaser or licensor of any or all of such Collateral at any such sale or other

disposition and Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled, upon instructions from Required Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Agent at such sale or other disposition. The foregoing shall not prohibit (i) Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (ii) any Lender from exercising setoff rights in accordance with Section 7.3(e) or (iii) subject to the following paragraph, any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any bankruptcy or other Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then the Required Lenders shall have the rights otherwise ascribed to Agent pursuant to Sections 7.2 and 7.3 and in addition to the matters set forth in clauses (ii) and (iii) of the preceding proviso and subject to Section 7.3(e)(ii), any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders. In case of the pendency of any bankruptcy or other debtor relief proceeding or any other judicial proceeding relative to any Loan Party, Agent (irrespective of whether the principal of any Loans shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Agent shall have made any demand on any Loan Party) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Agent allowed in such judicial proceeding and 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 to make such payments to Agent and, in the event that Agent shall consent to the making of such payments directly to the Lenders, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent and its agents and counsel, and any other amounts due Agent hereunder.

(e) **Delegation of Rights and Duties**. Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Lender). Any such Person shall benefit from this Section 10.11 to the extent provided by Agent. Each Lender agrees that any Collateral in its possession or control (or in the possession or control of its agents or bailees) is being held as gratuitous bailee for, or, as applicable, on trust for, the benefit of Agent and any assignee solely for the purpose of perfecting the security interest granted in such Collateral.

(f) **Reliance and Liability**.

(i) Agent may, without incurring any liability hereunder, (A) rely on the Register to the extent set forth in Section 10.9, (B) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Loan Party) and (C) rely and act upon any document and information (including those transmitted by Approved Electronic Communication) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(ii) Agent and its Related Persons shall not be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and Loan Party hereby waive and shall not assert (and the Borrowers shall cause each other Loan Party not a

signatory hereto to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting from the gross negligence, bad faith, or willful misconduct of Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, Agent: (A) shall not be responsible or otherwise incur liability to any Lender or other Person for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of Agent, when acting on behalf of Agent); (B) shall not be responsible to any Lender or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document; (C) makes no warranty or representation, and shall not be responsible, to any Lender or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of any Loan Party or any Related Person of any Loan Party in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to any Loan Party, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Agent in connection with the Loan Documents; and (D) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Loan Party or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrowers or any Lender describing such Default or Event of Default clearly labeled "notice of default" (in which case Agent shall promptly give notice of such receipt to all Lenders). For each of the items set forth in clauses (A) through (D) above, each Lender and the Loan Parties hereby waive and agree not to assert (and the Borrowers shall cause each other Loan Party not a signatory hereto to waive and agree not to assert) any right, claim or cause of action it might have against Agent based thereon.

(g) **Agent Individually**. Agent and its Affiliates may make loans and other extensions of credit to, acquire Equity Interests of, and engage in any kind of business with, any Loan Party or Affiliate thereof as though it were not acting as Agent and may receive separate fees and other payments therefor. To the extent Agent or any of its Affiliates makes any portion of the Loans or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender" and "Required Lender" and any similar terms shall, except where otherwise expressly provided in any Loan Document, include Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders.

(h) **Lender Credit Decision**.

(i) Each Lender acknowledges that it shall, independently and without reliance upon Agent or any Lender or any of their Related Persons or upon any document (including any offering and disclosure materials in connection with the syndication of the Loans) solely or in part because such document was transmitted by Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Loan Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by Agent to the Lenders, 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 Loan Party or any Affiliate of any Loan Party that may come in to the possession of Agent or any of its Related Persons.

(ii) If any Lender has elected to abstain from receiving material non-public information ("**MNPI**") concerning the Loan Parties or their Affiliates such Lender acknowledges that, notwithstanding such election, Agent and/or the Loan Parties will, from time to time, make available syndicate-information (which may contain MNPI) as required by the terms of, or in the course of administering the Loans to the credit contact(s) identified for receipt of such information on the Lender's administrative questionnaire who are able to receive and use all syndicate-level information (which may contain MNPI) in accordance with such Lender's compliance policies and contractual obligations and applicable law, including federal and state securities laws; provided, that if such contact is not so identified in such questionnaire, the relevant Lender hereby agrees to promptly (and in any event within one (1) Business Day) provide such a contact to Agent and the Loan Parties upon request therefor by Agent or the Loan Parties. Notwithstanding such Lender's election to abstain from receiving MNPI, such Lender acknowledges that if such Lender chooses to communicate with Agent, it assumes the risk of receiving MNPI concerning the Loan Parties or their Affiliates.

(i) **Expenses; Indemnities; Withholding**.

(i) Each Lender agrees to reimburse Agent and each of its Related Persons (to the extent not reimbursed by any Loan Party), promptly upon demand, severally and ratably, for any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Loan Party) that may be incurred by Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including preparation for and/or response to any subpoena or request for document production relating thereto or otherwise)) in respect of, or legal advice with respect to its rights or responsibilities under, any Loan Document.

(ii) Each Lender further agrees to indemnify, defend and hold Agent and each of its Related Persons (to the extent not reimbursed by any Loan Party), in each case, severally and ratably, harmless from and against liabilities (including, to the extent not indemnified pursuant to Section 9, Taxes, interest and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by or asserted against Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any related document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Agent or any of its Related Persons under or with respect to any of the foregoing; provided, that no Lender shall be liable to Agent or any of its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

(iii) To the extent required by any requirement of law, Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding Tax. If the IRS or any other Governmental Authority asserts a claim that Agent did not properly withhold Tax from amounts paid to or for the account of any Lender (because the appropriate certification form was not delivered, was not properly executed, or fails to establish an exemption from, or reduction of, withholding Tax with respect to a particular type of payment, or because such Lender failed to notify Agent or any other Person of a change in circumstances which rendered the exemption from, or reduction of, withholding Tax ineffective, failed to maintain a Participant Register or for any other reason), or Agent

reasonably determines that it was required to withhold Taxes from a prior payment but failed to do so, such Lender shall promptly indemnify Agent fully for all amounts paid, directly or indirectly, by Agent as Tax or otherwise, including penalties and interest, and together with all expenses incurred by Agent, including legal expenses, allocated internal costs and out-of-pocket expenses. Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding Tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which Agent is entitled to indemnification from such Lender under this Section 10.11(i)(iii).

(j) **Resignation of Agent**.

(i) Agent may resign at any time by delivering notice of such resignation to the Lenders and the Borrowers, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective in accordance with the terms of this Section 10.11(j)(i). If Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Agent. If, after thirty (30) days after the date of the retiring Agent's notice of resignation, no successor Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent from among the Lenders. Each appointment under this clause (i) shall be subject to the prior consent of the Borrowers, which may not be unreasonably withheld but shall not be required during the continuance of an Event of Default.

(ii) Effective immediately upon its resignation, (A) the retiring Agent shall be discharged from its duties and obligations under the Loan Documents, (B) the Lenders shall assume and perform all of the duties of the retiring Agent until a successor Agent shall have accepted a valid appointment hereunder, (C) the retiring Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such retiring Agent had been, validly acting as Agent under the Loan Documents and (D) subject to its rights under Section 10.11(c), the retiring Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Agent a successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent under the Loan Documents.

(k) **Release of Collateral or Guarantors**. Each Lender hereby consents to the release and hereby directs Agent to release (or, in the case of clause (ii)(B) below, release or subordinate) the following:

(i) any Subsidiary of the Borrowers from its guaranty of any Obligation if all of the Equity Interests of such Subsidiary owned by any Loan Party are sold or transferred in a transaction expressly permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such transaction, such Subsidiary would not be required to guaranty any Obligations pursuant to the Loan Documents; and

(ii) any Lien held by Agent for the benefit of the Lenders against (A) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Loan Party in a transaction expressly permitted by the Loan Documents (including pursuant to a valid waiver or consent), to the extent all Liens required to be granted in such Collateral pursuant to the Loan Documents after giving effect to such transaction have been granted, (B) any property subject to a Lien permitted hereunder in reliance upon clause (c) of the definition of Permitted Indebtedness and clause (a) of the definition of Permitted Liens and (C) all of the Collateral and all Loan Parties, upon (1) the occurrence of the Termination Date and (2) to the extent requested by Agent, receipt by Agent and the Lenders of liability releases from the Loan Parties each in form and substance acceptable to Agent.

Each Lender hereby directs Agent, and Agent hereby agrees, upon receipt of reasonable advance written notice from the Borrowers, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guaranties and Liens when and as directed in this Section 10.11(k).

(l) **Erroneous Payments**.

(i) If Agent (A) notifies a Lender or any Person who has received funds on behalf of a Lender (any such Lender or other recipient (and each of their respective successors and assigns), a "**Payment Recipient**") that Agent has determined in its reasonable discretion (whether or not after receipt of any notice under immediately succeeding clause (B)) that any funds (as set forth in such notice from Agent) received by such Payment Recipient from Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous Payment**") and (B) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of Agent pending its return or repayment as contemplated below in this Section 10.11(l) and held in trust for the benefit of Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as Agent may, in its sole discretion, specify in writing), return to Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of Agent to any Payment Recipient under this clause (i) shall be conclusive, absent manifest error.

(ii) Without limiting immediately preceding clause (i), each Lender or any Person who has received funds on behalf of a Lender (and each of their respective successors and assigns) agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by Agent (or any of its Affiliates), or (z) that such Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(A) it acknowledges and agrees that (1) in the case of immediately preceding clauses (x) or (y), an error or mistake shall be presumed to have been made (absent written confirmation from Agent to the contrary), or (2) an error or mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(B) such Lender shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify Agent of its receipt of such payment,

prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying Agent pursuant to this Section 10.11(l)(ii).

For the avoidance of doubt, the failure to deliver a notice to Agent pursuant to this Section 10.11(l)(ii) shall not have any effect on a Payment Recipient's obligations pursuant to Section 10.11(l)(i) or on whether or not an Erroneous Payment has been made.

(iii) Each Lender hereby authorizes Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by Agent to such Lender under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that Agent has demanded to be returned under immediately preceding clause (i).

(iv) In the event that an Erroneous Payment (or portion thereof) is not recovered by Agent for any reason, after demand therefor in accordance with immediately preceding clause (i), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "**Erroneous Payment Return Deficiency**"), upon Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (1) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "**Erroneous Payment Impacted Class**") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "**Erroneous Payment Deficiency Assignment**") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by Agent in such instance)), and is hereby (together with the Borrowers) deemed to execute and deliver an Assignment and Acceptance with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any promissory notes evidencing such Loans to the Borrowers or Agent (but the failure of such Person to deliver any such notes shall not affect the effectiveness of the foregoing assignment), (2) Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (3) upon such deemed acquisition, Agent as the assignee Lender shall become a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (4) Agent and the Borrowers shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (5) Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(v) Subject to Section 10.8(b) (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrowers or otherwise)), Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (A) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distributions in respect of principal and interest, received by Agent on or with respect to any such Loans

acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by Agent) and (B) may, in the sole discretion of Agent, be reduced by any amount specified by Agent in writing to the applicable Lender from time to time.

(vi) The parties hereto agree that (A) irrespective of whether Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, to the rights and interests of such Lender) under the Loan Documents with respect to such amount (the "**Erroneous Payment Subrogation Rights**"); provided, that the Loan Parties' Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to Agent under an Erroneous Payment Deficiency Assignment and (B) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrowers or any other Loan Party; provided, that this Section 10.11(l)(vi) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrowers relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (A) and (B) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by Agent from the Borrowers for the purpose of making such Erroneous Payment.

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

(viii) Each party's obligations, agreements and waivers under this Section 10.11(l) shall survive the resignation or replacement of Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

10.12 Headings; Construction. Section and subsection headings are used in this Agreement only for convenience and do not affect the meanings of the provisions that they precede.

10.13 USA PATRIOT Act. Each of Agent and each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it may be required to obtain, verify and record certain information and documentation that identifies such Person, which information may include the name and address of each such Person and such other information that will allow Agent or such Lender to identify such Persons in accordance with the USA PATRIOT Act. Notwithstanding the foregoing and except as may otherwise be agreed in writing, each of the Lenders agrees that Agent has no obligation to ascertain the identity of the Loan Parties or any authorized signatories of such Persons on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any of them or any such authorized signatory in doing so.

10.14 Counterparts; Fax/Email Signatures. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same agreement. This Agreement may be executed by signatures delivered by facsimile or electronic mail, each of which shall be fully binding on the signing party.

10.15 GOVERNING LAW. THIS AGREEMENT, ALONG WITH ALL OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED OTHERWISE IN SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES (EXCEPT SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATION LAW). FURTHER, THE LAW OF THE STATE OF NEW YORK SHALL APPLY TO ALL DISPUTES OR CONTROVERSIES ARISING OUT OF OR CONNECTED TO OR WITH THIS AGREEMENT AND ALL SUCH OTHER LOAN DOCUMENTS WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES (EXCEPT SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATION LAW).

10.16 CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL; CONSENT TO SERVICE OF PROCESS. ANY LEGAL ACTION, SUIT OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT AND EXPRESSLY AND IRREVOCABLY SUBMITTED EXCLUSIVELY IN AND TO THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR IN ANY OTHER COURT (IN ANY JURISDICTION) SELECTED BY AGENT IN ITS SOLE DISCRETION, AND BORROWERS AND EACH OTHER LOAN PARTY HEREBY ACCEPT FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY IN CONNECTION WITH ANY LEGAL ACTION, SUIT, OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, AND UNCONDITIONALLY, THE JURISDICTION OF THE AFOREMENTIONED COURTS, INCLUDING, FOR THE AVOIDANCE OF DOUBT, SUCH OTHER COURT (IN ANY JURISDICTION) SELECTED BY AGENT IN ITS SOLE DISCRETION. BORROWERS AND EACH OTHER LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, OR BASED ON UPON 28 U.S.C. § 1404, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING AND ADJUDICATION OF ANY SUCH ACTION, SUIT OR PROCEEDING IN ANY OF THE AFOREMENTIONED COURTS AND AGREES TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT. BORROWERS AND EACH OTHER LOAN PARTY HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR UNDER ANY AMENDMENT, WAIVER, AMENDMENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWERS AND EACH OTHER LOAN PARTY HEREBY WAIVE PERSONAL SERVICE OF ANY AND ALL PROCESS UPON BORROWERS OR ANY OTHER LOAN PARTY AND CONSENT THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE IN ANY MANNER PROVIDED UNDER THE RULES OF ANY SUCH COURTS.

10.17 Disclosure Schedules. The Disclosure Schedules may include items that are not material in order to avoid any misunderstanding, and such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement.

10.18 Publication. The Borrowers and each other Loan Party consent to the publication by Agent and each Lender of a tombstone, press releases or similar advertising material relating to the financing transactions contemplated by this Agreement, and Agent and each Lender reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.19 Confidentiality. Each of Agent and each Lender agrees to use commercially reasonable efforts not to disclose Confidential Information to any Person without the prior written consent of the Borrowers; provided, however, that nothing herein contained shall limit any disclosure of the tax structure of the transactions contemplated hereby, or the disclosure of any information (a) to the extent required by applicable law, statute, rule, regulation or judicial process or in connection with the exercise of any right or remedy under any Loan Document, or as may be required in connection with the examination, audit or similar investigation of Agent, the Lenders or any of their respective Affiliates, provided any recipients of any such information are advised of the confidential nature of such information and are instructed to keep such information confidential in accordance with the terms hereof, (b) to examiners, auditors, accountants or any regulatory or taxing authority, provided any recipients of any such information are advised of the confidential nature of such information and are instructed to keep such information confidential in accordance with the terms hereof, (c) to the officers, partners, managers, directors, employees, agents and advisors (including independent auditors, lawyers and counsel) of Agent, any Lender or any of their respective Affiliates, provided any recipients of any such information are advised of the confidential nature of such information and are instructed to keep such information confidential in accordance with the terms hereof, (d) in connection with any litigation or dispute which relates to this Agreement or any other Loan Document to which Agent or any Lender is a party or is otherwise subject, (e) to a subsidiary or Affiliate of Agent or any Lender, (f) to any assignee or participant (or prospective assignee or participant) which agrees to be bound by this Section 10.19, or (g) to any lender or other funding source of any Lender (each reference to Lender in the foregoing clauses shall be deemed to include the actual and prospective assignees and participants referred to in clause (f) and the lenders and other funding sources referred to in clause (g), as applicable for purposes of this Section 10.19); and provided, further, that in no event shall Agent or any Lender be obligated or required to return any materials furnished by or on behalf of the Borrowers or any other Loan Party or obligor. The obligations of Agent and each Lender under this Section 10.19 shall supersede and replace the obligations of Agent or any Lender under any confidentiality letter or provision in respect of this financing or any other financing previously signed and delivered by Agent or such Lender to the Borrowers or any of their Affiliates. Notwithstanding the foregoing or anything herein to the contrary, the Agent shall have the right to use the transaction contemplated hereby in marketing materials as well as press releases or announcements in connection with this transaction following the Closing Date.

10.20 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

For purposes of this Section 10.20:

"**Affected Financial Institution**" means (a) any EEA Financial Institution or (b) any U.K. Financial Institution.

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of any Affected Financial Institution.

"**Bail-In Legislation**" shall mean, (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).

"**EEA Financial Institution**" shall mean (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 clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Resolution Authority**" shall mean an EEA Resolution Authority or, with respect to any U.K. Financial Institution, a U.K. Resolution Authority.

"**U.K. Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain Affiliates of such credit institutions or investment firms.

"**U.K. Resolution Authority**" means the Bank of England or any other public administrative authority having responsibility for the resolution of any U.K. Financial Institution.

"**Write-Down and Conversion Powers**" shall mean, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any U.K. 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 such 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.

10.21 Settlements; Payments. The Revolving Loan Exposure may fluctuate from day to day through Agent's disbursement of funds to, and receipt of funds from, the Borrowers. In order to minimize the frequency of transfers of funds between Agent and each Lender, repayments of Loans may, at the election of Agent, be settled according to the procedures set forth in this Section 10.21. Notwithstanding the procedures set forth in this Section 10.21, each Lender's obligation to fund its portion of any advances made by Agent to the Borrowers will commence on the date such advances are made by Agent. Such payments will be made by such Lender without set-off, counterclaim or reduction of any kind.

(a) Each Settlement Date, Agent will advise each Lender by 1:00 p.m. (Eastern time) on a Business Day by telephone or written notice in accordance with this Agreement of the amount of each such Lender's Pro Rata Share of the Revolving Loan Exposure. If payments are necessary to adjust the amount of such Lender's share of the Revolving Loan Exposure to such Lender's Pro Rata Share of the Revolving Loan Exposure, the party from which such payment is due will pay the other party, in same day funds, by wire transfer to the other's account, not later than 1:00 p.m. (Eastern time) on the Business Day immediately following the Settlement Date (provided, that if Agent gives such notice at or prior to 1:00 p.m. (Eastern time) on the Settlement Date, such funding shall be made on the Settlement Date).

(b) On the first Business Day of each month (each, an "**Interest Settlement Date**"), Agent will advise each Lender by written notice in accordance with this Agreement of the amount of interest and fees charged to and collected from the Borrowers for the preceding month in respect of the Loans. Provided that such Lender is not then a Defaulting Lender, Agent will pay to such Lender, by wire transfer to such Lender's account (as specified by such Lender in accordance with this Agreement) such Lender's Pro Rata Share of such interest and fees not later than the next Business Day following the Interest Settlement Date.

10.22 Defaulting Lender. If any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) Such Defaulting Lender's Commitment and outstanding Loans shall be excluded for purposes of calculating the fee payable to Lenders in respect of the unused portion of the applicable Commitments, and such Defaulting Lender shall not be entitled to receive any such unused facility fees with respect to such Defaulting Lender's Commitments or Loans, as applicable.

(b) The Commitments and Loans of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 10.5).

(c) In the event a Defaulting Lender has defaulted on its obligation to fund any Loan, until such time as the Default Excess with respect to such Defaulting Lender has been reduced to zero, any prepayments or repayments on account of the Loans, to the extent they would be otherwise be payable to such Defaulting Lender, shall be applied first, to the payment of any amounts owing by such Defaulting Lender to Agent hereunder; second, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Agent; third, if so determined by Agent and the Borrowers, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that, if (i) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share and such Loans were made at a time when the conditions set forth in Section 1.10 were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such 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 10.22(c) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) In the event that Agent agrees in writing that a Defaulting Lender has adequately remedied all matters which caused such Lender to become a Defaulting Lender, then the Pro Rata Shares of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders or participations in the Loans as Agent shall determine may be necessary in order for such Lender to hold such Loans or participations in accordance with its Pro Rata Share; provided, that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; 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 having been a Defaulting Lender.

(e) The rights and remedies with respect to a Defaulting Lender under this Section 10.22 are in addition to any other rights and remedies which the Borrowers or Agent, as applicable, may have against such Defaulting Lender.

[signature pages follow]

IN WITNESS WHEREOF, the Borrowers, each other Loan Party party hereto, Agent, and Lenders have signed this Agreement as of the date first set forth above.

AGENT:

GREAT ROCK CAPITAL PARTNERS MANAGEMENT, LLC

By: _____
Name: _____
Title: _____

LENDERS:

GRC SPV INVESTMENTS, LLC

By: _____
Name: _____
Title: _____

[Signatures Continued from Previous Page]

BORROWERS:

[_____]

By: _____
Name: _____
Title: _____

GUARANTORS:

[_____]

By: _____
Name: _____
Title: _____

Annex A

Agent's Account

Bank: KeyBank, N.A.

Bank Address: 127 Public Square, Cleveland, OH 44114

Routing #: 041001039

Account #: 359681564316

Account Name: Great Rock Capital SPV Investments LLC Collection Account

Reference: Basic Fun

Disclosure Schedules

SECTION 1(a)

Existence and Authority

Ref.	Loan Party	Jurisdiction of Formation	Foreign Qualifications
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

SECTION 1(b)

Names; Trade Names and Styles

Ref.	Loan Party	Prior Legal Names	Trade Names
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

SECTION 1(c)

Chief Executive Officer; Other Places of Business; Collateral Locations

(i) Chief Executive Officer and Other Places of Business:

Ref.	Loan Party/Subsidiary	Address of Chief Executive Office	Leased / Owned	Landlord Information (if leased)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

(ii) Collateral Locations (not included in clause (i) above):

Loan Party/Subsidiary	Address	Location Description	Leased / Owned	Landlord Information (if leased)

SECTION 1(d)

Third Party Locations

Loan Party	Address	Description	Owner

SECTION 1(e)

Litigation

Ref.	Loan Party	Proceeding	Description
1.			
2.			
3.			
4.			

SECTION 1(f)

Capitalization; Subsidiaries

Loan Party / Issuer	Holder	No. Units/ Shares (if applicable)	Certificate No. (if applicable)	Percent Owned

SECTION 1(g)

Other Investment Property

Ref.	Loan Party	Investment Property Description
1.		
2.		
3.		
4.		

SECTION 1(h)

Material Contracts

SECTION 2

Commercial Tort Claims

SECTION 3

Deposit Accounts; Securities Accounts; Other Accounts

Ref.	Loan Party	Name of Financial Institution	Account Number	Type of Account and Purpose of Account
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				

SECTION 4

Intellectual Property

Patents and Patent Licenses:

Trademarks and Trademark Licenses:

Copyrights and Copyright Licenses:

Domain Names:

Other IP:

SECTION 5

Insurance

SECTION 6

Permitted Indebtedness

SECTION 7

Permitted Liens

SECTION 8

Transactions with Affiliates

Schedule A-1

Revolving Loan Commitments

Lender	Revolving Loan Commitments
GRC SPV INVESTMENTS, LLC	**$50,000,000**
All Revolving Lenders	**$50,000,000**

Schedule B

Definitions

Unless otherwise defined herein, any terms (whether capitalized or lower case) used herein that are defined in the UCC (including, without limitation, Account Debtor, Chattel Paper, Commercial Tort Claims, Deposit Account, Drafts, Documents, Equipment, Fixtures, General Intangibles, Inventory, Investment Property, Instruments, Letters of Credit, Letter-of-Credit Rights, Promissory Notes, Proceeds, Securities Account and Supporting Obligations) shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided, that to the extent that the UCC is used to define any term used herein and if such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern.

As used in this Agreement, the following terms have the following meanings:

"**Acceptable Appraisal**" means, with respect to any assets, the most recent appraisal of such assets received by Agent (a) from an appraisal company satisfactory to Agent, (b) the scope and methodology (including, to the extent relevant, any sampling procedure employed by such appraisal company) of which are satisfactory to Agent, and (c) the results of which are satisfactory to Agent, in each case under this definition, in Agent's Permitted Discretion.

"**Accounts**" shall mean all "accounts" as such term is defined in the UCC and all rights of payment of a monetary obligation arising (a) with respect to Inventory that has been or is to be sold, leased, licensed, assigned or otherwise disposed of, and (b) with respect to services rendered or to be rendered.

"**Actual Collections**" has the meaning set forth in Section 5.9(d).

"**Actual Disbursements**" has the meaning set forth in Section 5.9(d).

"**Additional Documents**" has the meaning set forth in Section 3.3(b).

"**Adjustment**" has the meaning set forth in Section 2.1(f).

"**Affiliate**" means, with respect to any Person, any other Person in control of, controlled by, or under common control with the first Person, and any other Person who has a substantial interest, direct or indirect, in the first Person or any of its Affiliates, including, any officer or director of the first Person or any of its Affiliates; provided, however, that neither Agent, any Lender nor any of their respective Affiliates shall be deemed an "Affiliate" of the Borrowers for any purposes of this Agreement. For the purpose of this definition, a "substantial interest" shall mean the direct or indirect legal or beneficial ownership of more than 10% of any class of equity or similar interest.

"**Agent**" has the meaning set forth in the Preamble to this Agreement.

"**Agent's Account**" has the meaning set forth in Section 1.7.

"**Agreement**" and "**this Agreement**" have the meanings set forth in the Preamble to this Agreement.

"**Anti-Corruption Laws**" means the FCPA, the U.K. Bribery Act of 2010, and the Corruption of Foreign Public Officials Act (Canada) as amended, and all other applicable laws and

regulations or ordinances concerning or relating to bribery, money laundering or corruption in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business.

"**Anti-Money Laundering Laws**" means the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"**Application Event**" means the occurrence of (a) a failure by the Borrowers to repay all of the Obligations in full on the Maturity Date, or (b) an Event of Default and the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to the second sentence of Section 4.2 of this Agreement.

"**Approved Electronic Communication**" means each notice, demand, communication, information, document and other material transmitted, posted or otherwise made or communicated by e-mail or facsimile that any party is obligated to, or otherwise chooses to, provide to Agent or any Lender pursuant to this Agreement or any other Loan Document, including any financial statement, financial and other report, notice, request, certificate and other information or material; provided, that Approved Electronic Communications shall not include any notice, demand, communication, information, document or other material that Agent or any Lender specifically instructs a Person to deliver in physical form.

"**Approved Fund**" means, with respect to any Lender, any Person (other than a natural Person) that (a) (i) is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business or (ii) temporarily warehouses loans for any Lender or any Person described in clause (i) above and (b) is advised or managed by (i) such Lender, (ii) any Affiliate of such Lender or (iii) any Person (other than an individual) or any Affiliate of any Person (other than an individual) that administers or manages such Lender.

"**Acquisition**" means any transaction, or any series of related transactions, consummated on or after the Closing Date, by which any Loan Party or Subsidiary (a) acquires any going business or all or substantially all of the assets of any Person, whether through purchase of assets, merger or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person which has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person.

"**Assignment and Acceptance**" means an Assignment and Acceptance Agreement substantially in the form of **Exhibit F** hereto.

"**Authorized Officer**" means the chief executive officer, chief financial officer or treasurer of the Borrowers and each other Person designated from time to time by any of the foregoing officers of the Borrowers in a notice to Agent, which designation shall continue in force and effect until terminated in a notice to Agent from any of the foregoing officers of the Borrowers.

"**Bankruptcy Code**" means the United States Bankruptcy Code (11 U.S.C. § 101 et seq.).

"**Bankruptcy Court**" has the meaning set forth in the recitals to this Agreement.

"**Base Rate**" means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50% or (c) 3.50%.

Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively. If for any reason Agent shall have determined in good faith that it is unable to ascertain the Federal Funds Effective Rate, including the failure of the Federal Reserve Bank of New York to publish rates or the inability of Agent to obtain quotations in accordance with the terms thereof, the Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist.

"**Base Rate Loan**" means a loan bearing interest on the basis of the Base Rate.

"**Blocked Account**" has the meaning set forth in Section 4.1.

"**Borrower**" and "**Borrowers**" have the meaning set forth in the Preamble to this Agreement.

"**Business Day**" means (i) a day other than a Saturday or Sunday or any other day on which Agent or commercial banks in New York are authorized or required by law to close and (ii) with respect to any matters relating to Term SOFR Loans, a SOFR Business Day.

"**Capital Expenditures**" means with respect to any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including expenditures for capitalized lease obligations) by the Loan Parties and their Subsidiaries during such period that are required by GAAP, consistently applied, to be included in or reflected by the property, plant and equipment or similar fixed asset accounts (or intangible accounts subject to amortization) on the balance sheet of Borrowers.

"**Capitalized Lease**" means any lease which is or should be capitalized on the balance sheet of the lessee thereunder in accordance with GAAP.

"**Change of Control**" means that:

(a) Permitted Holders fail to own and control, directly or indirectly, 51%, or more, of the Equity Interests of Holdings entitled (without regard to the occurrence of any contingency) to vote for the election of members of the board of directors of Holdings,

(b) any "person" or "group" (within the meaning of Sections 13(d) and 14(d) of the Exchange Act), other than Permitted Holders, becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 20%, or more, of the Equity Interests of Holdings entitled (without regard to the occurrence of any contingency) to vote for the election of members of the board of directors (or similar governing body) of Holdings,

(c) Holdings fails to own and control, directly or indirectly, 100% of the Equity Interests of the Borrowers and their Subsidiaries, or

(d) a majority of the members of the board of directors (or similar governing body) of Holdings do not constitute Continuing Directors, or

(e) a member of the board of directors of Holdings or the Borrowers is appointed that is not acceptable to Agent in its discretion, the composition of the board of directors of Holdings or the Borrowers is modified and the modifications are not acceptable to Agent in its discretion.

"**Chapter 11 Cases**" has the meaning set forth in the recitals to this Agreement.

"**Chapter 11 Debtor**" has the meaning set forth in the recitals to this Agreement.

"**Chapter 11 Order**" means any order of the Bankruptcy Court in the Chapter 11 Cases.

"**Closing Date**" means [•], 2024.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Collateral**" means all property and interests in property in or upon which a security interest, mortgage, pledge or other Lien is granted or purported to be granted pursuant to this Agreement or the other Loan Documents, including all of the property of each Loan Party described in Section 3.1. For the avoidance of doubt, "Collateral" shall exclude all Excluded Property.

"**Collateral Access Agreement**" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, vendor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in the Loan Parties' books and records or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

"**Collateral Documents**" means, collectively, this Agreement, the UK Collateral Documents, all security agreements, Mortgages, Control Agreements, and any other collateral assignment, security agreement, pledge agreement or other similar agreement pursuant to which any Loan Party pledges or grants a Lien in any assets securing the Obligations.

"**Collections**" has the meaning set forth in Section 4.1.

"**Commitments**" means, with respect to each Revolving Lender, its Revolving Loan Commitment.

"**Compliance Certificate**" means a compliance certificate substantially in the form of **Exhibit E** hereto to be signed by an Authorized Officer of the Borrowers.

"**Confidential Information**" means confidential information that any Loan Party furnishes to Agent or any Lender pursuant to any Loan Document concerning any Loan Party's business, but does not include any such information once such information has become, or if such information is, generally available to the public or available to Agent or any Lender (or other applicable Person) from a source other than the Loan Parties which is not, to Agent's or the applicable Lender's knowledge, bound by any confidentiality agreement in respect thereof.

"**Confirmation Order**" means [the *Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Combined Disclosure Statement and Chapter 11 Plan of Reorganization of Basic Fun, Inc., et al.*], entered on the Bankruptcy Court docket as Docket No. [__].

"**Conforming Changes**" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any replacement rate, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of increased costs provisions and other technical, administrative or operational matters) that Agent decides in consultation with Borrowers may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Agent in a manner

substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

"**Continuing Director**" means (a) any member of the board of directors, managers or similar governing body who was a director (or comparable manager) of Holdings on the Closing Date, and (b) any individual who becomes a member of the board of directors, managers or similar governing body after the Closing Date if such individual was approved, appointed or nominated for election to the board of directors, managers or similar governing body by either the Permitted Holder or a majority of the Continuing Directors, but excluding any such individual originally proposed for election in opposition to the board of directors, managers or similar governing body in office at the Closing Date in an actual or threatened election contest relating to the election of the directors (or comparable managers) of Holdings and whose initial assumption of office resulted from such contest or the settlement thereof.

"**Control Agreement**" means a control or blocked accounts agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by a Loan Party or one of its Subsidiaries, Agent, and the applicable securities intermediary (with respect to a securities account) or bank (with respect to a Deposit Account (other than an Excluded Account)).

"**Currency Due**" has the meaning set forth in Section 6.3(b).

"**Customs Brokers**" shall mean the persons listed on Schedule I hereto.

"**Debtor Relief Laws**" means any of Title 11 of the Bankruptcy Code, the UCC, or any applicable governing corporate statute dealing with the compromise of creditor's claims or arrangements, each as now and hereafter in effect, any successors to such statutes and any other applicable insolvency, bankruptcy, liquidation, reorganization, arrangement or relief of debtor or other similar law of any jurisdiction, where such statute is used by a Person to propose an arrangement and any applicable law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it.

"**Default**" means any event which with notice or passage of time, or both, would constitute an Event of Default.

"**Default Excess**" means with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender's Pro Rata Share of the aggregate outstanding principal amount of all Revolving Loans (calculated as if all applicable Defaulting Lenders (other than such Defaulting Lender), had funded their respective Pro Rata Shares of all Revolving Loans) over the aggregate outstanding principal amount of all Revolving Loans of such Defaulting Lender.

"**Default Rate**" has the meaning set forth in Section 2.1(a).

"**Defaulting Lender**" means, subject to Section 10.22(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Agent and the Borrowers in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing)

has not been satisfied, or (ii) pay to Agent, or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrowers and Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Agent or the Borrowers, to confirm in writing to Agent and the Borrowers that it will comply with its prospective funding obligations hereunder (provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Agent and the Borrowers), 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, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided, that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 10.22(b)) upon delivery of written notice of such determination to the Borrowers, and each other Lender.

"**Designated Lender**" has the meaning set forth in Section 10.5(e).

"**DIP Credit Agreement**" means that certain Senior Secured Super-Priority Debtor-in-Possession Loan and Security Agreement, dated as of July 3, 2024, by and among Great Rock Capital Partners Management, LLC, a Delaware limited liability company, as administrative agent, the lenders party thereto and the Loan Parties.

"**Disclosure Schedule**" means that certain Disclosure Schedule annexed hereto immediately following the signature page to this Agreement, as the same may be updated from time to time after the Closing Date with the prior written consent of Agent.

"**Dollar Equivalent**" means, at any time, (a) as to any amount denominated in Dollars, the amount hereof at such time, and (b) as to any amount denominated in a currency other than Dollars, the equivalent amount in Dollars as determined by Agent or any Lender at such time that such amount could be converted into Dollars by Agent or such Lender according to prevailing exchange rates selected by Agent or such Lender.

"**Dollars**" or "**$**" means United States Dollars, lawful currency for the payment of public and private debts.

"**E-Signature**" means the process of attaching to or logically associating with an Approved Electronic Communication an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Approved Electronic Communication) with the intent to sign, authenticate or accept such Approved Electronic Communication.

"**EBITDA**" means, for the applicable period, the sum of the Loan Parties' net income after taxes for such period (excluding any after-tax gains or losses on the sale of assets (other than the sale of Inventory in the ordinary course of business) and excluding other after-tax extraordinary gains or losses) plus (i) interest expense, (ii) income tax expense, (iii) depreciation and amortization for such period, (iv) extraordinary, unusual or non-recurring charges to the extent agreed to in writing by Administrative Agent, (v) transaction fees, costs, and expenses incurred in connection with Permitted Acquisitions, dispositions of assets to the extent permitted by this Agreement, and Permitted Investments in an aggregate amount not to exceed $[_____] in any period, (vi) losses and expenses from (or incurred in connection with) discontinued operations and other divested investments to the extent agreed to in writing by Agent in an amount not to exceed $[_____], (vii) extraordinary, unusual or non-recurring losses, fees, costs, charges or expenses related to freight charges for the transportation of goods, in an amount not to exceed $[_____] in any period, (ix) professional fees incurred by the Loan Parties in connection with the Chapter 11 Cases including but not limited to fees, costs, and expenses incurred in connection with closing of the transactions under the Loan Documents and the Subordinated Debt Documents in an aggregate amount not to exceed $[_____], plus or minus non-cash stock compensation and any other non-cash charges or gains which have been subtracted or added in calculating net income after taxes for such period, losses and expenses from (or incurred in connection with) discontinued operations and other divested investments to the extent agreed in writing by Administrative Agent, all on a consolidated basis in accordance with GAAP. [2]

"**Effective Date**" means the date that is determined to be the "Effective Date" of and as defined in the Plan of Reorganization.

"**Eligible Accounts**" means those Accounts created by a Loan Party in the ordinary course of its business, that arise out of such Loan Party's sale of goods or rendition of services, that comply with each of the representations and warranties respecting Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion upon written notice to the Borrowers to address the results of any information with respect to the Loan Parties' business or assets of which Agent becomes aware after the Closing Date, including any field examination performed by (or on behalf of) Agent from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, unapplied cash, taxes, finance charges, service charges, discounts, credits, allowances, and rebates. Eligible Accounts shall not include the following:

(a) Accounts that the Account Debtor has failed to pay within ninety (90) days of original invoice date or sixty (60) days of due date,

(b) Accounts owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with selling terms of more than ninety (90) days,

(d) Accounts with respect to which the Account Debtor is an Affiliate of any Loan Party or an employee or agent of any Loan Party or any Affiliate of any Loan Party,

(e) Accounts (i) arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms

[2] NTD: Under further review.

by reason of which the payment by the Account Debtor may be conditional, or (ii) with respect to which the payment terms are "C.O.D.," cash on delivery or other similar terms,

(f) Accounts that are not payable in Dollars,

(g) Accounts with respect to which the Account Debtor is a Foreign Account Debtor unless (i) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and, if requested by Agent, is directly drawable by Agent, or (ii) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Agent; provided that no more than $750,000 of Accounts shall be included pursuant to this clause (g),

(h) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which Borrowers have complied, to the reasonable satisfaction of Agent, with the Assignment of Claims Act, 31 USC §3727), or (ii) any state of the United States or any other governmental authority (in each case, a "**Government Account Debtor**"),

(i) Accounts with respect to which the Account Debtor is a creditor of a Loan Party, has or has asserted a right of recoupment or setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of recoupment or setoff, or dispute,

(j) Accounts with respect to an Account Debtor whose Eligible Accounts owing to Loan Parties exceed (A) other than with respect to Walmart Stores, Inc. and Target Corporation (and their respective Affiliates), 25% and (B) with respect to Walmart Stores, Inc. and Target Corporation (and their respective Affiliates), 40% (in each case, such percentage, as applied to a particular Account Debtor, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage, provided, that in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing applicable percentages shall be determined by Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(k) Accounts with respect to which the Account Debtor is subject to an insolvency or bankruptcy proceeding, receivership, assignment for the benefit of creditors or other similar proceedings under debtor relief laws, is not solvent, has gone out of business, or as to which any Loan Party has received notice of an imminent insolvency or bankruptcy proceeding or a material impairment of the financial condition of such Account Debtor,

(l) Accounts, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful, including by reason of the Account Debtor's financial condition,

(m) Accounts that are not subject to a valid and perfected first priority Agent's Lien,

(n) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor,

(o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity,

(p) Accounts that represent credit card sales,

(q) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the applicable Borrower of the subject contract for goods or services,

(r) Accounts with respect to which the Account Debtor or any of its subsidiaries or affiliates is party to (or any of the Accounts with respect to such Account Debtor, subsidiary or affiliate is subject to), any factoring, receivables financing, "quick pay" or similar arrangement, or

(s) Agent otherwise deems such Accounts (or any portion thereof) unacceptable for lending purposes in its sole discretion.

"**Eligible In-Transit Inventory**" means, as of any date of determination In-Transit Inventory:

(a) which has been purchased by the applicable Loan Party from a vendor which is not an Affiliate of any Loan Party, has been shipped on a common carrier for receipt by the applicable Loan Party, and has been in transit over water for 30 days or less from the date of shipment thereof and is due to be received by the applicable Loan Party within 30 days or less from such date of determination (or, in either case, such longer period of time as Agent may agree in its sole discretion in the case of any In-Transit Inventory that has been delayed because of a customs audit or inspection), but which In-Transit Inventory has not yet been received by the applicable Loan Party;

(b) for which the purchase order is in the name of the applicable Loan Party, and title and risk of loss has passed to such Loan Party;

(c) for which a document of title acceptable to Agent has been issued, and of which document Agent has possession or control (as defined in the UCC) (in each case, unless otherwise agreed by Agent in writing);

(d) is covered by insurance (including marine cargo insurance) reasonably acceptable to Agent;

(e) for which payment of the purchase price has been made by the applicable Loan Party, the purchase price is supported by a commercial letter of credit from an issuer acceptable to Agent, or the purchase price is on terms consistent with past practices of the applicable Loan Party and not overdue;

(f) unless otherwise agreed to by Agent, is subject to (i) a written agreement by the seller of such Inventory, in form and substance reasonably satisfactory to Agent, that waives all rights of stoppage, diversion or similar rights of the seller to such Inventory, or (ii) the bill of lading provides that the seller does not have any right of stoppage, diversion or similar rights with respect to such Inventory; and

(g) which otherwise is not excluded from the definitions of Eligible Inventory, other than as a result of clauses (d) or (e) of Eligible Inventory;

provided, that (x) Agent may, in its discretion, exclude any particular In-Transit Inventory from the definition of "Eligible In-Transit Inventory" in the event Agent determines that such In-Transit Inventory is subject to any Person's right of reclamation, repudiation or stoppage in transit or any event has occurred or is reasonably anticipated by Agent to arise which may otherwise adversely impact the ability of Agent

to realize upon such Inventory and (y) Agent may, in its discretion, waive any of the requirements set forth in clauses (a) – (f) above.

"**Eligible Intellectual Property**" means Intellectual Property of a Borrower that is the subject of an Acceptable Appraisal and that complies with each of the representations and warranties respecting Eligible Intellectual Property made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion upon prior written notice to Borrowers and after Agent consults with Borrowers, to address the results of any information with respect to the Borrowers' business or assets of which Agent becomes aware after the Closing Date, including any field examination or appraisal performed by (or on behalf of) Agent from time to time after the Closing Date. An item of Intellectual Property shall not be included in Eligible Intellectual Property if:

(a) such Intellectual Property is not set forth on **Schedule C**.

(b) such Intellectual Property is not validly registered with the United States Patent and Trademark Office or the United States Copyright Office, as applicable;

(c) such Intellectual Property is not owned by a Borrower, or is licensed by such Borrower to any third party other than non-exclusive licenses in the ordinary course of business;

(d) it is not subject to a valid and perfected first priority Agent's Lien (including filings at the United States Patent and Trademark Office or United States Copyright Office, as applicable); or

(e) such Intellectual Property is subject to any Liens other than Permitted Liens.

"**Eligible Inventory**" means Inventory of a Loan Party that complies with each of the representations and warranties respecting Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion upon written notice to the Borrowers to address the results of any information with respect to the Loan Parties' business or assets of which Agent becomes aware after the Closing Date, including any field examination or appraisal performed or received by Agent from time to time after the Closing Date. An item of Inventory shall not be included in Eligible Inventory if:

(a) a Loan Party does not have good, valid, and marketable title thereto,

(b) such Inventory does not constitute finished goods that are not defective and held for sale in the ordinary course of a Loan Party's business or work-in-process or raw material inventory to be sold in the ordinary course of a Loan Party's business upon completion thereof as finished goods that are not defective,

(c) a Loan Party does not have actual and exclusive possession thereof (either directly or through a bailee or agent of a Loan Party),

(d) it is not located at one of the locations in the continental United States, Canada or the United Kingdom set forth on Section 1(c) or 1(d) of the Disclosure Schedule (or in-transit from one such location to another such location in the continental United States or Canada or in the United Kingdom),

(e) it is in-transit to or from a location of a Loan Party (other than in-transit from one location set forth on Section 1(c) or 1(d) of the Disclosure Schedule to another location set forth on Section

1(c) or 1(d) of the Disclosure Schedule located in the continental United States or Canada or in the United Kingdom),

(f) it is located on Real Property leased by a Borrower or in a contract warehouse or with a bailee or processor, in each case, unless it is subject to a Collateral Access Agreement executed by the lessor, warehouseman or processor, as the case may be, and it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises,

(g) it is the subject of a bill of lading or other document of title (other than as described in the definition of "Eligible In-Transit Inventory"),

(h) it is not subject to a valid and perfected first priority Agent's Lien,

(i) it consists of goods returned or rejected by a Borrower's customer or goods being held for review by a customer (including, without limitation, for inspection, quality check and/or for damage),

(j) it consists of goods that are the subject of a contracted order with one of a Borrower's customers who is a Foreign Account Debtor (other than to the extent the resulting Accounts are otherwise Eligible Accounts), a Government Account Debtor, a Sanctioned Person or Sanctioned Entity,

(k) it consists of goods that are: obsolete, slow moving, excess, contaminated, damaged, unmerchantable, discontinued, repossessed, demo or field inventory, packaging or shipping materials, supplies used or consumed in the Loan Parties' business, bill and hold goods, defective goods, "seconds," or goods acquired on consignment,

(l) it consists of goods that are raw materials, work in process, spare parts or fabricated parts,

(m) it is subject to third party intellectual property, licensing or other proprietary rights, unless, after on and after the Final Order Date, (i) it is subject to a Licensor Agreement or (ii) Agent is otherwise satisfied that such Inventory can be freely sold by Agent on and after the occurrence of an Event of Default despite such third party rights,

(n) an Acceptable Appraisal of such Inventory has not been completed, or

(o) the Agent otherwise deems such Inventory unacceptable for lending purposes in its sole discretion.

"**Environmental Laws**" means any applicable federal, state, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on any Loan Party, relating to the protection of the environment or the protection of employee health to the extent related to exposure to Hazardous Materials.

"**Equity Interests**" means, with respect to a Person, all of the shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities Exchange Commission under the Exchange Act as in effect from time to

time), but in no event will Equity Interest include any debt securities convertible or exchangeable into equity unless and until actually converted or exchanged.

"**ERISA**" means the Employee Retirement Income Security Act of 1974 and all rules, regulations and orders promulgated thereunder.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) under common control with a Loan Party within the meaning of section 414(b) or (c) of the Code (and sections 414(m) and (o) of the Code for purposes of provisions relating to section 412 of the Code and section 302 of ERISA), or, solely for purposes of potential liability under Section 302 of ERISA and Section 412 of the Code, treated as a single employer therewith under Section 414 of the Code.

"**ERISA Event**" means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(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 a Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan or to appoint a trustee to administer any Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, or the determination that any Pension Plan is, or reasonably could be expected to be, considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Loan Party or any ERISA Affiliate; (i) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; or (j) the failure by any Loan Party or any ERISA Affiliate to make a required contribution to any Plan that results in, or would be reasonably expected to result in, the imposition of a lien or other encumbrance or the provision of security under Section 430(k) of the Code or Section 303(k) or 4068 of ERISA.

"**Erroneous Payment**" has the meaning set forth in Section 10.11(l)(i).

"**Erroneous Payment Deficiency Assignment**" has the meaning set forth in Section 10.11(l)(iv).

"**Erroneous Payment Impacted Class**" has the meaning set forth in Section 10.11(l)(iv).

"**Erroneous Payment Return Deficiency**" has the meaning set forth in Section 10.11(l)(iv).

"**Erroneous Payment Subrogation Rights**" has the meaning set forth in Section 10.11(l)(vi).

"**Event of Default**" has the meaning set forth in Section 7.1.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Excluded Accounts**" means (a) any zero-balance accounts, (b) any payroll, withholding tax and other fiduciary accounts, in each case solely to the extent such accounts contain only amounts designated for payment of current payroll, withholding tax and other fiduciary liabilities, and (c) any other accounts as long as the aggregate balance for all such Loan Parties in all such other accounts does not exceed $250,000 at any time.

"**Excluded Property**" has the meaning set forth in Section 3.1.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or becomes a party to this Agreement or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 9 amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes that would not have been imposed but for such Recipient's failure to comply with Section 9(e) or Section 9(f); and (d) any withholding Taxes imposed pursuant to FATCA.

"**Extraordinary Receipts**" means any cash or Permitted Investments received by or paid to or for the account of any Loan Party consisting of amounts received in respect of foreign, United States, state or local or municipal tax refunds, purchase price adjustments, indemnification payments, pension plan reversions, business interruption insurance, judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action or litigation; provided that "Extraordinary Receipts" shall not include tariff refunds.

"**FATCA**" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version to the extent 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 and implementing such Sections of the Code.

"**FCPA**" means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"**Federal Funds Effective Rate**" for any day means the rate per annum (based on a year of three hundred sixty (360) days and actual days elapsed and rounded upward to the nearest 1/100 of 1%) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate" as of the date of this Agreement; provided, that if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the "Federal Funds Effective Rate" for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.

"**Fee Letter**" means that certain Fee Letter, dated as of the Closing Date, between the Borrowers and Agent.

"**Fiscal Quarter**" means, as of any date of determination with respect to the Borrowers, each calendar quarter occurring during each Fiscal Year.

"**Fiscal Year**" means the fiscal year of the Borrowers which ends on December 31 of each year.

"**Fixed Charges**" means, with respect to any fiscal period and with respect to the Loan Parties determined on a consolidated basis in accordance with GAAP, the sum, without duplication, of (a) all principal amounts of Indebtedness (including Indebtedness to the Lenders to the extent such amounts may not be reborrowed) paid or payable during such period, plus (b) all Interest Expense and all fees for the use of money or the availability of money, including commitment, facility and like fees and charges upon Indebtedness (including Indebtedness to Agent or the Lenders) paid or payable during such period, plus (c) without limitation of the restrictions specified in Section 5.29(i), all dividends, redemptions, repurchases or other distributions paid or payable in cash on account of a Borrower's Equity Interests during such period, plus (d) all amounts paid or payable on account of Capitalized Leases during such period. [Notwithstanding the foregoing, Fixed Charges shall not include (a) any interest payments in respect of the Subordinated Debt paid in kind (and not in cash) or (b) any principal payments in respect of the Subordinated Debt not actually paid as a result of restrictions in respect thereof contained in this Agreement or the Subordinated Debt Subordination Agreement].[3]

"**Fixed Charge Coverage Ratio**" means, with respect to any fiscal period and with respect to the Loan Parties determined on a consolidated basis in accordance with GAAP, the ratio of (a) EBITDA for such period ***minus*** Unfinanced Capital Expenditures made (to the extent not already incurred in a prior period) or incurred during such period ***minus*** all cash tax expense paid or payable during such period ***minus*** all payments required to be made during such period but only to the extent not already accounted for in the calculation of EBITDA in respect of any funding deficiency or funding shortfall with respect to any Pension Plan or for any withdrawal liability associated with any such plan, to (b) Fixed Charges for such period.[4]

"**Flood Laws**" means the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, and related laws, rules and regulations, including any amendments or successor provisions.

"**Floor**" means, in respect of any Term SOFR Loan, the rate of 2.00% per annum.

"**Foreign Account Debtor**" means an Account Debtor that (a) does not maintain its chief executive office in the United States, Canada or the United Kingdom, or (b) is not organized under the laws of the United States, Canada or the United Kingdom or any state or province thereof, or (c) is the government of any foreign country excluding Canada, the United Kingdom or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof.

"**GAAP**" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting

[3] NTD: Under further review.
[4] NTD: Subject to review of Schedule E.

profession), which are applicable to the circumstances as of the date of determination, in any case consistently applied.

"**Government Account Debtor**" has the meaning set forth in the definition of "Eligible Accounts."

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

"**Guarantors**" means, collectively: (a) each Loan Party on the Closing Date other than the Borrowers (including, without limitation, the UK Loan Party); and (b) each other Person who, on or following the Closing Date pursuant to the terms of any Loan Document, has executed or is required to execute: (i) as a guarantor, a Guaranty of all or any portion of the Obligations; or (ii) as a pledgor, a third party pledge agreement (or similar document) in favor of Agent or the Lenders with respect to all or any portion of the Obligations.

"**Guaranty,**" "**Guaranteed**" or to "**Guarantee,**" as applied to any Indebtedness, liability or other obligation, means (a) a guaranty, directly or indirectly, in any manner, including by way of endorsement (other than endorsements of negotiable instruments for collection in the ordinary course of business), of any part or all of such Indebtedness, liability or obligation, including the Loan Guaranty, and (b) an agreement, contingent or otherwise, and whether or not constituting a guaranty, assuring, or intended to assure, the payment or performance (or payment of damages in the event of non-performance) of any part or all of such Indebtedness, liability or obligation by any means (including, the purchase of securities or obligations, the purchase or sale of property or services, or the supplying of funds).

"**Hazardous Material**" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations relating to the protection of the environment as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," "dangerous goods" or words of similar import, (b) oil, petroleum, or petroleum derived substances, (c) any flammable substances or explosives or any radioactive materials and (d) asbestos and polychlorinated biphenyls.

"**Hedge Agreement**" means a "swap agreement" as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

"**Holdings**" has the meaning set forth in the Preamble to this Agreement.

"**In-Transit Inventory**" means Inventory of a Loan Party which is in the possession of a common carrier and is in transit from the seller of such Inventory to such Loan Party from a location outside of the continental United States or Canada to a location of such Loan Party that is within the continental United States or Canada.

"**Indebtedness**" means (without duplication), with respect to any Person, (a) all obligations or liabilities, contingent or otherwise, for borrowed money, (b) all obligations represented by promissory notes, bonds, debentures or the like, or on which interest charges are customarily paid, (c) all liabilities secured by any Lien on property owned or acquired, whether or not such liability shall have been assumed, (d) all obligations of such Person under conditional sale or other agreements relating to property or assets purchased by such Person, (e) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding trade payables which are not ninety (90) days past the invoice date

incurred in the ordinary course of business), (f) all Capitalized Leases of such Person, (g) all obligations (contingent or otherwise) of such Person as an account party or applicant in respect of letters of credit and/or bankers' acceptances, or in respect of financial or other hedging obligations, (h) all equity interests issued by such Person subject to repurchase or redemption at any time on or prior to the Scheduled Maturity Date, other than voluntary repurchases or redemptions that are at the sole option of such Person, (i) all principal outstanding under any synthetic lease, off-balance sheet loan or similar financing product, and (j) all Guarantees, endorsements (other than for collection in the ordinary course of business) and other contingent obligations in respect of the obligations of others; provided, however, that notwithstanding anything to the contrary herein or in the other Loan Documents, the following shall not constitute Indebtedness: deferred revenue, taxes or other similar accrued expenses, in each case arising in the ordinary course of business.

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

"**Ineligible Assignee**" means (a) any natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person), (b) any Loan Party or any of its Affiliates or (c) any Defaulting Lender or any Affiliate of any Defaulting Lender or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or an Affiliate thereof.

"**Intellectual Property**" means any or all of the following and all rights, priorities and privileges arising out of, relating to or associated therewith, whether arising under United States, multinational or foreign laws or otherwise: (a) all works of authorship (whether or not copyrightable, including software code), copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto and copyright licenses, (b) all patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof, and patent licenses, (c) all trademarks and service marks (including common law trademarks and service marks), trademark and service mark registrations and applications therefor, trade names, logos, brand names, slogans, product names, and other source identifiers (including all goodwill arising from the use of or associated with any of the foregoing) and trademark licenses, (d) all industrial designs and all know-how, trade secrets, data, databases and data collections, inventions (whether patentable or not), invention disclosures, improvements, proprietary information, technology, algorithms, diagrams, formulae, methods, processes, protocols, schematics, designs, specifications, technical data and customer and supplier lists, and all documentation relating to any of the foregoing, (e) URLs, domain names, any registrations and applications therefor, websites, social media accounts, and any content associated therewith, (f) all moral and economic rights of authors and inventors, however denominated, (g) any other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing), (h) any similar or equivalent proprietary rights in any technology or any of the foregoing, (i) any registrations of the foregoing and applications to register the foregoing, and (j) all rights to sue at law or in equity for any past, present or future infringement, misappropriation or other impairment thereof, including the right to receive and collect all proceeds and damages therefrom.

"**Interest Expense**" means, for any period, the aggregate of the interest expense of the Loan Parties for such period, determined on a consolidated basis in accordance with GAAP.

"**Interest Period**" means any period commencing on the first day of a calendar month and ending on the last day of such calendar month; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the

last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, and (iii) no Interest Period shall extend beyond the Maturity Date. For purposes hereof, the date of a Loan initially shall be the date on which such Loan is made and thereafter shall be the effective date of the most recent conversion or continuation of such Loan. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"**Investment Property**" means the collective reference to (a) all "investment property" as such term is defined in Section 9-102 of the UCC, (b) all "financial assets" as such term is defined in Section 8-102(a)(9) of the UCC, and (c) whether or not constituting "investment property" as so defined, all Pledged Equity.

"**IRS**" means the United States Internal Revenue Service.

"**Issuers**" means the collective reference to each issuer of Investment Property (other than Holdings).

"**Joinder Agreement**" has the meaning set forth in Section 5.26(a).

"**Judgment Currency**" has the meaning set forth in Section 6.3(b).

"**Lender**" has the meaning set forth in the Preamble of this Agreement.

"**Lender Documentation Exception**" has the meaning set forth in Section 9(e).

"**Licensor Agreements**" has the meaning set forth in **Schedule G**.

"**Lien**" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement in the nature of a security interest of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capitalized Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"**Liquidity**" means [_____].

"**Loan Account**" has the meaning set forth in Section 2.4.

"**Loan Documents**" means, collectively, this Agreement and all notes, all guaranties, all certificates, the Collateral Documents, the Fee Letter, and all other agreements, documents and instruments now or hereafter executed or delivered by the Borrowers, any Loan Party in connection with, or to evidence the transactions contemplated by, this Agreement.

"**Loan Guaranty**" means Section 8 of this Agreement.

"**Loan Party**" means, individually, any Borrower or any Guarantor; and "Loan Parties" means, collectively, the Borrowers and the Guarantors.

"**Loans**" means, collectively, the Revolving Loans and any Protective Advances.

"**Material Adverse Effect**" means any event, act, omission, condition or circumstance which, which individually or in the aggregate, has or could reasonably be expected to have a material adverse effect on (a) the business, operations, properties, assets or financial condition, of the Loan Parties

(taken as a whole), (b) the ability of the Loan Parties (taken as a whole) to perform their obligations under any of the Loan Documents, or (c) the validity or enforceability of, or Agent's or any Lender's rights and remedies under, the Loan Documents.

"**Material Contract**" means has the meaning set forth in Section 5.18.

"**Maturity Date**" means the earliest to occur of (a) the Scheduled Maturity Date, (b) the Termination Date, or (c) such earlier date to which the Obligations may be accelerated in accordance with the terms of this Agreement (including without limitation pursuant to Section 7.2).

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.5.

"**Maximum Liability**" has the meaning set forth in Section 8.9.

"**MNPI**" has the meaning set forth in Section 10.11(h)(ii).

"**Mortgages**" means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by a Loan Party or one of its Subsidiaries in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber Real Property Collateral.

"**Multiemployer Plan**" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which a Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"**Net Cash Flow**" has the meaning set forth in Section 5.9(d).

"**Net Cash Proceeds**" means:

(a) with respect to any sale or disposition by any Loan Party or any of its Subsidiaries of assets, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of such Loan Party or such Subsidiary, in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Permitted Lien on any asset (other than (A) Indebtedness owing to Agent or any Lender under this Agreement or the other Loan Documents and (B) Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such sale or disposition, (ii) actual fees, commissions, and expenses related thereto and required to be paid by such Loan Party or such Subsidiary to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries in connection with such sale or disposition, (iii) Taxes paid or reasonably estimated to be payable to any taxing authorities by such Loan Party or such Subsidiary in connection with such sale or disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and are properly attributable to such transaction, (iv) Permitted Tax Distributions paid (or reasonably estimated to be payable) as a result thereof, and (v) all amounts that are set aside as a reserve (A) for adjustments in respect of the purchase price of such assets, (B) for any liabilities associated with such sale or casualty, to the extent such reserve is required by GAAP, and (C) for the payment of unassumed liabilities relating to the assets sold or otherwise disposed of at the time of, or within thirty (30) days after, the date of such sale or other disposition, to the extent that in each case the funds described above in this clause (v) are (A) deposited into escrow with a third party escrow agent or set aside in a separate deposit account that is subject to a Control Agreement in favor of Agent, and (B) paid to Agent as a prepayment of the applicable Obligations in accordance with this Agreement at such time when such amounts are no longer required to be set aside as such a reserve; and

(b) with respect to the issuance or incurrence of any Indebtedness by any Loan Party or any of its Subsidiaries, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Loan Party or such Subsidiary in connection with such issuance or incurrence, after deducting therefrom only (i) reasonable fees, commissions, and expenses related thereto and required to be paid by such Loan Party or such Subsidiary in connection with such issuance or incurrence, (ii) Taxes paid or payable to any taxing authorities by such Loan Party or such Subsidiary in connection with such issuance or incurrence, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and are properly attributable to such transaction, and (iii) Permitted Tax Distributions paid (or reasonably estimated to be payable) as a result thereof.

"**NOLV**" means, as of any date of determination, with respect to assets of any Person, the value of such assets that is estimated to be recoverable in an orderly liquidation of such assets, net of all associated costs and expenses of such liquidation, as determined based upon the most recent Acceptable Appraisal, if available (or as otherwise reasonably determined by Agent).

"**Non-Paying Guarantor**" has the meaning set forth in Section 8.10.

"**Non-U.S. Recipient**" has the meaning set forth in Section 9(e)(ii).

"**Notice of Borrowing**" has the meaning set forth in Section 1.7.

"**Obligations**" means all the Loans, any other present or future advances or extensions of credit made hereunder, any other present or future debts, liabilities, interest (including any interest that accrues after the commencement of an insolvency proceeding, including under any Debtor Relief Laws, regardless of whether allowed or allowable in whole or in part as a claim in any such insolvency proceeding), fees, expenses (including any fees or expenses that accrue after the commencement of an insolvency proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such insolvency proceeding), obligations, guaranties, covenants, duties and indebtedness at any time owing by the Borrowers or any other Loan Party to Agent or any Lender, whether evidenced by this Agreement or any other Loan Document whether arising from an extension of credit, guaranty, indemnification or otherwise (including, without limitation, the fees, costs and expenses owing to any Lender Financial Advisor or as a reimbursement to the Lenders or Agent in respect of any Lender Financial Advisor, in each case, as set forth in Section 5.27, whether direct or indirect (including those acquired by assignment and any participation by Agent or any Lender in any Loan Party's indebtedness owing to others), whether absolute or contingent, now existing or hereafter arising, whether due or to become due, and whether arising before or after the commencement of a proceeding under the Bankruptcy Code, any other Debtor Relief Laws or any similar statute or laws.

"**OFAC**" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"**Organic Documents**" means, with respect to any Person, the certificate of incorporation, articles of incorporation, certificate of formation, certificate of limited partnership, by-laws, operating agreement, limited liability company agreement, limited partnership agreement or other similar governance document of such Person.

"**Other Connection Taxes**" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its

obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"**Participant**" has the meaning set forth in Section 10.10.

"**Participant Register**" has the meaning set forth in Section 10.10.

"**Paying Guarantor**" has the meaning set forth in Section 8.10.

"**Payment Recipient**" has the meaning set forth in Section 10.11(l)(i).

"**PBGC**" means the Pension Benefit Guaranty Corporation.

"**Pension Act**" means the Pension Protection Act of 2006.

"**Pension Funding Rules**" means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA, and any sections of the Code or ERISA related thereto that are enacted after the date of this Agreement.

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

"**Perfection Certificate**" means a certificate in the form of Exhibit G hereto.

"**Permitted Acquisition**" means any Acquisition by any Loan Party in a transaction that satisfies each of the following requirements:

(a) Agent shall receive at least thirty (30) days' prior written notice of such proposed Acquisition;

(b) at or prior to the closing thereof, Agent shall have a perfected first priority Lien in all assets and Equity Interests of the Target subject to no Liens other than Permitted Liens, and the Loan Parties and, if applicable, the Target shall have complied with Section 5.26 hereof and shall have executed such documents and taken such actions as may be reasonably required by Agent in connection therewith;

(c) on or prior to the closing date thereof, Agent shall have received, in form and substance reasonably satisfactory to Agent, copies of the acquisition agreement and related agreements and instruments, and all opinions, certificates, lien search results and other documents reasonably requested by Agent;

(d) on or prior to the closing date thereof, Agent shall receive, a due diligence package, reasonably satisfactory to Administrative Agent, containing such due diligence information, materials and reports as the Administrative Agent may reasonably request with respect to such Acquisition and the applicable Target;

(e) such Acquisition shall not be hostile and the board of directors or similar governing body of the Target shall have approved such proposed Acquisition;

(f) the total consideration paid or payable (including without limitation, all transaction costs, assumed Indebtedness and liabilities incurred, assumed or reflected on a consolidated balance sheet of Holdings and its Subsidiaries after giving effect to such acquisition, and the maximum amount of all deferred payments, including earn-outs) for all Permitted Acquisitions consummated during the term of this Agreement shall not exceed $[•] in the aggregate for all such Permitted Acquisitions unless agreed to in advance by Agent;

(g) the Loan Parties shall be in compliance with Section 5.27;

(h) the assets being acquired (other than a *de minimis* amount of assets in relation to the assets being acquired) are located within the United States, Canada or the United Kingdom, or the Person whose Equity Interests are being acquired is organized in a jurisdiction located within the United States, Canada or the United Kingdom; and

(i) Liquidity is no less than $[_____] for the thirty (30) day period prior to such Acquisition and on a pro forma basis immediately after giving effect to such Acquisition.

"**Permitted Discretion**" means a determination made by Agent in the exercise of reasonable (from the perspective of a secured asset based lender in its dealings with similarly-situated secured asset-based borrowers) business judgment.

"**Permitted Holders**" means Jay Foreman, John MacDonald, Susan MacDonald and their Related Persons.

"Permitted Indebtedness" means: (a) the Obligations; (b) the Indebtedness described in Section 6 of the Disclosure Schedule in each case under this clause (b) along with extensions, refinancings, modifications, amendments and restatements thereof; provided, that (i) the principal amount thereof is not increased, (ii) if such Indebtedness is subordinated to any or all of the Obligations, (A) the applicable subordination terms shall not be modified in a manner that is adverse to Agent and Lenders without the prior written consent of Agent, (B) the documents evidencing such Indebtedness cannot be amended, restated, modified, or supplemented in a manner that is materially adverse to Agent and Lenders without the prior written consent of Agent and (C) any payments made with respect to such Indebtedness shall be subject to the payment restrictions set forth in Section 5.29(n); (c) capitalized leases and purchase money Indebtedness secured by Permitted Liens incurred in the ordinary course of business in an aggregate amount not exceeding $500,000 at any time outstanding, along with extensions, refinancings, modifications, amendments and restatements thereof; (d) Indebtedness incurred as a result of endorsing checks and other negotiable instruments for deposit or collection in the ordinary course of business, overdraft protection and netting services of banks; (e) [reserved]; (f) [reserved]; (g) Indebtedness consisting of unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with dispositions permitted under Section 5.29(d); (h) unsecured guarantees with respect to Indebtedness of any Loan Party, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness; (i) Indebtedness in respect of letters of credit, bank guarantees and similar instruments issued for the account of a Loan Party or any of its Subsidiaries in the ordinary course of business supporting

obligations under (A) workers' compensation, unemployment insurance and other social security laws and (B) bids, trade contracts, leases (including, without limitation, real estate leases), statutory obligations, surety and appeal bonds, performance bonds and obligations of a like nature; (j) guaranties (other than in respect of Indebtedness for borrowed money) in the ordinary course of business of the obligations of suppliers, customers, franchisees, lessees, landlords and licensees of the Loan Parties or any of their respective Subsidiaries; (k) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to any Loan Party, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year; (l) the incurrence by any Loan Party of Indebtedness under Hedge Agreements that is incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Loan Party's operations and not for speculative purposes, in an aggregate amount not to exceed $250,000 at any one time; (m) unsecured Indebtedness to trade creditors in the ordinary course of business and consistent with historical business practices; (n) Indebtedness incurred in the ordinary course of business in respect of credit cards, credit card processing services, debit cards, stored value cards, commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards"), in an aggregate amount not to exceed $250,000 at any one time; (o) unsecured Indebtedness incurred in respect of netting services, overdraft protection, and other like services, in each case, incurred in the ordinary course of business; (p) Subordinated Debt in an aggregate principal amount not to exceed $[•] plus the amount of any paid in kind interest that has been added to such principal amount after the date hereof less the amount of any principal payments thereof made after the Closing Date; (q) Indebtedness of any Borrower owing to any Subsidiary of Holdings that is a Loan Party; (r) guarantees by any Borrower of Indebtedness of any other Loan Party to the extent such underlying Indebtedness is permitted hereunder; and (s) accrual of interest, accretion or amortization of original issue discount, or the payment of interest in kind, in each case, on Indebtedness that otherwise constitutes Permitted Indebtedness.

"**Permitted Investments**" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having a rating of at least AA from Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, Inc. ("S&P") or Aa from Moody's Investors Service, Inc. ("Moodys");

(c) investments in commercial paper maturing within one year from the date of acquisition thereof and having, at such date of acquisition, a rating of at least A-2 from S&P or P-2 from Moody's;

(d) investments in certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof, or by any Lender which has a combined capital and surplus and undivided profits of not less than $500,000,000;

(e) fully collateralized repurchase agreements with a term of not more than one hundred twenty (120) days for securities described in clause (a) of this definition and entered into with a financial institution satisfying the criteria described in clause (d) of this definition; and

(f) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated at least AA by S&P or Aa by Moody's and (iii) have portfolio assets of at least $1,000,000,000.

"**Permitted Liens**" means (a) purchase money security interests in specific items of Equipment and proceeds securing Permitted Indebtedness described under clause (c) of the definition of Permitted Indebtedness; (b) Liens disclosed in Section 7 of the Disclosure Schedule; provided, however, that to qualify as a Permitted Lien, any such Lien described in Section 7 of the Disclosure Schedule shall only secure the Indebtedness that it secures on the Closing Date and any permitted refinancing in respect thereof; (c) liens for Taxes, fees, assessments, or other governmental charges or levies, either not delinquent or being contested in compliance with Section 5.10(a); (d) liens of landlords, warehouseman, processors, suppliers, materialmen, mechanics, carriers, or other similar liens arising in the ordinary course of business and securing obligations which are not delinquent or are being contested in good faith by appropriate proceedings (which proceedings have the effect of preventing the enforcement of such lien) for which adequate reserves in accordance with GAAP are being maintained; (e) liens which constitute banker's liens, rights of set-off, or similar rights as to deposit accounts or other funds maintained with a bank or other financial institution (but only to the extent such banker's liens, rights of set-off or other rights are in respect of customary service charges relative to such deposit accounts and other funds, and not in respect of any loans or other extensions of credit by such bank or other financial institution to any Loan Party); (f) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto; (g) cash deposits or pledges made (i) to secure the payment of worker's compensation, unemployment insurance, or other social security benefits or obligations, public or statutory obligations or (ii) in respect of letters of credit, bank guarantees or similar instruments issued for the account of a Loan Party or any of its Subsidiaries in the ordinary course of business supporting obligations of the type set forth in the foregoing clause (i); (h) [reserved]; (i) easements, covenants, conditions, restrictions, encroachments, building code laws, zoning restrictions, rights-of-way, protrusions and similar encumbrances and title defects affecting Real Property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and that in the aggregate do not materially interfere with the ordinary conduct of business of the Loan Parties, taken as a whole, and such other title defects or survey matters in the aggregate that are disclosed by current surveys that, in each case, do not materially interfere with the current use of any Real Property Collateral; (j) judgement Liens arising solely as a result of the existence of judgements, orders or awards that do not constitute an Event of Default under Section 7.1 of this Agreement; (k) the interests of lessors under operating leases and non-exclusive licensors under license agreements; (l) non-exclusive licenses of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business; (m) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness; (n) 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; (o) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by a Borrower or any of its Subsidiaries in the ordinary course of business permitted by this Agreement; and (p) Liens securing the Subordinated Debt, subject to the terms of the Subordination Agreement.

"**Person**" means any individual, sole proprietorship, partnership, joint venture, limited liability company, trust, unincorporated organization, association, corporation, government or any agency or political division thereof, or any other entity.

"**Petition Date**" has the meaning set forth in the recitals to this Agreement.

"**Plan**" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of any Loan Party or any such plan to which any Loan Party (or with respect to any plan subject to Section 412 or 430 of the Code or Section 302 or Title IV of ERISA, any ERISA Affiliate) is required to contribute on behalf of any of its employees.

"**Plan of Reorganization**" means the plan of reorganization under the Chapter 11 Cases (including all related schedules, supplements, exhibits and orders, as applicable), which shall be in form and substance satisfactory to the Required Lenders.

"**Pledged Equity**" means the Equity Interests listed on Sections 1(f) and 1(g) of the Disclosure Schedule, together with any other equity interests, certificates, options, or rights or instruments of any nature whatsoever in respect of the equity interests of any Person that may be issued or granted to, or held by, any Loan Party while this Agreement is in effect, and including, without limitation, to the extent attributable to, or otherwise related to, such pledged equity interests, all of such Loan Party's (i) interests in the profits and losses of each Issuer, (ii) rights and interests to receive distributions of each Issuer's assets and properties, and (iii) rights and interests, if any, to participate in the management or each Issuer related to such pledged equity interests; provided that Pledged Equity shall not include any Excluded Property.

"**Prepetition RBC Credit Agreement**" means that certain Amended and Restated Subordinate Credit Agreement, dated as of October 30, 2020, by and among Basic Fun, as borrower, Holdings, the other credit parties party thereto, the lenders from time to time party thereto, and the Prepetition RBC Credit Agreement Agent, as collateral agent, as amended, supplemented or otherwise modified from time to time.

"**Prepetition RBC Credit Agreement Agent**" means Royal Bank of Canada.

"**Prime Rate**" means the rate of interest quoted in The Wall Street Journal, Money Rates Section as the Prime Rate, as in effect from time to time (or, if such rate ceases to be so published, as quoted from such other generally available and recognizable source as Agent may select). The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"**Pro Rata Share**" means with respect to a Revolving Lender's obligation to make all or a portion of the Revolving Loans, with respect to a Revolving Lender's right to receive payments of interest, fees, and principal with respect to the Revolving Loans, and with respect to all other computations and other matters related to the Revolving Loan Commitments or the Revolving Loans, the percentage obtained by dividing (a) the Revolving Loan Exposure of such Lender by (b) the aggregate Revolving Loan Exposure of all Lenders.

"**proceeds of Collateral**" means all proceeds of Collateral, including (i) all "proceeds" of Collateral as defined by Article 9 of the Uniform Commercial Code and (ii) all other amounts or assets distributed on account of any Obligations or the proceeds therefor, including reorganization securities.

"**Protective Advances**" has the meaning set forth in Section 1.6.

"**Real Property**" means any estates or interests in real property now owned or hereafter acquired by a Loan Party and the improvements thereto.

"**Real Property Collateral**" means any Real Property hereafter acquired by any Loan Party or one of its Subsidiaries that is not subject to a Permitted Lien and with a fair market value in excess of $500,000.

"**Recipient**" means Agent, any Lender, Participant or any other recipient of any payment to be made by or on account of any Obligation of any Loan Party under this Agreement or any other Loan Document, as applicable.

"**Register**" has the meaning set forth in Section 10.9(a).

"**Related Persons**" means, with respect to any Person, each Affiliate and Approved Fund of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

"**Released Parties**" has the meaning set forth in Section 6.1.

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

"**Required Lenders**" means, at any time, Revolving Lenders having or holding more than 50% of the aggregate Revolving Loan Exposure of all Revolving Lenders.

"**Reserves**" has the meaning set forth in Section 1.5.

"**Revolving Lender**" means a Lender with a Revolving Loan Commitment.

"**Revolving Loan Borrowing Base**" means, as of any date of determination, the lesser of:

(a) $50,000,000, and

(b) the result of:

(i) 95% of all Eligible Accounts, plus

(ii) up to the lesser of (A) 95% of NOLV of all Eligible Inventory and Eligible In-Transit Inventory and (B) 70% of the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices) of all Eligible Inventory and Eligible In-Transit Inventory ; provided, that (x) amounts contributed to this clause (ii) in respect of Eligible In-Transit Inventory shall not exceed $1,000,000 as of any date of determination and (y) amounts contributed to this clause (ii) in respect of Eligible Inventory of the UK Loan Party shall not exceed $3,000,000 as of any date of determination, plus

(iii) 50% of NOLV of all Eligible Intellectual Property; provided, that this clause (iii) shall not exceed $3,000,000 as of any date of determination, minus

(iv) all Reserves.

The term "Revolving Loan Borrowing Base" and the calculation thereof shall not include any assets or property acquired in an Acquisition unless (x) Agent has conducted field examinations and appraisals reasonably required by it (with results reasonably satisfactory to Agent) and (y) the Person owning such

assets or property shall be a (directly or indirectly) wholly-owned Subsidiary of Borrower and have become a Loan Party.

"**Revolving Loan Borrowing Base Certificate**" means a certificate in the form of **Exhibit C-2** hereto.

"**Revolving Loan Commitment**" means, with respect to each Lender, its Revolving Loan Commitment, and, with respect to all Lenders, their Revolving Loan Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on **Schedule A-2** to this Agreement or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement.

"**Revolving Loan Exposure**" means, with respect to any Revolving Lender, as of any date of determination (a) prior to the termination of the Revolving Loan Commitments, the amount of such Revolving Lender's Revolving Loan Commitment, and (b) after the termination of the Revolving Loan Commitments, the aggregate outstanding principal amount of the Revolving Loans of such Revolving Lender.

"**Revolving Loans**" has the meaning set forth in Section 1.2.

"**Rolling Stock**" means all Equipment or Inventory covered by a certificate of title under applicable law.

"**Sale**" has the meaning set forth in Section 10.8(b).

"**Sanctioned Entity**" means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, or (c) an organization directly or indirectly controlled by a country or territory or its government, in each case of clauses (a) through (c) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

"**Sanctioned Person**" means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC's consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, (d) with which any Loan Party is prohibited from dealing or otherwise engaging in any transaction by any Sanctions or (e) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (d) above.

"**Sanctions**" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order or the federal government of Canada, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (e) any other Governmental Authority with jurisdiction over any Lender or any Loan Party or any of their respective Subsidiaries or Affiliates.

"**Scheduled Maturity Date**" means [•], 2027 (or if such date is not a Business Day, the next succeeding Business Day, unless such Business Day is in the next calendar month, in which case the next preceding Business Day).

"**Scheduled Unavailability Date**" has the meaning set forth in Section 2.1(f).

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Senior Officer**" means the current president, chief executive officer, chief financial officer or treasurer of any Loan Party.

"**Setting Off Person**" has the meaning set forth in Section 7.3(e).

"**Settlement Date**" means Friday of each week (or if any Friday is not a Business Day on which all Lenders are open for business, the immediately preceding Business Day on which all Lenders are open for business); provided, that Agent, in its discretion, may require that the Settlement Date occur more frequently (even daily) so long as any Settlement Date chosen by Agent is a Business Day on which each Lender is open for business.

"**SOFR**" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website at approximately 8:00 a.m. (New York City, New York time) on the immediately succeeding Business Day.

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

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

"**SOFR-Based Rate**" means SOFR or Term SOFR.

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

"**Stated Rate**" has the meaning set forth in Section 2.5.

"**Subordinated Credit Agreement**" has the meaning specified therefor in the definition of "Subordinated Debt".

"**Subordinated Debt**" means the Indebtedness under that certain [_____] (the "**Subordinated Credit Agreement**") in an original principal amount of $[•].

"**Subordinated Debt Documents**" means the Subordinated Credit Agreement and any other documents, instruments or agreements which evidence the Subordinated Debt or pursuant to which the Subordinated Debt was issued or is governed, in each case as amended, modified, supplemented or restated from the time to time, in accordance with the terms of this Agreement

"**Subordinated Debt Subordination Agreement**" means that certain Intercreditor and Subordination Agreement dated as of the Closing Date between Agent and the holders of the Subordinated Debt (and any agent therefor).

"**Subsidiary**" means any corporation or other entity of which a Person owns, directly or indirectly, through one or more intermediaries, more than 50% of the Equity Interests at the time of determination. Unless the context indicates otherwise, references to a Subsidiary shall be deemed to refer to a Subsidiary of any Borrower.

"**Target**" means the Equity Interests in a Person, or the business, division, product line or portion of the assets of a Person, acquired in an Acquisition.

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

"**Term SOFR**" means, for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor of one month comparable to the applicable Interest Period on the day (such day, the "**Lookback Day**") that is two SOFR Business Days prior to the first day of such Interest Period, as such rate is published by the SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Lookback Day the Term SOFR Reference Rate for the applicable one month tenor has not been published by the SOFR Administrator and a replacement date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the SOFR Administrator on the first preceding SOFR Business Day for which such Term SOFR Reference Rate for such tenor was published by the SOFR Administrator so long as such first preceding SOFR Business Day is not more than three SOFR Business Days prior to such Lookback Day; and provided further that if Term SOFR as so determined would be less than the Floor, then Term SOFR shall be deemed to the Floor.

"**Term SOFR Loan**" means a loan bearing interest based on Term SOFR.

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

"**Termination Date**" means the date on which all of the Obligations have been paid in full in cash (other than unasserted contingent indemnification obligations not yet due and payable) and all of each Lender's lending commitments under this Agreement and under each of the other Loan Documents have been terminated.

"**Testing Date**" has the meaning set forth in Section 5.9(c).

"**UCC**" means, at any given time, the Uniform Commercial Code as adopted and in effect at such time in the State of New York or such other applicable jurisdiction; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, priority, or remedies with respect to Agent's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "UCC" means the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies.

"**UK Collateral Documents**" means, collectively, a debenture duly executed and delivered by the UK Loan Party and governed by the laws of England and Wales and in form and substance satisfactory to Agent, a share charge duly executed and delivered by Basic Fun with respect to the Equity

Interests of the UK Loan Party and in form and substance satisfactory to Agent, and all other security agreements, collateral assignments, pledge agreements or other similar agreements pursuant to which the UK Loan Party pledges or grants a Lien in any assets securing the Obligations.

"**UK Loan Party**" means K'Nex UK Limited.

"**Unfinanced Capital Expenditures**" means Capital Expenditures (a) not financed with the proceeds of any incurrence of Indebtedness (other than the incurrence of any Revolving Loans), the proceeds of any sale or issuance of Equity Interests or equity contributions, the proceeds of any asset sale (other than the sale of Inventory in the ordinary course of business) or any insurance proceeds, and (b) that are not reimbursed by a third person (excluding any Loan Party or any of its Affiliates) in the period such expenditures are made pursuant to a written agreement.

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

(a) Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP consistently applied, subject to, in the case of unaudited interim financial statements, normal year-end audit adjustments and the lack of footnote disclosures. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Loan Document, and either the Borrowers or Agent shall so request, Agent, Lenders and the Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided, that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrowers shall provide to Agent financial statements and other documents required under this Agreement and the other Loan Documents which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (Codification of Accounting Standards 825-10) to value any Indebtedness or other liabilities of any Loan Party at "fair value," as defined therein.

(b) Notwithstanding anything to the contrary contained in the paragraph above or the definition of Capitalized Leases, in the event of a change in GAAP after the Closing Date requiring all leases to be capitalized, only those leases (assuming for purposes of this paragraph that they were in existence on the Closing Date) that would constitute Capitalized Leases on the Closing Date shall be considered Capitalized Leases (and all other such leases shall constitute operating leases) and all calculations and deliverables under this Agreement or the other Loan Documents shall be made in accordance therewith (other than the financial statements delivered pursuant to this Agreement; provided, that all such financial statements delivered to Agent in accordance with the terms of this Agreement after the date of such change in GAAP shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such change).

(c) References in this Agreement to "Articles," "Sections," "Annexes," "Exhibits" or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include," "includes" and "including" shall be deemed to be followed by "without limitation." "Or" shall be construed to mean "and/or." Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise

specified, "from and including" or "through and including," respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. Time is of the essence for each performance obligation of the Loan Parties under this Agreement and each other Loan Document. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. References to any agreement, instrument or document (i) shall include all schedules, exhibits, annexes and other attachments thereto and (ii) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein or in any other Loan Document). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. Unless otherwise specified herein Dollar ($) baskets set forth in the representations and warranty, covenants and event of default provisions of this Agreement (and other similar baskets) are calculated as of each date of measurement by the Dollar Equivalents thereof as of such date of measurement.

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, 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, assignment, sale 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).

(e) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations or any tranche of the Loans (including the Obligations in respect of the Revolving Loans) shall mean (a) the payment or repayment in full in immediately available funds of (i) the principal amount of, and interest accrued and unpaid with respect to, the outstanding Loans (or tranche of Loans, as applicable), together with the payment of any premium or fees applicable to the repayment of the applicable Loans (including the Prepayment Fee), (ii) all costs, charges and expenses payable with respect thereto under the Loan Documents, and (iii) all fees or charges that have accrued hereunder or under any other Loan Document with respect to the outstanding Loans (or tranche of Loans, as applicable), (b) the receipt by Agent of cash collateral in order to secure any other contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to Agent or the applicable Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys' fees and legal expenses) to Agent or the applicable Lenders, such cash collateral to be in such amount as Agent reasonably determines is appropriate to secure such contingent Obligations, (c) the payment or repayment in full in immediately available funds of all other outstanding Obligations (or the Obligations in respect of the applicable tranche of Loans) other than unasserted contingent indemnification Obligations, and (d) the termination of all of the Commitments of the Lenders (or the Commitments in respect of the tranche of Loans) and receipt by the Agent and the applicable Lenders of a general release from the Loan Parties and the other Lenders party hereto. Any reference herein to any Person shall be construed to include such Person's successors and assigns.

Schedule C

Eligible Intellectual Property

K’nex
Cutetitos
Mash’ems

Schedule D

Reporting[5]

Provide Agent and each Lender with each of the documents set forth below at the following times in form reasonably satisfactory to Agent (and delivered electronically in acceptable format if requested by Agent):

Weekly (no later than the 3rd day of each week), or upon the date of each Revolving Loan requested	a) a completed and executed Revolving Loan Borrowing Base Certificate (as defined in the Loan Agreement), including a (i) calculation indicating compliance with the minimum Liquidity, (ii) detailed aging of the Borrower's Accounts, (iii) a detailed calculation of Accounts that are not eligible for the Borrowing Base, including any claims, offsets or disputes from Account Debtors, (iv) a listing of each Borrower's accounts payables, (v) a schedule detailing the Borrower's inventory, and (vi) a detailed calculation of inventory that is not eligible for the Revolving Loan Borrowing Base, (vii) a cash report, and (viii) detailed sales and cash receipt journals, and b) a reconciliation of Accounts, accounts payable, trial balances, and Inventory in Borrower's fiscal month end general ledger accounts to its monthly financial statements, including any book reserves related to each category.
Monthly (no later than the 30th day after the end of each fiscal month)	c) an executed month-end Revolving Loan Borrowing Base Certificate, along with the applicable supporting schedules outlined in a) and b) above covering Accounts, Inventory, and Intellectual Property d) a reconciliation of Accounts (including a roll-forward of Accounts), accruals, trial balances, accounts payable, and Inventory of Borrower's fiscal month end general ledger accounts to its monthly financial statements including any book reserves related to each category, e) detailed reporting on Inventory including fiscal month-end Inventory perpetual report with roll-forward with respect to Borrowers' Inventory together with a listing by category and location of Inventory, f) unaudited interim financial statements of Borrowers as of the end of such month and of the portion of such Fiscal Year then elapsed, including balance sheet, income statement, statement of cash flow, and results of their respective operations during such month and the then-elapsed portion of the Fiscal Year, together with comparative figures for the same periods in the immediately preceding Fiscal Year and the corresponding figures from the budget for the Fiscal Year covered by such financial statements, in each case on a consolidated basis, certified by an Authorized Officer of Borrowers as prepared in accordance with GAAP subject to normal year-end audit adjustments and lack of footnote disclosures, and fairly presenting the consolidated financial position and results of operations (including management discussion and analysis of such results) of Borrowers and each of their Subsidiaries for such month and period, g) a detailed schedule of all debts as of the end of such month, indicating the creditors, maturity date, prior month end balance, borrowing during such month, payments during such month, and month end balance, h) monthly bank statements with bank reconciliation on outstanding checks

[5] NTD: Under further review.

Prior to the making of any Loan and on or before the deadline for submission of a Notice of Borrowing pursuant to Section 1.7 of the Loan Agreement	i) a Notice of Borrowing, and j) a Revolving Loan Borrowing Base Certificate.
Quarterly (no later than the 30th day after the end of each fiscal quarter)	k) concurrently with the delivery of the interim financial statements, a Compliance Certificate, indicating whether Borrowers are in compliance with each of the covenants specified in Section 5.27 and setting forth a detailed calculation of such covenants, and indicating whether any Default or Event of Default is then in existence,
Bi-Annually (in January and in July of each calendar year) (no later than the 30th day of each such fiscal month)	l) a report regarding each Loan Party's accrued, but unpaid, sales and property taxes.
Annually (no later than 45 days prior to the end of each Fiscal Year)	m) monthly business financial projections for the following Fiscal Year for the Loan Parties on a consolidated and consolidating basis, including, Revolving Loan Borrowing Base projections, balance sheet projections, income statement projections, TTM EBITDA projections and cash flow projections, together with appropriate supporting details and a statement of underlying assumptions used in preparing such projections, and n) an updated Perfection Certificate and Disclosure Schedule, excluding any lien or judgment searches; provided if there are no material changes the previous Perfection Certificate or Disclosure Schedule, then the Loan Parties may submit a certification to that effect.
Annually (no later than the 120th day after the end of each year)	o) unqualified, audited financial statements of Borrowers and each of their Subsidiaries as of the end of such Fiscal Year, including balance sheet, income statement, and statement of cash flow for such Fiscal Year, in each case on a consolidated and consolidating basis, audited and certified (without qualification) by a firm of independent certified public accountants of recognized standing selected by Borrowers but acceptable to Agent, together with a copy of any management letter issued in connection therewith, and p) a Compliance Certificate, indicating whether Borrowers are in compliance with each of the covenants specified in Section 5.27, and setting forth a detailed calculation of such covenants and indicating whether any Default or Event of Default is then in existence

Upon reasonable request by Agent	q) such other reports as to the Collateral or the financial condition of the Borrowers and the other Loan Parties, as Agent may reasonably request, r) copies of any annual report to be filed pursuant to the requirements of ERISA in connection with each Benefit Plan subject thereto, s) each federal and state income tax return filed by any Loan Party promptly following such request, together with such supporting documentations as is supplied to the applicable tax authority with such return and proof of payment of any amounts owing with respect to such return, t) information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations. u) a detailed list of the Loan Party's consolidated customers, with address and contact information, v) a detailed list of the Loan Party's consolidated vendors, with address and contract information.
Promptly upon (but in no event later than two Business Days after) delivery or receipt, as applicable, thereof	w) copies of any and all written notices (including notices of default or acceleration), reports and other deliveries received by or on behalf of any Loan Party, x) copies of any regular, periodic and special reports or registration statements which any Loan Party files with the Securities and Exchange Commission or any other applicable Governmental Authority, y) A description of any disposition of any assets, or receipt of insurance proceeds, that constitute Collateral included in the Revolving Loan Borrowing Base (in each case, outside the ordinary course of business) with a value in excess of $25,000, and z) written notification upon knowledge of any written information, exhibit, or report furnished to Agent or the Lenders contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made.

For the avoidance of doubt, the delivery of any of the above in accordance with the requirements of the Loan Agreement shall satisfy the requirements set forth in this schedule. However, requirements set forth on this schedule shall be in addition to the requirements set forth in the Loan Agreement.

Schedule E

[Financial Covenants TBD]

Schedule F

1. GRC SPV Investments, LLC – At the address set forth for Agent in Section 10.1(b).

Schedule G

Post-Closing Requirements

[TBD]

Schedule H

Licensors

Unless otherwise agreed by Agent, each of the following:

Hasbro (3), LPS, Tonka, Vault	Licensing
Disney Consumer Products	Licensing
The Walt Disney Company	Licensing
MATTEL INC/FISHER-PRICE	Licensing
UNIVERSAL STUDIOS LICENSING LLC	Licensing
BANDAI NAMCO Entertainment (2) Pac Man, Electronic Game	Licensing
BBC STUDIOS	Licensing
CLOUDCO ENTERTAINMENT	Licensing
SANRIO	Licensing
COCA-COLA	Licensing
CRAYOLA	Licensing
DISCOVERY LICENSING, INC.	Licensing
JOSTER LORIA GROUP LLC (2), Ferrara, Kellogg	Licensing
JUST BORN INC	Licensing
LISA MARKS ASSOCIATES INC	Licensing
MAJOR LEAGUE BASEBALL	Licensing
MARVEL CHARACTERS (4), Novelty, Amusement, Play Tent, Deadpool	Licensing
MGA ENTERTAINMENT	Licensing
MDR BRAND MANAGEMENT LLP	Licensing
MOONBUG Entertainment Limited	Licensing
MOOSE ENTERPRISE PTY LTD	Licensing
NATIONAL FOOTBALL LEAGUE	Licensing

NATIONAL HOCKEY LEAGUE	Licensing
NBA PROPERTIES	Licensing
NETFLIX	Licensing
NINTENDO OF AMERICA	Licensing
PLAYMONSTER GROUP LLC (Kahootz)	Licensing
POKEMON	Licensing
Retail Monster LLC	Licensing
SEVEN TOWN LIMITED	Licensing
STRIKER ENTERTAINMENT	Licensing
VIACOM MEDIA NETWORKS	Licensing
WARNER BROS CONSUMER PRODUCTS INC	Licensing

Schedule I

Customs Brokers

Scan Global

Janel

Stiles

Blue Spark Global

Partners in Logistics

and other Persons designated as "Customs Brokers" by Agent in consultation with the Borrower.

Exhibit 3

Mezzanine Exit Facility Agreement

OHS Draft 9.27.24

SECOND AMENDED AND RESTATED SUBORDINATE CREDIT AGREEMENT

Dated as of [_____], 2024

Among

BASIC FUN, INC.
as Borrower

BASIC FUN HOLDCO, LLC
as Holdings

CERTAIN SUBSIDIARIES OF THE BORROWER
FROM TIME TO TIME PARTY HERETO,
as Loan Parties

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as Lenders,

and

ROYAL BANK OF CANADA,
as Collateral Agent

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SECOND AMENDED AND RESTATED SUBORDINATE CREDIT AGREEMENT

SECOND AMENDED AND RESTATED SUBORDINATE CREDIT AGREEMENT, dated as of [_____], 2024 (as may be further amended, restated, supplemented, replaced or otherwise modified from time to time, this "**Agreement**"), by and among BASIC FUN, INC., a corporation organized under the laws of Delaware (the "**Borrower**"), BASIC FUN HOLDCO, LLC, a limited liability company organized under the laws of Delaware ("**Holdings**"), the Subsidiaries of the Borrower from time to time party hereto, the Lenders (as defined below) and ROYAL BANK OF CANADA, as collateral agent for the Lenders (in its capacity as collateral agent, the "**Collateral Agent**").

RECITALS

A. On June 28, 2024, the Borrower and certain of its affiliates and Subsidiaries (each a "**Chapter 11 Debtor**" and collectively, the "**Chapter 11 Debtors**") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"), which cases were requested to be jointly administered under Case No. 24-11432 (CTG) (collectively, the "**Chapter 11 Cases**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

B. The Chapter 11 Debtors shall emerge from the Chapter 11 Cases on the date hereof upon the effectiveness of the Chapter 11 Debtors' Combined Disclosure Statement and Chapter 11 Plan of Reorganization of Basic Fun, Inc., et al. (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "**Plan of Reorganization**"), and the Plan of Reorganization was confirmed by the Bankruptcy Court on [_____], 2024 and became effective as of the date hereof (the "**Plan Effective Date**"), pursuant to the terms of the Confirmation Order and the Plan of Reorganization.

C. The Borrower, Holdings, the Subsidiaries of the Borrower party thereto, the lenders from time to time party thereto and the Collateral Agent entered into that certain Amended and Restated Subordinate Credit Agreement, dated as of October 30, 2020, as amended by that certain Waiver and Amendment No. 1 to Amended and Restated Subordinate Credit Agreement, dated as of April 26, 2021, that certain Amendment No. 2 to Amended and Restated Subordinate Credit Agreement, dated as of December 30, 2021, that certain Amendment No. 3 to Amended and Restated Subordinate Credit Agreement, dated as of May 23, 2023, and that certain Amendment No. 4 to Amended and Restated Subordinate Credit Agreement, dated as of June 28, 2024 (as so amended through the date hereof, the "**Prepetition Credit Agreement**").

D. The Borrower, Holdings and the Subsidiaries of the Borrower, the lenders from time to time party thereto and Great Rock Capital Partners Management, LLC, as administrative agent entered into that certain Senior Secured Super-Priority Debtor-in-Possession Loan and Security Agreement, dated as of July 3, 2024 (as amended, supplemented or otherwise modified from time to time, the "**DIP Loan Agreement**").

E. Pursuant to the terms of the Plan of Reorganization, the Lenders and the Collateral Agent have agreed, in settlement of prepetition claims and the loans and other obligations owing to the Lenders and the Collateral Agent under the Prepetition Credit Agreement, the DIP Loan Agreement and related documents in accordance with the Plan of Reorganization, and on the terms and conditions set forth herein and therein, to amend and restate the Prepetition Credit Agreement on the terms and subject to the conditions set forth herein.

F. Accordingly, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"**13 Week Cash Flow Projections**" has the meaning assigned to such term in Section 5.01(k)(i).

"**Acquired EBITDA**" has the meaning assigned to such term in the definition of "Consolidated Adjusted EBITDA."

"**Acquired Entity or Business**" has the meaning assigned to such term in the definition of "Consolidated Adjusted EBITDA."

"**Adverse Proceeding**" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Holdings or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of the Borrower, threatened in writing against or affecting Holdings or any of its Subsidiaries or any property of Holdings or any of its Subsidiaries.

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

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, that Person.

"**Agreed Currency**" has the meaning assigned to such term in Section 9.23.

"**Agreement**" has the meaning assigned to such term in the preamble to this Agreement.

"**Anti-Corruption Laws**" means the FCPA, the U.K. Bribery Act of 2010, the Corruption of Foreign Public Officials Act (Canada) as amended, the Criminal Code (Canada), and all other applicable laws and regulations or ordinances concerning or relating to bribery or corruption in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business.

"**Anti-Money Laundering Laws**" means the applicable laws or regulations in any jurisdiction in which any Loan Party or its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"**Applicable Percentage**" means, with respect to any Lender, (a) a percentage equal to a fraction the numerator of which is the aggregate outstanding principal amount of the Loans and the denominator of which is the aggregate outstanding principal amount of the Loans of such Lender, (b) a percentage equal to a fraction the numerator of which is the aggregate outstanding principal amount of the First Out Loans and the denominator of which is the aggregate outstanding principal amount of the First Out Loans of such Lender, and (c) a percentage equal to a fraction the numerator of which is the aggregate outstanding principal amount of the Last Out Loans and the denominator of which is the aggregate outstanding principal amount of the Last Out Loans of such Lender, in each case as the context may require.

"**Approved Fund**" means, with respect to any Lender, any Person (other than a natural person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, 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 and 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.

"**Arranger**" means Royal Bank of Canada.

"**Assignment and Assumption**" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.05) in the form of Exhibit A or any other form approved by the Collateral Agent, the Required Lenders and the Borrower.

"**Assignment of Key Man Insurance**"[1] shall mean the Assignment of Life Insurance Policy as Collateral (as amended, restated, supplemented, replaced or otherwise modified from time to time) entered into on the Closing Date in favor of the [Senior Agent] [Collateral Agent] by the Borrower as owner and beneficiary of a life insurance policy on the life of Jay Foreman in the amount of $[5,000,000].

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of any Affected Financial Institution.

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

"**Bankruptcy Code**" has the meaning assigned to such term in the Recitals.

"**Bankruptcy Court**" has the meaning assigned to such term in the Recitals.

"**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".

"**BF LP**" means Basic Fun, L.P., a limited partnership organized under the laws of Delaware.

"**BF LPA**" means the Fourth Amended and Restated Agreement of Limited Partnership of BF LP dated as of [_____], 2024, as amended, restated, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"**Board**" means the Board of Governors of the Federal Reserve System of the U.S.

"**Borrower**" shall have the meaning assigned to such term in the preamble to this Agreement. For the avoidance of doubt, Holdings is not and shall not be the Borrower.

[1] **Note to Draft**: Borrower to provide status update on key man insurance.

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City and Toronto, Ontario are authorized or required by law to remain closed.

"**Canadian AML Legislation**" shall mean the *Proceeds of Crime (Money Laundering) and Terrorism Financing Act* (Canada) and other applicable Canadian anti-money laundering and "know your client" policies, regulations, laws or rules, together with any guidelines or orders thereunder.

"**Canadian Anti-Terrorism Laws**" means the *Criminal Code* R.S.C. 1985, c. c-46, as amended, Canadian AML Legislation, the *United Nations Act*, R.S.C. 1985 c. u-2, Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism and the United Nations al-Qaida and Taliban Regulations promulgated under the *United Nations Act*, the *Special Economic Measures Act* (Canada), together with any similar Canadian legislation, rules, regulations and interpretations thereunder or related thereto.

"**Canadian Person**" means any Person that is incorporated or organized under the laws of Canada or any province or territory thereof.

"**Canadian Subsidiary**" means a Subsidiary of Holdings that is a Canadian Person.

"**Capital Expenditures**" means, for any particular period, with respect to any particular Person, any expenditure made by such Person during such period that is required in accordance with GAAP to be capitalized on the balance sheet of such Person, including without limitation any expenditure in connection with the acquisition, development, improvement or maintenance of any capital or fixed asset of such Person; provided that the total consideration for any Permitted Acquisition shall be excluded for purposes of calculating Capital Expenditures under this Agreement.

"**Capital Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or is required to be accounted for as a capital lease on the balance sheet of that Person.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing, but excluding for the avoidance of doubt any Indebtedness convertible into or exchangeable for any of the foregoing.

"**Cash**" means money, currency or a credit balance in any demand or Deposit Account (for the avoidance of doubt, and in respect of any financial covenant or ratio, the amount thereof shall be determined in accordance with GAAP).

"**Cash Equivalent Bank**" has the meaning assigned to such term in the definition of "Cash Equivalents."

"**Cash Equivalents**" means, as at any date of determination, (a) readily marketable securities (i) issued or directly and unconditionally guaranteed or insured as to interest and principal by the U.S. or Canadian government or (ii) issued by any agency or instrumentalities of the U.S. or Canada the obligations of which are backed by the full faith and credit of the U.S. or Canada, in each case maturing within one year after such date and, in each case, repurchase agreements and reverse repurchase agreements relating thereto; (b) readily marketable direct obligations issued by any state of the U.S. or province of Canada or any political subdivision thereof or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or

at least P-2 from Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) and, in each case, repurchase agreements and reverse repurchase agreements relating thereto; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency); (d) deposits, money market deposits, time deposit accounts, certificates of deposit or bankers' acceptances (or similar instruments) maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the U.S., Canada or any state or province thereof or the District of Columbia that has capital and surplus of not less than $100,000,000 (each Lender and each commercial bank referred to herein as a "**Cash Equivalent Bank**") or, in each case, repurchase agreements and reverse repurchase agreements relating thereto; (e) shares of any money market mutual fund that (i) has substantially all of its assets invested in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than $250,000,000, and (iii) has a rating of at least A-2 from S&P or at least P-2 from Moody's; and (f) solely with respect to any Subsidiary that is not a Canadian Subsidiary or a Domestic Subsidiary, investments of the types and maturities described in clauses (a) through (e) above issued, where relevant, by a Cash Equivalent Bank or any commercial bank of recognized international standing chartered in the country where such Subsidiary is domiciled having unimpaired capital and surplus of at least $500,000,000.

In the case of Investments by any Subsidiary that is not a Canadian Subsidiary or Domestic Subsidiary, Cash Equivalents shall also include (x) investments of the type and maturity described in clauses (a) through (f) above of foreign obligors, which investments or obligors have the ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (y) other short-term investments utilized by such Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (f) and in this paragraph.

"**Cdn. Dollar**" and "**Cdn. $**" shall mean dollars in the lawful currency of Canada.

"**Change in Law**" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement, or (c) compliance by any Lender (or, for purposes of Section 2.07(b), by any lending office of such Lender or by such Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement (other than any such request, guideline or directive to comply with any law, rule or regulation that was in effect on the date of this Agreement). For purposes of this definition and Section 2.07, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof 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, issued or implemented.[2]

"**Change of Control**" means the earliest to occur of:[3]

[2] **Note to Draft**: Conformed to LSTA guidance.

[3] **Note to Draft**: Subject to receipt and review of updated org chart. Borrower please provide pro forma org chart.

(a) (i) Jay Foreman ceasing to beneficially own and Control, directly or indirectly, in the aggregate more than 50% of the Class A Limited Partnership Interests (as defined in the BF LPA) of BF LP, (ii) Jay Foreman and John McDonald no longer having the right, collectively, to appoint a majority of the Representatives on the Advisory Committee (each as defined in the BF LPA) of BF LP, or (iii) the Representative on the Advisory Committee of BF LP who is appointed by the Advisory Committee pursuant to Section 3.1(a) of the BF LPA, is appointed without the consent of Jay Foreman;

(b) each of the following: (x) Jay Foreman is no longer actively involved in the management of Holdings and its Subsidiaries and (y) Jay Foreman is not a member of the Advisory Committee of BF LP or the board of directors (or equivalent governing body) of Holdings or any of its Subsidiaries; or

(c) BF LP ceasing to beneficially own and Control, directly or indirectly, all of the Capital Stock of Holdings, or Holdings ceasing to beneficially own and Control, directly or indirectly, all of the Capital Stock of the Borrower; or

(d) any Person or Persons, other than the Borrower or a direct or indirect Wholly-Owned Subsidiary of the Borrower beneficially owning or Controlling any Subsidiary of the Borrower; or

(e) an initial public offering of Capital Stock of Holdings, any parent entity thereof or any of Holdings' Subsidiaries; or

(f) a member of the board of directors of Holdings or the Borrower is appointed that is not acceptable to the Collateral Agent in its discretion, or the composition of the board of directors of Holdings or the Borrower is modified and the modifications are not acceptable to the Collateral Agent in its discretion.

"**Chapter 11 Cases**" has the meaning assigned to such term in the Recitals.

"**Chapter 11 Debtor**" and "**Chapter 11 Debtors**" have the meanings assigned to such terms in the Recitals.

"**Charges**" has the meaning assigned to such term in Section 9.19.

"**Closing Date**" means the date hereof, which is the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02), which shall be the Plan Effective Date.

"**Closing Date Lender**" means Royal Bank of Canada.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Collateral**" means any and all property of a Loan Party subject to a Lien under the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that is or becomes subject to a Lien pursuant to the Collateral Documents to secure the Obligations.

"**Collateral Agent**" has the meaning assigned to such term in the preamble to this Agreement.

"**Collateral Documents**" means, collectively, the Guarantee and Collateral Agreement, any intellectual property security agreements, the Shareholder Loan Subordination Agreement, the UK Security Documents and any other documents granting a Lien upon the Collateral as security for payment of the Obligations pursuant to the terms hereof or any other Loan Document.

"**Commitment**" means, with respect to each Lender, (a) with respect to the First Out Loans, such Lender's agreement to the conversion of certain obligations to First Out Loans as set forth in Section 2.01(a), and (b) with respect to the Last Out Loans, such Lender's agreement to the conversion of certain obligations to Last Out Loans as set forth in Section 2.01(b), in effect as of such time.

"**Commitment Schedule**" means the Schedule attached hereto as Schedule 1.01(a).

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

"**Compliance Certificate**" means a Compliance Certificate substantially in the form of Exhibit B.

"**Confidential Information**" has the meaning assigned to such term in Section 9.13.

"**Confirmation Order**" has the meaning assigned to such term in Section 4.01(f).

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

"**Consolidated Adjusted EBITDA**"[4] means, for any period, without duplication, Consolidated Net Income (excluding any after-tax gains or losses on the sale of assets (other than the sale of inventory in the ordinary course of business) and excluding other after-tax extraordinary gains or losses) plus (a), to the extent deducted in determining Consolidated Net Income, the following with respect to Holdings and its Subsidiaries for such period: (i) Consolidated Interest Expense for such period, (ii) Consolidated Tax Expense for such period, (iii) depreciation expenses for such period, (iv) amortization expenses for such period, (v) non-cash losses, excluding any write-downs of tangible assets, for such period, (vi) unrealized foreign exchange losses for such period, (vii) fees, costs and expenses incurred in connection with the closing of the transactions under the Loan Documents, the Senior Loan Documents and the Plan of Reorganization on the Closing Date, such amounts not to exceed $[_____], and (viii) such non-recurring expenses as the Required Lenders may in their sole discretion approve in writing for such period; minus (b), to the extent such amounts increase Consolidated Net Income, the following with respect to Holdings and its Subsidiaries for such period: (i) any income or gains for such period resulting from transactions or events that are not expected to re-occur, or do not typify normal business activities (determined in accordance with GAAP), (ii) unrealized foreign exchange gains for such period, and (iii) non-cash gains for such period.

There shall be included in determining Consolidated Adjusted EBITDA for any period, without duplication, to the extent not included in Consolidated Net Income, the Acquired EBITDA of any Person, property, business or asset acquired by Holdings or any of its Subsidiaries during such period to the extent not subsequently sold, transferred or otherwise disposed of (but not including the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired) (each such Person, property, business or asset acquired, an "**Acquired Entity or Business**"), based on the Acquired EBITDA of such Acquired Entity or Business for such period (including the portion thereof occurring prior to such acquisition) determined on a historical pro forma basis, but only to the extent consistent with a quality of

[4] **Note to Borrower**: Consider adjusting for unrealized foreign exchange losses or gains to the GR Loan Agreement (items (a)(vi) and (b)(ii)).

earnings report delivered to the Collateral Agent with respect thereto at least ten (10) Business Days prior to such acquisition, and only to the extent acceptable to the Collateral Agent and the Lenders, acting in their reasonable discretion. For purposes hereof, "**Acquired EBITDA**" means, with respect to any Acquired Entity or Business for any period, the amount for such period of Consolidated Adjusted EBITDA of such Acquired Entity or Business (determined as if references to Holdings and its Subsidiaries in the definition of "Consolidated Adjusted EBITDA" (and in the component financial definitions used therein) were references to such Acquired Entity or Business and its subsidiaries that will become Subsidiaries), all as determined on a consolidated basis for such Acquired Entity or Business.

To the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated Adjusted EBITDA for any period the Disposed EBITDA of any Person, property, business or asset sold, transferred or otherwise disposed of, closed or classified as discontinued operations (other than if so classified on the basis that it is being held for sale unless such sale has actually occurred during such period) by Holdings or any of its Subsidiaries during such period (each such Person, property, business or asset so sold, transferred or otherwise disposed of, closed or classified, a "**Sold Entity or Business**"), based on the Disposed EBITDA of such Sold Entity or Business for such period (including the portion thereof occurring prior to such sale, transfer, disposition, closure or classification) determined on a historical pro forma basis. For purposes hereof, "**Disposed EBITDA**" means, with respect to any Sold Entity or Business for any period through (but not after) the date of such disposition, the amount for such period of Consolidated Adjusted EBITDA of such Sold Entity or Business (determined as if references to Holdings and its Subsidiaries in the definition of "Consolidated Adjusted EBITDA" (and in the component financial definitions used therein) were references to such Sold Entity or Business and its subsidiaries), all as determined on a consolidated basis for such Sold Entity or Business.

"**Consolidated Funded Debt**" means, as at any date of determination, the aggregate principal amount of all Indebtedness described in clauses (a), (b), (c), (d) and (f) of the definition of "Indebtedness" of Holdings and its Subsidiaries (including, with respect to clause (d), vendor take-back debt and other seller indebtedness in connection with Permitted Acquisitions), and without duplication, clause (g) of the definition of "Indebtedness" with respect to the foregoing items of Indebtedness.

"**Consolidated Interest Expense**" means, with respect to Holdings and its Subsidiaries for any period, without duplication, the aggregate amount of interest and other financing charges expensed by Holdings and its Subsidiaries on account of such period with respect to Indebtedness, including interest, discount financing fees, commissions, discounts, the interest or time value of money component of costs related to factoring or securitizing receivables or monetizing inventory and other fees and charges payable with respect to letters of credit, letters of guarantee and bankers' acceptance financing, standby fees, the interest component of Capital Leases and net payments (if any) pursuant to Derivative Transactions involving interest, but excluding any amount, such as amortization of debt discount and expenses, that would qualify as depreciation expense and the amount reflected in Consolidated Net Income for such period in respect of gains (or losses) attributable to translation of Indebtedness from one currency to another currency, all as determined on a consolidated basis in accordance with GAAP.

"**Consolidated Net Income**" means, for any period, the net income (or loss) for such period of Holdings and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; provided, that in calculating Consolidated Net Income of Holdings and its Subsidiaries for any period, there shall be excluded (a) the net income (or loss) of any Person (other than a Subsidiary which shall be subject to clause (b) below), in which Holdings or any of its Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid in cash to Holdings or any of its Subsidiaries by dividend or other distribution during such period, (b) the net income (if positive), of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to Holdings or any of its Subsidiaries of such net income (i) is not at the time permitted by operation of the

terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary or (ii) would be subject to any taxes payable on such dividends or distributions, but in each case only to the extent of such prohibition or taxes, and (c) the net income (or loss) of any Subsidiary that is not a Wholly-Owned Subsidiary to the extent such net income (or loss) is attributable to the minority interest in such Subsidiary.

"**Consolidated Tax Expense**" means, for any period, without duplication, the tax expense (including federal, provincial, state, local and foreign income taxes) of Holdings and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"**Contractual Obligation**" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"**Contractual Rights**" has the meaning assigned to such term in Section 5.12.

"**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.

"**Cure Expiration Date**" has the meaning assigned to such term in Section 6.18.

"**Cure Notice**" has the meaning assigned to such term in Section 6.18.

"**Debtor Relief Laws**" means the Bankruptcy Code, the *Bankruptcy and Insolvency Act (Canada)*, the *Companies Creditors Arrangement Act (Canada)*, the "plan of arrangement" provisions of any Canadian federal or provincial incorporation statute, and all other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the U.S., Canada or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"**Default**" means any event or condition which upon notice, lapse of time or both would (unless cured or waived) become an Event of Default.

"**Defaulting Agent**" means the Collateral Agent, if it has (a) on or after the Closing Date, become (or any parent company thereof has become) insolvent or been determined by any Governmental Authority having regulatory authority over such Person or its assets, to be insolvent, or the assets or management of which has been taken over by any Governmental Authority, (b) on or after the Closing Date, become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian, appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in, any such proceeding or appointment, or (c) become the subject of a Bail-In Action.

"**Default Rate of Interest**" has the meaning assigned to such term in Section 2.06(c).

"**Deposit Account**" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"**Derivative Transaction**" means (a) any interest-rate transaction, including any interest-rate swap, basis swap, forward rate agreement or interest rate option (including a cap, collar or floor), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted), (b) any exchange-rate transaction, including any cross-currency interest-rate swap, any forward foreign-exchange contract, any currency option, and any other instrument linked to exchange rates that gives rise to similar credit risks, (c) any equity derivative transaction, including any equity-linked swap, any equity-linked option, any forward equity-linked contract, and any other instrument linked to equities that gives rise to similar credit risk, and (d) any commodity (including precious metal) derivative transaction, including any commodity-linked swap, any commodity-linked option, any forward commodity-linked contract, and any other instrument linked to commodities that gives rise to similar credit risks; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, members of management, managers or consultants of Holdings or its subsidiaries shall be a Derivative Transaction.

"**DIP Loan Agreement**" has the meaning assigned to such term in the Recitals.

"**Disposed EBITDA**" has the meaning assigned to such term in the definition of "Consolidated Adjusted EBITDA."

"**Disposition**" or "**Dispose**" means the sale, lease, sublease, or other disposition of any property of any Person.

"**Disqualified Capital Stock**" means any Capital Stock which, by its terms (or by the terms of any Security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (i) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than for Qualified Capital Stock), in whole or in part, on or prior to 91 days following the Maturity Date at the time such Capital Stock is issued, (ii) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for (a) debt securities or (b) any Capital Stock that would constitute Disqualified Capital Stock, in each case at any time on or prior to 91 days following the Maturity Date at the time such Capital Stock is issued, (iii) contains any mandatory repurchase obligation which may come into effect prior to the Termination Date, or (iv) provides for the scheduled payments of dividends in Cash on or prior to 91 days following the Maturity Date at the time such Capital Stock is issued.

"**Dollar Equivalent**" shall mean, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in Cdn. Dollars or any other currency (other than Dollars), the equivalent amount thereof in Dollars as determined by the Lenders on the basis of the Spot Rate for the purchase of Dollars with Cdn. Dollars or such other currency, as applicable.

"**Dollars**" or "**$**" refers to lawful money of the U.S.

"**Domestic Subsidiary**" means any Subsidiary that is in U.S. Person.

"**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 clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

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

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

"**Eligible Assignee**" means (a) a Lender, (b) a commercial bank, insurance company, finance company, financial institution, any fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act or National Instrument 45-106 *Prospectus Exemptions* of the Canadian Securities Administrators), (c) any Affiliate of a Lender, or (d) an Approved Fund of a Lender; provided that in any event, "Eligible Assignee" shall not include (i) any natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person) or (ii) Holdings or any of its Affiliates.

"**Environmental Claim**" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to natural resources or the environment.

"**Environmental Laws**" means any and all applicable current or future foreign or domestic, federal, provincial, municipal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other applicable requirements of Governmental Authorities and the common law relating to (a) pollution or protection of the environment, including any Hazardous Materials Activity; or (b) the generation, use, storage, transportation or disposal of or exposure to Hazardous Materials, in any manner applicable to Holdings or any of its Subsidiaries or any Facility.

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Holdings or any Subsidiary 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.

"**ERISA**" means the Employee Retirement Income Security Act of 1974.

"**ERISA Affiliate**" means, as applied to any Person, (a) any corporation which is (or was within the prior six (6) years) a member of a controlled group of corporations within the meaning of Section 414(b) of the Code of which that Person is a member and (b) any trade or business (whether or not incorporated) which is (or was within the prior six (6) years) a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code of which that Person is a member.

"**ERISA Event**" means (a) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the 30-day notice period has been waived); (b) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of, or the failure to meet, the minimum funding standard of Section 412 of the Code with respect to any Pension Plan, or a determination that a Pension Plan is, or could

reasonably be expected to be, in "at risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) or Section 302 of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) the withdrawal by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Holdings any of its Subsidiaries pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the appointment of a trustee to administer any Pension Plan; (f) the imposition of liability on Holdings or any of its Subsidiaries pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from any Multiemployer Plan, a determination that a Multiemployer Plan is, or could reasonably be expected to be, in "endangered status" or "critical status" within the meaning of Sections 431 and 432 of the Code or Sections 304 and 305 of ERISA, or the receipt by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (h) the occurrence of an act or omission which could reasonably be expected to give rise to the imposition on Holdings or any of its Subsidiaries of fines, penalties, excise taxes or related charges under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Pension Plan; or (i) the incurrence of liability (including without limitation due to the failure by any Loan Party or any ERISA Affiliate to make a required contribution to any Plan) or the imposition of a Lien pursuant to Section 436 or 430(k) of the Code or pursuant to ERISA with respect to any Pension Plan, other than for PBGC premiums due but not delinquent.

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

"**Event of Default**" has the meaning assigned to such term in Article 7.

"**Excluded Property**" has the meaning assigned to such term in Section 5.12.

"**Excluded Subsidiary**" means (a) any Subsidiary that is not a Wholly-Owned Subsidiary and (b) any Immaterial Subsidiary; provided, however, that in no event shall any Subsidiary which is a guarantor of the Senior Obligations be an Excluded Subsidiary.

"**Excluded Swap Obligation**" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"**Excluded Taxes**" means, with respect to the Collateral Agent or any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower or any other Loan Party hereunder, (a) Taxes imposed on (or measured by) its net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable

lending office is located or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrower under Section 2.10 hereof), or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.08 hereof, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) any Tax imposed as a result of a failure by the Collateral Agent or a Lender to comply with Section 2.08(f) and (d) any U.S. federal withholding tax under FATCA.

"**Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) owned, leased, operated or used by Holdings or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"**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 to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreements and fiscal or regulatory legislation, rules or official interpretations adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

"**FCPA**" means the United States Foreign Corrupt Practices Act of 1977, as amended.

"**Federal Funds Effective Rate**" means, for any day, the rate 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.

"**Financial Officer**" of any Person means the chief financial officer, the treasurer, any assistant treasurer, any vice president of finance or the controller of such Person or any officer with substantially equivalent responsibilities of any of the foregoing.

"**Financial Officer Certification**" means, with respect to the financial statements for which such certification is required, the certification of a Financial Officer of Holdings that such financial statements fairly present, in all material respects, in accordance with GAAP, the consolidated financial condition of Holdings as at the dates indicated and the results of its operations and its cash flows for the periods indicated, subject to the absence of footnotes and changes resulting from audit and normal year-end adjustments.

"**Financial Plan**" has the meaning assigned to such term in Section 5.01(i).

"**First Out Interest Rate**" means the rate of interest equal to 12.50% per annum.

"**First Out Loans**" means the loans made or deemed made by the Lenders to the Borrower under Section 2.01(a).

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of Holdings ending on December 31 of each calendar year.

"**Fixed Charge Coverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated Adjusted EBITDA, minus cash dividend payments made by Holdings to the holders of its Capital Stock, minus Capital Expenditures and capitalization of intangible assets, in each case incurred by Holdings or its Subsidiaries without a corresponding incurrence of Indebtedness (other than revolving loans under the Senior Credit Agreement) or contribution of new equity to Holdings, minus Consolidated Tax Expense of Holdings and its Subsidiaries paid or due and owing in cash (increased by any investment tax credits used to reduce Consolidated Tax Expense paid in cash to the extent already (i) used to reduce Capital Expenditures or (ii) used to reduce other expenses in determining Consolidated Net Income), in each case, for such Test Period to (b) Fixed Charges for such Test Period.

"**Fixed Charges**" means, for any period, the sum without duplication, of the following for such period: (a) Consolidated Interest Expense required to be paid in cash by Holdings and its Subsidiaries during such period, plus (b) all scheduled principal amortization payments that were required to be paid in cash during such period with respect to Indebtedness for borrowed money of Holdings and its Subsidiaries for such period, and all repayments of principal of the Shareholder Loan Notes, plus (c) all amounts paid or payable by Holdings and its Subsidiaries on account of Capital Leases during such period, plus (d) all earn-out obligations required to be paid in cash by Holdings and its Subsidiaries during such period, plus (e) all dividends, redemptions, repurchases or other distributions paid or payable by Holdings and its Subsidiaries in cash during such period. For each of the first three Test Periods following the Closing Date, the Fixed Charges shall be deemed to be the annualized amount of the Fixed Charges incurred from the Closing Date to the end of such Test Period. For greater certainty, Fixed Charges will not include any interest payment which is paid in kind.[5]

"**Flood Hazard Property**" means any Real Estate Asset subject to a Mortgage and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"**Foreign Benefit Arrangement**" shall mean any employee benefit arrangement mandated by non-U.S. or non-Canadian law that is maintained or contributed to by any Loan Party or Subsidiary or any ERISA Affiliate.

"**Foreign Lender**" has the meaning assigned to such term in Section 2.08(i).

"**Foreign Plan**" shall mean each employee benefit plan (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA) that is not subject to U.S. law and is maintained or contributed to by any Loan Party.

"**Foreign Plan Event**" shall mean, with respect to any Foreign Benefit Arrangement or Foreign Plan, (a) the failure to make or, if applicable, accrue in accordance with normal accounting practices, any employer or employee contributions required by applicable law or by the terms of such Foreign Benefit Arrangement or Foreign Plan; (b) the failure to register or loss of good standing with applicable regulatory authorities of any such Foreign Benefit Arrangement or Foreign Plan required to be registered; or (c) the failure of any Foreign Benefit Arrangement or Foreign Plan to comply with any provisions of applicable law and regulations or with the terms of such Foreign Benefit Arrangement or Foreign Plan.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

[5] **Note to Borrower**: This last sentence will need to be added to the GR Loan Agreement.

"**GAAP**" means generally accepted accounting principles in the United States in effect and applicable to the accounting period in respect of which reference to GAAP is made, subject to the provisions of Section 1.04.

"**Governmental Authority**" means any federal, state, municipal, national, provincial, territorial or other government, governmental department, commission, board, bureau, court, central bank, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state, province, territory or locality of the U.S. or Canada, the U.S., Canada or a foreign entity or government.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**Granting Lender**" has the meaning assigned to such term in Section 9.05(e).

"**Guarantee**" of or by any person (the "**guarantor**") shall mean (a) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other person (the "**primary obligor**") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take-or-pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (iv) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part), or (v) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or other obligation, or (b) any Lien on any assets of the guarantor securing any Indebtedness or other obligation of any other person, whether or not such Indebtedness or other obligation is assumed by the guarantor; provided, however, that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business. The amount of any Guarantee for purposes of clause (b) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness or other obligation and (ii) the fair market value of the property encumbered thereby as determined by such person in good faith.

"**Guarantee and Collateral Agreement**" means the Amended and Restated Guarantee and Collateral Agreement, dated as of the Closing Date, between the Loan Parties and the Collateral Agent, for the benefit of the Collateral Agent and the other Secured Parties, as amended, restated, supplemented, replaced or otherwise modified from time to time.

"**Guarantee and Collateral Agreement Joinder**" has the meaning assigned to such term in the Guarantee and Collateral Agreement.

"**Guarantor**" means each Loan Party (other than, as to itself, the Borrower).

"**Hazardous Materials**" means any chemical, material, substance or waste, or any constituent thereof, the exposure to, or Release of, which is prohibited, limited or regulated by any Environmental Law or any Governmental Authority due to its dangerous or deleterious properties or characteristics.

"**Hazardous Materials Activity**" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Material, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Material, and any corrective action or response action with respect to any of the foregoing.

"**Hedge Agreement**" means any agreement with respect to any Derivative Transaction between any Loan Party or any Subsidiary and any other Person.

"**Holdings**" has the meaning assigned to such term in the preamble to this Agreement.

"**Immaterial Subsidiary**" means any Subsidiary that did not, as of last day of the Fiscal Quarter of Holdings most recently ended for which financial statements have been (or were required to be be) delivered pursuant to Section 5.01(b) or (c), have assets with a value in excess of 2.5% of the Total Assets or revenues representing in excess of 2.5% of total revenues of Holdings and its Subsidiaries on a consolidated basis as of such date, and (b) taken together with all such Subsidiaries as of such date that are not Loan Parties as a result of being Immaterial Subsidiaries, did not have assets with a value in excess of 5.0% of the Total Assets or revenues representing in excess of 5.0% of total revenues of Holdings and its Subsidiaries on a consolidated basis as of such date.

"**Indebtedness**," as applied to any Person, means, without duplication, (a) all indebtedness for borrowed money; (b) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (c) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability on a balance sheet prepared in accordance with GAAP; (d) any obligation owed for all or any part of the deferred purchase price of property or services (excluding (x) any earn out obligation or purchase price adjustment until such obligation becomes a liability on the balance sheet (excluding the footnotes thereto) in accordance with GAAP, (y) accrued expenses and trade accounts payable in the ordinary course of business (including on an inter-company basis), and (z) liabilities associated with customer prepayments and deposits), which purchase price is (i) due more than six months from the date of incurrence of the obligation in respect thereof or (ii) evidenced by a note or similar written instrument to the extent the same would appear as a liability on a balance sheet prepared in accordance with GAAP; (e) all Indebtedness of others secured by any Lien on any property or asset owned or held by such Person regardless of whether the indebtedness secured thereby shall have been assumed by such Person or is non-recourse to the credit of such Person; (f) the face amount of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for reimbursement of drawings (except to the extent the relevant reimbursement obligations relate to trade payables and are satisfied within 20 days following the incurrence thereof); (g) the Guarantee by such Person of the Indebtedness of another; (h) all obligations of such Person in respect of any Disqualified Capital Stock; and (i) all net obligations of such Person in respect of any Derivative Transaction, including any Hedge Agreement, whether or not entered into for hedging or speculative purposes; provided that (i) in no event shall obligations under any Derivative Transaction be deemed "Indebtedness" for any calculation of the Total Leverage Ratio or any other financial ratio under this Agreement and (ii) the amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"**Indemnified Taxes**" means (i) Taxes other than Excluded Taxes imposed on or in respect of any payment made by a Loan Party under any Loan Document and (ii) to the extent not otherwise described in clause (i), Other Taxes.

"**Indemnitee**" has the meaning set forth in Section 9.03(b).

"**Initial 13 Week Cash Flow Projections**" means the most recent form of 13 Week Cash Flow Projections, as delivered by the Borrower to the Collateral Agent prior to the Closing Date.

"**Interest Payment Date**" means the last day of each calendar month and the Maturity Date.

"**Interest Rate**" means the First Out Interest Rate, the Last Out Cash Interest Rate or the Last Out PIK Interest Rate, as applicable.

"**Investment**" means (a) any purchase or other acquisition by a Person or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person, (b) the acquisition by purchase or otherwise (other than purchases or other acquisitions of inventory, materials, supplies and/or equipment in the ordinary course of business) of all or a substantial portion of the business, property or fixed assets of any Person or any division or line of business or other business unit of any Person, and (c) any loan, advance (other than advances made on an intercompany basis in the ordinary course of business for the purchase of inventory) or capital contribution by Holdings or any of its Subsidiaries to any other Person.[6]

"**IP Rights**" has the meaning assigned to such term in Section 3.05(c).

"**IRS**" means the U.S. Internal Revenue Service.

"**ITA**" means the United Kingdom Income Tax Act 2007.

"**Joinder**" means a joinder substantially in the form of Exhibit C.

"**Judgment Currency**" has the meaning assigned to such term in Section 9.23.

"**K'NEX UK**" means K'NEX UK Limited.

"**Last Out Cash Interest Rate**" means the rate of interest equal to 8.00% per annum.

"**Last Out Loans**" means the loans made or deemed made by the Lenders to the Borrower under Section 2.01(b).

"**Last Out PIK Interest Rate**" means the rate of interest equal to 8.00% per annum.

"**Lender Parties**" has the meaning assigned to such term in Section 9.14.

"**Lenders**" means the Lenders as of the Closing Date and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"**Lien**" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement 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

[6] **Note to Draft**: All permitted Investments are covered in Section 6.06, including the concepts deleted in this definition.

Capital Lease having substantially the same economic effect as any of the foregoing), in each case, in the nature of security; provided that in no event shall an operating lease in and of itself be deemed a Lien.

"**Life Insurance Proceeds**" means an amount equal to any Cash payments or proceeds (including Cash Equivalents) received by [the Senior Agent or] the Collateral Agent[, if applicable,] in respect of the life insurance policy which is subject to the Assignment of Key Man Insurance required hereunder.

"**Liquidity**" has the meaning given to such term in the Senior Credit Agreement.[7]

"**Loan Documents**" means this Agreement, the Collateral Documents, the Shareholder Loan Subordination Agreement, the Subordination Agreement and any other document or instrument designated by the Borrower and the Collateral Agent as a "Loan Document." Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, amendments and restatements, supplements or other modifications thereto.

"**Loan Parties**" means Holdings and its Subsidiaries, including the Borrower (but excluding any Excluded Subsidiary), and any Person who becomes a party to this Agreement as a Loan Party pursuant to a Joinder or a party to the Guarantee and Collateral Agreement (or a similar foreign guarantee and collateral agreement in the case of a Foreign Subsidiary) as a Grantor and Guarantor thereunder pursuant to a Guarantee and Collateral Agreement Joinder, together with their respective successors and assigns, in each case, until such time as the respective Person is released from its obligations under the applicable Loan Documents in accordance with the terms and provisions thereof. For the avoidance of doubt, Holdings is a Loan Party under this Agreement and is a Grantor and a Guarantor, but is not and shall not be the Borrower.

"**Loans**" means the First Out Loans and the Last Out Loans made or deemed made by the Lenders to the Borrower under Section 2.01.

"**Margin Stock**" has the meaning assigned to such term in Regulation U.

"**Material Adverse Change**" means any change, effect, event, occurrence or change in condition or state of fact that has, or could reasonably be expected to have, a Material Adverse Effect.

"**Material Adverse Effect**" means a material adverse effect on (a) the business, assets, financial condition, prospects or results of operations, in each case, of Holdings and its Subsidiaries, taken as a whole, (b) the rights and remedies (taken as a whole) of the Collateral Agent or the Lenders under the applicable Loan Documents, or (c) the ability of the Loan Parties (taken as a whole) to perform their obligations under the Loan Documents.

"**Material Contract**" means an agreement made between a Loan Party or Subsidiary and another Person which if terminated could have, or could reasonably be expected to have (in the absence of any agreement replacing such agreement), a Material Adverse Effect.

"**Material Permit**" means a license, permit, approval, registration or qualification granted to or held by a Loan Party or Subsidiary which if terminated could have, or could reasonably be expected to have (in the absence of any license, permit, approval, registration or qualification replacing such terminated license, permit, approval, registration or qualification), a Material Adverse Effect.

"**Material Real Estate Asset**" means (a) any fee-owned Real Estate Asset owned by any Loan Party as of the Closing Date having a fair market value (as reasonably estimated by Holdings) that equals

[7] **Note to Draft**: Subject to finalization of this definition in the Senior Credit Agreement.

or exceeds $500,000 as of such date, (b) any fee-owned Real Estate Asset owned or acquired by any Loan Party after the Closing Date having a fair market value (as reasonably estimated by Holdings) that equals or exceeds $500,000 as of the date of acquisition thereof, and (c) any other Real Estate Asset that secures any of the obligations under the Senior Loan Documents.

"**Maturity Date**" means the earliest to occur of (a) [_____],[8] (b) the Termination Date, or (c) such earlier date on which the Obligations are accelerated in accordance with the terms of Section 7.01.

"**Maximum Rate**" has the meaning assigned to such term in Section 9.19.

"**Moody's**" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"**Mortgaged Properties**" means, initially, the owned real properties of the Loan Parties specified on Schedule 1.01(b), and shall include each other Material Real Estate Asset and improvements thereto with respect to which a Mortgage is required to be granted pursuant to Section 5.12.

"**Mortgages**" means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Collateral Agent, for the benefit of the Collateral Agent and the other Secured Parties, on any Material Real Estate Assets (it being understood and agreed that any requirement for Mortgages shall be subject to the provisions of Section 5.12).

"**Multiemployer Plan**" means any employee benefit plan which is a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA, to which Holdings any of its Subsidiaries, or any of their respective ERISA Affiliates, makes or is obligated to make contributions, or during the preceding five (5) years has made or been obligated to make contributions.

"**Narrative Report**" means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of Holdings and its Subsidiaries for the applicable month, Fiscal Quarter or Fiscal Year, and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate, corresponding figures from the Financial Plan for the applicable Fiscal Year.

"**Net Proceeds**" means an amount equal to: (a) any Cash payments or proceeds (including Cash Equivalents) received by Holdings or any of its Subsidiaries (i) in respect of any Disposition, (ii) under any casualty insurance policy in respect of a covered loss thereunder of any assets of Holdings or any of its Subsidiaries, or (iii) as a result of the taking of any assets of Holdings or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, *minus* (b) (i) any actual out-of-pocket costs incurred by Holdings or any of its Subsidiaries in connection with the adjustment, settlement or collection of any claims of Holdings or such Subsidiary in respect thereof, (ii) any selling costs and out-of-pocket expenses (including reasonable broker's fees or commissions, legal fees, transfer and similar Taxes and Holdings' good faith estimate of income Taxes paid or payable) in connection with any sale of such assets as referred to in clause (a) of this definition, and (iii) any amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustments associated with any sale or taking of such assets as referred to in clause (a) of this definition (provided that to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Proceeds).

[8] **Note to Draft**: Insert date that is 3 years and 90 days after the Closing Date.

"**Net Issuance Proceeds**" means with respect to any issuance or incurrence of Indebtedness, the Cash proceeds thereof, net of all Taxes and customary fees, commissions, costs, underwriting discounts and other fees and expenses incurred in connection therewith.

"**Obligations**" means all unpaid principal of and accrued and unpaid interest (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, all accrued and unpaid fees and all expenses, reimbursements, indemnities and all other advances to, debts, liabilities and obligations of the Loan Parties to the Lenders or to any Lender or the Collateral Agent or any indemnified party arising under the Loan Documents in respect of any Loan, whether direct or indirect (including those acquired by assumption), absolute, contingent, due or to become due, now existing or hereafter arising, and in the case of any Guarantor, its Guarantee of any of the foregoing; provided that Obligations of each Guarantor shall not include Excluded Swap Obligations of such Guarantor.

"**OFAC**" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"**Organizational Documents**" means (a) with respect to any corporation, its certificate or articles of incorporation or organization and its by-laws, (b) with respect to any limited partnership, its certificate of limited partnership, and its partnership agreement, (c) with respect to any general partnership, its partnership agreement, (d) with respect to any limited liability company, its articles of organization or certificate of formation, and its operating agreement, and (e) with respect to any other form of entity, such other organizational documents required by local law or customary under such jurisdiction to document the formation and governance principles of such type of entity. In the event any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official (to the extent relevant and available in the jurisdiction of organization of the relevant Subsidiary).

"**Other Connection Taxes**" means Taxes imposed on any recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"**Other Taxes**" means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes, arising from any payment made hereunder or from the execution, delivery, performance or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.10).

"**Outstanding Amount**" means, at any time, (i) the sum of the principal amount of the Loans; (ii) the sum of the principal amount of the First Out Loans; or (iii) the sum of the principal amount of the Last Out Loans, as the context may require and as the same may be increased from time to time due to payment in kind or decreased from time to time due to repayment or prepayments made by the Borrower in accordance with the terms of this Agreement.

"**Participant**" has the meaning assigned to such term in Section 9.05(c)(i).

"**Participant Register**" has the meaning assigned to such term in Section 9.05(c).

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

"**Pension Act**" means the Pension Protection Act of 2006.

"**Pension Funding Rules**" means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA, and any sections of the Code or ERISA related thereto that are enacted after the date of this Agreement.

"**Pension Plan**" means any employee pension benefit plan, as defined in Section 3(2) of ERISA (other than a Multiemployer Plan), subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which Holdings or any of its Subsidiaries, or any of their respective ERISA Affiliates, is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"**Perfection Certificate**" means the perfection certificate executed by a Responsible Officer of the Borrower, dated as of the Closing Date.

"**Permitted Acquisition**" means any acquisition, whether by purchase, merger, amalgamation or otherwise, of all or substantially all of the assets of or any business line, unit, or division or any plant of, any Person or of a majority of the outstanding Capital Stock of any Persons, in any such case, consented to in writing by the Required Lenders; provided that:

(a) such acquisition shall be made by the Borrower or one or more other Loan Parties that are Subsidiaries of the Borrower;

(b) (i) the acquisition target shall have its primary operations in Canada or the United States and its business, operations or activities shall be substantially similar to those carried on by Holdings and its Subsidiaries at the date hereof and business, operations and activities reasonably related, complementary or ancillary thereto and (ii) in any Fiscal Year, the aggregate fair market value of all assets located outside of Canada and the United States acquired in all such acquisitions, plus the aggregate fair market value of all Capital Stock acquired in all such acquisitions where less than all of the Capital Stock of the relevant acquisition target is acquired, shall not exceed $2,000,000;

(c) the business to be acquired in connection with such acquisition shall have positive EBITDA for the previous four fiscal quarters;

(d) the Lenders shall have received reasonable advance notice of such acquisition, including a reasonably detailed description thereof, and at least fifteen (15) Business Days prior to the consummation of such acquisition (or such lesser period of time as may be agreed by the Lenders) the Lenders shall have received copies of the acquisition agreement, related Contractual Obligations and historical financial information made available to any Loan Party or any Subsidiary thereof along with a quality of earnings report acceptable to the Lenders in respect of the acquisition target and a pro forma financial forecast for the acquisition target on a standalone and consolidated basis and, to the extent requested by the Lenders, any reports, environmental assessments, opinions, certificates and lien searches made available to any Loan Party or any Subsidiary thereof;

(e) such acquisition shall have been funded (or, in the case of any vendor take-back

note, earnout, anticipated working capital adjustment or other form of delayed payment in respect of such acquisition arrangements satisfactory to the Collateral Agent in its sole discretion shall have been implemented to ensure that each thereof will be funded) solely from cash common equity contributed to the Borrower by BF LP through Holdings;

(f) after giving effect to such acquisition (including any Loans to be made to finance such acquisition), Liquidity will be greater than $5,000,000 immediately prior to and immediately following such acquisition and as projected on a pro-forma basis as of the end of each fiscal month for each of the twelve (12) fiscal months following such acquisition;

(g) if such acquisition is of all of the Capital Stock of a Person or Persons (other than a Person that qualifies as an Immaterial Subsidiary following such acquisition), each such Person shall have executed a Joinder to this Agreement as a Loan Party and a Guarantee and Collateral Agreement Joinder as a Grantor and Guarantor under the Guarantee and Collateral Agreement, so as to create a Lien in all assets acquired and/or Capital Stock of such acquired Person or Persons (to the extent provided therein), and the Collateral Agent shall have been provided with such customary legal opinions, certificates and other documents as may be reasonably required by the Collateral Agent in connection therewith;

(h) no Default or Event of Default shall exist or would result from the consummation of such acquisition;

(i) after giving effect to such acquisition, the Loan Parties shall be in compliance with the financial covenants set forth in Section 6.14(a) and Section 6.14(b), and the Total Leverage Ratio shall not exceed 2.50:1.00 determined on a pro forma basis as of the last day of the last Fiscal Quarter for which financial statements have been delivered under this Agreement;

(j) such acquisition is consensual (not "hostile"), and, if applicable, has been approved or endorsed by the acquisition target's board of directors;

(k) the Lenders shall have received a certificate of a Responsible Officer of the Borrower 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 acquisition along with a reasonably detailed calculation of the financial calculations described in clause (i) above; and

(l) the Required Lenders shall have consented in writing, which consent shall not be unreasonably withheld, conditioned or delayed.

"**Permitted Liens**" means Liens permitted pursuant to Section 6.02.

"**Permitted Refinancing**" [has the meaning given to such term in the Subordination Agreement.][9]

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

"**Plan**" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of any Loan Party or any such plan to which any Loan Party (or

[9] **Note to Draft**: Subject to review of the Subordination Agreement.

with respect to any plan subject to Section 412 or 430 of the Code or Section 302 or Title IV of ERISA, any ERISA Affiliate) is required to contribute on behalf of any of its employees.

"**Plan Effective Date**" has the meaning assigned to such term in the Recitals.

"**Plan of Reorganization**" has the meaning assigned to such term in the Recitals.

"**PPSA**" means the *Personal Property Security Act* (Ontario) or similar or equivalent legislation in Ontario or any other province the laws of which are required to be applied in connection with the creation or perfection of security interests or other liens and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time.

"**Prepayment Asset Sale**" means any voluntary or involuntary non-ordinary course sale or disposition of any assets by Holdings or any of its Subsidiaries.

"**Prepetition Credit Agreement**" has the meaning assigned to such term in the Recitals.

"**Projections**" means the projections of Holdings and the Subsidiaries provided to the Lenders prior to the date hereof.

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

"**Qualified Capital Stock**" of any Person means any Capital Stock of such Person that is not Disqualified Capital Stock.

"**Real Estate Asset**" means, at any time of determination, all right, title and interest (fee, leasehold or otherwise) in and to real property (including, but not limited to, land, improvements and fixtures thereon) of any Loan Party.

"**Register**" has the meaning assigned to such term in Section 9.05(b)(iv).

"**Regulation T**" means Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation U**" means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation X**" means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Related Funds**" means, with respect to any Lender that is an Approved Fund, any other Approved Fund that is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"**Related Parties**" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, trustees, employees, agents, advisors and other representatives of such Person and such Person's Affiliates.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping or leaching of any Hazardous Material into the environment

(including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material).

"**Relevant Loan Party**" has the meaning assigned to such term in Section 2.08(l).

"**Repayment Notice**" means a duly completed and signed notice from the relevant Borrower in the form of Exhibit E hereto or such other form reasonably acceptable to the Lenders.

"**Representatives**" has the meaning assigned to such term in Section 9.13.

"**Required Lenders**" means, at any time, Lenders having First Out Loans representing 66 2/3% of all First Out Loans.

"**Requirements of Law**" means, with respect to any Person, collectively, the common law and all federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Resolution Authority**" shall mean an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"**Responsible Officer**" of any Person means the chief executive officer, the president, any executive vice president, any senior vice president, any vice president, the chief operating officer or any Financial Officer of such Person and any other individual or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement, and, as to any document delivered on the Closing Date under Section 4.01(c), shall include any secretary or assistant secretary or any other individual or similar official thereof with substantially equivalent responsibilities of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"**Restricted Payment**" means (a) any dividend, distribution or other payment on account of any Capital Stock of Holdings or any of its Subsidiaries now or hereafter outstanding, except in the case of Holdings a dividend payable solely in shares of Qualified Capital Stock to the holders of such Capital Stock, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of any Capital Stock of Holdings or any of its Subsidiaries now or hereafter outstanding, and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Capital Stock of Holdings or any of its Subsidiaries now or hereafter outstanding.

"**S&P**" means Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"**Sanctioned Country**" means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Syria, the so-called Donetsk People's Republic, and the so-called Luhansk People's Republic).

"**Sanctioned Person**" means, at any time, any Person (a) listed in any Sanctions-related list of

designated Persons maintained by the United States, Canada, the United Nations Security Council, the European Union or any European Union member state, or the United Kingdom, (b) located, organized or resident in a Sanctioned Country, (c) with which any Loan Party is prohibited from dealing or otherwise engaging in any transaction by any Sanctions, (d) that is otherwise a target of Sanctions, or (e) owned or controlled by any such Person or Persons described in the foregoing clauses (a) through (d).

"**Sanctions**" means all economic or financial sanctions or trade embargoes or other sanctions laws or regulations, including those imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the OFAC or the U.S. Department of State, (b) Canada, (c) the United Nations Security Council, (d) the European Union or any European Union member state, or (e) His Majesty's Treasury of the United Kingdom, or (f) any other Governmental Authority with jurisdiction over any Lender or any Loan Party or any of their respective Subsidiaries or Affiliates.

"**SEC**" means the Securities and Exchange Commission.

"**Secured Parties**" has the meaning assigned to such term in the Guarantee and Collateral Agreement.

"**Securities**" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing; provided that "Securities" shall not include any earn-out agreement or obligation or any employee bonus or other incentive compensation plan or agreement.

"**Securities Act**" means the Securities Act of 1933 and the rules and regulations of the SEC promulgated thereunder.

"**Senior Agent**" means the "Agent" under and as defined in the Senior Credit Agreement. As of the Closing Date, Great Rock Capital Partners Management, LLC is the Senior Agent.

"**Senior Credit Agreement**" means the Loan and Security Agreement dated as of the date hereof among the Senior Agent, the Senior Lenders, as lenders, and the Borrower, as borrower, Holdings and the Subsidiaries of Holdings from time to time party thereto, as amended, restated, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement and the Subordination Agreement.

"**Senior Lenders**" means the Persons party to the Senior Credit Agreement as lenders from time to time and their successors and permitted assigns.

"**Senior Loan Documents**" means the "Loan Documents" as defined in the Senior Credit Agreement.

"**Senior Obligations**" means "Obligations" as defined in the Senior Credit Agreement and includes all indebtedness and obligations owing to any replacement lenders in connection with a Permitted Refinancing of the Senior Obligations under the Senior Credit Agreement.

"**Shareholder Loan Notes**" means the notes specified on Schedule 1.01(c).

"**Shareholder Loan Subordination Agreement**" means a subordination agreement in form and substance satisfactory to the Collateral Agent, subordinating the obligations under each Shareholder Loan Note to the Obligations, as such subordination agreement may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"**Sold Entity or Business**" has the meaning assigned to such term in the definition of "Consolidated Adjusted EBITDA."

"**SPC**" has the meaning assigned to such term in Section 9.05(e).

"**Specified Equity Contribution**" has the meaning assigned to such term in Section 6.18.

"**Spot Rate**" means, in relation to the conversion of one currency into another currency, the spot rate of exchange for such conversion as quoted by the Bank of Canada at the close of business on the Business Day that such conversion is to be made (or, if such conversion is to be made before close of business on such Business Day, then at approximately close of business on the immediately preceding Business Day), and, in either case, if no such rate is quoted, the spot rate of exchange quoted for wholesale transactions by the Collateral Agent in Toronto, Ontario on the Business Day such conversion is to be made in accordance with its normal practice.

"**Subordination Agreement**" means the [Intercreditor and Subordination Agreement] dated as of the Closing Date between the Collateral Agent, the Senior Agent and the Loan Parties, as amended, restated, supplemented, replaced or otherwise modified from time to time.

"**subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50.0% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of such Person or a combination thereof; provided that in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"**Subsidiary**" means any subsidiary of Holdings.

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

"**Tax Deduction**" means a deduction or withholding from a payment under any Loan Document for and on account of any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments and all interest, penalties or similar liabilities with respect thereto.

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

"**Termination Date**" has the meaning assigned to such term in Article 5.

"**Test Period**" means a period of four consecutive Fiscal Quarters.

"**Threshold Amount**" means $500,000.

"**Total Leverage Ratio**" means the ratio, as of any date of determination, of (a) Consolidated Funded Debt as of such date (excluding the Shareholder Loan Notes so long as the Shareholder Loan Subordination Agreement remains in full force and effect) to (b) Consolidated Adjusted EBITDA for the Test Period then most recently ended for which financial statements are available. Notwithstanding the foregoing, there shall be deducted from the foregoing clause (a), the amount of unrestricted cash reflected on the consolidated balance sheet of Holdings on the applicable date of determination.

"**Treasury Regulations**" means the U.S. federal income tax regulations promulgated under the Code.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the creation or perfection of security interests.

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

"**UK Insolvency Proceeding**" means, with respect to a UK Loan Party any corporate action, legal proceedings, or other procedure or step taken in relation to: (i) a suspension of payments, a moratorium of its indebtedness generally (or any class thereof), its winding-up, dissolution, administration, or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise), other than pursuant to a consolidation, amalgamation or merger permitted under the terms of this Agreement, (ii) a composition, compromise, assignment or similar arrangement for the financial benefit of its creditors, (iii) a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition being presented for its winding up or liquidation by it or a regulator, supervisor or similar official, (iv) the appointment of a liquidator, a receiver, an administrator, compulsory manager, conservator, trustee, custodian or other similar officer in respect of it or any of its assets, or (v) the possession of its assets or a distress, execution, attachment, sequestration or other legal process being levied, enforced or sued on its assets by a secured party.

"**UK Loan Party**" means K'NEX UK and any other Loan Party incorporated in the United Kingdom.

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

"**UK Security Documents**" means (a) the debenture dated as of the Closing Date by K'NEX UK in favor of the Collateral Agent and any supplemental debenture related thereto; (b) the share pledge agreement dated as at the Closing Date by the Borrower over the shares of K'NEX UK in favor of the Collateral Agent; and (c) any other instrument, document or agreement governed by English law entered into, now or at any time in the future by a Loan Party or any of its Subsidiaries.

"**U.S.**" means the United States of America.

"**U.S. Person**" means any Person that is a "United States Person" within the meaning of Section 7701(a)(30) of the Code.

"**U.S. Tax Compliance Certificate**" has the meaning assigned to such term in Section 2.08(j)(iii).

"**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)).

"**Wholly-Owned Subsidiary**" of any Person means a subsidiary of such Person, 100.0% of the Capital Stock of which (other than directors' qualifying shares or shares required by law to be owned by a resident of the relevant jurisdiction) shall be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

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

Section 1.02. Amendment and Restatement.

(a) This Agreement is and shall for all purposes be deemed to be an amendment and restatement of the Prepetition Credit Agreement. While this Agreement will supersede the Prepetition Credit Agreement insofar as it constitutes the entire agreement between the parties concerning the subject matter of this Agreement, this Agreement merely amends and restates the Prepetition Credit Agreement and does not constitute or result in a novation or rescission of the Prepetition Credit Agreement or any other Loan Document.

(b) The parties confirm that none of the outstanding Loans (as defined in the Prepetition Credit Agreement) has been repaid or replaced by new obligations as a result of this Agreement. All of those outstanding Loans are Loans under this Agreement as more specifically provided in Section 2.01 and all of the Obligations (as defined in the Prepetition Credit Agreement) are Obligations under this Agreement.

Section 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein or in any other Loan Document shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified, extended, refinanced or replaced (subject to any restrictions or qualifications on such amendments, restatements, amendment and restatements, supplements or modifications, extensions, refinancings or replacements set forth herein or in any other Loan Document), (b) any reference to any law in any Loan Document shall include all statutory

and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law, (c) any reference herein or in any Loan Document to any Person shall be construed to include such Person's successors and permitted assigns, (d) the words "herein," "hereof" and "hereunder," and words of similar import, when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision hereof or thereof, (e) all references herein or in any other Loan Document to Articles, Sections, clauses, paragraphs, Exhibits and Schedules shall be construed to refer to Articles, Sections, clauses and paragraphs of, and Exhibits and Schedules to, such Loan Document, (f) in the computation of periods of time in any Loan Document from a specified date to a later specified date, the word "from" means "from and including," the words "to" and "until" mean "to but excluding" and the word "through" means "to and including," and (g) the words "asset" and "property," when used in any Loan Document, shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including Cash, securities, accounts and contract rights.

Section 1.04. Accounting Terms; GAAP.

(a) All financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time and, except as otherwise expressly provided herein, all terms of an accounting or financial nature that are used in calculating the Total Leverage Ratio, the Fixed Charge Coverage Ratio, Consolidated Adjusted EBITDA or Consolidated Net Income shall be construed and interpreted in accordance with GAAP, as in effect on the Closing Date unless otherwise agreed to by the Borrower and the Required Lenders; provided that if the Borrower notifies the Collateral Agent and the Lenders that the Borrower requests an amendment to any provision hereof to reflect the effect of any change occurring after the Closing Date in GAAP or in the application thereof, then the Borrower and the Collateral Agent and the Lenders shall negotiate in good faith to enter into an amendment of such affected provisions (without the payment of any amendment or similar fees to the Lenders) to provide for such change in GAAP or the application thereof and/or to preserve the original intent thereof in light of such change in GAAP or the application thereof, in each case, subject to the approval of the Required Lenders (not to be unreasonably withheld, conditioned or delayed).

(b) Notwithstanding anything to the contrary contained in paragraph (a) above or the definition of "Capital Lease," in no event shall any lease that would be categorized as an "operating lease" in accordance with Accounting Standard Codification 842 be considered a Capital Lease.

Section 1.05. Timing of Payment of Performance; Times of Day. When payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. Unless otherwise specified herein, all references herein to times of day shall be references to Toronto, Ontario time (daylight or standard, as applicable).

Section 1.06. Exchange Rates. Except for purposes of financial statements delivered hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Required Lenders.

ARTICLE 2 THE CREDIT[10]

Section 2.01. Loans.

(a) On the Closing Date, pursuant to the Plan of Reorganization, First Out Loans in the aggregate principal amount of $[_____] and Last Out Loans in the aggregate principal amount of $[_____], shall in each case be deemed to have been advanced hereunder, pursuant to the restructuring, rearrangement and refinancing of loans owing to the Closing Date Lender under the Prepetition Credit Agreement and the DIP Loan Agreement.

(b) The restructuring, rearrangement and refinancing described in this Section 2.1 shall be deemed automatically effected pursuant to a cashless exchange of loans and substitution of loans, liens and security interests and other obligations under the Prepetition Credit Agreement and the DIP Loan Agreement on the Closing Date without the need for the delivery of any request for advance or any similar document from the Borrower.

Section 2.02. Repayment of Loans; Evidence of Debt.

(a) Repayment of Loans.

(i) The Borrower will repay the Outstanding Amount of the First Out Loans in an aggregate principal amount equal to $375,000 on the last day of each Fiscal Quarter beginning with the Fiscal Quarter ending December 31, 2024.

(ii) The remaining Outstanding Amount of the Loans together with all other Obligations to the Lenders in connection therewith shall be repaid on the Maturity Date.

(b) Evidence of Debt. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made or deemed made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder. The entries made in such accounts shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that the failure of any Lender to maintain such accounts or any manifest error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

Section 2.03. Prepayment of Loans.

(a) Optional Prepayments.

(i) Upon prior notice in accordance with paragraph (a)(ii) of this Section, the Borrower shall have the right at any time and from time to time to prepay any portion of the Outstanding Amount of the Loans in whole or in part. Each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages of the applicable Loans.

(ii) The Borrower shall notify the Lenders of any prepayment under this Section 2.03(a) by delivering a Repayment Notice to the Lenders not later than 1:00 p.m. five Business Days before the date of prepayment. Each such Repayment Notice shall be irrevocable and shall specify the prepayment date and the Outstanding Amount to be prepaid; provided that a

[10] **Note to Draft**: Subject to RBC ops review.

Repayment Notice delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other transactions, in which case such notice may be revoked by the Borrower (by notice to the Lenders on or prior to the specified effective date) if such condition is not satisfied. Each prepayment made pursuant to this Section 2.03(a) shall be accompanied by the payment of accrued interest to the date of such payment on the amount prepaid. Each partial prepayment of the Loans shall be in a minimum amount of $500,000 and increments of $50,000.

(b) Mandatory Prepayments.

(i) No later than the third Business Day following the receipt of Net Proceeds in respect of any Prepayment Asset Sale in excess of $250,000 in the aggregate in any Fiscal Year, the Borrower shall apply an amount equal to 100% of the Net Proceeds received with respect thereto in excess of such thresholds to prepay the Outstanding Amount of the Loans; provided that if prior to the date any such prepayment is required to be made, the Borrower notifies the Lenders of its intention to reinvest such Net Proceeds in the business of the Borrower or any of its Subsidiaries that is a Loan Party, then so long as no Event of Default then exists, the Borrower shall not be required to make a mandatory prepayment under this clause (i) in respect of such Net Proceeds to the extent such Net Proceeds are so reinvested within 12 months following receipt thereof, or if the Borrower or any of its Subsidiaries that is a Loan Party has entered into a binding contract to so reinvest such Net Proceeds during such 12-month period and such Net Proceeds are so reinvested within six months after the expiration of such 12-month period; provided, however, that if any Net Proceeds have not been so reinvested prior to the expiration of the applicable period, the Borrower shall promptly prepay the Loans with the Net Proceeds not so reinvested as set forth above (without regard to the immediately preceding proviso).

(ii) In the event that Holdings or any of its Subsidiaries shall receive Net Issuance Proceeds from the issuance or incurrence of Indebtedness of Holdings or any of its Subsidiaries (other than with respect to Indebtedness permitted under Section 6.01), the Borrower shall, substantially simultaneously with (and in any event not later than the Business Day immediately following) the receipt of such Net Issuance Proceeds by Holdings or such Subsidiary, apply an amount equal to 100% of such Net Issuance Proceeds to prepay the Outstanding Amount of the Loans.

(iii) No later than the third Business Day following the receipt of Life Insurance Proceeds, the Borrower shall apply an amount equal to 100% of such Life Insurance Proceeds to prepayment the Outstanding Amount of the Loans.

(iv) Notwithstanding the foregoing, the amount payable under clauses (i) – (iii) above shall be limited to the amount of the Net Proceeds, Net Issuance Proceeds or Life Insurance Proceeds, as applicable, remaining after application to repay the Senior Obligations which are required to be paid by the Senior Lenders under the Senior Credit Agreement.

(v) The Borrower shall deliver to the Lenders, at the time of each prepayment required under Section 2.03(b), a certificate signed by a Responsible Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment. Prepayments shall be accompanied by accrued interest as required by Section 2.06. All prepayments hereunder shall be subject to Section 2.09.

(c) In the case of any such prepayment, the Borrower shall deliver a Repayment Notice to the Lenders not later than 1:00 p.m. one Business Day before the date of prepayment.

(d) All prepayments and repayments made on the Loans under Sections 2.02, 2.03(a) and 2.03(b) shall be applied (A) first, to the Outstanding Amount of the First Out Loans, all accrued but unpaid interest thereon and all other Obligations owing to the Lenders in connection with the First Out Loans until paid in full, and (B) second, to the Outstanding Amount of the Last Out Loans, all accrued but unpaid interest thereon and all other Obligations owing to the Lenders in connection with the Last Out Loans until paid in full.

Section 2.04. [Reserved].

Section 2.05. Fees. Any fees payable hereunder shall be paid in Dollars on the date due, in immediately available funds, to the Lenders. Fees paid shall not be refundable under any circumstances.

Section 2.06. Interest.

(a) Interest on the First Out Loans. Interest shall accrue and the Borrower agrees to be liable for and pay interest on the Outstanding Amount of the First Out Loans at the First Out Interest Rate. Interest in respect of the Outstanding Amount of the First Out Loans shall be payable by way of monthly interest payments on each and every Interest Payment Date in cash during which the Outstanding Amount of the First Out Loans remains outstanding and on the Maturity Date; provided that if on any Interest Payment Date, interest on the First Out Loans for the month ending on such date may not be paid in cash under the terms of the Subordination Agreement, (i) the First Out Interest Rate shall be increased by 3.5% and (ii) the interest otherwise payable on the First Out Loans on such Interest Payment Date (plus the interest payable under clause (i)) shall instead be paid in kind and added to the Outstanding Amount of the First Out Loans.

(b) Interest on the Last Out Loans. Interest shall accrue and the Borrower agrees to be liable for and pay interest on the Outstanding Amount of the Last Out Loans at the sum of (x) the Last Out Cash Interest Rate and (y) the Last Out PIK Interest Rate. Interest in respect of the Outstanding Amount of the Last Out Loans shall be payable by way of monthly interest payments on each and every Interest Payment Date during which the Outstanding Amount of the Last Out Loans remains outstanding and on the Maturity Date, (i) in cash in respect of the Last Out Cash Interest Rate and (ii) paid in kind and added to the Outstanding Amount of the Last Out Loans in respect of the Last Out PIK Interest Rate; provided that if on any Interest Payment Date, interest on the Last Out Loans for the month ending on such date may not be paid in cash under the terms of the Subordination Agreement or if for any other reason interest on the First Out Loans for such Interest Payment Date is paid in kind, the interest otherwise payable on the Last Out Loans on such Interest Payment Date at the Last Out Cash Interest Rate shall instead be paid in kind and (together with the interest payable at the Last Out PIK Interest Rate) added to the Outstanding Amount of the Last Out Loans.

(c) Default Interest. Upon the occurrence of an Event of Default which is continuing, the Borrower shall pay interest on the Outstanding Amount of the Loans from the date of the occurrence of such Event of Default and for so long as such Event of Default continues at a rate per annum equal to (i) with respect to the First Out Loans, the First Out Interest Rate, plus 2%, and (ii) with respect to the Last Out Loans, the Last Out Cash Pay Interest Rate, plus the Last Out PIK Interest Rate, plus 2% of additional payment-in-kind interest (collectively, the "**Default Rate of Interest**").

(d) Matters Relating to Interest.

(i) All interest hereunder shall be computed on the basis of a year of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For the purposes of the *Interest Act* (Canada), whenever any interest or fee under this Agreement is calculated using a rate based on a year of 365 or 366 days, as the case may be, the rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate based on a year of 365 or 366 days, as the case may be, (y) multiplied by the actual number of days in the calendar year in which the period for which such interest or fee is payable (or compounded) ends, and (z) divided by 365 or 366 as the case may be. Interest shall accrue on each Loan for the day on which the Loan is made or deemed made and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid in each case; provided that any Loan that is repaid on the same day on which it is made or deemed made shall bear interest for one day.

(ii) The principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement.

(iii) The rates of interest stipulated in this Agreement are intended to be nominal rates and not effective yields.

Section 2.07. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender;

(ii) impose on any Lender any other condition affecting this Agreement; or

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

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise) in respect of any Loan in an amount deemed by such Lender to be material, then, within ten (10) days after the Borrower's receipt of the certificate contemplated by paragraph (c) of this Section 2.07, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender, as applicable, for such additional costs incurred or reduction suffered; provided that the Borrower shall not be liable for such compensation if (x) the relevant Change in Law occurs on a date prior to the date such Lender becomes a party hereto, (y) the Lender invokes Section 2.11, or (z) such circumstances in the case of requests for reimbursement under clause (ii) above resulting from a market disruption are not generally affecting the banking market.

(b) If any Lender determines that any Change in Law regarding liquidity or capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding

company could have achieved but for such Change in Law (including any Change in Law due to Taxes other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then within ten (10) days of receipt by the Borrower of the certificate contemplated by paragraph (c) of this Section 2.07, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as applicable, as specified in paragraph (a) or (b) of this Section 2.07 and setting forth in reasonable detail the manner in which such amount or amounts was determined and certifying that such Lender is generally charging such amounts to similarly situated borrowers shall be delivered to the Borrower and shall be conclusive absent manifest error.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided, further, 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 2.08. Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by Requirements of Law. If any Requirements of Law (as determined in the good faith discretion of an applicable withholding agent) require the deduction or withholding of any Tax from any such payment by a Loan Party, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with the Requirements of Law; provided that if an applicable withholding agent shall be required to deduct or withhold any Indemnified Taxes from such payments, then (i) the sum payable by the applicable Loan Party shall be increased as necessary so that after making all such required deductions or withholdings (including deductions and withholdings applicable to additional sums payable under this Section) the applicable recipient receives an amount equal to the sum it would have received had no such deductions or withholding been made, (ii) such withholding agent shall make such deductions or withholdings, and (iii) such withholding agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Requirements of Law. If at any time a Loan Party is required by Requirements of Law to make any deduction or withholding from any sum payable hereunder, such Loan Party shall promptly notify the relevant Lender or Collateral Agent upon becoming aware of the same.

(b) In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with Requirements of Law, or at the option of the Collateral Agent timely reimburse it for the payment of, any Other Taxes.

(c) Each Loan Party shall indemnify the Collateral Agent and each applicable Lender within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Collateral Agent or such Lender, as applicable, (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy of the Collateral Agent), or by the Collateral Agent on its own behalf or on behalf of a Lender.

(d) Each Lender shall severally indemnify, within ten (10) days after demand therefor, (i) the Collateral Agent for any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Collateral Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) the Collateral Agent for any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.05(c) relating to the maintenance of a Participant Register, and (iii) the Collateral Agent for any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Collateral Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Collateral Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Collateral Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Collateral Agent to the Lender from any other source against any amount due to the Collateral Agent under this paragraph (d).

(e) As soon as practicable after any payment of Indemnified Taxes by a Loan Party to a Governmental Authority, such Loan Party shall deliver to the Collateral Agent and the Lenders the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Collateral Agent and Required Lenders.

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Collateral Agent, on or prior to the date on which such Lender becomes a Lender under this Agreement and at the time or times reasonably requested in writing by the Borrower or the Collateral Agent, such properly completed and executed documentation prescribed by applicable laws or by the taxing authorities of any jurisdiction and such other documentation reasonably requested in writing by the Borrower or the Collateral Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Collateral Agent, shall deliver such other documentation prescribed by applicable law or by the taxing authority of any jurisdiction or reasonably requested in writing by the Borrower or the Collateral Agent as will enable the Borrower or the Collateral Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences or in Section 2.08(k), the completion, execution and submission of such documentation shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, 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 Collateral Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Collateral 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 Collateral Agent, as may be necessary for the Borrower and the Collateral 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.

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

(iv) Each Lender hereby authorizes the Collateral Agent to deliver to the Loan Parties and to any successor Collateral Agent any documentation provided by such Lender to the Collateral Agent pursuant to this Section 2.08(f).

(g) If the Collateral Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.08, it shall pay over such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.08 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of the Collateral Agent or such Lender (including any Taxes) as is determined by the Collateral Agent or such Lender in its sole discretion, and without interest (other than any net after-Tax interest paid by the relevant Governmental Authority with respect to such refund); provided that such Loan Party, upon the request of the Collateral Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Collateral Agent or such Lender in the event the Collateral Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the Collateral Agent or a Lender be required to pay any amount to a Loan Party pursuant to this paragraph (g) to the extent that the payment of which would place the Collateral Agent or Lender in a less favorable net after-Tax position than the Collateral Agent or Lender would have been in if the Tax subject to indemnification had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section shall not be construed to require the Collateral Agent or any Lender to make available its Tax returns (or any other information relating to its taxes which it deems confidential) to such Loan Party or any other Person or to arrange its affairs in any particular manner.

(h) Survival. Each party's obligations under this Section 2.08 shall survive the resignation or replacement of the Collateral Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Any Lender that is a U.S. Person (each such Lender, a "**Foreign Lender**") shall deliver to the Borrower and the Collateral Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable

request of the Borrower or the Collateral Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

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

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

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

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form requested by the of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**") and (y) executed copies of IRS Form W-8BEN (or W-8BEN-E, as applicable); or

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

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

(l) United Kingdom Tax Matters. The provisions of this Section 2.08(l) shall only apply in respect of any UK Loan Party or the Borrower to the extent only that it makes a payment of interest that is treated as having a UK source for UK tax purposes (a "**Relevant Loan Party**"),

and in respect of any such Relevant Loan Party the provisions of Section 2.08(a)-(k) shall not apply.[11]

(i) Tax Gross-Up.

(A) Each Relevant Loan Party shall make all payments to be made by it under any Loan Document without any Tax Deduction unless a Tax Deduction is required by law.

(B) A Relevant Loan Party shall, promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Collateral Agent accordingly. Similarly, a Lender shall promptly notify the Collateral Agent on becoming so aware in respect of a payment payable to that Lender. If the Collateral Agent receives such notification from a Lender, it shall notify the Relevant Loan Party.

(C) If a Tax Deduction is required by law to be made by a Relevant Loan Party, the amount of the payment due from that Relevant Loan Party shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(D) If a Relevant Loan Party is required to make a Tax Deduction, that Relevant Loan Party shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(E) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Relevant Loan Party making that Tax Deduction shall deliver to Collateral Agent for the benefit of the Lender entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

(ii) Tax Indemnity.

(A) Each Relevant Loan Party shall (within three Business Days of demand by the Collateral Agent) pay to a Lender an amount equal to the loss, liability or cost which that Lender determines will be or has been (directly or indirectly) suffered for or on account of Taxes by that Lender in respect of a Loan Document.

(B) This Section 2.08(l)(ii) above shall not apply:

(1) with respect to any Taxes assessed on a Lender (i) under the law of the jurisdiction in which such Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which such Lender is treated as resident for tax purposes; or (ii) under the law of the jurisdiction in which such Lender is located in respect of amounts received or receivable in such jurisdiction, if such Taxes are imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by such Lender; or

[11] **Note to Draft**: UK tax provisions under review.

(2) to the extent a loss, liability or cost is compensated for by an increased payment under Section 2.08(l)(ii)(C).

(C) A Lender making, or intending to make a claim under this Section 2.08(l)(ii) shall promptly notify Collateral Agent of the event which will give, or has given, rise to the claim, following which Collateral Agent shall notify the Relevant Loan Party.

Section 2.09. Payments Generally; Allocation of Proceeds; Sharing of Set-offs.

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or of amounts payable under Section 2.07 or Section 2.08 or otherwise) in immediately available funds, without set-off (except as otherwise provided in Section 2.08) or counterclaim and, unless otherwise specified, prior to 2:00 p.m. on the date when due. Any amounts received after such time on any date may, in the discretion of the applicable Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to each Lender to the applicable account designated to the Borrower by such Lender and except that payments pursuant to Section 2.07 or Section 2.08 shall be made directly to the Persons entitled thereto. The Collateral Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as otherwise provided herein, each payment or prepayment of principal of the Loans and each payment of interest on the Loans shall be allocated pro rata among the Lenders in accordance with their respective Applicable Percentages of the applicable Loans. All payments hereunder shall be made in Dollars unless otherwise provided herein. Any payment required to be made by the Collateral Agent hereunder shall be deemed to have been made by the time required if the Collateral Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Collateral Agent to make such payment.

(b) All proceeds of Collateral received by the Collateral Agent after the Maturity Date shall, upon election by the Collateral Agent at the direction of the Required Lenders, be applied, first, on a pro rata basis, to pay any fees, indemnities or expense reimbursements then due to the Collateral Agent from any Loan Party constituting Obligations, second, on a pro rata basis, to pay any fees, indemnities or expense reimbursements then due to the Lenders from any Loan Party constituting Obligations, third, to payment of the Outstanding Amount of the First Out Loans together with all accrued and unpaid interest thereon until paid in full, fourth, to payment of the Outstanding Amount of the Last Out Loans together with all accrued and unpaid interest thereon until paid in full, fifth, to the payment of any other Obligation (other than contingent indemnification obligations for which no claim has yet been made) due to the Collateral Agent or any Lender on a pro rata basis, and sixth, to the Borrower as it shall direct.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for Cash at face value) participations in the Loans of other Lenders at such time outstanding to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant

to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any permitted assignee or participant. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) If any Lender shall fail to make any payment required to be made by it pursuant to this Section 2.09 or the second last paragraph of Article 8, then the Collateral Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Collateral Agent for the account of such Lender to satisfy such Lender's obligations under such Sections or paragraphs, as applicable, until all such unsatisfied obligations are fully paid.

(e) If, on any date, amounts (other than interest and fees) would be due and payable under this Agreement in the same currency by the Borrower to the relevant Lenders, or any one of them, and by the Lenders, or such Lender, to the Borrower, then, on such date, unless notice is given by such Lender stating that netting is not to apply to such payments, the obligations of each such party to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by the Borrower to such Lenders, or such Lender, exceeds the aggregate amount that would otherwise have been payable by such Lenders, or such Lender, to the Borrower or vice versa, such obligations shall be replaced by an obligation upon whichever of the Borrower or such Lenders, or such Lender, would have had to pay the larger aggregate amount to pay to the other the excess of the larger aggregate amount over the smaller aggregate amount.

Section 2.10. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.07 or if any Loan Party is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.08, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder affected by such event, or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.07 or Section 2.08, as applicable, in the future, and (ii) would not subject such Lender to any material unreimbursed out-of-pocket cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.07, (ii) any Loan Party is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.08, or (iii) in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender directly affected thereby" with respect to which Required Lender consent has been obtained, any Lender is a non-consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Collateral Agent, (x) repay all Obligations of the Borrower owing to such Lender relating to the Loans held by such Lender as of such termination date as the Borrower may elect on a non-pro rata basis or (y) replace such Lender by requiring such Lender to assign and delegate (and such Lender shall be obligated to assign and delegate), without recourse (in accordance with and subject to the restrictions contained in Section 9.05), all its interests, rights and obligations under this Agreement

to an Eligible Assignee that shall assume such obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Lender shall have received payment of an amount equal to the outstanding principal amount of its Loans and accrued interest thereon, accrued fees and all other amounts payable to it hereunder with respect to such Loans, (ii) in the case of any assignment resulting from a claim for compensation under Section 2.07 or payments required to be made pursuant to Section 2.08, such assignment will result in a reduction in such compensation or payments, and (iii) such assignment does not conflict with applicable law. A Lender shall not be required to make any such assignment and delegation, and the Borrower may not repay the Obligations of such Lender 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. Each Lender agrees that if it is replaced pursuant to this Section 2.10, it shall (x) execute and deliver to the Borrower and the Collateral Agent an Assignment and Assumption to evidence such sale and purchase subject to such Assignment and Assumption; provided that the failure of any Lender replaced pursuant to this Section 2.10 to execute an Assignment and Assumption shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register; and (y) consent to such proposed amendment, waiver or consent prior to signing such Assignment and Assumption. Each Lender hereby irrevocably appoints the Borrower (such appointment being coupled with an interest) as such Lender's attorney-in-fact, with full authority in the place and stead of such Lender and in the name of such Lender, from time to time in the Borrower's discretion, with prior written notice to such Lender, to take any action and to execute any such Assignment and Assumption or other instrument that the Borrower may deem reasonably necessary to carry out the provisions of this clause (b).

Section 2.11. Illegality. If any provision of this Agreement or any of the other Loan Documents would obligate the Borrower to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by such Lender of "interest" at a "criminal rate" (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been established by the mutual mistake of such Lender and the Borrower and shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by such Lender of "interest" at a "criminal rate," such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

(a) first, by reducing the amount or rate of interest required to be paid; and

(b) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid which would constitute interest for purposes of Section 347 of the *Criminal Code* (Canada).

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

On the Closing Date, each Loan Party, on behalf of itself and its Subsidiaries, represents and warrants to the Lenders that:

Section 3.01. Organization; Powers. Each of the Loan Parties and each of its Subsidiaries (a) is duly organized, validly existing and in good standing (to the extent such concept exists in the relevant jurisdiction) under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted, and (c) is qualified to do business in, and is in good standing (to the extent such concept exists in the relevant jurisdiction) in, every jurisdiction where its ownership, lease or operation of properties or conduct of its business requires such

qualification; except, in each case referred to in Section 3.01(b) and (c) (other than Section 3.01(c) with respect to Holdings and the Borrower) where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.02. Authorization; Enforceability. After giving effect to the Confirmation Order and the Plan of Reorganization, the execution, delivery and performance of each of the Loan Documents are within each applicable Loan Party's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational action of such Loan Party. Each Loan Document to which any Loan Party is a party has been duly executed and delivered by such Loan Party and is a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity and principles of good faith and fair dealing.

Section 3.03. Governmental Approvals; No Conflicts. After giving effect to the Confirmation Order and the Plan of Reorganization, the execution and delivery of the Loan Documents by each Loan Party party thereto and the performance by such Loan Party thereof (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) for filings necessary to perfect Liens created pursuant to the Loan Documents, and (iii) such consents, approvals, registrations, filings, or other actions the failure to obtain or make which could not be reasonably expected to have a Material Adverse Effect, (b) will not violate any (i) of such Loan Party's Organizational Documents or (ii) any Requirements of Law applicable to such Loan Party which, in the case of this clause (b)(ii), could reasonably be expected to have a Material Adverse Effect, and (c) will not violate or result in a default under any Contractual Obligation of any of the Loan Parties which in the case of this clause (c) could reasonably be expected to result in a Material Adverse Effect.

Section 3.04. Financial Condition; No Material Adverse Effect.

(a) [The Borrower has heretofore furnished to the Lenders the financial statements described in Section 4.01(p).] [Such financial statements and] the financial statements furnished to the Lenders pursuant to Section 5.01 present fairly, in all material respects, the consolidated financial position and results of income and cash flows of the Persons covered thereby as of such dates and for such periods in accordance with GAAP except as otherwise noted therein, subject in the case of interim unaudited financial statements to the absence of footnotes and changes resulting from audit and normal year-end adjustments.

(b) Since the Closing Date, no Material Adverse Change has occurred.

Section 3.05. Properties.

(a) As of the date of this Agreement, there are no Material Real Estate Assets owned by any Loan Party.

(b) Each Loan Party and its Subsidiaries has good and valid fee simple title (or similar concept under any applicable jurisdiction) to or rights to purchase, or valid leasehold interests in, or other limited property interests in, all its Real Estate Assets (including any Mortgaged Properties) and has good title to its personal property and assets, in each case, except for defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(c) Each Loan Party and its Subsidiaries have valid title to or a valid license or right to use all patents, trademarks, service marks, trade names, copyrights, proprietary know how and data and other rights in works of authorship (including all copyrights embodied in software), and all other similar intellectual property rights (the foregoing, collectively, "**IP Rights**") needed to conduct the businesses of Loan Parties and their Subsidiaries as presently conducted without, to the knowledge of any Loan Party, any infringement or misappropriation of the IP Rights of third parties, except where such failure to own or license or have rights to use could not, or where such infringement or misappropriation could not, have, individually or in the aggregate, a Material Adverse Effect.

Section 3.06. Litigation and Environmental Matters.

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened in writing against or affecting the Loan Parties or any of their Subsidiaries which could reasonably be expected, individually or in the aggregate, to result in liability of Holdings or any Subsidiary in excess of the Threshold Amount.

(b) Except for any matters that, individually or in the aggregate, could not reasonably be expected to result in Environmental Liability of Holdings or any Subsidiary in excess of the Threshold Amount, (i) no Loan Party nor any of its Subsidiaries has received notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability and (ii) no Loan Party nor any of its Subsidiaries (A) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law or (B) has become subject to any Environmental Liability.

(c) No Loan Party nor any of its Subsidiaries has treated, stored, transported or disposed of Hazardous Materials at or from any currently or formerly operated real estate or facility relating to its business in a manner that could reasonably be expected to result in Environmental Liability of Holdings or any Subsidiary in excess of the Threshold Amount.

Section 3.07. Compliance with Laws. After giving effect to the Confirmation Order and the Plan of Reorganization, each Loan Party and its Subsidiaries is in compliance with all Requirements of Law applicable to it or its property, except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.08. Investment Company Status. No Loan Party is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 3.09. Taxes. Each Loan Party and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it (including in the capacity of a withholding agent) that are due and payable, except Taxes (or any requirement to file Tax returns with respect thereto) that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP.

Section 3.10. ERISA Events.

(a) (i) The operation and administration of each Plan has complied in all material respects with the terms of such Plan, the applicable provisions of ERISA and the Code and the regulations and interpretations promulgated thereunder; (ii) no Pension Plan has failed to satisfy

the minimum funding standards (within the meaning of Sections 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan, whether or not waived; (iii) there has been no failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan; (iv) no ERISA Event has occurred or is reasonably expected to occur; (v) each Loan Party and, to the best knowledge of each Loan Party, each ERISA Affiliate, has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; and (vi) the present value of all accumulated benefit obligations under any Pension Plan did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Pension Plan allocable to such accrued benefits (determined using the assumptions applicable thereto promulgated under Section 430 of the Code) and no Loan Party knows of any facts or circumstances that could reasonably be expected to cause the accumulated benefit obligations for any such Pension Plan to not exceed the fair market value of the assets of such Pension Plan.

(b) Each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or can rely on a favorable opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, and to the best knowledge of each Loan Party, nothing has occurred that would cause the loss of such Plan's tax-qualified status. There are no pending or, to the best knowledge of any Loan Party, claims threatened in writing, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to result in liabilities individually or in the aggregate in excess of $250,000 on any Loan Party. There has been no non-exempt prohibited transaction or, to the best knowledge of each Loan Party, violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in liabilities individually or in the aggregate in excess of $250,000.

(c) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no Foreign Plan Event has occurred.

(d) As of the Closing Date, no Loan Party or any Canadian Subsidiary thereof maintains or contributes to a Canadian pension plan.

Section 3.11. Disclosure.

(a) All written information (other than the Projections, 13 Week Cash Flow Projections and Financial Plans, other forward-looking information and information of a general economic or industry-specific nature) that has been made available concerning the Loan Parties and their Subsidiaries and prepared by, or on behalf of, the foregoing by any of their respective representatives, and made available to any Lender or the Collateral Agent in connection with this Agreement, when taken as a whole, did not, when furnished, contain any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (after giving effect to all supplements and updates thereto from time to time).

(b) Each of the Projections, 13 Week Cash Flow Projections and Financial Plans have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time furnished (it being recognized that the Projections, 13 Week Cash Flow Projections and Financial Plans are not to be viewed as facts and are subject to significant uncertainties and contingencies many of which are beyond the Loan Parties' control, that no assurance can be given

that any particular financial projections or plans will be realized, that actual results may differ from projected results and that such differences may be material).

Section 3.12. Solvency. After giving effect to the Confirmation Order and the Plan of Reorganization, (i) the sum of the debt (including contingent liabilities) of the Loan Parties and their Subsidiaries, taken as a whole, does not exceed the fair value of the assets of the Loan Parties and their Subsidiaries, taken as a whole, (ii) the present fair saleable value of the assets of the Loan Parties and their Subsidiaries, taken as a whole, is not less than the amount that will be required to pay the probable liabilities (including contingent liabilities) of the Loan Parties and their Subsidiaries, taken as a whole, on their debts as they become absolute and matured, (iii) the capital of the Loan Parties and their Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Loan Parties and their Subsidiaries, taken as a whole, (iv) the Loan Parties and their Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debt as they mature in the ordinary course of business and (v) none of the Loan Parties nor any of their Subsidiaries is "insolvent" within the meaning of Section 101(32) of the Bankruptcy Code or an "insolvent person" within the meaning of the *Bankruptcy and Insolvency Act* (Canada). For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

Section 3.13. Capitalization and Subsidiaries. Schedule 3.13 sets forth, in each case as of the Closing Date, (a) a correct and complete list of the name of Holdings and each Subsidiary of Holdings and the ownership interest therein held by Holdings or its applicable Subsidiary; (b) the type of entity of Holdings and each of its Subsidiaries; and (c) the limited partnership interests in BF LP and the amount of any loans made by the unit holders of BF LP to BF LP.

Section 3.14. Security Interest in Collateral. The provisions of this Agreement and the other Loan Documents create legal, valid and enforceable Liens on all of the Collateral in favor of the Collateral Agent (or any designee or trustee on its behalf), for the benefit of itself and the other Secured Parties, subject, as to enforceability, to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity and principles of good faith and dealing, and upon the making of such filings and taking of such other actions required to be taken hereby or by the applicable Loan Documents (including the filing of appropriate UCC and PPSA financing statements, the filing of appropriate assignments or notices with the U.S. Patent and Trademark Office, the U.S. Copyright Office and the Canadian Intellectual Property Office, and the proper recordation of Mortgages and fixture filings with respect to any Material Real Estate Assets, in each case in favor of the Collateral Agent (or any designee or trustee on its behalf) for the benefit of itself and the other Secured Parties and the delivery to the Collateral Agent of any stock certificates or promissory notes required to be delivered pursuant to the applicable Loan Documents), such Liens constitute perfected Liens (with the priority such Liens are expressed to have within the relevant Collateral Document) on the Collateral (to the extent such Liens are required to be perfected under the terms of the Loan Documents), securing the Obligations, in each case as and to the extent set forth therein.

Section 3.15. Labor Disputes. Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, there are no strikes, lockouts or slowdowns against any Loan Party or any of its Subsidiaries pending or, to the knowledge of any Loan Party or any of its Subsidiaries, overtly threatened.

Section 3.16. Federal Reserve Regulations.

(a) Not more than 25% of the value of the assets of the Loan Parties and their Subsidiaries, taken as a whole, is represented by Margin Stock.

(b) None of the Loan Parties nor any of their Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(c) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of the provisions of Regulation T, U or X.

Section 3.17. Anti-Terrorism, Corruption and Money Laundering Laws.

(a) Each of Holdings and its Subsidiaries, and to the knowledge of any Loan Party, each director, officer, employee, agent and Affiliate of such Loan Party is, and since April 24, 2019 has been, in compliance with the Sanctions, Anti-Corruption Laws, and Anti-Money Laundering Laws. No Loan or use of proceeds will violate or be used in any manner that would result in the violation of any Sanctions, Anti-Corruption Laws, or Anti-Money Laundering Laws applicable to any party hereto.

(b) None of Holdings or any of its Subsidiaries or, to the knowledge of any Loan Party, any director, manager, officer, agent or employee or Affiliate of Holdings or any of its Subsidiaries, in each case, is a Sanctioned Person, has any assets located in a Sanctioned Country, or derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Countries.

(c) Each Loan Party has implemented and maintains in effect policies and procedures designed to ensure compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

(d) No part of the proceeds of any Loan will be used for any improper payments, directly or, to the knowledge of any Loan Party, indirectly, 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, or any other party (if applicable) in order to obtain, retain or direct business or obtain any improper advantage, or otherwise in any manner that would result in a violation of any Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws by any party hereto. No part of the proceeds of any Loan will be used for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country.

Section 3.18. UK Pension Plans. No UK Loan Party has: (a) at any time been an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004 (U.K.)) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pensions Schemes Act 1993 (U.K.)); (b) at any time been "connected" with or an "associate" of (as those terms are used in sections 38 and 43 of the Pensions Act 2004 (U.K.)) such an employer; or (c) been issued with a Financial Support Direction or Contribution Notice in respect of any pension scheme.

ARTICLE 4 CONDITIONS

Section 4.01. Closing Date. The obligations of the Lenders to make the Loans on the Closing Date are subject to the satisfaction (or waiver in accordance with Section 9.02) of the following conditions:

(a) Credit Agreement and Other Loan Documents. The Collateral Agent (or its counsel) shall have received from each of the Loan Parties, a counterpart of each Loan Document (including the Subordination Agreement) to be executed on the Closing Date, signed on behalf of such party.

(b) Legal Opinions. The Collateral Agent shall have received, on behalf of itself and the Lenders on the Closing Date, a customary written opinion of Polsinelli PC, special U.S. counsel for the Loan Parties, (A) dated the Closing Date, (B) addressed to the Collateral Agent and the Lenders, and (C) covering such matters relating to the Loan Documents as the Collateral Agent and Lenders shall reasonably request.

(c) Closing Certificates; Certified Charters; Good Standing Certificates. The Collateral Agent shall have received (i) a certificate of each Loan Party, dated the Closing Date and executed by a Responsible Officer of such Loan Party, which shall (A) certify that attached thereto is a true and complete copy of the resolutions or written consents of its board of directors, members or other governing body (including any committee thereof) authorizing the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, the Loans hereunder, and that such resolutions or written consents are in full force and effect in the form attached thereto on the Closing Date and have not been further amended, modified or repealed as of the Closing Date, (B) identify by name and title and bear the signatures of the Responsible Officer or authorized signatory of such Loan Party authorized to sign the Loan Documents to which it is a party on the Closing Date, and (D) certify that (x) attached thereto is a true and complete copy of (1) the certificate or articles of incorporation, organization or formation (or memorandum of association or other equivalent thereof) of each Loan Party, (2) each Loan Party's by-laws or operating, management, partnership or similar agreement (to the extent applicable) and (y) as of the Closing Date, each such document or agreement referred to in the foregoing clauses (x)(1) and (2) remains in full force and effect in the form attached thereto on the Closing Date and has not been further amended, modified or repealed as of the Closing Date, and (3) a certificate of good standing (or status or subsistence) with respect to each Loan Party from the Secretary of State (or similar official) of the state of such Loan Party's organization (to the extent relevant and available in the jurisdiction of organization of such Loan Party.

(d) Officer's Certificate. (i) The representations and warranties set forth in Section 3 of this Agreement and in the other Loan Documents shall be true and correct in all material respects (or in all respects, in the case of any thereof already subject to a materiality or material adverse effect qualification); provided that in the case of any representation and warranty set forth in Section 3 or in any other Loan Document which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects (or in all respects, in the case of any thereof already subject to a materiality or material adverse effect qualification) as of the respective date or for the respective period, as the case may be; and (ii) no Default or Event of Default shall have occurred and be continuing on the date of making or deemed making of Loans on the Closing Date, and the Collateral Agent shall have received a certificate from a Responsible Officer of the Borrower certifying the matters in the foregoing clauses (i) and (ii).

(e) Plan of Reorganization. The Plan of Reorganization, the Confirmation Order, and any related order of the Bankruptcy Court (and any amendments or modifications to any of the

foregoing) shall be in form and substance satisfactory to the Lenders, including approval of the secured term loan facility provided hereunder and applicable releases and exculpations.

(f) Confirmation Order. The Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, shall have entered an order (the "**Confirmation Order**"), which Confirmation Order shall be in full force and effect, not subject to any stay or any statutory appeal period, which shall have expired or been waived, and the Confirmation Order shall not have been amended in any manner adverse to the Collateral Agent or the Lenders.

(g) Plan Effective Date. The Plan Effective Date shall have occurred, and all conditions precedent to the confirmation and effectiveness of the Plan of Reorganization, as set forth in the Plan of Reorganization (other than the effectiveness of this Agreement, the Senior Credit Agreement and the other transactions which shall occur contemporaneously with the Plan Effective Date), shall have been fulfilled or waived as permitted therein, including, without limitation, all transactions contemplated in the Plan of Reorganization or in the Confirmation Order to occur on the Plan Effective Date shall have been substantially consummated in accordance with the terms thereof and in compliance with applicable law and regulatory approvals (if any).

(h) Administrative Expense Claims. The Lenders shall have received satisfactory evidence as to the payment in full on the Plan Effective Date of all administrative expense claims, priority claims and other claims required to be paid upon the Plan Effective Date.

(i) Expenses. The Collateral Agent shall have received payment of all expenses for which invoices have been presented at least one Business Day prior to the Closing Date (including the reasonable fees and expenses of legal counsel), in each case on or before the Closing Date.

(j) Solvency. The Collateral Agent shall have received a certificate dated as of the Closing Date in substantially the form of Exhibit F from a Financial Officer of Holdings certifying as to the matters set forth therein.

(k) Pledged Stock, Stock Powers. The Senior Agent shall have received or confirmed possession of the certificates representing the Capital Stock of K'NEX UK pledged pursuant to a charge over shares, together with an undated stock or similar power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof.

(l) Filings Registrations and Recordings. Subject to the terms of each applicable Collateral Document, each document (including any UCC or PPSA (or similar) financing statement) required by the Collateral Documents or under law or reasonably requested by the Collateral Agent to be filed, registered or recorded in order to create in favor of the Collateral Agent, for the benefit of itself and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Permitted Liens), shall be in proper form for filing, registration or recordation.

(m) Senior Loan Documents. The Collateral Agent shall have received a true, correct and complete copy of each of the Senior Loan Documents, which shall be in form and substance satisfactory to the Collateral Agent in its sole discretion and the transactions contemplated by the Senior Credit Agreement shall close concurrently on the Closing Date.

(n) Shareholder Loan Notes. The Collateral Agent shall have received copies of the amended and restated Shareholder Loan Notes, extending the maturity date thereof to a date which

is later than 90 days following the Maturity Date and otherwise in form and substance satisfactory to the Collateral Agent.

(o) USA PATRIOT Act. No later than three (3) Business Days in advance of the Closing Date, the Collateral Agent shall have received all documentation and other information reasonably requested by the Lenders in writing at least ten (10) Business Days in advance of the Closing Date, which documentation or other information is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(p) Financial Plans. The Arranger shall have received the Financial Plan for each of the 2025 Fiscal Year, the 2026 Fiscal Year and the 2027 Fiscal Year.

(q) Perfection Certificate. The Collateral Agent shall have received a fully executed updated Perfection Certificate.

(r) Funds Flow. The Collateral Agent shall have received a funds flow statement identifying all payments to be made on or about the Closing Date in connection with the effectiveness of the Plan of Reorganization.

(s) Excess Availability. The amount of the Revolving Loan Borrowing Base (as defined in the Senior Credit Agreement) as of the Closing Date shall exceed the aggregate outstanding principal amount of the Revolving Loans (as defined in the Senior Credit Agreement) on such date (after giving effect to all Revolving Loans made on such date) by not less than $5,000,000.

(t) Ownership. The Collateral Agent shall have received a pro forma ownership capitalization table for BF LP and its Subsidiaries.

(u) Partnership Agreement. The Collateral Agent shall have received and be satisfied with a copy of the partnership agreement of BF LP and all amendments thereto, and shall have received evidence of Minority Approval thereunder with respect to the transactions contemplated in the Plan of Reorganization.

(v) Employment Agreements. The Collateral Agent shall have received and be satisfied with a copy of the employment agreements for each of John MacDonald and Jay Foreman.[12]

(w) Participation Agreements. The Closing Date Lender shall have entered into participation agreements with respect to 100% of the Last Out Loans, in form and substance satisfactory to the Closing Date Lender, and in amounts consistent with the Plan of Reorganization, and the participations have been fully funded at par.

For purposes of determining whether the conditions specified in this Section 4.01 have been satisfied, by funding its Loans hereunder (or in connection with any Assignment and Assumption), the Collateral Agent and each Lender that has executed this Agreement (or such Assignment and Assumption) shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other

[12] **Note to Borrower**: Please confirm whether these employment agreements have changed since October 2020.

matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Collateral Agent or such Lender, as the case may be.

ARTICLE 5 AFFIRMATIVE COVENANTS

Until the date that the Outstanding Amount of the Loans and accrued interest on each Loan and all fees, expenses and other amounts payable under any Loan Document (other than contingent indemnification obligations for which no claim or demand has been made) have been paid in full in Cash (such date, the "**Termination Date**"), each Loan Party, on behalf of itself and its Subsidiaries, covenants and agrees with the Lenders that:

Section 5.01. Financial Statements and Other Reports. The Borrower will deliver to the Collateral Agent and to each Lender:

(a) Monthly Reporting. As soon as available, and in any event within 30 days following the end of each month:

(i) the consolidated balance sheet of Holdings as at the end of such fiscal month and the related consolidated statements of income and cash flows of Holdings for such month and for the period from the beginning of the then current Fiscal Year to the end of such month setting forth in each case, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto, subject to the absence of footnotes, normal audit and year-end adjustments and the effects of acquisition accounting; and

(ii) a breakdown of revenue and gross margin by product group and customer.

(b) Quarterly Financial Statements. As soon as available, and in any event within 45 days following the end of each Fiscal Quarter, the consolidated balance sheet of Holdings as at the end of such Fiscal Quarter and the related consolidated statements of income and cash flows of Holdings for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter setting forth in each case, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto, subject to the absence of footnotes, normal audit and year-end adjustments and the effects of acquisition accounting.

(c) Annual Financial Statements. As soon as available, and in any event within 120 days following the end of each Fiscal Year, (x) the consolidated balance sheet of Holdings as at the end of such Fiscal Year and the related consolidated statements of income and cash flows of Holdings for such Fiscal Year, setting forth in each case, in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Narrative Report with respect thereto; and (y) with respect to such consolidated financial statements, a report thereon of independent certified public accountants of recognized national standing reasonably acceptable to the Collateral Agent (which report shall be unqualified as to "going concern" and scope of audit), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Holdings as at the dates indicated and the results of its consolidated operations and cash flows for the periods indicated in conformity with GAAP.

(d) Compliance Certificate. Together with each delivery of consolidated financial statements of Holdings pursuant to Sections 5.01(a), 5.01(b) and 5.01(c), a duly executed and

completed Compliance Certificate (i) certifying that no Default or Event of Default has occurred and is continuing (or if a Default or Event of Default has occurred and is continuing, describing in reasonable detail such Default or Event of Default and the steps being taken to cure, remedy or waive the same), (ii) certifying as to the accuracy of representations and warranties made in the Loan Documents, (iii) in the case of (x) financial statements delivered pursuant to Section 5.01(b) and 5.01(c), setting forth reasonably detailed calculations of the financial covenants set forth in Section 6.14 as of the date of such financial statements and (y) financial statements delivered pursuant to Section 5.01(a), setting forth reasonably detailed calculations of the financial covenant set forth in Section 6.17 as of the date of such financial statements together with an explanation of commentary as to the reasons for any negative variance, (iv) setting forth a list identifying each Subsidiary of Holdings or confirming that there is no change in such information since the later of the Closing Date and the date of the last such list, (v) in the case of financial statements delivered pursuant to Sections 5.01(b) and 5.01(c), reporting on Capital Expenditures during the period covered by such financial statements, and (vi) in the case of financial statements delivered pursuant to Sections 5.01(b) and 5.01(c), reporting on the capitalization of intangible assets during the period covered by such financial statements.

(e) Registered Intellectual Property. Together with the delivery of each Compliance Certificate required by Section 5.01(d), a list and description of all intellectual property acquired or developed by the Loan Parties that has been registered or for which an application for registration has been filed since the date of the Perfection Certificate or the prior list and description provided under this clause (e), as applicable, in order to allow the Collateral Agent to perfect and protect its Liens thereon.

(f) Notice of Default. Promptly upon any Responsible Officer of any Loan Party obtaining knowledge (i) of any Default or Event of Default or (ii) of the occurrence of any event or change that has caused or could reasonably be expected to cause or evidences either in any case or in the aggregate, a Material Adverse Effect, a reasonably-detailed notice specifying the nature and period of existence of such condition, event or change and what action the Borrower has taken, is taking and proposes to take with respect thereto.

(g) Notice of Litigation. Promptly upon any Responsible Officer of any Loan Party obtaining knowledge of (i) the institution of, or threat of, any Adverse Proceeding not previously disclosed in writing by the Loan Parties to the Collateral Agent and Lenders or (ii) any material development in any Adverse Proceeding that, in the case of either clause (i) or (ii), could reasonably be expected to result in liability of Holdings or any Subsidiary in excess of the Threshold Amount, written notice thereof together with such other non-privileged information as may be reasonably available to the Loan Parties to enable the Lenders to evaluate such matters.

(h) ERISA Event. Promptly upon any Responsible Officer of any Loan Party becoming aware of the occurrence of any ERISA Event or Foreign Plan Event that, individually or together with all ERISA Events or Foreign Plan Events that have occurred, could reasonably be expected to result in liability in an aggregate amount in excess of $100,000, a written notice specifying the nature thereof.

(i) Financial Plan. As soon as available and in any event no later than 30 days after the beginning of each Fiscal Year, a consolidated plan and financial forecast for each month of such Fiscal Year (a "**Financial Plan**"), including (i) a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of Holdings for such Fiscal Year, prepared in reasonable detail setting forth, with appropriate discussion, the principal assumptions on which such financial plan is based, (ii) pro forma calculations of the financial covenants

contained in Section 6.14 for each month or Fiscal Quarter covered by such Financial Plan, and (iii) a Capital Expenditure plan for each month covered by such Financial Plan.

(j) Information Regarding Collateral. At least 15 Business Days advance notice in writing of any change (i) in any Loan Party's legal name, (ii) in any Loan Party's type of organization, (iii) in any Loan Party's jurisdiction of organization, (iv) in any Loan Party's organizational identification number, or (v) the location of any tangible Collateral of any Loan Party in any Province or Territory of Canada (in the case of clause (v), to the extent necessary to perfect or maintain the perfection and priority of the Collateral Agent's security interest in the applicable Collateral).

(k) Other Reports.

(i) 13 Week Cash Flow Projections. On a bi-weekly basis, not later than the Wednesday of every other week following the Closing Date, a rolling 13-week update of the Initial 13 Week Cash Flow Projections as of the Friday immediately preceding the delivery thereof (the Initial 13 Week Cash Flow Projections as updated from time to time, the "**13 Week Cash Flow Projections**") together with commentary on any material negative variances.

(ii) Senior Reporting. To the extent not delivered above, copies of all reports and financial information delivered by the Borrower to the Senior Agent under the Senior Credit Agreement, including without limitation borrowing base certificates and inventory and accounts receivable summary ageing reports.

(l) Senior Credit Agreement. Promptly and in any event within one Business Day following the execution and delivery thereof, copies of any amendments to, or waivers or consents granted under, the Senior Credit Agreement and any notices of default or events of default issued thereunder.

(m) Shareholder Reports, Etc. To the extent the following are not publicly available on the Borrower's website or on the website of the Securities and Exchange Commission, promptly after the sending or filing thereof, as the case may be, copies of any proxy statements, financial statements or reports which each Loan Party has made available to its shareholders and copies of any regular, periodic and special reports or registration statements which any Loan Party files with the Securities and Exchange Commission or any other applicable Governmental Authority, including any Governmental Authority which may be substituted therefor, or any applicable national securities exchange.

(n) Other Requested Information. Such other certificates, reports and information (financial or otherwise) as the Collateral Agent or any Lender may reasonably request from time to time in connection with the Loan Parties' or their Subsidiaries' financial condition or business.

Section 5.02. Existence. Except as otherwise permitted under Section 6.07, each Loan Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits necessary in the normal conduct of its business except to the extent (other than with respect to the preservation of existence of the Loan Parties) failure to do so could not reasonably be expected to result in a Material Adverse Effect.

Section 5.03. Payment of Taxes. Each Loan Party will, and will cause each of its Subsidiaries to, pay all material Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon; provided that no such Tax need be paid

if it is being contested in good faith by appropriate proceedings and adequate reserves or other appropriate provisions, as shall be required in conformity with GAAP, shall have been made therefor and, in the case of a Tax which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax.

Section 5.04. Maintenance of Properties. Each Loan Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear and casualty and condemnation excepted, all tangible property reasonably necessary to the normal conduct of business of the Loan Parties and their Subsidiaries and from time to time will make or cause to be made all needed and appropriate repairs, renewals and replacements thereof except as expressly permitted by this Agreement.

Section 5.05. Insurance. Each Loan Party will maintain or cause to be maintained, with insurance companies that such Loan Party believes (in good faith judgment of the management of such Loan Party) are financially sound and reputable insurers at the time the relevant coverage is placed or renewed, insurance coverage with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Loan Parties and their Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts, with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, each Loan Party will maintain flood insurance with respect to each Flood Hazard Property, in each case in compliance with and solely to the extent required by the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 (where applicable), the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, each as now or hereafter in effect or any successor statute thereto. Each such policy of insurance shall (i) to the extent applicable, name the Collateral Agent on behalf of the Lenders as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy with respect to the Collateral (excluding any business interruption insurance policy), contain a loss payable clause or endorsement that names the Collateral Agent, on behalf of the Lenders as the loss payee thereunder and provides for at least 30 days' prior written notice to the Collateral Agent of any modification or cancellation of such policy (or 10 days' prior written notice for any cancellation due to non-payment of premiums).

Section 5.06. Inspections. Each Loan Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by the Collateral Agent and each Lender to visit and inspect any of the properties of the Loan Parties and any of their Subsidiaries at which the principal financial records and executive officers of the applicable Person are located, to inspect, copy and take extracts from its financial and accounting records, and to discuss its affairs, finances and accounts with its officers and independent public accountants, all upon reasonable notice, reasonable coordination in and at such reasonable times during normal business hours and as often as may reasonably be requested; provided that (x) only the Collateral Agent on behalf of the Lenders may exercise the rights of the Collateral Agent and the Lenders under this Section 5.06 and (y) except as provided in the proviso below in connection with the occurrence and continuance of an Event of Default, only one exercise of such rights per calendar year shall be at the expense of the Borrower; provided, further, that when an Event of Default has occurred and is continuing, the Collateral Agent (or any of its representatives or independent contractors) and any Lender may do any of the foregoing at the expense of the Borrower in accordance with Section 9.03(a) at any time during normal business hours and upon reasonable advance notice.

Section 5.07. Maintenance of Book and Records. Each Loan Party will, and will cause its Subsidiaries to, maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets

and business of the Loan Parties and their Subsidiaries, as the case may be, and permit the preparation of consolidated financial statements in accordance with GAAP to be derived therefrom.

Section 5.08. Compliance with Laws. Each Loan Party will comply, and shall cause each of its Subsidiaries to comply, with the requirements of (i) applicable Sanctions, Anti-Money Laundering and Anti-Corruption Laws and (iii) all other applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws, ERISA), except in the case of clause (iii), to the extent the failure of such Loan Party or Subsidiary to comply could not reasonably be expected to have a Material Adverse Effect. Each Loan Party and its Subsidiaries shall implement and maintain in effect policies and procedures designed to ensure compliance by Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents, and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

Section 5.09. Environmental.

(a) Environmental Disclosure. The Borrower will deliver to the Collateral Agent and to the Lenders:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of any Loan Party or any of its Subsidiaries or by independent consultants, Governmental Authorities or any other Persons, with respect to significant environmental matters at any Loan Party's real property or with respect to any Environmental Claims, in each case, that could reasonably be expected to have a Material Adverse Effect;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported by any Loan Party or any of its Subsidiaries to any federal, state or local governmental or regulatory agency under any Environmental Laws that could reasonably be expected to have a Material Adverse Effect, (B) any remedial action taken by any Loan Party or any of its Subsidiaries or any other Persons of which any Loan Party or any of its Subsidiaries has knowledge in response to (1) any Hazardous Materials Activities, the existence of which has a reasonable possibility of resulting in one or more Environmental Claims that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (2) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and (C) any Loan Party's discovery of any occurrence or condition arising under Environmental Law or relating to Hazardous Materials on any real property adjoining or in the vicinity of any Facility that reasonably could be expected to have a Material Adverse Effect;

(iii) as soon as practicable following the sending or receipt thereof by any Loan Party or any of its Subsidiaries, a copy of any and all non-privileged written communications with respect to (A) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to give rise to a Material Adverse Effect, (B) any Release required to be reported by any Loan Party or any of its Subsidiaries to any federal, state or local governmental or regulatory agency that could reasonably be expected to have a Material Adverse Effect, and (C) any request made to any Loan Party or any of its Subsidiaries for information from any governmental agency that suggests such agency is investigating whether any Loan Party or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity which could reasonably be expected to have a Material Adverse Effect;

(iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of stock, assets or property by any Loan Party or any of its Subsidiaries that could reasonably be expected to expose any Loan Party or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (B) any proposed action to be taken by any Loan Party or any of its Subsidiaries to modify current operations in a manner that could subject any Loan Party or any of its Subsidiaries to any additional obligations or requirements under any Environmental Law that could reasonably be expected to have a Material Adverse Effect; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Collateral Agent or a Lender in relation to any matters disclosed pursuant to this Section 5.09(a).

(b) Hazardous Materials Activities, Etc. Each Loan Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary and required under Environmental Law to (i) cure any violation of Environmental Laws by such Loan Party or its Subsidiaries[13] and (ii) make an appropriate response to any Environmental Claim against such Loan Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder, in each case of (i) and (ii), where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.10. [Reserved].

Section 5.11. Use of Proceeds. The Loans hereunder are made in accordance with the Plan of Reorganization. No part of the proceeds of any Loan was or will be used, whether directly or indirectly, for any purpose that would entail a violation of Regulations T, U or X.

Section 5.12. Additional Collateral; Further Assurances.

(a) Each Loan Party shall cause each Subsidiary (other than an Excluded Subsidiary) formed or acquired after the date of this Agreement to:

(i) within ten (10) days after such formation or acquisition (or such longer period acceptable to the Collateral Agent in its sole discretion), cause such Subsidiary, and cause each direct and indirect parent of such Subsidiary, to duly execute and deliver to the Collateral Agent a Joinder and a Guarantee guaranteeing the other Loan Parties' obligations under the Loan Documents;

(ii) within ten (10) days after such formation or acquisition (or such longer period acceptable to the Collateral Agent in its sole discretion), furnish to the Collateral Agent a description of the real and personal properties of such Subsidiary, in detail reasonably satisfactory to the Collateral Agent;

(iii) within fifteen (15) days after such formation or acquisition (or such longer period acceptable to the Collateral Agent in its sole discretion), cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to duly execute and deliver to the Collateral Agent Collateral Documents, as specified by and in form and substance reasonably satisfactory to the Collateral Agent (including delivery of all certificates representing the Capital Stock in and of such Subsidiary), securing payment of all the Obligations of such

[13] **Note to Draft**: Removed due to double materiality.

Subsidiary or such parent, as the case may be, under the Loan Documents and constituting Liens on all such real and personal properties;

(iv) within fifteen (15) days (or such longer period acceptable to the Collateral Agent in its sole discretion) after such formation or acquisition, cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to take whatever action (including the recording of Mortgages, the filing of UCC and PPSA financing statements or similar filing in any applicable jurisdiction, the giving of notices and the endorsement of notices on title documents or such other actions as are necessary or desirable under any applicable law) may be necessary or advisable in the reasonable opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the Collateral Documents delivered pursuant to this Section 5.12, enforceable against all third parties in accordance with their terms, and

(v) within fifteen (15) days after such formation or acquisition (or such longer period acceptable to the Collateral Agent in its sole discretion), deliver to the Collateral Agent, upon the request of the Collateral Agent in its reasonable discretion, a signed copy of a favorable opinion, addressed to the Collateral Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Collateral Agent, as to the matters contained in clauses (i), (iii) and (iv) above, and as to such other matters as the Collateral Agent may reasonably request.

(b) Upon the acquisition of any property by any Loan Party following the Closing Date, if such property, in the judgment of the Collateral Agent, shall not already be subject to a perfected security interest (subject to the security interest in favor of the Senior Agent) in favor of the Collateral Agent for the benefit of the Collateral Agent (unless such property is specifically excluded as Collateral by the terms of the Collateral Documents), then the Loan Parties shall, at the Loan Parties' expense:

(i) within ten (10) days after such acquisition (or such longer period acceptable to the Collateral Agent in its sole discretion), furnish to the Collateral Agent a description of the property so acquired in detail reasonably satisfactory to the Collateral Agent; and

(ii) within fifteen (15) days after such acquisition (or such longer period acceptable to the Collateral Agent in its sole discretion), cause the applicable Loan Party to duly execute and deliver to the Collateral Agent Collateral Documents (to the extent not already delivered), as specified by and in form and substance reasonably satisfactory to the Collateral Agent, securing payment of all the Obligations of the applicable Loan Party under the Loan Documents and constituting Liens on all such properties.

(c) Within fifteen (15) days after such acquisition (or such longer period acceptable to the Collateral Agent in its sole discretion) of any property or assets (other than leasehold interests in real property) not subject to the Collateral Agent's lien (subject to the security interest in favor of the Senior Agent), cause the applicable Loan Party to take whatever action (including the recording of Mortgages in respect of fee owned real property, the delivery of title insurance, surveys and environmental reports, the filing of UCC or PPSA financing statements or similar filing in any applicable jurisdiction, the giving of notices and the endorsement of notices on title documents or such action necessary or desirable under applicable Requirements of Law) may be necessary or advisable in the opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and subsisting Liens on such property, enforceable against all third parties, and within fifteen (15) days (or such longer period acceptable to the Collateral Agent in its sole discretion), deliver to the Collateral Agent, upon the request of

the Collateral Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Collateral Agent, of counsel for the Loan Parties reasonably acceptable to the Collateral Agent as to the matters contained herein and in subsection (b)(ii) above and as to such other matters as the Collateral Agent may reasonably request.

(d) [Reserved].

(e) Without limiting the foregoing, each Loan Party will promptly execute and deliver, or cause to be promptly executed and delivered, to the Collateral Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries of the type required by Article 4, as applicable), which the Collateral Agent or the Required Lenders may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents (to the extent required herein or therein), all at the expense of the Borrower in accordance with Section 9.03(a).

(f) [If the Senior Obligations are repaid in full and the commitments under the Senior Credit Agreement are terminated, the Borrower shall deliver to the Collateral Agent the Assignment of Key Man Insurance in substantially the same form as the Assignment of Key Man Insurance issued to the Senior Agent.]

Notwithstanding anything to the contrary in this Section 5.12 or any other Collateral Document, no Collateral Document (or other security or pledge agreements, mortgages or deeds) shall be governed under the laws of any non-U.S. or non-Canadian or non-UK jurisdiction and no intellectual property filings shall be required outside of Canada and the U.S., unless required by the Senior Loan Documents, and collateral documents are executed and delivered in connection with the Senior Loan Documents.

In addition, no Loan Party shall be required to grant or take any other action with respect to a security interest in (i) any leasehold real property where a Loan Party is a tenant; (ii) any fee-owned real property that has an individual fair market value in an amount less than $500,000 (as reasonably estimated by the Borrower) if the Senior Agent has not been granted a mortgage or charge over such real property; (iii) Capital Stock (A) constituting margin stock or (B) in any Person that is not a Wholly-Owned Subsidiary to the extent not permitted by the terms of such Person's organizational or joint venture documents; (iv) motor vehicles and other assets subject to certificates of title; (v) any property or assets the pledge of which is prohibited by applicable law, rule or regulation; (vi) any governmental licenses (but not the proceeds thereof) or state, provincial or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or the PPSA of any applicable jurisdiction other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or the PPSA of any applicable jurisdiction notwithstanding such prohibition; (vii) any lease, license or other agreement or any property subject to a purchase money security interest or similar arrangement permitted hereunder to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money arrangement or create a right of termination in favor of any other party thereto (other than a Loan Party) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or the PPSA of any applicable jurisdiction other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or the PPSA of any applicable jurisdiction notwithstanding such prohibition; (viii) any "intent-to-use" trademark application in the United States prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to

the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law of the United States; (ix) [reserved]; (x) any contract, right or license (the "**Contractual Rights**"), including any right as security holder, shareholder or holder of a partnership interest, if pursuant to the terms of such Contractual Right, or pursuant to the terms of any agreement affecting such Contractual Right, the Contractual Right would automatically terminate if it was part of the Collateral, or would be terminable at the option of any party thereto (other than a Loan Party), or would be subject to disposition, alteration or amendment at the option of another party (other than a Loan Party) including another security holder, shareholder or holder of a partnership interest after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or the PPSA of any applicable jurisdiction other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or the PPSA of any applicable jurisdiction notwithstanding such prohibition (provided that any interest in the Contractual Rights shall be held in trust for the Collateral Agent and the security interest granted hereby shall automatically extend to such Contractual Rights once the appropriate consents of the other parties to such Contractual Rights are obtained); and (xi) any property or asset to the extent that the burden or cost of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined in writing by the Borrower, and the Collateral Agent and the Required Lenders (collectively, "**Excluded Property**"); provided, however, that the term "Excluded Property" shall not include any proceeds, substitutions or replacements of any property described in clauses (i) through (xi) above unless such proceeds, substitutions or replacements constitute property of the type described in clauses (i) through (xi) above (or any of them); provided, further, that in no event shall any property that is pledged to secure the Loan Parties' obligations under the Senior Credit Agreement be Excluded Property hereunder.

Section 5.13. [Reserved].

Section 5.14. Post-Closing Obligations. The Loan Parties shall complete each of the actions described on Schedule 5.14 as soon as commercially reasonable and by no later than the date set forth in Schedule 5.14 with respect to such action or such later date as the Collateral Agent may agree in its sole discretion.

Section 5.15. Observer Rights of the Lenders; Quarterly Meetings.

(a) The Closing Date Lender shall be entitled to have two observers present at all meetings of the board of directors of Holdings, the Borrower and its Subsidiaries and any sub-committee thereof. Notwithstanding the foregoing, the observers of the Closing Date Lender may be excluded from any such meetings (or any portion thereof), solely to the extent that the board of directors determines in good faith that (i) such meetings will involve discussions regarding the Loans or the Senior Obligations, or any alternatives thereto, of Holdings, the Borrower or its Subsidiaries, (ii) such exclusion is required to preserve attorney-client privilege, or (iii) such exclusion is required to avoid a conflict of interest between the interests of Holdings, the Borrower or its Subsidiaries on the one hand, and the interests of the Closing Date Lender on the other hand. The Borrower shall reimburse the Closing Date Lender for all reasonable out of pocket travel and other incidental expenses of such observers.

(b) The Borrower shall ensure that all information provided to the board of directors of Holdings, the Borrower and its Subsidiaries from time to time in connection with a meeting or vote taken by written consent is concurrently provided to the Closing Date Lender. Notwithstanding the foregoing, the Borrower may refrain from providing such information (or any portion thereof) to the Closing Date Lender, or such information may be redacted, solely to the extent that the board of directors of the Borrower determines in good faith that (i) such information concerns the Loans

or the Senior Obligations, or any alternatives thereto, of Holdings, the Borrower or its Subsidiaries, (ii) such exclusion or redaction, as the case may be, is required to preserve attorney-client privilege, or (iii) such exclusion or redaction, as the case may be, is required to avoid a conflict of interest between the interests of the Borrower or its Subsidiaries on the one hand, and the interests of the Closing Date Lender on the other hand.

(c) The Borrower shall meet at least once per Fiscal Quarter with representatives of the Closing Date Lender to review financial statements and discuss business matters. The Borrower shall reimburse the Closing Date Lender for all reasonable out of pocket travel and other incidental expenses of attending such meetings. In addition, each Loan Party shall participate and will cause their key management personnel to participate in meetings with the Collateral Agent and Lenders periodically during each year, which meetings shall be held at such times and such places as may be reasonably requested by the Collateral Agent or the Required Lenders..

Section 5.16. [Reserved].

Section 5.17. [Reserved].

Section 5.18. UK Pension Plans.

(a) The Borrower shall ensure that all pension schemes operated by or maintained for the benefit of the UK Loan Parties and/or any of their employees are fully funded based on the statutory funding objective under sections 221 and 222 of the Pensions Act 2004 (UK) and that no action is taken or omitted to be taken or in relation to such a pension scheme which has or is reasonably likely to have a Material Adverse Effect (including the termination or commencement of winding-up proceedings of any such pension scheme or any UK Loan Parties ceasing to employ any member of such a pension scheme).

(b) The Borrower shall ensure that no UK Loan Parties is at any time an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004 (UK)) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993) or "connected" with or an "associate" of (as those terms are defined in sections 38 or 43 of the Pensions Act 2004) such an employer.

(c) The Borrower shall deliver to the Collateral Agent at such times as those reports are prepared in order to comply with the then current statutory or auditing requirements (as applicable either to the trustees of any relevant schemes or to the UK Loan Parties).

(d) The Borrower shall promptly notify the Collateral Agent of any investigation or proposed investigation by any pensions regulator (or equivalent) and the outcome of any such investigation with respect to the UK Loan Parties.

(e) The Borrower shall promptly notify the Collateral Agent if it receives, or it becomes aware that a UK Loan Party has been issued with a Financial Support Direction or Contribution Notice in respect of any pension scheme.

Section 5.19. COMI. For the purposes of European Union Council Regulation number 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "**Regulations**"), each UK Loan Party's centre of main interests (as that term is used in Article 3(1) of the Regulations) is England and Wales.

Section 5.20. Chief Financial Officer. The chief financial officer of the Borrower as of the Closing Date shall remain the chief financial officer of the Borrower unless a successor chief financial officer satisfactory to the Collateral Agent is appointed within thirty (30) days after resignation of the prior chief financial officer (unless extended in writing by the Collateral Agent).

ARTICLE 6 NEGATIVE COVENANTS

Until the Termination Date has occurred, each Loan Party, on behalf of itself and its Subsidiaries, covenants and agrees with the Lenders that:

Section 6.01. Indebtedness. No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or otherwise become or remain liable with respect to any Indebtedness, except:

(a) (i) the Obligations, (ii) Senior Obligations in an aggregate principal amount not to exceed the amount permitted under the Subordination Agreement (as such principal amount may be increased from time to time by the capitalization and payment-in-kind of interest), and (iii) the Shareholder Loan Notes;

(b) Indebtedness of the Borrower to any Subsidiary and of any Subsidiary to the Borrower or any of its Subsidiaries; provided that in the case of any Indebtedness of a Subsidiary that is not a Loan Party owing to a Loan Party, such Indebtedness shall be permitted as an Investment by Section 6.06; provided, further, that all such Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party must be expressly subordinated to the Obligations of such Loan Party on terms reasonably acceptable to the Collateral Agent and the Required Lenders;

(c) Indebtedness which may be deemed to exist pursuant to any performance and completion guaranties or customs, stay, performance, bid, surety, statutory, appeal, performance and return of money bonds, tenders, statutory obligations, leases, governmental contracts, trade contracts or other similar obligations incurred in the ordinary course of business or in respect of any letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments to support any of the foregoing items;

(d) Guarantees of Indebtedness or other obligations of Holdings or any Subsidiary with respect to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.01 or obligations not prohibited by this Agreement; provided that in the case of any Guarantees by a Loan Party of the obligations of a non-Loan Party the related Investment is permitted under Section 6.06;

(e) Indebtedness existing on the Closing Date and described on Schedule 6.01;[14]

(f) Indebtedness consisting of obligations owing under any customer or supplier incentive, supply, license or similar agreements entered into in the ordinary course of business;

(g) Indebtedness with respect to Capital Leases and purchase money Indebtedness incurred in the ordinary course of business in an aggregate amount not exceeding $500,000 in the aggregate;

(h) Indebtedness (including obligations in respect of letters of credit, bank guarantees, surety bonds, performance bonds or similar instruments with respect to such Indebtedness) incurred

[14] **Note to Draft**: Existing letters of credit and Capital Leases to be listed on Schedule 6.01.

in respect of workers compensation claims, unemployment insurance (including premiums related thereto), other types of social security, pension obligations, vacation pay, health, disability or other employee benefits;

(i) Indebtedness representing (i) deferred compensation to current or former directors, officers, employees, members of management, managers and consultants of any Loan Party or any Subsidiary in the ordinary course of business and (ii) deferred compensation or other similar arrangements in connection with any Permitted Acquisition or any other Investment permitted hereby;

(j) unfunded pension fund and other Plan obligations and liabilities incurred in the ordinary course of business to the extent that the unfunded amounts would not otherwise cause an Event of Default under Section 7.01(j);

(k) Indebtedness under Hedge Agreements that is incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Loan Party's or Subsidiary's operations and not for speculative purposes, in an aggregate amount not to exceed $250,000 at any one time;

(l) Indebtedness incurred in the ordinary course of business in respect of credit cards, credit card processing services, debit cards, stored value cards, commercial cards (including so-called "purchase cards," "procurement cards" or "p-cards"), in an aggregate amount not to exceed $250,000 at any one time; and

(m) customer deposits and advance payments received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business.

Section 6.02. Liens. No Loan Party shall, nor shall it permit any of its Subsidiaries to, create, incur, assume or permit or suffer to exist any Lien on or with respect to any property of any kind owned by it, whether now owned or hereafter acquired, or any income or profits therefrom, except:

(a) (i) Liens created pursuant to the Loan Documents securing the Obligations and (ii) Liens created pursuant to the Senior Loan Documents securing the Senior Obligations and which are subject to the Subordination Agreement;

(b) Liens for Taxes which are (i) for amounts not yet overdue or (ii) being contested in accordance with Section 5.03;

(c) statutory Liens (and rights of set-off) of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen, suppliers and materialmen, and other Liens imposed by law, in each case incurred in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that are being contested in good faith by appropriate proceedings, so long as adequate reserves or other appropriate provisions required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred (i) in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security laws and regulations, (ii) in the ordinary course of business to secure the performance of tenders, statutory obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), (iii) pursuant to pledges and deposits of Cash or Cash

Equivalents in the ordinary course of business securing (x) any liability for reimbursement or indemnification obligations of insurance carriers providing property, casualty, liability or other insurance to any Loan Party or Subsidiary or (y) leases or licenses of property otherwise permitted by this Agreement, or (iv) to secure obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments posted with respect to the items described in clauses (i) through (iii) above;

(e) Liens consisting of easements, rights-of-way, restrictions, encroachments and other minor defects or irregularities in title, in each case which do not, in the aggregate, materially interfere with the ordinary conduct of the business of Holdings and its Subsidiaries, taken as a whole, or the use of the affected property for its intended purpose;

(f) Liens consisting of any (i) interest or title of a lessor or sub-lessor under any lease of real estate permitted hereunder, (ii) landlord lien permitted by the terms of any lease, (iii) restriction or encumbrance to which the interest or title of such lessor or sub-lessor may be subject, or (iv) subordination of the interest of the lessee or sub-lessee under such lease to any restriction or encumbrance referred to in the preceding clause (iii);

(g) Liens solely on any Cash earnest money deposits made by Holdings or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to any Investment permitted hereunder;

(h) purported Liens evidenced by the filing of UCC or PPSA financing statements relating solely to operating leases or consignment or bailee arrangements entered into in the ordinary course of business;

(i) 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;

(j) Liens in connection with any zoning, building or similar law or other Lien granted to, or rights reserved to or vested in, or limitations, provisos and conditions, if any, expressed in any original grant from, any Governmental Authority, to control or regulate the use of any real property or dimensions of real property or the structure thereon, including Liens in connection with any condemnation or eminent domain proceeding or compulsory purchase order;

(k) Liens described on Schedule 6.02 and any modifications, replacements, refinancings, renewals or extensions thereof; provided that (i) no such Lien extends 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 6.01 and (B) proceeds and products thereof, accessions thereto and improvements thereon and (ii) such modification, replacement, refinancing, renewal or extension of the obligations secured or benefited by such Liens, if constituting Indebtedness, is permitted by Section 6.01;

(l) Liens securing Indebtedness with respect to Capital Leases and purchase money Indebtedness permitted pursuant to Section 6.01(g); provided that any such Lien shall encumber only the assets that are the subject of such Capital Leases or purchase money Indebtedness, as applicable, and proceeds and products thereof;

(m) (i) Liens that are contractual rights of setoff or netting relating to the establishment of depositary relations with banks not granted in connection with the issuance of Indebtedness and (ii) bankers Liens and rights and remedies as to Deposit Accounts;

(n) Liens disclosed in the title insurance policies delivered pursuant to Section 5.12 with respect to any Mortgaged Property and any replacement, extension or renewal of any such Lien; provided that no such replacement, extension or renewal Lien shall cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal (and additions thereto, improvements thereon and the proceeds thereof);

(o) Liens on assets securing judgments, awards, attachments or decrees not constituting an Event of Default under Section 7.01(i);

(p) 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 Holdings and its Subsidiaries or (ii) secure any Indebtedness;

(q) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of any assets or property in the ordinary course of business and permitted by this Agreement;

(r) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods; and

(s) statutory reservations and exceptions to title set forth in applicable laws, including without limitation, the *Land Titles Act* (Ontario), the *Certification of Titles Act* (Ontario) and/or the *Registry Act* (Ontario).

Section 6.03. No Further Negative Pledges. No Loan Party shall nor shall it permit any of its Subsidiaries to enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties, whether now owned or hereafter acquired, for the benefit of the Secured Parties with respect to the Obligations, except with respect to:

(a) specific property to be sold pursuant to any Disposition permitted by Section 6.07(b);

(b) restrictions contained in any agreement with respect to Indebtedness permitted by Section 6.01 that is secured by a Permitted Lien, but only if such restrictions apply only to the Person or Persons obligated under such Indebtedness and its or their Subsidiaries or the property or assets securing such Indebtedness;

(c) [reserved];[15]

(d) restrictions by reason of customary provisions restricting assignments, subletting or other transfers (including the granting of any Lien) contained in leases, subleases, licenses, sublicenses and other agreements entered into in the ordinary course of business (provided that such restrictions are limited to the relevant leases, subleases, licenses, sublicenses or other agreements and/or the property or assets secured by such Liens or the property or assets subject to such leases, subleases, licenses, sublicenses or other agreements, as the case may be);

[15] **Note to Draft**: Deletion covered by clause (b).

(e) any encumbrance or restriction assumed in connection with an acquisition permitted under this Agreement of property or the Capital Stock of any Person, so long as such encumbrance or restriction relates solely to the property so acquired (or to the Person or Persons (and its or their subsidiaries) bound thereby) and was not created in connection with or in contemplation of such acquisition;

(f) restrictions on Cash or other deposits imposed by Persons under contracts entered into in the ordinary course of business or for whose benefit such Cash or other deposits exist; and

(g) restrictions set forth in any Loan Document, any Hedge Agreement or any Senior Loan Document.

Section 6.04. Restricted Payments. No Loan Party shall nor shall it permit any of its Subsidiaries to pay or make, directly or indirectly, any Restricted Payment, except that:

(a) any Subsidiary of the Borrower may make Restricted Payments to the Borrower or any of its Subsidiaries; and

(b) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may pay dividends or make distributions to enable Holdings to make, and Holdings may make, distributions to any parent company thereof (i) in an amount sufficient to pay franchise, excise and similar Taxes and other fees required to maintain the legal existence of Holdings (or such parent company) to the extent actually used to pay such Taxes, costs and expenses and (ii) in an amount sufficient to pay out-of-pocket legal, accounting, appraisal and filing costs and other expenses in the nature of overhead (including director and manager fees and reimbursement of out-of-pocket expenses) in the ordinary course of business and directly attributable to ownership of the Loan Parties, in the case of clauses (i) and (ii) in an aggregate amount not to exceed $250,000 in any Fiscal Year.[16]

Section 6.05. Restrictions on Subsidiary Distributions. No Loan Party shall, nor shall it permit any of its Subsidiaries to, enter into or cause to exist any agreement restricting the payment of dividends or other distributions or the making of Cash loans or advances by any Subsidiary to the Borrower or any of its Subsidiaries, except:

(a) in any agreement evidencing Indebtedness permitted by Section 6.01 that is secured by a Permitted Lien if such encumbrance or restriction applies only to the Person obligated under such Indebtedness and its Subsidiaries or the property or assets intended to secure such Indebtedness;[17]

(b) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, subleases, licenses, sublicenses and similar agreements entered into in the ordinary course of business;

(c) assumed in connection with an acquisition permitted under this Agreement of property or the Capital Stock of any Person, so long as such encumbrance or restriction relates

[16] **Note to Draft**: Modeled on language in the DIP Loan Agreement.

[17] **Note to Draft**: Deleted clause (ii) is covered because the exception applies generally to Section 6.01.

solely to the Person and its Subsidiaries (including the Capital Stock of such Person) and/or property so acquired and was not created in connection with or in anticipation of such acquisition;

(d) in any agreement for the Disposition of a Subsidiary (or all or substantially all of the property and/or assets thereof) permitted under this Agreement, that restricts the payment of dividends or other distributions or the making of loans or advances by that Subsidiary pending such Disposition;

(e) on Cash or other deposits imposed by Persons under contracts entered into in the ordinary course of business or for whose benefit such Cash or other deposits exist; and

(f) (i) those arising under or as a result of applicable law, rule, regulation or order or the terms of any license, authorization, concession or permit and (ii) those arising in any Hedge Agreement.

Section 6.06. Investments. No Loan Party shall, nor shall it permit any of its Subsidiaries to make or own any Investment in any other Person except:

(a) Cash and Cash Equivalents;

(b) (i) Investments existing on the Closing Date in Subsidiaries, (ii) Investments by Holdings in the Borrower, and among the Borrower and its Subsidiaries that are Loan Parties, (iii) Investments by any Subsidiary that is not a Loan Party in any other Subsidiary that is not a Loan Party, and (iv) Investments by the Borrower or any of its Subsidiaries that are Loan Parties in any Subsidiary that is not a Loan Party, not to exceed $750,000 in the aggregate in any calendar year; provided that no Event of Default has occurred and is continuing and subject to the condition that the Borrower be in compliance with the financial covenants in Section 6.14;

(c) Investments (i) constituting deposits, prepayments and other credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts, and (iii) in the form of advances made to distributors, suppliers, licensors and licensees, in each case, in the ordinary course of business or, in the case of clause (iii), to the extent necessary to maintain the ordinary course of supplies to Holdings or any Subsidiary;

(d) Permitted Acquisitions;

(e) Investments existing on the Closing Date and described on Schedule 6.06 and any modification, replacement, renewal or extension thereof so long as such modification, renewal or extension thereof does not increase the amount of such Investment or as otherwise permitted by this Section 6.06;

(f) Investments received in lieu of Cash in connection with any Disposition permitted by Section 6.07;

(g) 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;

(h) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers;

(i) Investments (including debt obligations and Capital Stock) received (i) in connection with the bankruptcy or reorganization of any Person, (ii) in settlement of delinquent obligations of, or other disputes with, customers, suppliers and other account debtors arising in the ordinary course of business, (iii) upon foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment, and/or (iv) as a result of the settlement, compromise, resolution of litigation, arbitration or other disputes;

(j) loans and advances of payroll payments or other compensation to present or former employees, directors, members of management, officers, managers or consultants of any Loan Party in the ordinary course of business;

(k) Guarantees of leases (other than Capital Leases) or of other obligations not constituting Indebtedness, in each case in the ordinary course of business;

(l) advances to current or former employees, officers, directors, members of management, managers, consultants or independent contractors of Holdings or its Subsidiaries (other than any such advances to Jay Foreman or John MacDonald) for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business and in an aggregate amount not to exceed $250,000 at any one time;

(m) non-cash loans and advances to employees, officers, and directors of a Loan Party or any of its Subsidiaries for the purpose of purchasing Capital Stock of Holdings, so long as the proceeds of such loans or advances are used in their entirety to purchase such Capital Stock, in an aggregate amount not to exceed $250,000 at any one time; and

(n) other Investments so long as (i) no Event of Default has occurred, is continuing or would result after giving pro forma effect to the making of such Investment and (ii) such Investments are for reasonably necessary business purposes and in an aggregate amount not to exceed $250,000 during the term of this Agreement.

Section 6.07. Fundamental Changes; Disposition of Assets. No Loan Party shall, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger, amalgamation or consolidation (including a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company), or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or make any Disposition, except:

(a) (i) any Loan Party (other than Holdings or the Borrower) may be merged, consolidated or amalgamated with any other Loan Party (other than Holdings or the Borrower), (ii) any Loan Party (other than Holdings) may be merged, consolidated or amalgamated with the Borrower, provided that the Borrower shall be the continuing or surviving Person, and (iii) any Subsidiary that is not a Loan Party may be merged, consolidated or amalgamated with any other Subsidiary (other than Holdings or the Borrower), provided that in the case of any such merger, consolidation or amalgamation in this clause (iii) involving a Guarantor, a Guarantor shall be the continuing or surviving Person;

(b) Dispositions among the Borrower and its Subsidiaries that are Loan Parties, and Dispositions by any Subsidiary that is not a Loan Party to any other Subsidiary;

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

(d) Dispositions of equipment to the extent that the proceeds of such sale are reasonably promptly applied to the purchase price of replacement equipment;

(e) Dispositions of surplus, obsolete, used or worn out property or other property that, in the reasonable judgment of the Borrower, is no longer useful in its business (or in the business of any of any Loan Party or its Subsidiaries);

(f) Dispositions of non-inventory assets and property in an aggregate amount not to exceed $250,000 per fiscal year, subject to Section 2.03(b)(i);

(g) the lease or sublease of assets in the ordinary course of business, in an aggregate amount not to exceed $250,000 at any one time;

(h) Dispositions of Cash Equivalents or other assets that were Cash Equivalents when the original Investment was made (in each case, for the fair market value thereof);

(i) Dispositions, discounting or forgiveness of accounts receivable in the ordinary course of business or in connection with the collection or compromise thereof; and

(j) terminations of Derivative Transactions.

Section 6.08. Prepayments and Modifications of Certain Indebtedness. No Loan Party shall, nor shall it permit any of its Subsidiaries to:

(a) optionally or voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Shareholder Loan Note, or make any payment in respect of any Shareholder Loan Note, except for payments expressly permitted by the terms of the Shareholder Loan Subordination Agreement; or

(b) amend, modify or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of the Senior Loan Documents or any Shareholder Loan Note, except as expressly permitted by the terms of the Subordination Agreement or the Shareholder Loan Subordination Agreement; or

(c) redeem, purchase, defease or otherwise satisfy or make any payment in respect of any Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party.

Section 6.09. Transactions with Affiliates. No Loan Party shall, nor shall it permit any of its Subsidiaries to, enter into any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any of their Affiliates on terms that are less favorable to such Loan Party or such Subsidiary, as the case may be, than those that might be obtained at the time in a comparable arm's-length transaction from a Person who is not an Affiliate.

Section 6.10. Conduct of Business. No Loan Party shall, nor shall it permit any of its Subsidiaries to, engage in any material line of business other than the businesses engaged in by such Loan Party or its Subsidiaries on the Closing Date and reasonably related, complementary or ancillary businesses.

Section 6.11. Amendments or Waivers of Organizational Documents. No Loan Party shall, nor shall it permit any of its Subsidiaries to, amend or modify, in each case in a manner that is materially adverse to the Lenders (in their capacities as such) such Person's Organizational Documents without obtaining the prior written consent of the Required Lenders; provided that, for purposes of clarity, it is understood and

agreed that any Loan Party and any of its Subsidiaries may effect a change to their respective organizational forms to the extent permitted under Section 6.07. In addition, no Loan Party shall permit or allow any amendment, restatement, supplement, replacement or other modification to the BF LPA which changes the rights to distributions or redemptions of any partnership interests in BF LP or the management and control rights in BF LP, its general partner or any of the Loan Parties (including, without limitation, consent rights and rights in relation to the Advisory Committee of BF LP or the equivalent governing body of its general partner or any of the Loan Parties); provided that the foregoing shall not preclude the issuance of additional partnership interests in BF LP as long as such issuance (i) does not constitute or result in a Change of Control, Default or Event of Default or (ii) convey any redemption rights or management control rights to the holders of such partnership interests which are disproportionate to their ownership of Class A Limited Partnership Interests (as defined in the BF LPA) (or equivalents) in BF LP or any Loan Party.

Section 6.12. Canadian Pension Plans. No Loan Party shall commence to participate in a Canadian defined benefit pension plan or any "multiemployer pension plan," as defined in the *Pension Benefits Act* (Ontario), or an equivalent plan under pension standards legislation of any other applicable jurisdiction in Canada.

Section 6.13. Permitted Activities of Holdings. Holdings shall not:

(a) incur any Indebtedness other than (i) the Indebtedness under the Loan Documents or the Senior Loan Documents and (ii) Guarantees of Indebtedness of Subsidiaries permitted hereunder;

(b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than the Liens created under the Collateral Documents or Senior Loan Documents to which it is a party; or

(c) engage in any business activity or own any material assets other than (i) holding the Capital Stock of the Borrower and, indirectly, any other Subsidiary; (ii) performing its obligations under the Loan Documents and the Senior Loan Documents; (iii) issuing its own Capital Stock; (iv) filing Tax reports and paying Taxes and other customary obligations related thereto in the ordinary course (and contesting any Taxes); (v) preparing reports to Governmental Authorities and the holders of its Capital Stock; (vi) holding meetings of directors and of the holders of its Capital Stock, preparing organizational records and other organizational activities required to maintain its separate organizational structure or to comply with applicable Requirements of Law; (vii) providing indemnification for its current or former officers, directors, members of management, managers, employees and advisors or consultants; (viii) participating in tax, accounting and other administrative matters; (ix) complying with applicable Requirements of Law; and (x) performing activities incidental to any of the foregoing.

Section 6.14. Financial Covenants.

(a) Maximum Total Leverage Ratio. The Loan Parties shall not permit the Total Leverage Ratio for any Test Period ending on the last day of any Fiscal Quarter during a period specified immediately below to be greater than the ratio set forth immediately below opposite such period:[18]

[18] **Note to Draft**: Covenant levels under review.

Period	Ratio
Closing Date to _____	[_.__]:1.00
_____ to _____	[_.__]:1.00
_____ to _____	[_.__]:1.00
_____ to _____	[_.__]:1.00
_____ to _____	[_.__]:1.00
_____ to _____	[_.__]:1:00
_____ to _____	[_.__]:1:00
_____ to _____	[_.__]:1.00
_____ and thereafter	[_.__]:1.00

(b) Minimum Fixed Charge Coverage Ratio. The Loan Parties shall not permit the Fixed Charge Coverage Ratio (x) for the Test Period ending on the last day of any Fiscal Quarter or (y) on the date of payment of any earn-out obligation, for the Test Period most recently then ended (determined on pro forma basis as though such payment had been made during such Test Period), in any such case, to be less than 1.10:1.00.

Section 6.15. No Basic Fun, L.P. Acquisitions, Etc. The Loan Parties shall not permit BF LP to, directly or indirectly, consummate any acquisition, whether by purchase, merger, amalgamation or otherwise, of all or substantially all of the assets of or any business line, unit, or division or any plant of, any Person or of a majority of the outstanding Capital Stock of any Person, except any Permitted Acquisition consummated by a Loan Party in accordance with this Agreement.

Section 6.16. Capital Expenditures. The Loan Parties shall not permit Capital Expenditures of the Loan Parties and their Subsidiaries to exceed, $[_____].[19]

Section 6.17. Minimum EBITDA. The Loan Parties shall not permit the cumulative Consolidated Adjusted EBITDA for the periods commencing on the Closing Date and ending on the last day of a calendar month set forth below, to be less than the amount set forth below opposite such calendar month: [20]

Test Period	Minimum Cumulative Consolidated Adjusted EBITDA
[DATE]	$[TBD]
[DATE]	$[TBD]
[DATE]	$[TBD]
[DATE]	$[TBD]
[DATE]	$[TBD]

Section 6.18. Equity Cure. In the event the Loan Parties fail to comply with the financial covenant set forth in Section 6.14(a), Section 6.14(b) or Section 6.17 as of the last day of any fiscal quarter

[19] **Note to Draft**: Covenant level under review.

[20] **Note to Draft**: Covenant levels under review.

(with respect to Sections 6.14(a) and 6.14(b)) or fiscal month (with respect to Section 6.17), (i) any cash equity contribution to Holdings (funded with proceeds of common equity issued by Holdings or other equity issued by Holdings having terms reasonably acceptable to the Collateral Agent and in any case, not constituting Disqualified Capital Stock, and such proceeds shall be substantially concurrently contributed to the capital of Holdings) which is substantially concurrently contributed to the Borrower as cash common equity, after the last day of such fiscal quarter or fiscal month, as applicable, and on or prior to the day that is five (5) Business Days after the day on which financial statements are required to be delivered for such fiscal quarter or fiscal month, as applicable (such date, the "**Cure Expiration Date**"), will, at the irrevocable election of the Borrower in writing delivered to the Collateral Agent no later than the day on which financial statements are required to be delivered for such fiscal quarter or fiscal month, as applicable (the "**Cure Notice**"), be included in the calculation of Consolidated Adjusted EBITDA and solely for the purposes of determining compliance with such covenant in Section 6.14(a), Section 6.14(b) or Section 6.17, as applicable, at the end of such fiscal quarter or fiscal month, as applicable, and any subsequent period that includes such fiscal quarter or fiscal month, as applicable (any such equity contribution so included in the calculation of Consolidated Adjusted EBITDA, a "**Specified Equity Contribution**"); provided that (a) Specified Equity Contributions shall not be permitted in consecutive fiscal quarters or fiscal months, as applicable, (b) the amount of any Specified Equity Contribution will be no greater than the amount required to cause the Loan Parties to be in compliance with such covenant in Section 6.14(a), Section 6.14(b) or Section 6.17, as applicable, (c) all Specified Equity Contributions will be disregarded for purposes of the calculation of Consolidated Adjusted EBITDA for all other purposes, including determining compliance with incurrence based or pro forma calculations and other items governed by reference to Consolidated Adjusted EBITDA, (d) there shall be no more than four (4) Specified Equity Contributions made in the aggregate after the Closing Date, (e) there shall be no more than two (2) Specified Equity Contributions made during any twelve (12) month period, (f) such Specified Equity Contributions shall be applied to prepay the Senior Obligations in accordance with the terms of Senior Credit Agreement until paid in full and then to the First Out Loans and interest thereon until paid in full and then to the Last Out Loans and interest thereon until paid in full, and (g) no Specified Equity Contribution shall be permitted if a Change of Control would result therefrom. Upon receipt by the Collateral Agent of a Cure Notice from the Borrower that it intends to exercise its rights under this Section 6.18, (i) the covenant under Section 6.14(a), Section 6.14(b) or Section 6.17, as applicable, shall be deemed retroactively cured with the same effect as though there had been no failure to comply therewith, and any Default or Event of Default under Section 7.01(d) shall be deemed not to have occurred for purposes of the Loan Documents (provided that if the Cure Expiration Date has occurred without the Specified Equity Contribution having been received and designated, such Default or Event of Default shall be deemed reinstated), and (ii) so long as a Cure Notice shall have been delivered to the Collateral Agent no later than the day on which financial statements are required to be delivered for such applicable fiscal quarter or fiscal month, as applicable, none of the Collateral Agent nor any Lender may exercise any rights or remedies under Section 7.01 (or under any other Loan Document) on the basis of any actual or purported Default or Event of Default under Section 7.01(d), as applicable, until and unless the Cure Expiration Date has occurred without a Specified Equity Contribution having been received or the Borrower has confirmed in writing that it does not intend to provide such Specified Equity Contribution.

Section 6.19. UK People with Significant Control Regime. Each Loan Party shall within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 (U.K.) in respect of any UK Loan Party whose shares are the subject of a Lien in favor of the Collateral Agent and promptly provide the Collateral Agent with a copy of that notice.

Section 6.20. UK Operations. Notwithstanding anything to the contrary contained in any Loan Document, no UK Loan Party shall have any Foreign Plan (including any UK pension plan) or any employees in the United Kingdom.

Section 6.21. Intellectual Property; Non-Loan Party Assets. Notwithstanding anything in Article 6 or elsewhere in this Agreement or in any other Loan Document to the contrary, no Subsidiary of Holdings that is not a Loan Party may own or otherwise exclusively license any IP Rights or other assets material to the business of Holdings and its Subsidiaries.

ARTICLE 7 EVENTS OF DEFAULT

Section 7.01. Events of Default. If any of the following events (each, an "**Event of Default**") shall occur:

(a) Failure To Make Payments When Due. Failure by the Borrower or any other Loan Party to pay (i) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (ii) any interest on any Loan or any fee or any other amount due hereunder within three Business Days after the date due; or

(b) Default in Other Agreements. (i) Failure of any Loan Party or any of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of the Senior Credit Agreement or one or more other items of Indebtedness (other than Indebtedness referred to in clause (a) above) with an aggregate outstanding principal amount exceeding the Threshold Amount, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by any Loan Party with respect to any other term of (A) the Senior Credit Agreement or one or more other items of Indebtedness with an aggregate outstanding principal amount exceeding the Threshold Amount or (B) any loan agreement, mortgage, indenture or other agreement relating to the Senior Credit Agreement or such other item(s) of Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, that Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Representations, Etc. Any representation, warranty or certification made or deemed made by any Loan Party in any Loan Document or in any certificate or document required to be delivered in connection herewith or therewith shall be untrue in any material respect as of the date made or deemed made; or

(d) Breach of Certain Covenants. Failure of any Loan Party, as required by the relevant provision, to perform or comply with any term or condition contained in Section 5.01, Section 5.02 (as it applies to the preservation of the existence of the Loan Parties), Section 5.04, Section 5.05, Section 5.06, Section 5.07, Section 5.11, Section 5.12, Section 5.14, Section 5.15, Section 5.20, Article 6 or Section 5 of the Guarantee and Collateral Agreement; or

(e) Other Defaults Under Loan Documents. Any Loan Party shall default in the performance of or compliance with any term contained herein or in any of the other Loan Documents, other than any such term referred to in any other Section of this Article 7, and such default shall not have been remedied or waived within 30 days after the earlier to occur of (i) receipt by the Borrower of written notice from the Collateral Agent of such default or (ii) any Loan Party having actual knowledge of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of any Loan Party or any of its Subsidiaries in an involuntary case under any Debtor Relief Law, which decree or order is not

stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against any Loan Party or any of its Subsidiaries under any Debtor Relief Law; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Loan Party or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of any Loan Party or any of its Subsidiaries for all or a substantial part of its property; and any such event described in this clause (ii) shall continue for 60 consecutive days without having been dismissed, vacated, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) Any Loan Party or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under any Debtor Relief Law, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or (ii) any Loan Party or any of its Subsidiaries shall make a general assignment for the benefit of creditors; or (iii) any Loan Party or any of its Subsidiaries shall admit in writing its inability to pay its debts as such debts become due; or

(h) UK Insolvency Proceeding. A UK Insolvency Proceeding is instigated by or against a UK Loan Party and such UK Insolvency Proceeding is not a winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days after the date of its commencement or, if earlier, the date any such petition is advertised or otherwise permitted under the Loan Documents; or (B) a UK Loan Party (x) is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law; (y) suspends or threatens to suspend making payments on any of its debts, (z) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its Indebtedness or (C) in respect of any UK Loan Party, the value of its assets is less than that its liabilities (taking into account contingent and prospective liabilities) or a moratorium is declared or imposed in respect of any its Indebtedness (if a moratorium occurs, the ending of a moratorium will not remedy any Event of Default caused by that moratorium); or

(i) Judgments and Attachments. Any one or more final money judgments, writs or warrants of attachment or similar process involving in the aggregate at any time an amount in excess of the Threshold Amount (in either case to the extent not adequately covered by insurance as to which a third party insurance company has admitted liability in writing) shall be entered or filed against any Loan Party or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed pending appeal for a period of 60 days; or

(j) Plan Events. (i) An ERISA Event and/or a Foreign Plan Event shall have occurred, (ii) a trustee shall be appointed by a United States district court to administer any Plan(s) or (iii) any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred or will be assessed withdrawal liability to such Multiemployer Plan and such person does not have reasonable grounds for contesting such withdrawal liability or is not contesting such withdrawal liability in a timely and appropriate manner; and in each case in clauses (i) through (iii) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to result in liability in excess of $100,000; or

(k) Change of Control. A Change of Control shall occur; or

(l) Guaranties, Collateral Documents and Other Loan Documents. At any time after the execution and delivery (or in the case of clause (iii) below, issuance) thereof, (i) any Guarantee shall cease to be in full force and effect (other than in accordance with its terms or upon the occurrence of the Termination Date) or shall be declared to be null and void or any Guarantor shall repudiate in writing its obligations thereunder (other than as a result of the discharge of such Guarantor in accordance with the terms thereof), (ii) any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the occurrence of the Termination Date or any other termination of such Collateral Document in accordance with the terms thereof) or shall be declared null and void, (iii) the insurance policy that is the subject of the Assignment of Key Man Insurance shall cease to be in full force and effect or shall be declared to be null and void or the insurer with respect thereto shall repudiate or deny in writing its obligations thereunder or under the Assignment of Key Man Insurance or contest the validity or enforceability thereof in writing, (iv) the Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by and subject to such limitations and restrictions as are set forth by the relevant Collateral Document, or (v) any Loan Party shall contest the validity or enforceability of any provision of any Loan Document in writing or deny in writing that it has any further liability (other than by reason of the occurrence of the Termination Date), including with respect to future advances by the Lenders, under any Loan Document; or

(m) Material Adverse Change. A Material Adverse Change shall occur; or

(n) Loss of Material Contract or Material Permit. Any Loan Party or any of its Subsidiaries is in default under any Material Contract or Material Permit which permits the counterparty to such Material Contract or the issuer of such Material Permit to terminate the Material Contract or Material Permit or any Loan Party or any of its Subsidiaries agrees to the surrender or termination of any Material Contract or Material Permit prior to the expiry date expressly set out therein (unless it is concurrently or within 15 days of such termination replaced by another Material Contract or Material Permit, as applicable, which, taken as a whole, contains terms that are at least as favorable to such Loan Party or Subsidiary, taken as a whole, as the Material Contract or Material Permit, as applicable, being replaced containing substantially similar terms); or

then, and in every such event (other than an event with respect to the Borrower described in clause (f) or (g) of this Article 7), and at any time thereafter during the continuance of such event, the Collateral Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any of the following actions, at the same or different times: (i) declare the Outstanding Amount of the Loans to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; provided that upon the occurrence of an event with respect to the Borrower described in clause (f) or (g) of this Article 7, the Outstanding Amount of the Loans shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, shall automatically become effective, in each case without further action of the Collateral Agent or any Lender. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Collateral Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC and the PPSA.

ARTICLE 8 THE COLLATERAL AGENT

Each of the Lenders hereby irrevocably appoints Royal Bank of Canada (or any successor appointed pursuant hereto) as its agent and authorizes the Collateral Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Collateral Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

Each of the Lenders irrevocably appoints the Collateral Agent to act as its trustee in connection with the UK Security Documents; and each of the Lenders authorizes the Collateral Agent to exercise the rights specifically given to the Collateral Agent under or in connection with the Loan Documents together with any incidental rights.

Any Person serving as Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Collateral Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, unless the context otherwise requires or unless such Person is in fact not a Lender, include each Person serving as Collateral Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any subsidiary of a Loan Party or other Affiliate thereof as if it were not the Collateral Agent hereunder. The Lenders acknowledge that, pursuant to such activities, the Collateral 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 the Collateral Agent shall not be under any obligation to provide such information to them.

The Collateral Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Collateral Agent 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 the Collateral 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) the Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers that are expressly contemplated by the Loan Documents that the Collateral Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02); provided that the Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Collateral Agent to liability or that is contrary to any Loan Document or applicable laws; and (c) except as expressly set forth in the Loan Documents, the Collateral Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Subsidiaries that is communicated to or obtained by the Person serving as Collateral Agent or any of its Affiliates in any capacity. The Collateral Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Collateral Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.02) or 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 Collateral Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to the Collateral Agent by the Borrower or any Lender, and the Collateral Agent shall not be responsible for or have any duty to ascertain

or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence, value or sufficiency of the Collateral, (vi) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Collateral Agent, or (vii) the properties, books or records of any Loan Party or any Affiliate thereof.

If any Lender acquires knowledge of a Default or Event of Default, it shall promptly notify the Collateral Agent and the other Lenders thereof in writing. Each Lender agrees that, except with the written consent of the Collateral Agent, it will not take any enforcement action hereunder or under any other Loan Document, accelerate the Obligations under any Loan Document, or exercise any right that it might otherwise have under applicable law or otherwise to credit bid at foreclosure sales, UCC or PPSA sales, any sale under Section 363 of the Bankruptcy Code (or any similar provision of other Debtor Relief Law or under a court order in respect of measures granted with similar effect under any other Debtor Relief Law) or other similar Dispositions of Collateral. Notwithstanding the foregoing, however, a Lender may take action to preserve or enforce its rights against a Loan Party where a deadline or limitation period is applicable that would, absent such action, bar enforcement of the Obligations held by such Lender, including the filing of proofs of claim in a case under the Bankruptcy Code.

Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, the Loan Parties, the Collateral Agent and each other Secured Party agrees that (i) no Secured Party other than the Collateral Agent shall have any right individually to realize upon any of the Collateral or to enforce the Guarantee of any Guarantor, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Collateral Agent, on behalf of the Secured Parties in accordance with the terms hereof and all powers, rights and remedies under the other Loan Documents may be exercised solely by the Collateral Agent, and (ii) in the event of a foreclosure or exercise of power of sale by the Collateral Agent on any of the Collateral pursuant to a public or private disposition (including pursuant to Section 363 of the Bankruptcy Code (or any similar provision of other Debtor Relief Law or under a court order in respect of measures granted with similar effect under any other Debtor Relief Law)), (A) the Collateral Agent, as agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such disposition, and (B) the Collateral Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such disposition.

Each of the Lenders hereby irrevocably authorizes the Collateral Agent, on behalf of all Secured Parties to take any of the following actions upon the instruction of the Required Lenders:

(a) consent to the disposition of all or any portion of the Collateral free and clear of the Liens securing the Obligations in connection with any such disposition or other transfer pursuant to the applicable provisions of Debtor Relief Laws, including Section 363 of the Bankruptcy Code (or any similar provision of other Debtor Relief Law or under a court order in respect of measures granted with similar effect under any other Debtor Relief Law);

(b) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles) in connection with any disposition of all or any portion of the Collateral pursuant to the applicable

provisions of Debtor Relief Laws, including under Section 363 of the Bankruptcy Code (or any similar provision of other Debtor Relief Law or under a court order in respect of measures granted with similar effect under any other Debtor Relief Law);

(c) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles) in connection with any disposition of all or any portion of the Collateral pursuant to the applicable provisions of the UCC or the PPSA, as the case may be, including pursuant to Sections 9-610 or 9-620 of the UCC and Sections 63 and 65 of the PPSA; and/or

(d) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles) in connection with any foreclosure or other disposition conducted in accordance with applicable law following the occurrence of an Event of Default, including by power of sale, judicial action or otherwise;

it being understood that no Lender shall be required to fund any amounts in connection with any purchase of all or any portion of the Collateral by the Collateral Agent pursuant to the foregoing clauses (b), (c) or (d) without its prior written consent.

Each Lender and each other Secured Party agrees that the Collateral Agent is under no obligation to credit bid any part of the Obligations or to purchase or retain or acquire any portion of the Collateral; provided that, in connection with any credit bid or purchase under clause (b), (c) or (d) of the preceding paragraph, the Obligations owed to all of the Secured Parties (other than with respect to contingent or unliquidated liabilities as set forth in the next succeeding paragraph) shall be entitled to be, and shall be, credit bid by the Collateral Agent on a ratable basis.

With respect to each contingent or unliquidated claim that is an Obligation, the Collateral Agent is hereby authorized, but is not required, to estimate the amount of any such claim for purposes of the credit bid or purchase so long as the fixing or liquidation of such claim would not unduly delay the ability of the Collateral Agent to credit bid the Obligations or purchase the Collateral at such disposition. In the event that the Collateral Agent, in its sole and absolute discretion, elects not to estimate any such contingent or unliquidated claim or any such claim cannot be estimated without unduly delaying the ability of the Collateral Agent to credit bid or purchase in accordance with the second preceding paragraph, then those of the contingent or unliquidated claims not so estimated shall be disregarded, shall not be credit bid, and shall not be entitled to any interest in the portion or the entirety of the Collateral purchased by means of such credit bid.

Each Secured Party whose Obligations are credit bid under clause (b), (c) or (d) of the third preceding paragraph shall be entitled to receive interests in the Collateral or other asset or assets acquired in connection with such credit bid (or in the Capital Stock of the acquisition vehicle or vehicles that are used to consummate such acquisition) on a ratable basis in accordance with the percentage obtained by dividing (x) the amount of the Obligations of such Secured Party that were credit bid in such credit bid or disposition, by (y) the aggregate amount of all Obligations that were credit bid in such credit bid or disposition.

In addition, in case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, each Secured Party agrees that the Collateral Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Collateral 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 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 and the Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Collateral Agent and their respective agents and counsel and all other amounts to the extent due to the Lenders and the Collateral Agent under Sections 2.11 and 9.03) allowed in such judicial proceeding;

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and

(c) to receive payments from any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding and, in the event that the Collateral Agent shall consent to the making of such payments directly to the Lenders, to pay to the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Collateral Agent and its agents and counsel, and any other amount to the extent due to the Collateral Agent under Sections 2.11 and 9.03.

Nothing contained herein shall be deemed to authorize the Collateral Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Collateral Agent to vote in respect of the claim of any Lender in any such proceeding.

The Collateral 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 Collateral 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 or deemed making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Collateral Agent may presume that such condition is satisfactory to such Lender unless the Collateral Agent shall have received notice to the contrary from such Lender prior to the making or deemed making of such Loan. The Collateral 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 Collateral Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of this Article 8 shall apply to any such sub-agent and to the Related Parties of the Collateral Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Collateral Agent.

The Collateral Agent may resign at any time by giving ten (10) days prior written notice to the Lenders and the Borrower. If the Collateral Agent becomes a Defaulting Agent, the Borrower may, upon ten (10) days' notice, remove the Collateral Agent. Upon receipt of any such notice of resignation or removal, the Required Lenders shall have the right, with the consent of the Borrower (not to be unreasonably withheld or delayed), to appoint a successor Collateral Agent which shall be a commercial bank with an office in the U.S. having combined capital and surplus in excess of $1,000,000,000; provided that during the existence and continuation of an Event of Default, no consent of the Borrower shall be

required. If no successor shall have been so appointed as provided above and shall have accepted such appointment within ten (10) days after the retiring Collateral Agent gives notice of its resignation, then (a) in the case of a retirement, the retiring Collateral Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Collateral Agent meeting the qualifications (including, for the avoidance of doubt, the Borrower's consent, if required) set forth above, or (b) in the case of a removal, the Borrower may, after consulting with the Required Lenders, appoint a successor Collateral Agent meeting the qualifications set forth above; provided that (x) in the case of a retirement, if such Collateral Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, or (y) in the case of a removal, the Borrower shall notify the Required Lenders that no qualifying Person has accepted such appointment, then, in each case, such resignation or removal shall nonetheless become effective in accordance with such notice and (i) the retiring or removed Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) all payments and communications provided to be made to or through the Collateral Agent shall instead be made to each Lender directly (and each Lender will cooperate with the Borrower to enable the Borrower to take such actions), and all determinations provided to be made by the Collateral Agent shall instead be made by the Required Lenders, in each case, until such time as the Required Lenders or the Borrower, as applicable, appoint a successor Collateral Agent, as provided for above in this Article 8. Upon the acceptance of its appointment as Collateral Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent (other than any rights to indemnity payments owed to the retiring Collateral Agent), and the retiring Collateral Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Collateral Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Collateral Agent's resignation hereunder, the provisions of this Article 8 and Section 9.03 shall continue in effect for the benefit of such retiring Collateral 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 it was acting as Collateral Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Collateral Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon either the Collateral Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Collateral Agent herein, the Collateral 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 the Collateral Agent or any of its Related Parties.

Anything herein to the contrary notwithstanding, the Arranger shall not have any right, power, obligation, liability, responsibility or duty under this Agreement, except in its capacities, as applicable, as the Collateral Agent or a Lender hereunder.

To the extent the Collateral Agent (or in each case any Affiliate thereof) is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Collateral Agent (and in each case any Affiliate thereof) in proportion to their respective Applicable Percentage of all Loans for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Collateral Agent (or any Affiliate thereof) in performing its duties hereunder or under any

other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Collateral Agent's (or each such Affiliate's) gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

For the purposes of the grant of security under the laws of the Province of Quebec which may now or in the future be required to be provided by any Loan Party governed by the laws of the Province of Quebec or which has its registered office, domicile, a place of business or assets situated in the Province of Quebec, the Collateral Agent is hereby irrevocably authorized and appointed to act as the hypothecary representative (within the meaning of Article 2692 of the Civil Code of Québec) on behalf of all Secured Parties in order to hold any hypothec granted under the laws of the Province of Quebec pursuant to any Quebec deed of hypothec granted to the Collateral Agent as security for the Obligations and to exercise such rights and duties as are conferred upon a hypothecary representative under the relevant Quebec deed of hypothec and applicable laws (with the power to delegate any such rights or duties). Any person who becomes a Secured Party shall be deemed to have consented to and ratified the foregoing appointment of the Collateral Agent as hypothecary representative on behalf of all Secured Parties. For greater certainty, the Collateral Agent, acting as hypothecary representative, shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favor of the Collateral Agent, which shall apply *mutatis mutandis*. Each successor Collateral Agent shall automatically (and without any further action) become the successor hypothecary representative for the purposes of any Québec deeds of hypothec. If requested by the Collateral Agent, the applicable Loan Parties shall prepare and register notices of replacement in each applicable register in which each hypothec created pursuant to any Québec deeds of hypothec is registered (as contemplated by Article 2692 of the *Civil Code of Québec*).

Notwithstanding anything herein to the contrary, the exercise of any right or remedy by the Collateral Agent or any Lender hereunder or under any other Loan Document is subject to the limitations and provisions of the Subordination Agreement. In the event of any conflict between the terms of the Subordination Agreement and the terms of this Agreement or such other Loan Document, the terms of the Subordination Agreement shall govern. Each Lender hereunder (i) acknowledges that it has received a copy of the Subordination Agreement, (ii) agrees that it will be bound by and will take no actions contrary to the provisions of the Subordination Agreement, (iii) authorizes and instructs the Collateral Agent to enter into the Subordination Agreement as ["Subordinate Agent"] on behalf of such Lender, and (iv) hereby consents to the subordination of the Liens securing the Obligations, and to the subordination of the Obligations themselves, on the terms set forth in the Subordination Agreement.

ARTICLE 9 MISCELLANEOUS

Section 9.01. Notices.

(a) Subject to paragraph (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 facsimile or email, as follows:

(i) if to any Loan Party, to the Borrower at:

Basic Fun, Inc.
301 Yamato Road, Suite 4200
Boca Raton, Florida, USA 33431
Attention: Frank McMahon
Email: Frank.McMahon@basicfun.com

with a copy (which shall not constitute notice) to:

Polsinelli PC
1401 Eye Street N.W., Suite 800
Washington, D.C. 20005
Attention: Mark B. Joachim
Email: mjoachim@polsinelli.com

(ii) if to the Collateral Agent, at:

Royal Bank of Canada
200 Bay Street, 4th Floor, North Tower, Royal Bank Plaza
Toronto, Ontario M5J 2W7
Attention: Matt Hall
Email: matthew.hall@rbccm.com

with a copy (which shall not constitute notice) to:

Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019
Attention: Raniero D'Aversa
Email: rdaversa@orrick.com

Notices to any Lender (other than the Collateral Agent) shall be directed to such Lender's address designated to the other parties.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof or three (3) Business Days after dispatch if sent by certified or registered mail, in each case, delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01, or (B) sent by facsimile shall be deemed to have been given when sent and when receipt has been confirmed by telephone; provided that 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, such notices or other communications 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 clause (b) below shall be effective as provided in such clause (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail and Internet or Intranet websites) pursuant to procedures set forth herein or otherwise approved by the Collateral Agent. The Collateral Agent or the Borrower (on behalf of the Loan Parties) may, in its or their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures set forth herein or otherwise approved by it; provided that approval of such procedures may be limited to particular notices or communications. All such notices and other communications (i) 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 not given

during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient; and (ii) 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 (b)(i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

Section 9.02. Waivers; Amendments.

(a) No failure or delay by the Collateral Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Collateral Agent and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, to the extent permitted by law, the making or deemed making of a Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Collateral Agent, any Lender may have had notice or knowledge of such Default or Event of Default at the time.

(b) Subject to clauses (A), (B) and (C) and Section 9.02(c) below, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified, except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders (or the Collateral Agent with the consent of the Required Lenders) or (ii) in the case of any other Loan Document (other than any such waiver, amendment or modification to effectuate any modification thereto expressly contemplated by the terms of such other Loan Documents), pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that, notwithstanding the foregoing:

(A) Without the consent of each Lender directly and adversely affected thereby, no such agreement may:

(1) increase the Commitment of such Lender; it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall constitute an increase of any Commitment of such Lender;

(2) reduce or forgive the principal amount of any Loan;

(3) extend the scheduled final maturity of any Loan or the date of any scheduled payment of interest or fees payable hereunder (in each case, other

than extensions for administrative reasons agreed by the Collateral Agent and the Required Lenders);

(4) reduce the rate of interest (other than to waive any obligations of the Borrower to pay interest at the Default Rate of Interest under Section 2.06(c)) or the amount of any fees owed to such Lender; it being understood that any change in any ratio used in the calculation of any interest or fees due hereunder (including any component definition thereof) shall not constitute a reduction in any rate of interest or fees hereunder;

(5) extend the expiry date of such Lender's Commitment; it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall constitute an extension of any Commitment of any Lender; or

(6) change any of the provisions of this Section 9.02(b); and

(B) no such agreement shall:

(1) change the definitions of "Required Lenders" to reduce any of the voting percentages required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the prior written consent of each Lender (in the case of the definition of "Required Lenders");

(2) release all or substantially all of the Collateral from the Lien granted pursuant to the Loan Documents (except as otherwise permitted herein or in the other Loan Documents, including pursuant to Article 8), without the prior written consent of each Lender; or

(3) release all or substantially all of the value of the Guarantees under the Guarantee and Collateral Agreement (except as otherwise permitted herein or in the other Loan Documents, including pursuant to Section 10.12 hereof), without the prior written consent of each Lender; or

(4) amend or modify the provisions of Section 2.09(a) (with respect to pro rata allocation among Lenders), 2.09(b), 2.09(c) or 2.09(d) of this Agreement in a manner that would by its terms alter the pro rata sharing of payments required thereby (except as provided in this Section 9.02), without the prior written consent of each Lender; and

provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Collateral Agent hereunder without the prior written consent of the Collateral Agent, as the case may be. The Collateral Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.05, or Commitment reductions or terminations pursuant to Section 2.10.

Notwithstanding anything to the contrary contained in this Section 9.02 or any other provision of this Agreement or any other Loan Document, (i) guarantees, collateral security agreements, pledge agreements and related documents (if any) executed by the Loan Parties in connection with this Agreement may be in a form reasonably determined by the Collateral Agent and may be amended, supplemented and/or

waived with the consent of the Collateral Agent at the request of the Borrower without the input or need to obtain the consent of any other Lenders to (x) comply with Requirements of Law or advice of local counsel, (y) cure ambiguities, omissions or defects, or (z) cause such guarantees, collateral security agreements, pledge agreement or other documents to be consistent with this Agreement and the other Loan Documents, and (ii) if the Collateral Agent and the Borrower have jointly identified any ambiguity, mistake, defect, inconsistency, obvious error or any error or omission of a technical nature or any necessary or desirable technical change, in each case, in any provision of the Loan Documents, then the Collateral Agent and the Borrower shall be permitted to amend such provision.

Section 9.03. Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Arranger, the Collateral Agent and their respective Affiliates (but limited, in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all such Persons taken as a whole and, if necessary, of one local counsel in any relevant material jurisdiction to such Persons, taken as a whole) in connection with the syndication and distribution (including via the Internet or through a service such as Intralinks or SyndTrak) of the preparation, execution, delivery and administration of the Loan Documents and related documentation, including in connection with any amendments, modifications or waivers of the provisions of any Loan Documents (whether or not the transactions contemplated thereby shall be consummated), and (ii) all reasonable and documented out-of-pocket expenses incurred by the Collateral Agent, the Arranger or the Lenders and each of their respective Affiliates (but limited, in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all such Persons taken as a whole and, solely in the case of an actual or potential conflict of interest, one additional counsel to all affected Persons, taken as a whole, and, if reasonably necessary, one local counsel in any relevant material jurisdiction to all such Persons, taken as a whole and, solely in the case of an actual or potential conflict of interest, one additional local counsel to all affected Persons, taken as a whole) in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section 9.03, or in connection with the Loans made or deemed made. Other than to the extent required to be paid on the Closing Date, all amounts due under this paragraph (a) shall be payable by the Borrower within five (5) Business Days after receipt of an invoice relating thereto, setting forth such expenses in reasonable detail and together with backup documentation supporting such reimbursement requests (or as otherwise agreed by the Borrower).

(b) The Borrower shall indemnify the Arranger, the Collateral Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (but limited, in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, solely in the case of an actual or potential conflict of interest, one additional counsel to all affected Indemnitees, taken as a whole, and, if reasonably necessary, one local counsel in any relevant material jurisdiction to all Indemnitees, taken as a whole and, solely in the case of an actual or potential conflict of interest, one additional local counsel to all affected Indemnitees, taken as a whole), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of any other transactions contemplated hereby or thereby (except for any Taxes, other than any Taxes that represent losses, claims or damages arising from any non-Tax claim), (ii) the use or the proposed

use of the proceeds of the Loans, (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto (and regardless of whether such matter is initiated by a third party or by the Borrower, any other Loan Party or any of their respective Affiliates), or (iv) any actual or alleged presence or Release or threat of Release of Hazardous Materials on, at, to or from any Mortgaged Property or other property currently or formerly owned or operated by any Loan Party or any Subsidiary, or any Environmental Liability; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or of any Affiliate of such Indemnitee or to the extent such judgment finds such losses, claims, damages, liabilities or related expenses to have resulted from such Indemnitee's material breach of the Loan Documents or (B) arise out of any claim, litigation, investigation or proceeding brought by such Indemnitee (or its Related Parties) against another Indemnitee (or its Related Parties) (other than any claim, litigation, investigation or proceeding brought by or against the Collateral Agent or the Arranger, acting in its capacity as the Collateral Agent or as an Arranger) that does not involve any act or omission of any Loan Party or any of its Subsidiaries. Each Indemnitee shall be obligated to refund or return any and all amounts paid by the Borrower pursuant to this Section 9.03(b) to such Indemnitee for any fees, expenses or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof. All amounts due under this paragraph (b) shall be payable by the Borrower within five (5) Business Days (x) after written demand thereof, in the case of any indemnification obligations and (y) in the case of reimbursement of costs and expenses, after receipt of an invoice relating thereto, setting forth such expenses in reasonable detail and together with backup documentation supporting such reimbursement requests.

(c) The Borrower shall not be liable for any settlement of any proceeding effected without its consent (which consent shall not be unreasonably withheld, delayed or conditioned), but if settled with the Borrower's written consent, or if there is a final judgment against an indemnitee in any such proceeding, the Borrower agree to indemnify and hold harmless each Indemnitee to the extent and in the manner set forth above. The Borrower shall not, without the prior written consent of an Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending or threatened proceeding in respect of which indemnity could have been sought hereunder by such Indemnitee unless (i) such settlement includes an unconditional release of such Indemnitee from all liability or claims that are the subject matter of such proceeding and (ii) such settlement does not include any statement as to any admission of fault or culpability of any Indemnitee.

Section 9.04. Waiver of Claim. To the extent permitted by applicable law, no party to this Agreement shall assert, and each hereby waives, any claim against any other party hereto or any Related Party thereof, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, any Loan or the use of the proceeds thereof, except, in the case of a claim by any Indemnitee against the Borrower, to the extent such damages would otherwise be subject to indemnification pursuant to the terms of Section 9.03.

Section 9.05. Successors and Assigns.

(a) General. 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 (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder

without the prior written consent of each Lender and the Collateral Agent (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.05 (any attempted assignment or transfer not complying with the terms of this Section 9.05 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 paragraph (c) of this Section 9.05) and, to the extent expressly contemplated hereby and the Related Parties of each of the Arranger, the Collateral Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments.

(i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower; provided that the Borrower shall have been deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the Collateral Agent within seven (7) Business Days after receiving written notice thereof; provided, further, that no consent of the Borrower shall be required (x) for an assignment to another Lender, an Affiliate of a Lender or an Approved Fund or (y) if an Event of Default has occurred and is continuing; and

(B) the Collateral Agent.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to another Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Loans, the principal amount of Loans or commitments 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 Collateral Agent and the other Lenders and determined on an aggregate basis in the event of concurrent assignments to Related Funds or by Related Funds) shall not be less than $1,000,000 unless the Borrower (unless an Event of Default has occurred and is continuing) and the Collateral Agent otherwise consent;

(B) 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;

(C) the parties to each assignment shall execute and deliver to the Collateral Agent and the other Lenders an Assignment and Assumption manually; and

(D) the Eligible Assignee, if it shall not be a Lender, shall deliver on or prior to the effective date of such assignment, to the Collateral Agent any Tax forms required under Section 2.08.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section 9.05, from and after the effective date specified in each Assignment and Assumption the Eligible Assignee thereunder shall be a party hereto and, to the extent of the interest assigned

by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.07, Section 2.08 and Section 9.03 with respect to facts and circumstances occurring on or prior to the effective date of such assignment and subject to its obligations thereunder and under Section 9.13).

(iv) The Collateral Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices 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 their respective successors and assigns, and the commitment of, and principal amount of and interest on the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation, shall not affect the Borrower's obligations in respect of such Loans. The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Collateral Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and, with respect to itself, any Lender, at any reasonable time and from time to time upon reasonable prior notice; provided that the information contained in the Register which is shared with each Lender (other than the Collateral Agent and its affiliates) shall be limited to the entries with respect to such Lender including the Commitment of, or principal amount of and stated interest on the Loans owing to such Lender.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an Eligible Assignee, the Eligible Assignee's completed tax certifications required by Section 9.05(b)(ii)(D) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 9.05, if applicable, and any written consent to such assignment required by paragraph (b) of this Section 9.05, the Collateral Agent shall promptly accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) By executing and delivering an Assignment and Assumption, the assigning Lender thereunder and the Eligible Assignee thereunder shall be deemed to confirm and agree with each other and the other parties hereto as follows: (A) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that the amount of its commitments, and the outstanding balances of its Loans, in each case without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Assumption; (B) except as set forth in clause (A) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by any Loan Party or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (C) such assignee represents and warrants that it is an Eligible Assignee, legally authorized to enter into such Assignment and Assumption; (D) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements referred to in Section

3.04(a) or delivered pursuant to Section 5.01(a), Section 5.01(b) or Section 5.01(c), as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Assumption; (E) such assignee will independently and without reliance upon the Collateral Agent, such assigning Lender 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 this Agreement; (F) such assignee appoints and authorizes the Collateral Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Collateral Agent, by the terms hereof, together with such powers as are reasonably incidental thereto; and (G) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(c) Participations.

(i) Any Lender may, without the consent of the Borrower, the Collateral Agent, or any other Lender, sell participations to one or more Persons (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its commitments and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (C) the Borrower, the Collateral Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in (x) clause (A) to the first proviso to Section 9.02(b) that directly and adversely affects the Loans or commitments in which such Participant has an interest and (y) clauses (B)(1), (2) or (3) to the first proviso to Section 9.02(b). Subject to paragraph (c)(ii) of this Section 9.05, the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.07 and Section 2.08 (subject to the limitations and requirements of such Sections (it being understood and agreed that any documentation required to be delivered pursuant to Section 2.8(f) shall be delivered solely to the applicable participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.05. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.09 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.09(c) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.07 or 2.08 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation, or the sale of the participation to such Participant is made with the Borrower's prior written consent expressly acknowledging that such Participant's rights under Sections 2.07 and 2.08 are not limited to what the applicable Lender would have received absent the participation (which consent shall not be unreasonably withheld or delayed).

Each Lender that sells a participation shall, acting for this purpose as a non-fiduciary agent of the Borrower, maintain at one of its offices a copy of a register for the recordation of the names and addresses of each Participant and their respective successors and assigns, and principal amount of and interest on the Loans (the "**Participant Register**"); provided that no Lender shall have any

obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to any Participant's interest in any Loan or any other obligation under any Loan Document) to any Person except (i) to the extent that such disclosure is necessary to establish that such Loan or other obligation is in registered form under Section 5f.103-1(c) and proposed Section 1.163-5 of the Treasury Regulations (or, in each case, any amended or successor version) or (ii) if compelled by order of the court or other legal process. The entries in the Participant Register shall be conclusive absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Collateral Agent (in its capacity as Collateral Agent) shall have no responsibility for maintaining a Participant Register.

(d) Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (other than to any natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person)) to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and this Section 9.05 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Granting Lenders. Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle (an "**SPC**"), identified as such in writing from time to time by the Granting Lender to the Collateral Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making or deemed making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. 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 Section 2.07 or Section 2.08) and no SPC shall be entitled to any greater amount under Section 2.07 or Section 2.08 or any other provision of this Agreement or any other Loan Document that the Granting Lender would have been entitled to receive, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender), and (iii) the Granting Lender shall for all purposes including approval of any amendment, waiver or other modification of any provision of the Loan Documents, remain the Lender of record hereunder. 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 indebtedness 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 proceedings under the laws of the U.S., Canada or any state or province thereof; provided that (A) in the case of the Borrower, such SPC's Granting Lender is in compliance in all material respects with its obligations to the Borrower hereunder; and (B) each Lender designating any SPC hereby agrees to indemnify, save and hold harmless each other party hereto for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such SPC during such period of forbearance. In addition,

notwithstanding anything to the contrary contained in this Section 9.05, any SPC may (1) with notice to, but without the prior written consent of, the Borrower or the Collateral Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender, and (2) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC.

Section 9.06. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making or deemed making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Collateral Agent or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until the Termination Date. The provisions of Sections 2.07, 2.08, 9.03 and 9.13 and Article 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the occurrence of the Termination Date or the termination of this Agreement or any provision hereof but in each case, subject to the limitations set forth in this Agreement.

Section 9.07. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Collateral Agent or the Arranger constitute the entire agreement among the parties relating to the subject matter hereof and supersede the Prepetition Credit Agreement and any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Loan Parties and the Collateral Agent and when the Collateral Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page of this Agreement, any other Loan Document or any amendment or modification of any thereof by facsimile or by email as a ".pdf" or ".tif" attachment shall be effective as delivery of an original executed counterpart.

Section 9.08. Severability. To the extent permitted by law, any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 9.09. Right of Setoff. If an Event of Default shall have occurred and be continuing, the Collateral Agent, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by the Collateral Agent, or such Lender or Affiliate (including by branches and agencies of the Collateral Agent, or such Lender, wherever located) to or for the credit or the account of the Borrower or any Guarantor against any of and all the Obligations held by the Collateral Agent or such Lender or Affiliate, irrespective of whether or not the Collateral Agent or such Lender or Affiliate shall have made any demand under the Loan Documents and although such obligations may be unmatured. Any applicable Lender or Affiliate shall promptly notify the Borrower and the Collateral Agent of such set-off or application;

provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender, the Collateral Agent and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender, Collateral Agent or Affiliate may have.

Section 9.10. Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN THE OTHER LOAN DOCUMENTS), WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, AND ATTORNS TO THE NON-EXCLUSIVE JURISDICTION OF ANY COURT OF COMPETENT JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF OVER ANY SUIT, IN ANY ACTION OR IN ANY PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH SUIT, ACTION OR PROCEEDING SHALL (EXCEPT AS PERMITTED BELOW) BE HEARD AND DETERMINED IN SUCH COURT, TO THE EXTENT PERMITTED BY LAW. THE PARTIES HERETO AGREE THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY REGISTERED MAIL ADDRESSED TO SUCH PERSON SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PERSON FOR ANY SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH SUIT, ACTION OR PROCEEDING 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 COLLATERAL AGENT AND THE LENDERS RETAIN THE RIGHT TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, 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 LAW, ANY CLAIM OR DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) TO THE EXTENT PERMITTED BY LAW, EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF

MAIL) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 9.01. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 9.11. 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 SUIT, ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY 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 BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.12. Headings. Article and Section headings and the table of contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.13. Confidentiality. The Collateral Agent, each Lender and the Arranger agrees (and each Lender agrees to cause its SPC, if any) to maintain the confidentiality of the Confidential Information (as defined below), except that Confidential Information may be disclosed, (a) to its and its Affiliates' directors (or equivalent managers), officers, employees, independent auditors, other experts and advisors, including accountants, legal counsel and other advisors, or other agents that are retained by the Collateral Agent, such Lender or the Arranger solely to assist with administration of the Loans and the Collateral in the ordinary course of business (collectively, the "**Representatives**") on a "need to know" basis solely in connection with the transactions completed hereby and who are informed of the confidential nature of such Confidential Information and are or have been advised of their obligation to keep such Confidential Information of this type confidential; provided that such Person shall be responsible for its Affiliates' and their Representatives' compliance with this paragraph; (b) upon the demand or request of any regulatory (including any self-regulatory body, such as the National Association of Insurance Commissioners), governmental or administrative authority that has jurisdiction over such Person or its Affiliates (in which case such Person shall (i) except with respect to any audit or examination conducted by bank accountants or any Governmental Authority exercising examination or regulatory authority, to the extent permitted by law, inform the Borrower promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment); (c) to the extent compelled by legal, judicial or administrative proceeding, in any such legal, judicial or administrative proceeding or otherwise as required by applicable Requirements of Law, rule or regulation (in which case such Person shall (i) to the extent permitted by law, inform the Borrower promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (d) to any other party to this Agreement, (e) to (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement, including any SPC, (ii) any pledgee referred to in Section 9.05, or (iii) any actual or

prospective, direct or indirect contractual counterparty (or its advisors) to any Derivative Transaction (including any credit default swap) or similar derivative product relating to the Loan Parties and their obligations, in each case who are informed of the confidential nature of such Confidential Information and are or have been advised of their obligation to keep such Confidential Information of this type confidential; (f) with the prior written consent of the Borrower; (g) to the extent applicable and reasonably necessary or advisable, for purposes of establishing a "due diligence" defense; (h) in connection with any litigation or dispute which relates to this Agreement or any other Loan Document to which the Collateral Agent, any Lender or the Arranger is a party or is otherwise subject; and (i) to the extent such Confidential Information (X) becomes publicly available or (Y) becomes available to the Collateral Agent or any Lender on a non-confidential basis other than as a result of a breach of this Section from a source other than a Loan Party. For the purposes of this Section, "**Confidential Information**" means all information received relating to the Loan Parties and/or any of their Subsidiaries and their respective businesses (including any information obtained by the Collateral Agent, any Lender or the Arranger, based on a review of the books and records relating to Holdings and/or any of its Subsidiaries and their respective Affiliates from time to time, including prior to the date hereof) other than any such information that is or becomes publicly available to the Collateral Agent, the Arranger, or any Lender on a non-confidential basis and from a source that is not, to the knowledge of the Collateral Agent or such Lender, as applicable, subject to any confidentiality obligations to any Loan Party or any affiliate thereof, prior to disclosure by any Loan Party. Notwithstanding anything to the contrary in the foregoing, the Collateral Agent, the Arranger and each Lender may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Collateral Agent, the Arranger or such Lender in connection with the Loans and the administration of this Agreement, and shall have the right to use the transaction contemplated hereby in marketing materials as well as press releases or announcements in connection with this transaction following the Closing Date.

Section 9.14. No Fiduciary Duty. Each of the Collateral Agent, the Arranger and each Lender, and their respective Affiliates (collectively, the "**Lender Parties**"), may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their respective Affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender Party, on the one hand, and any Loan Party, its respective stockholders or its respective Affiliates, on the other. The Loan Parties acknowledge and agree that: (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lender Parties, on the one hand, and each Loan Party, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender Party has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its respective stockholders or its respective Affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender Party has advised, is currently advising or will advise any Loan Party, its respective stockholders or its respective Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents and (y) each Lender Party is acting solely as principal and not as the agent or fiduciary of such Loan Party, its respective management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that such Loan Party has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party agrees that it will not claim that any Lender Party owes a fiduciary or similar duty to such Loan Party in connection with such transaction or the process leading thereto.

Section 9.15. Several Obligations; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder.

Section 9.16. Applicable Anti-Terrorism Laws.

(a) The Collateral Agent and each Lender hereby notifies each Loan Party that pursuant to the requirements of the Anti-Money Laundering Laws and Canadian Anti-Terrorism Laws and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" policies, regulations, laws or rules, the Collateral Agent and the Lenders are 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 to identify the Borrower in accordance with such laws. Collateral Agent and each Lender will also require information regarding each personal guarantor, if any, and may require information regarding the Loan Parties' management and owners, such as legal name, address and date of birth. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of a Lender, in order to comply with the Anti-Money Laundering Laws and Canadian Anti-Terrorism Laws and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" policies, regulations, laws or rules, whether now or hereafter in existence.

(b) If the Collateral Agent has ascertained the identity of any Canadian Person or any authorized signatories of any Canadian Person for the purposes of Canadian AML Legislation, then the Collateral Agent:

(i) shall be deemed to have done so as an agent for each Lender and this Agreement shall constitute a "written agreement" in such regard between each Lender and the Collateral Agent within the meaning of the applicable Canadian AML Legislation; and

(ii) shall provide to the Lenders, copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding Section 9.16(b) and except as may otherwise be agreed in writing, each Lender agrees that the Collateral Agent has no obligation to ascertain the identity of the Canadian Persons or any authorized signatories of the Canadian Persons on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any Canadian Person or any such authorized signatory in doing so.

Section 9.17. Disclosure. Each Loan Party and each Lender hereby acknowledges and agrees that the Collateral Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

Section 9.18. Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Collateral Agent and the Lenders, in assets which, in accordance with Article 9 of the UCC, the PPSA or any other applicable law can be perfected only by possession. Should any Lender (other than the Collateral Agent) obtain possession of any Collateral, such Lender shall notify the Collateral Agent thereof; and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent's instructions.

Section 9.19. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively, "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by

the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 9.20. Conflicts. Notwithstanding anything to the contrary contained herein, in any other Loan Document, in the event of any conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall govern and control.

Section 9.21. Time. Time is of the essence in all respects hereof.

Section 9.22. *Limitations Act* (Ontario), 2002. Each of the parties hereto agree that any and all limitation periods provided for in the *Limitations Act, 2002* (Ontario) shall be excluded from application to the Obligations and any undertaking, covenant, indemnity or other agreement of any Loan Party provided for in any Loan Document to which it is a party in respect thereof, in each case to fullest extent permitted by such Act.

Section 9.23. Judgment Currency. If for the purpose of obtaining judgment in any court it is necessary to convert any amount owing or payable to the Collateral Agent or the Lenders under this Agreement from the currency in which it is due (the "**Agreed Currency**") into a particular currency (the "**Judgment Currency**"), the rate of exchange applied in that conversion shall be that at which the Collateral Agent in accordance with its normal procedures, could purchase the Agreed Currency with the Judgment Currency at or about noon on the Business Day immediately preceding the date on which judgment is given. The obligation of the Loan Parties in respect of any amount owing or payable under this Agreement to the Collateral Agent or the Lenders in the Agreed Currency shall, notwithstanding any judgment and payment in the Judgment Currency, be satisfied only to the extent that the Collateral Agent in accordance with its normal procedures, could purchase the Agreed Currency with the amount of the Judgment Currency so paid at or about noon on the next Business Day following that payment; and if the amount of the Agreed Currency which the Collateral Agent could so purchase is less than the amount originally due in the Agreed Currency, the Loan Parties shall, as a separate obligation and notwithstanding the judgment or payment, indemnify the Collateral Agent and the Lenders against any loss.

Section 9.24. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 9.25. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Collateral Agent, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans or the Commitments or this Agreement;

(ii) the prohibited 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 so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, 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 Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14, and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Collateral 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, 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 Collateral Agent, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Collateral Agent, the Arranger and their respective Affiliates is 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 Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Collateral Agent under this Agreement, any other Loan Document or any documents related hereto or thereto).

[***Signature Pages Follow***]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

BORROWER:

BASIC FUN, INC.,
a Delaware corporation

By: _____
Name:
Title:

HOLDINGS:

BASIC FUN HOLDCO, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

OTHER LOAN PARTIES:

TBDUM, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

TGS ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name:
Title:

K'NEX UK LIMITED,
a company organized under the laws of England and Wales

By: _____
Name:
Title:

ROYAL BANK OF CANADA,
DBA RBC CAPITAL PARTNERS, as Collateral Agent

By:_____
Name:
Title:

By: _____
Name:
Title:

ROYAL BANK OF CANADA,
DBA RBC CAPITAL PARTNERS, as First Out Lender and Last Out Lender

By:_____
Name:
Title:

By:_____
Name:
Title:

Exhibit 4

New Boards

The Advisory Committee and the boards of directors (or equivalents) of Basic Fun and Holdco (the "**Boards**") shall consist of seven members:

1. Jay Foreman
2. John MacDonald
3. Steve Littman
4. Mike Swartz
5. Matt White
6. Kyle Burns
7. Lisa Buchanan