

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

**INSTANT BRANDS ACQUISITION
HOLDINGS INC., et al.,

Debtors.¹**

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**Chapter 11

Case No. 23-90716 (DRJ)

Jointly Administered

Ref. Doc. Nos. 31, 74**

NOTICE OF FILING OF REDLINE OF REVISED INTERIM DIP ORDER

PLEASE TAKE NOTICE that Instant Brands Acquisition Holdings Inc. and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this *Notice of Filing of Redline of Revised Interim DIP Order* (this “**Notice**”).

PLEASE TAKE FURTHER NOTICE that on June 13, 2023, the Debtors filed the *Debtors’ Emergency Motion For Entry of Interim and Final Orders, Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, 507, and 552, (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Providing Adequate Protection to Prepetition Secured Parties, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 31] (the “**DIP Motion**”). Attached to the DIP Motion was a proposed interim order granting the relief requested therein (the “**Original Proposed Interim Order**”). The Original

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions, are as follows: Instant Brands (Texas) Inc. (2526); Instant Brands Acquisition Holdings Inc. (9089); Instant Brands Acquisition Intermediate Holdings Inc. (3303); Instant Brands Holdings Inc. (3318); URS-1 (Charleroi) LLC (7347); Instant Brands LLC (0566); URS-2 (Corning) LLC (8085); Corelle Brands (Latin America) LLC (8862); EKCO Group, LLC (7167); EKCO Housewares, Inc. (0216); EKCO Manufacturing of Ohio, Inc. (7300); Corelle Brands (Canada) Inc. (5817); Instant Brands (Canada) Holding Inc. (4481); Instant Brands Inc. (9822); and Corelle Brands (GHC) LLC (9722). The address of the debtors’ corporate headquarters is 3025 Highland Parkway, Suite 700, Downers Grove, IL 60515.

Proposed Interim DIP Order included as Exhibit A thereto, a draft of the ABL DIP Credit Agreement (the “**Draft ABL DIP Credit Agreement**”). The Original Proposed Interim DIP Order also included as Exhibit B thereto, a draft of the Term DIP Credit Agreement (the “**Draft Term DIP Credit Agreement**”).

PLEASE TAKE FURTHER NOTICE that on June 13, 2023, the Debtors filed the *Notice of Filing Initial DIP Budget and Revised Proposed Interim Order (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Post-petition Financing and (B) Use Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Providing Adequate Protection to Prepetition Secured Parties, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 74] (the “**First Notice**”). The initial DIP Budget (the “**Initial DIP Budget**”) was attached to the First Notice as Exhibit A thereto. A revised proposed interim order granting the relief requested in the DIP Motion (the “**Initial Revised Proposed Interim Order**”) was also attached to the First Notice as Exhibit B thereto.

PLEASE TAKE FURTHER NOTICE that contemporaneously herewith, the Debtors are filing a separate notice with a revised proposed interim order granting the relief requested in the DIP Motion (the “**Further Revised Proposed Interim Order**”) reflecting certain informal comments to the Initial Revised Proposed Interim Order. The Further Revised Proposed Interim Order includes a revised version of the Draft ABL DIP Credit Agreement (the “**Revised Proposed ABL DIP Credit Agreement**”). The Further Revised Proposed Interim Order also includes a revised version of the Draft Term DIP Credit Agreement (the “**Revised Proposed Term DIP Credit Agreement**”). The Further Revised Proposed Interim Order also includes a revised version of the Initial DIP Budget (the “**Revised Initial DIP Budget**”).

PLEASE TAKE FURTHER NOTICE that attached to this Notice as **Exhibit 1** is a changed-pages only redline of the Further Revised Proposed Interim Order against the Initial Revised Proposed Interim Order.

PLEASE TAKE FURTHER NOTICE that attached to this Notice as **Exhibit 2** is a changed-pages only redline of the Revised Proposed ABL DIP Credit Agreement against the Draft ABL Credit Agreement.

PLEASE TAKE FURTHER NOTICE that attached to this Notice as **Exhibit 3** is a changed-pages only redline of the Revised Proposed Term DIP Credit Agreement against the Draft Term DIP Credit Agreement.

PLEASE TAKE FURTHER NOTICE that the Debtors respectfully request the Court enter the Further Revised Proposed Interim Order.

[Remainder of page intentionally left blank]

Dated: June 14, 2023

HAYNES AND BOONE, LLP

/s/ Charles A. Beckham, Jr.

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Proposed Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that on June 14, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles A. Beckham, Jr.

Charles A. Beckham, Jr.

EXHIBIT 1

Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agents, the DIP Lenders or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their direct or indirect subsidiaries.

44. **Provision Regarding Certain Counterparties.** Notwithstanding anything in this Interim Order, the DIP Documents or the Prepetition Documents to the contrary, none of the Prepetition Obligations or DIP Obligations are, or shall be, secured by (i) any (A) platinum leased to Instant Brands LLC by Bank of Montreal or (B) rhodium (together with platinum, the “Boullion”) leased to Instant Brands LLC by SCMI US, Inc. or (ii) (A) any quantity of Boullion required to be maintained by Instant Brands LLC pursuant to the terms of any Precious Metals Lease (as defined in the DIP Documents) with Bank of Montreal or SCMI US, Inc. and which quantity of Boullion is, pursuant to the terms of such Precious Metals Lease, required to not be subject to a lease, consignment or other similar arrangement and for which Instant Brands LLC is required to hold title, free and clear of any liens.

45. **Effectiveness.** This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014, or any Local Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

46. **Headings.** Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

51. **Rights and Duties Independent.** The rights and duties of the DIP Term Secured Parties under the DIP Term Documents on the one hand and the ABL DIP Secured Parties under the ABL DIP Documents on the other are (a) subject to the Prepetition Intercreditor Agreement and the DIP Intercreditor Agreement, and (b) otherwise be exercised and observed independently by the ABL DIP Secured Parties on the one hand and the DIP Term Secured Parties on the other.

52. **Determination of Requisite Parties.** Any determination as to whether a consent, modification, permission, or amendment required or permitted under this Interim Order has been granted by the “requisite” DIP Secured Parties or the “requisite” Prepetition Secured Parties will be determined by reference to the applicable DIP Credit Agreement or Prepetition Credit Agreement.

53. **Bankruptcy Rules.** The requirements of Bankruptcy Rules 4001, 6003, and 6004 and Local Rule 4001-2, in each case to the extent applicable, are satisfied by the contents of the Motion.

54. **Necessary Action.** The Debtors are authorized to take any and all such necessary actions as are necessary or appropriate to implement the terms of this Interim Order.

55. **Final Hearing.** The Final Hearing is scheduled for ~~_____~~ July 12, 2023 at ~~1:00 p.m.~~ 3:30 p.m. (prevailing Central Standard Time) before this Court. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file a written objection thereto, which shall be served upon the Notice Parties, the DIP Secured Parties, and the Prepetition Secured Parties, and shall also be filed with the Clerk of the United States Bankruptcy Court for

the Southern District of Texas, in each case to allow actual receipt by the foregoing no later than

| 4:00 p.m., 2023 at :00 .m. ~~((prevailing~~ Central ~~Standard~~ Time) on July 6, 2023.

Signed: _____, 2023

| _____
DAVID R. JONES

United States Bankruptcy Judge

Summary report: Litera Compare for Word 11.3.0.46 Document comparison done on 6/14/2023 5:08:50 PM	
Style name: Finance	
Intelligent Table Comparison: Active	
Original DMS: iw://DMSWEB/AmericasActive/96975707/11	
Modified DMS: iw://DMSWEB/AmericasActive/96975707/12	
Changes:	
<u>Add</u>	6
Delete	7
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	13

EXHIBIT 2

~~Filing Draft—Subject to Borrower, Agent and Lender Approval~~

SUPERPRIORITY SENIOR SECURED PRIMING DEBTOR-IN-POSSESSION
ASSET-BASED REVOLVING CREDIT AGREEMENT

dated as of June [●15], 2023

among

INSTANT BRANDS HOLDINGS INC.,
a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code,
as the Lead Borrower,

INSTANT BRANDS INC.,
a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code,
as the Canadian Borrower,

INSTANT BRANDS ACQUISITION INTERMEDIATE HOLDINGS INC.,
a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code,
as Holdings,

THE LENDERS AND ISSUING BANKS
FROM TIME TO TIME PARTY HERETO

and

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

BANK OF AMERICA, N.A.,

and

[●],

as Joint Lead Arrangers¹

¹ BofA/Skadden to confirm.

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EXHIBITS:

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Exhibit C-2 –	Form of Administrative Questionnaire
Exhibit D –	Form of Borrowing Base Certificate
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Exhibit I –	Form of Interim Order
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Exhibit K –	Form of Variance Report

This SUPERPRIORITY SENIOR SECURED PRIMING DEBTOR-IN-POSSESSION ASSET-BASED REVOLVING CREDIT AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “Agreement”) is entered into as of June [●]15, 2023 among INSTANT BRANDS HOLDINGS INC., a Delaware corporation and a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code (the “Lead Borrower”), INSTANT BRANDS INC., a corporation incorporated under the *Canada Business Corporations Act* and a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code (the “Canadian Borrower” and together with the Lead Borrower, the “Borrowers”), INSTANT BRANDS ACQUISITION INTERMEDIATE HOLDINGS INC., a Delaware corporation and a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code (“Holdings”), BANK OF AMERICA, N.A., as Administrative Agent and Collateral Agent, and each Lender and Issuing Bank from time to time party hereto.

PRELIMINARY STATEMENTS

WHEREAS, on June [●]12, 2023 (the “Petition Date”), the Lead Borrower, Holdings and [certain of] the Lead Borrower’s US and Canadian Subsidiaries (collectively, the “Debtors”) filed voluntary petitions with the Bankruptcy Court commencing their respective cases that are pending under Chapter 11 of the Bankruptcy Code (each case of the Borrower and each other Debtor, a “Case” and, collectively, the “Cases”) and have continued in the possession of their assets and in the management of their business pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Canadian Borrower, in its capacity as foreign representative on behalf of the Debtors, filed or will file an application with the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario, Canada (the “Canadian Court”) under Part IV of the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”) to recognize the Cases as “foreign main proceedings” and grant certain customary related relief (the “Canadian Recognition Proceedings”);

WHEREAS, prior to the Petition Date, the Pre-Petition ABL Lenders provided financing to the Borrowers pursuant to that certain Asset-Based Revolving Credit Agreement, dated as of June 30, 2021 (as amended, restated, supplemented or otherwise modified prior to the Petition Date, the “Pre-Petition ABL Credit Agreement”), among the Borrowers, Holdings, the Pre-Petition ABL Agent and the Pre-Petition ABL Lenders parties thereto;

WHEREAS, as of the Petition Date, (i) the Pre-Petition Tranche A Revolving Lenders had outstanding Pre-Petition Tranche A Revolving Commitments of \$219,600,000 under the Pre-Petition ABL Credit Agreement, of which \$[●] was outstanding as Pre-Petition Tranche A Revolving Loans (the “Pre-Petition Outstanding Tranche A Revolving Loans”), (ii) the Pre-Petition Tranche B-1 Revolving Lenders had outstanding Pre-Petition Tranche B-1 Revolving Commitments of \$22,000,000 under the Pre-Petition ABL Credit Agreement, of which \$[●] was outstanding as Pre-Petition Tranche B-1 Revolving Loans (the “Pre-Petition Outstanding Tranche B-1 Revolving Loans”) and (iii) the Pre-Petition Tranche B-2 Revolving Lenders had outstanding Pre-Petition Tranche B-2 Revolving Commitments of \$8,400,000 under the Pre-Petition ABL Credit Agreement, of which \$[●] was outstanding as Pre-Petition Tranche B-2 Revolving Loans (the “Pre-Petition Outstanding Tranche B-2 Revolving Loans”);²

WHEREAS, the Borrowers have requested that the Lenders and the Issuing Banks extend credit to them in the form of superpriority senior secured priming debtor-in-possession asset-based revolving credit facilities in an aggregate principal amount of \$125,000,000, consisting of (i) a first-out tranche in respect of Tranche A Revolving Commitments in an aggregate principal amount of \$105,000,000 and (ii) Last-Out Tranches in respect of (x) Tranche B-1 Revolving Commitments in an aggregate principal amount of \$12,000,000 and (y) Tranche B-2 Revolving Commitments in an aggregate principal amount of \$8,000,000, in each case, on the terms and subject to the conditions set forth herein;

WHEREAS, all of the Borrowers’ obligations under the Facility are to be guaranteed by the Guarantors;

² BofA/Skadden to confirm and update.

WHEREAS, the Lenders are willing to extend such credit, and the Issuing Banks are willing to issue letters of credit, to the Borrowers, in each case, on the terms and subject to the conditions set forth herein; and

WHEREAS, the respective priorities of the Facilities and the other Secured Obligations with respect to the Collateral shall be as set forth in the Interim Order and the Final Order, in each case upon entry thereof by the Bankruptcy Court.

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

ARTICLE I.

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below. Unless otherwise defined herein, all terms defined in the UCC or the PPSA, as applicable, and used but not defined in this Agreement have the meanings specified in the UCC or the PPSA, as applicable:

“ABL Intercreditor Agreement” means the ABL Intercreditor Agreement, dated as of October 9, 2020 ~~(as amended, restated, supplemented or otherwise modified prior to the date hereof), by and among Citibank, N.A., as Original ABL Agent (as defined therein) under the Pre-Petition ABL Credit Agreement and Original Term Loan Agent (as defined therein) under the Pre-Petition Term Loan Agreement, Bank of America, N.A., in its capacity as new ABL Agent (as defined therein) under the Pre-Petition ABL Credit Agreement pursuant to a Lien Sharing and Priority Confirmation Joinder (as defined therein) dated as of June 30, 2021, Jefferies Finance LLC, in its capacity as new Term Loan Agent (as defined therein) under the Pre-Petition Term Loan Agreement pursuant to a Lien Sharing and Priority Confirmation Joinder (as defined therein) dated as of April 12, 2021, and acknowledged and consented to by each,~~ by and among the Prepetition ABL Agent, the Prepetition Term Agent, the Borrower and the Guarantors ~~party thereto.~~

“ABL Priority Collateral” means ~~{~~“ABL DIP Priority Collateral”~~}~~ as defined in the Orders.

“Acceptable Confirmation Order” means an order of the Bankruptcy Court confirming an Acceptable Reorganization Plan, in form and substance satisfactory to the Required Revolving Lenders in their sole discretion (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Required Revolving Lenders in their sole discretion).

“Acceptable Disclosure Statement” means the disclosure statement relating to an Acceptable Reorganization Plan in form and substance acceptable to the Required Revolving Lenders in their sole discretion.

~~“Acceptable Intercreditor Agreement” means a customary crossing lien intercreditor agreement or arrangement governing intercreditor arrangements for the sharing or subordination of liens or arrangements relating to the distribution of payments, as applicable, the terms of which are satisfactory to the Administrative Agent in its sole discretion; provided that an intercreditor agreement substantially in the form of the ABL Intercreditor Agreement shall be an “Acceptable Intercreditor Agreement” for all purposes of this Agreement and the other Loan Documents; provided, further that the Administrative Agent shall enter into, execute and deliver any Acceptable Intercreditor Agreement (or any supplement, amendments or modifications thereto) which allows the Lead Borrower and its Restricted Subsidiaries to enter into Permitted Precious Metals Leases and to provide the applicable counterparty thereunder with necessary access to the applicable assets subject to such lease upon the exercise of remedies with respect thereto.~~

“Acceptable Reorganization Plan” means a Reorganization Plan for each of the Cases that (i) provides for the termination of the Commitments and Payment in Full of all of the Secured Obligations on the Consummation Date of such Reorganization Plan, (ii) contains release, indemnification and other exculpatory provisions for the Agents, the Lenders, the Pre-Petition ABL Agent and the Pre-Petition ABL Lenders satisfactory to the Required Revolving Lenders in their sole discretion and (iii) is otherwise in form and substance satisfactory to the Required Revolving Lenders in their sole discretion.

(a) denominated in Euros, the rate per annum equal to the Euro Interbank Offered Rate (“EURIBOR”), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the day that is two TARGET Days preceding the first day of such Interest Period with a term equivalent to such Interest Period;

(b) denominated in Canadian Dollars, the rate per annum equal to the Canadian Dollar Offered Rate (the “CDOR Rate”), as published on the applicable Refinitiv UK screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period;

(c) denominated in Australian Dollars, the rate per annum equal to the Bank Bill Swap Reference Bid Rate (“BBSY”), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period; and

(d) and with respect to Loans, Letters of Credit and Letter of Credit reimbursement obligations denominated in any other Alternative Currency, the term rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.12(a) plus the adjustment (if any) determined by the Administrative Agent and the relevant Lenders pursuant to Section 1.12(a);

provided, that, if any Alternative Currency Term Rate shall be less than the applicable Floor for such benchmark rate, such benchmark rate shall be deemed to be such Floor for purposes of this Agreement.

“Alternative Currency Term Rate Loan” or “Alternative Currency Term Rate Borrowing” means a Loan that bears interest at a rate based on the Alternative Currency Term Rate. All Alternative Currency Term Rate Loans must be denominated in an Alternative Currency.

“AML Legislation” means applicable “know-your-customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and Parts II.1 and XII.2 of the Criminal Code (Canada).

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Lead Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption, including the Foreign Corrupt Practices Act of 1977 and the *Corruption of Foreign Public Officials Act* (Canada), as each may be amended from time to time.

“Anti-Terrorism Laws” has the meaning specified in Section 5.19.

“Applicable Administrative Agent” means (i) with respect to ABL Priority Collateral, the Administrative Agent, (ii) with respect to Term Priority Collateral, the DIP Term Loan Agent or (iii) if at any time there is no ABL Intercreditor Agreement ~~or other intercreditor agreement as described in the definition of Acceptable Intercreditor Agreement~~ then in effect, the Administrative Agent.

“Applicable Fee Rate” means 0.50% *per annum*.

“Applicable Percentage” means, with respect to any Lender, (a) a percentage equal to a fraction, the numerator of which is (i) the aggregate Commitment of such Revolving Lender and (ii) the denominator of which is the Aggregate Commitments of all the Revolving Lenders (or, if the Aggregate Commitments have terminated or expired, the Applicable Percentage shall be determined based upon such Revolving Lender’s share of the aggregate Revolving Exposure).

“Applicable Rate” means, for any day:

(a) with respect to (i) any Tranche A Revolving Loan that is a Term Rate Loan or an Alternative Currency Daily Rate Loan, 4.00% *per annum* and (ii) any Tranche A Revolving Loan or Swingline Loan that is a Base Rate Loan or a Canadian Prime Rate Loan, 3.00% *per annum*;

(b) with respect to any Tranche B-1 Revolving Loan (i) that is a Term Rate Loan or an Alternative Currency Daily Rate Loan, 5.00% *per annum* and (i) that is a Base Rate Loan or a Canadian Prime Rate Loan, 4.00% *per annum*; and

(c) with respect to any Tranche B-2 Revolving Loan (i) that is a Term Rate Loan or an Alternative Currency Daily Rate Loan, 6.00% *per annum* and (i) that is a Base Rate Loan or a Canadian Prime Rate Loan, 5.00% *per annum*.

“Applicable Time” means, with respect to any Borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the Issuing Bank, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Approved Budget” means a projected statement of sources and uses of cash for the Borrower and the other Debtors on a weekly basis for the following 13 calendar weeks including the anticipated uses of the Facilities and the DIP Term Loan Facility for each week during such period, in substantially the form of Exhibit J hereto. As used herein, “Approved Budget” shall initially refer to the initial Approved Budget delivered in accordance with Section 4.01(a)(iv) and thereafter shall refer to the most recent ~~Approved Budget~~ budget delivered by the Borrower in accordance with Section 6.01(d), to the extent that each of the Borrower and the Administrative Agent (with the consent of the Required Revolving Lenders) has approved such budget as the Approved Budget in its sole and absolute discretion.

“Approved Fund” means any Fund that is administered, advised or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

“Arrangers” or “Joint Lead Arrangers” means, collectively, Bank of America and [●], in their respective capacities as joint lead arrangers.

“Asset Disposition” means any direct or indirect sale, lease (other than an operating lease entered into in the ordinary course of business), transfer, issuance or other disposition, or a series of related sales, leases, transfers, issuances or dispositions that are part of a common plan, of shares of Capital Stock of a Subsidiary (other than directors’ qualifying shares), property or other assets (each referred to for the purposes of this definition as a “disposition”) by the Lead Borrower or any of its Restricted Subsidiaries, including any disposition by means of a merger, amalgamation, consolidation or similar transaction.

“Asset Swap” means a concurrent purchase and sale or exchange of Related Business Assets (or assets which prior to their sale or exchange have ceased to be Related Business Assets of the Lead Borrower or any of its Restricted Subsidiaries) between the Lead Borrower or any of its Restricted Subsidiaries and another Person; provided that the Lead Borrower or such Restricted Subsidiary, as the case may be, receives consideration at least equal to the fair market value (such fair market value to be determined on the date of the contractually agreeing to such transaction) as determined in good faith by the Lead Borrower.

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

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.04), and accepted by the Administrative Agent, in the form of Exhibit C-1 or any other form approved by the Administrative Agent and in the case of such Assignment and Assumption not substantially in the form of Exhibit C-1, the Lead Borrower.

“Audited Financial Statements” means the audited consolidated balance sheet and related statements of income, stockholders’ equity and cash flows of the Lead Borrower and its Subsidiaries, as of and for the period

“Bloomberg” means Bloomberg Index Services Limited.

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

“Board of Directors” means, as to any Person, the board of directors or managers (or other equivalent governing body), as applicable, of such Person or any duly authorized committee thereof.

“Borrower” and “Borrowers” have the meanings specified in the preamble hereto.

“Borrower Materials” means Borrowing Base Certificates, Compliance Certificates, Borrowing Notices, Interest Election Requests, and other information, reports, financial statements, information and materials delivered by the Loan Parties under the Loan Documents as well as Reports and other information provided by or on behalf of the Borrowers to the Agents or the Lenders in connection with the credit facility established by this Agreement.

“Borrowing” means (a) Revolving Loans under the same Facility of the same Type and currency, made, converted or continued on the same date and, in the case of Term Rate Loans, as to which a single Interest Period is in effect, (b) a Swingline Loan of the same Type and (c) in the case of a borrowing consisting of Tranche A Revolving Loans, shall be deemed to include Protective Advances of the same Type.

“Borrowing Base” means individually, the Tranche A Borrowing Base, the Tranche B-1 Borrowing Base or the Tranche B-2 Borrowing Base and collectively, all such Borrowing Bases.

“Borrowing Base Certificate” means a certificate, signed and certified as accurate and complete by a Financial Officer of the Lead Borrower, in substantially the form of Exhibit D or another form which is reasonably acceptable to the Administrative Agent in its Permitted Discretion (it being understood that the information contained therein shall be broken out separately for the US Loan Parties, on the one hand, and Canadian Loan Parties, on the other hand).

“Borrowing Notice” means a notice substantially in the form of Exhibit A or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent) by any Borrower requesting any Revolving Borrowing pursuant to Section 2.03.

“British Pounds Sterling” means the lawful currency of the United Kingdom.

“Budget Event” shall mean any of the following:

(a) the aggregate amount of actual receipts during any Budget Testing Period shall be less than the aggregate receipts in the Approved Budget for such Budget Testing Period by an amount greater than the Permitted Variance (this clause (a), the “Budgeted Receipts Test”); or

(b) “Budget Event” shall mean that the aggregate amount of actual disbursements during any Budget Testing Period shall exceed the projected aggregate disbursements in the Approved Budget for such Budget Testing Period by an amount greater than the Permitted Variance (this clause (b), the “Budgeted Disbursements Test”).

“Budget Testing Date” means (a) each Wednesday with respect to any Budgeted Disbursements Test, (i) the second Friday after the Petition Date and (b) each Wednesday (i.e., June 23, 2023) and (ii) each Friday of each week thereafter and (b) with respect to any Budgeted Receipts Test, (i) the fourth Friday after the Petition Date (i.e., July 7, 2023) and (ii) each Friday of each week thereafter.

“Budget Testing Period” means, as of any date of determination, the period beginning on the applicable Budget Testing Period Commencement Date and ending on the Budget Testing Date immediately succeeding such date of determination. For the avoidance of doubt, each Budget Testing Period ending on or after July 7, 2023 shall be a four calendar week period.

“Budget Testing Period” shall mean (a) with respect to the Commencement Date” means (a)(i) with respect to any Budgeted Disbursements Test conducted on any Budget Testing Date occurring on or prior to July 7, 2023, in each case, the first Sunday prior to the Petition Date (i.e., June 11, 2023) and (ii) with respect to any Budgeted Disbursements Test conducted on the Budget Testing Date occurring on or after July 14, 2023, (x) the first Sunday after the Petition Date (i.e., June 18, 2023) and (y) each Sunday of each week thereafter, respectively and (b)(i) with respect to any Budgeted Receipts Test conducted on the first Budget Testing Date, ~~the period beginning on the Wednesday of the week in which~~ in respect thereof occurring on July 7, 2023, the first Sunday prior to the Petition Date ~~occurs and ending on the immediately succeeding Tuesday (i.e., June 11, 2023)~~ and (bii) with respect to ~~each any Budgeted Receipts Test conducted on any Budget Testing Date thereafter, the period beginning on Wednesday immediately prior to~~ occurring on or after July 14, 2023, (x) the first Sunday after the Petition Date (i.e., June 18, 2023) and (y) each Sunday of each week thereafter, respectively. For the avoidance of doubt, with respect to any Budget Testing Date occurring on or after July 7, 2023, the applicable Budget Testing Period Commencement Date shall in each case be the fourth Sunday preceding such Budget Testing Date ~~and ending on the immediately succeeding Tuesday.~~

“Budgeted Disbursements Test” has the meaning specified in clause (b) of the definition of “Budget Event”.

“Budgeted Receipts Test” has the meaning specified in clause (a) of the definition of “Budget Event”

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in New York or North Carolina; provided that:

(a) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Alternative Currency Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Alternative Currency Loan, means a Business Day that is also a TARGET Day;

(b) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in British Pounds Sterling, means a day other than a day banks are closed for general business in London because such day is a Saturday, Sunday or a legal holiday under the laws of the United Kingdom;

(c) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in Canadian Dollars, means a day other than a day banks are closed for general business in Toronto because such day is a Saturday, Sunday or a legal holiday under the laws of Canada;

(d) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in Australian Dollars, means a day other than a day banks are closed for general business in Sydney because such day is a Saturday, Sunday or a legal holiday under the laws of Australia;

(e) if such day relates to any fundings, disbursements, settlements and payments in an Additional Alternative Currency, or any other dealings in any Additional Alternative Currency to be carried out pursuant to this Agreement, means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such Additional Alternative Currency.

“Canada” means the country of Canada.

“Canadian Borrower” has the meaning specified in the preamble hereto.

“Canadian Borrower Outstandings” means the USD Equivalent of the outstanding amount of all Revolving Loans made to, and Letters of Credit issued on behalf of, the Canadian Borrower.

“Canadian Borrower Sublimit” means \$10,000,000.

“Canadian Court” has the meaning specified in the recitals hereto.

Consumer Protection Act of 2010 (Pub. L. No. 111-203) and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued and with respect to any Lender claiming increasing costs or charges pursuant to Section 2.15, Section 2.16, or Section 2.17, only to the extent such Lender imposes the same charges on other similarly situated borrowers under comparable facilities.

“Change of Control” means the occurrence of any of the following:

- (1) the Permitted Holders shall cease to beneficially own, either directly or indirectly (within the meaning of Rules 13d-3 or 13d05 under the Exchange Act), Capital Stock representing more than 50% of the total voting power of the Voting Stock of Holdings (or its successor by merger, amalgamation, consolidation or purchase of all or substantially all of its assets);
- (2) [reserved]; or
- (3) Holdings shall cease to own, directly or indirectly, 100% of the Equity Interests in each Borrower (other than in connection with a merger, amalgamation or consolidation permitted under Section 7.04, (after which Holdings continues to own, directly or indirectly, 100% of the Equity Interests in each surviving Borrower)).

Notwithstanding the foregoing: (i) any holding company whose only significant asset is Capital Stock of the Lead Borrower or any of its direct or indirect parent companies shall not itself be considered a “person” or “group” for purposes of clause (1) above; (ii) the term “Change of Control” shall not include a merger, amalgamation or consolidation of the Lead Borrower with, or the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the Lead Borrower’s assets to, an Affiliate incorporated or organized solely for the purpose of reincorporating or reorganizing the Lead Borrower in another jurisdiction in the United States and/or for the sole purpose of forming or collapsing a holding company structure; and (iii) a “person” or “group” shall not be deemed to have beneficial ownership of securities subject to a stock purchase agreement, merger agreement or similar agreement (or voting or option agreement related thereto) until the consummation of the transactions contemplated by such agreement.

“Class” (a) when used with respect to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular series of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Tranche A Revolving Commitments, Tranche B-1 Revolving Commitments, Tranche B-2 Revolving Commitments or Incremental Commitments and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Tranche A Revolving Loans, Swingline Loans, Protective Advances, Tranche B-1 Revolving Loans, Tranche B-2 Revolving Loans or Incremental Loans. Commitments (and, in each case, the Loans made pursuant to such Commitments) that have the same terms and conditions shall be construed to be in the same Class.

“Closing Date” means June [●15], 2023, the first date on which all conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 4.01.

“CME” means CME Group Benchmark Administration Limited.

“Code” means the United States Internal Revenue Code of 1986.

“Collateral” means any and all property and tangible and intangible assets of any Loan Party, whether now owned or hereafter acquired, in which Liens are, from time to time, granted (or purported to be granted) to secure the Secured Obligations and the Guaranties pursuant to the Collateral Documents (including the Orders). The “Collateral” shall not include any leased or owned Real Property.

“Collateral Access Agreement” means an agreement reasonably satisfactory in form and substance to the Administrative Agent executed by (a) a bailee or other Person in possession of ABL Priority Collateral, (b) a

mortgagee in connection with Indebtedness secured by a mortgage on real property or (c) any landlord of real property leased by any Loan Party.

“Collateral Agent” means Bank of America, in its capacity as “Collateral Agent” under this Agreement, the other Loan Documents, the ABL Intercreditor Agreement, ~~any other Acceptable Intercreditor Agreement~~ and the other Collateral Documents, and any successor thereto in such capacity.

“Collateral and Guarantee Requirement” means, at any time, subject to (x) any applicable limitations set forth in this Agreement (including Sections 6.11 and 6.13), the Guaranty or the other Loan Documents ~~(including any Acceptable Intercreditor Agreement then outstanding)~~ and (y) the time periods (and extensions thereof) set forth in Sections 6.11, 6.13 ~~and 6.18~~, the requirement that:

(a) the Administrative Agent shall have received from (i) each US Loan Party, (A) either (x) a counterpart of the Guaranty duly executed and delivered on behalf of such Person or (y) in the case of any such Person that becomes or is required to become a US Loan Party after the Closing Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Guaranty in accordance with Section 6.11, duly executed and delivered on behalf of such Person and (B) either (x) a counterpart of the US Security Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes or is required to become a US Loan Party after the Closing Date (including by ceasing to be an Excluded Subsidiary), a supplement to the US Security Agreement in accordance with Section 6.11, duly executed and delivered on behalf of such Person, in each case of this clause (a)(i)(y) together with documents of the type referred to in Section 4.01(a)(ii) and (iii); (ii) each Canadian Loan Party, (A) either (x) a counterpart of the Guaranty duly executed and delivered on behalf of such Person or (y) in the case of any such Person that becomes or is required to become a Canadian Loan Party after the Closing Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Guaranty in accordance with Section 6.11, duly executed and delivered on behalf of such Person and (B) either (x) a counterpart of the Canadian Security Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes or is required to become a Canadian Loan Party after the Closing Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Canadian Security Agreement in accordance with Section 6.11, duly executed and delivered on behalf of such Person, in each case of this clause (a)(ii)(y) together with documents of the type referred to in Section 4.01(a)(ii) and (iii); and (iii) each Loan Party, either (x) an acknowledgement counterpart of the ABL Intercreditor Agreement ~~and any other applicable Acceptable Intercreditor Agreement, in each case~~ duly executed and delivered on behalf of such Person or (y) in the case of any such Person that becomes or is required to become a Loan Party after the Closing Date (including by ceasing to be an Excluded Subsidiary), an executed acknowledgement to the ABL Intercreditor Agreement, in the form specified therein or in another form as may be reasonably agreed by the Administrative Agent, ~~and an executed acknowledgement to any other applicable Acceptable Intercreditor Agreement that is outstanding~~; and

(b) (x) the Secured Obligations shall have been secured by a valid and perfected first-priority security interest in substantially all tangible and intangible assets of the Loan Parties (other than Excluded Property and as more fully set forth in the Orders) and (y) the Collateral Agent shall have received from each Restricted Subsidiary that is required to comply with the requirements set forth in this definition pursuant to Section 6.11, (i) if such Restricted Subsidiary owns issued, registered or applied for (A) patents, (B) industrial designs, (C) trademarks and/or (D) copyrights that constitute Collateral, Intellectual Property Security Agreements contemplated by the applicable Security Agreement for filing with the Canadian Intellectual Property Office, the United States Patent and Trademark Office and the United States Copyright Office, as applicable; (ii)(x) with respect to each Canadian Loan Party, all Instruments, Documents of Title and Chattel Paper (in each case, as defined in the PPSA) of the Canadian Loan Party required to be delivered pursuant to the Canadian Security Agreement and (y) with respect to each US Loan Party, all Instruments and Chattel Paper (in each case, as defined in the UCC) of such Restricted Subsidiary required to be delivered pursuant to the US Security Agreement; (iii) PPSA and/or UCC financing statements, as applicable, or financing change statements in appropriate form for filing in such jurisdictions as the Administrative Agent may reasonably request; (iv) the certificates, if any, representing all of the certificated Equity Interests of the Lead Borrower and each other applicable Restricted Subsidiary (other than any such Equity Interests constituting Excluded Property), together with undated

stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all "Intercompany Notes" (as defined in the applicable Security Agreement) owing to any Loan Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of the applicable Loan Party; and (v) control agreements with respect to deposit accounts and securities accounts as contemplated by the applicable Security Agreement.

Notwithstanding anything to the contrary herein or in any other Loan Document, (i) the Administrative Agent may grant extensions of time (including after the expiration of any relevant period, which apply retroactively) for the creation and perfection of security interests in, or obtaining of title insurance, legal opinions, surveys or other deliverables with respect to, particular assets or the provision of any Guaranty by any Restricted Subsidiary, and each Lender hereby consents to any such extension of time, (ii) any Lien required to be granted from time to time pursuant to the definition of "Collateral and Guarantee Requirement" shall be subject to the exceptions and limitations set forth in the Collateral Documents and the Orders, (iii) in each case except as set forth in Section 6.19, perfection by control shall not be required with respect to any asset requiring perfection through control agreements or other control arrangements, including deposit accounts, securities accounts and commodities accounts (other than control of pledged Capital Stock and/or Instruments, in each case, constituting Collateral and are required to be pledged and delivered to the Collateral Agent pursuant to the Collateral Documents, this Agreement or the Orders) and no blocked account agreement, account control agreement or similar agreement shall be required, (iv) no Loan Party shall be required to seek any landlord waiver, bailee letter, estoppel, warehouseman waiver or other collateral access or similar letter or agreement, (v) other than with respect to Capital Stock issued by, and assets of, any Foreign Subsidiary that becomes a Guarantor as set forth in the definition of "Subsidiary Guarantor" or any Intermediate Parent that is a Foreign Subsidiary, no Loan Party will be required to (1) take any action or grant or perfect any security interest in any asset located outside of the U.S. or Canada or conduct any foreign lien search (other than any lien search in Canada), (2) execute any foreign law guarantee, security agreement, pledge agreement, mortgage, deed or charge (other than any guarantee or Collateral Document governed by the laws of Canada), (3) make any Intellectual Property filing, conduct any Intellectual Property search or prepare any Intellectual Property schedule with respect to any Intellectual Property assets of any Loan Party, in each case, in any jurisdiction outside the United States or Canada or (4) or enter into any source code escrow arrangement, (vi) in no event will the Collateral include any Excluded Property, (vii) no action shall be required to perfect any Lien with respect to (x) any vehicle or other asset subject to a certificate of title and/or (y) Letter-of-Credit Rights (as defined in Article 9 of the UCC), in each case to the extent that a security interest therein cannot be perfected by filing a Form UCC-1 (or equivalent under the PPSA) "all assets" financing statement without the requirement to list any VIN, serial or other number and (viii) no Loan Party shall be required to grant a Lien on, or require the perfection of any Lien granted in, those assets as to which the cost, burden, difficulty or consequence (including any effect on the ability of the relevant Loan Party to conduct its operations and business in the ordinary course of business) of obtaining or perfecting such Lien (including any mortgage, stamp, intangibles or other tax or expenses relating to such Lien) outweighs, or is excessive in relation to, the benefit to the Lenders of the security afforded thereby as determined in good faith by the Lead Borrower and the Administrative Agent (provided that, this clause shall not apply to any cost, burden, difficulty, or consequence under Section 956 of the Code with respect to any pledge of the stock of any Canadian Subsidiary or (without prejudice to the limitation under clause (b) of "Excluded Property" definition) any assets directly owned by any Canadian Subsidiary).

Notwithstanding the foregoing, (i) no action shall be required to create or perfect a Lien in any asset in respect of which the creation or perfection of a security interest therein would (1) be prohibited by enforceable anti-assignment provisions ([taking into account the imposition of the automatic stay under Section 362 of the Bankruptcy Code](#)) set forth in any contract that is permitted or otherwise not prohibited by the terms of this Agreement (after giving effect to the Orders and the applicable anti-assignment provisions ([taking into account the imposition of the automatic stay under Section 362 of the Bankruptcy Code](#)) of the UCC, PPSA or other applicable Requirements of Law), (2) violate the terms of any contract in effect on the Closing Date or any contract of a Restricted Subsidiary upon the acquisition of such Restricted Subsidiary by the Lead Borrower or any Restricted Subsidiary (and not entered into in contemplation thereof) relating to such asset that is permitted or otherwise not prohibited by the terms of this Agreement or other applicable Requirements of Law, in each case, after giving effect to the Orders and the applicable anti-assignment provisions ([taking into account the imposition of the automatic stay under Section 362 of the Bankruptcy Code](#)) of the UCC, PPSA or other applicable Requirements of Law or (3) trigger termination of any contract in effect on the Closing Date or any contract of a Restricted Subsidiary upon the

acquisition of such Restricted Subsidiary by the Lead Borrower or any Restricted Subsidiary (and not entered into in contemplation thereof) relating to such asset that is permitted or otherwise not prohibited by the terms of this Agreement pursuant to any “change of control” or similar provision, in each case, after giving effect to the Orders and the applicable anti-assignment provisions ([taking into account the imposition of the automatic stay under Section 362 of the Bankruptcy Code](#)) of the UCC, PPSA or other applicable Requirements of Law, it being understood that the Collateral shall include any proceeds and/or receivables arising out of any contract described in this clause (other than Excluded Property) to the extent the assignment of such proceeds or receivables is expressly deemed effective under the Orders or the UCC, PPSA or other applicable Requirements of Law notwithstanding the relevant prohibition, violation or termination right, (ii) no Loan Party shall be required to create or perfect a security interest in any asset to the extent the creation or perfection of a security interest in such asset would (A) be prohibited under any applicable Requirements of Law, after giving effect to the Orders and any applicable anti-assignment provision ([taking into account the imposition of the automatic stay under Section 362 of the Bankruptcy Code](#)) of the UCC, PPSA or other applicable law and other than proceeds thereof (other than Excluded Property) to the extent that the assignment of such proceeds is effective under the Orders or the UCC, PPSA or other applicable Requirements of Law notwithstanding such Requirements of Law, (B) require any governmental consent, approval, license or authorization (unless such consent, approval, license or authorization has been obtained), after giving effect to the Orders and any applicable anti-assignment provision ([taking into account the imposition of the automatic stay under Section 362 of the Bankruptcy Code](#)) of the UCC, PPSA or other applicable Requirements of Law and other than proceeds thereof (other than Excluded Property) to the extent that the assignment of such proceeds is effective under the Orders or the UCC, PPSA or other applicable Requirements of Law notwithstanding such consent or restriction and/or (C) result in material adverse tax consequences (provided that, this clause (C) shall not apply to any adverse tax consequences, burden, or cost under Section 956 of the Code with respect to any Canadian Subsidiary) or adverse regulatory consequences to any Loan Party or any of its Subsidiaries or Parent Entities as determined by the Lead Borrower in good faith following consultation with the Administrative Agent, (iii) any joinder or supplement to any Guaranty, any Collateral Document and/or any other Loan Document executed by any Restricted Subsidiary that is required to become a Loan Party pursuant to [Section 6.11](#) may, with the consent of the Administrative Agent (not to be unreasonably withheld, conditioned or delayed), include such schedules (or updates to schedules) as may be necessary to qualify any representation or warranty set forth in any Loan Document to the extent necessary to ensure that such representation or warranty is true and correct to the extent required thereby or by the terms of any other Loan Document and (iv) no Loan Party will be required to take any action required under the Federal Assignment of Claims Act or any similar law.

Notwithstanding the foregoing, the Lead Borrower may from time to time, upon notice to the Administrative Agent, elect to cause any and all property and tangible and intangible assets of any Loan Party, whether now owned or hereafter acquired, that would otherwise be Excluded Property to become Collateral hereunder and under the applicable Collateral Documents (but shall have no obligation to do so), subject to the satisfaction of the guarantee and collateral requirements consistent with the Collateral and Guarantee Requirement or otherwise reasonably acceptable to the Lead Borrower and the Administrative Agent; provided, that the consent of the Administrative Agent shall be required before Real Property may become Collateral hereunder and under the Collateral Documents.

“Collateral Documents” means, collectively, the US Security Agreement, the Canadian Security Agreement, the Intellectual Property Security Agreements, the Orders, the Deposit Account Control Agreements, and the other security agreements, pledge agreements, agency agreements, deeds of hypothec and other instruments and documents executed and delivered pursuant to this Agreement or any of the foregoing, as the same may be amended, supplemented or otherwise modified from time to time and pursuant to which Collateral is pledged, assigned or granted (or purported to be pledged, assigned or granted) to or on behalf of the Collateral Agent for the benefit of the Secured Parties or notice of such pledge, assignment or grant is given.

“Commitment” means, as to each Lender, such Lender’s Revolving Commitment in respect of the applicable Facility, together with the commitment of such Lender to acquire participations in Protective Advances hereunder. The initial amounts of each Lender’s Commitments are set forth on the Commitment Schedule, in the applicable Incremental Amendment, or in the Assignment and Assumption pursuant to which such Lender shall have established, extended, increased and/or assumed its Commitments, as applicable.

“Commitment Increase” has the meaning specified in [Section 2.09\(e\)](#).

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.04(b)(ii) (subject to such consents, if any, as may be required under subclauses (A), (B) and (C) of Section 10.04(b)(i)).

“Eligible Credit Card Receivable” means all of the Credit Card Receivables of each Loan Party that arise in the ordinary course of their business, that have been earned by performance, that comply in all material respects with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluded criteria set forth below. In determining the amount to be included, Eligible Credit Card Receivables shall be calculated net of customer deposits, unapplied cash, bonding subrogation rights to the extent not cash collateralized, any and all returns, accrued rebates, discounts (which may, in the Administrative Agent’s Permitted Discretion, be calculated on shortest terms), credits, allowances or sales or excise taxes of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time. Eligible Credit Card Receivables shall not include the following:

(a) Credit Card Receivables due from Credit Card Processors or Credit Card Issuers that have been outstanding for more than five (5) Business Days from the date of sale or for such longer period as may be approved by the Administrative Agent in its Permitted Discretion;

(b) Credit Card Receivables due from Credit Card Processors or Credit Card Issuers with respect to which the Loan Parties do not have good, valid and marketable title thereto, free and clear of any Lien, other than (i) a Lien in favor of the Administrative Agent, (ii) a Lien expressly permitted under Sections 7.01(b) through (f), (i), (k), (l), (t), (u), (aa) or (bb) or (iii) a Lien expressly permitted under Section 7.01(a), (z), (uu), (vv) or (r) (to the extent relating to a Lien expressly permitted under Section 7.01(a), (z), (uu) or (vv)), in each case of this clause (iii) which does not have priority over (or equal to) the Lien on such Credit Card Receivables in favor of the Administrative Agent;

(c) Credit Card Receivables due from Credit Card Processors or Credit Card Issuers that are not subject to a valid and perfected first priority Lien (other than as permitted in clause (b) above) in favor of the Administrative Agent on behalf of the Secured Parties pursuant to the relevant Collateral Documents as provided in the ABL Intercreditor Agreement ~~or any Acceptable Intercreditor Agreement~~ and the Orders (it being the intent that chargebacks in the ordinary course by such processors shall not be deemed violative of this clause);

(d) Credit Card Receivables due from Credit Card Processors or Credit Card Issuers which are disputed, or with respect to which a claim, counterclaim, offset or chargeback (other than chargebacks in the ordinary course by credit card processors) has been asserted, by the related credit card processor (but only to the extent of such dispute, counterclaim, offset or chargeback);

(e) Credit Card Receivables due from Credit Card Processors or Credit Card Issuers as to which the credit card processor has the right under certain circumstances to require the Loan Parties to repurchase such Credit Card Receivables from such credit card processor;

(f) except as otherwise approved by the Administrative Agent or as otherwise provided in Section 6.19, Credit Card Receivables due from Credit Card Processors or Credit Card Issuers as to which the Administrative Agent has not received a Credit Card Agreement; or

(g) Accounts due from Credit Card Processors or Credit Card Issuers (other than Visa, MasterCard, American Express, Carte Blanche, Diners Club and Discover) which the Administrative Agent determines, in its Permitted Discretion, to be unlikely to be collected.

“Eligible Currency” means any lawful currency other than Dollars that is readily available, freely transferable and convertible into Dollars in the international interbank market available to the Lenders in such market and as to which a USD Equivalent may be readily calculated. If, after the designation by the Lenders of any currency as an Additional Alternative Currency pursuant to Section 1.12, any change in currency controls or exchange regulations or any change in the national or international financial, political or economic conditions are

“Euro” or “€” means the single currency of participating member states of the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

“Event of Default” has the meaning specified in Section 8.01.

“Exchange Act” means the Securities Exchange Act of 1934, and the rules and regulations of the SEC promulgated thereby.

“Exchange Rate” means, for any currency on any Revaluation Date or any other relevant date of determination, (a) the rate of exchange for the purchase of Dollars with the Alternative Currency last provided (either by publication or otherwise provided to the Administrative Agent or the Issuing Bank, as applicable) by the applicable Bloomberg source (or such other publicly available source for displaying exchange rates) on date that is two (2) Business Days immediately preceding the Revaluation Date or other date of determination (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Administrative Agent or the Issuing Bank, as applicable using any method of determination it deems appropriate in its sole discretion) and (b) if such amount is denominated in any other currency, the rate of exchange for the purchase of such amount in Dollars as determined by the Administrative Agent or the Issuing Bank, as applicable, using any method of determination it deems appropriate in its sole discretion. Any determination by the Administrative Agent or the Issuing Bank pursuant to clauses (a) or (b) above shall be conclusive absent manifest error.

“Excluded Accounts” means:

(i) any deposit account, securities account, commodities account or other account of any Loan Party (and all cash, Cash Equivalents and other securities or investments held therein) exclusively used to hold funds in trust for the benefit of third parties for all or any of the following purposes: (A) payroll, healthcare and other employee wage and benefits, (B) taxes, including any tax account or sales tax account, (C) any escrow, defeasance or redemption account, or (D) any fiduciary or trust account ~~or (E) maintaining cash collateral or a deposit to the extent permitted under Sections 7.01(b), (c), (g), (hh), (kk), (ll), (oo) or (pp) to the extent the aggregate balance of such accounts described in this clause (E) does not exceed \$1,000,000.~~

(ii) zero balance disbursements accounts,

(iii) [reserved], and

(iv) the DIP Proceeds Account (as defined in the DIP Term Loan Agreement) solely to the extent maintained by the Lead Borrower to solely contain identifiable proceeds of the Final Loan Amount (as defined in the DIP Term Loan Agreement).

“Excluded Hedging Obligation” means, with respect to any Guarantor, any Hedging 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 security interest to secure, such Hedging 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 Hedging Obligation. If a Hedging Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Hedging Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“Excluded Property” means the following:

(a) [reserved];

(b) (x) any Equity Interests of a Person that is not a Borrower or a Wholly-Owned Subsidiary of the Lead Borrower to the extent that a pledge of such Equity Interests is prohibited by such Person's Organization Documents or would trigger termination pursuant to any "change of control" or similar provision pursuant to the terms of such Person's Organization Documents (it being understood that no Loan Party shall be required to seek the consent of third parties thereunder) and (y) any Equity Interests constituting "margin stock" (as defined in Regulation U);

(c) [reserved];

(d) unless otherwise permitted pursuant to the Bankruptcy Code, any property to the extent and for so long as the grant of a security interest therein would violate applicable Law or which would require governmental (including regulatory) consent, approval, license or authorization to provide such security interest (to the extent such consent, approval, license or authorization has not been obtained (it being understood that no Loan Party shall be required to obtain any such consent, approval, license or authorization));

(e) any right, title or interest in any general intangible, permit, license, lease, contract or other agreement or any property or right subject thereto (including pursuant to a purchase money security interest, Capitalized Lease Obligation or similar arrangement permitted pursuant to this Agreement), in each case to the extent and for so long as the grant of security interest therein constitutes a breach of or default that would be enforceable after giving effect to the automatic stay under Section 362 of the Bankruptcy Code and is under, or results in the termination of or requires a consent not obtained under, any such permit, contract, lease, license or other agreement, or results in the invalidation of such property or provides any party to such contract, lease, license or agreement with a right of termination (in each case, after giving effect to the Orders and Sections 9-406, 9-407, 9-408 and 9-409 of the UCC (or equivalent under the PPSA); provided that, this exclusion shall in no way be construed to limit, impair or otherwise affect Collateral Agent's unconditional continuing security interests in and Liens upon any rights or interests of any Loan Party in or to monies due or to become due to any Loan Party under any such lease, contract, license or license agreement;

(f) any "intent-to-use" applications for trademarks or service marks filed in the United States Patent and Trademark Office ("USPTO") pursuant to 15 U.S.C. §1051 Section 1(b) unless and until evidence of use of the mark in interstate commerce is submitted to and accepted by the USPTO pursuant to 15 U.S.C. §1051 Section 1(c) or Section 1(d) to the extent, if any, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of any such application or registration issuing from such application under applicable federal laws;

(g) any Excluded Account described in clause (i) or (ii) of the definition thereof;

(h) any owned or leased Real Property;

(i) any governmental or regulatory license or state or local franchise, charter, consent, permit or authorization to the extent the granting of a security interest therein is prohibited or restricted thereby or by applicable Law to the extent such prohibition is enforceable on and after the Petition Date;

(j) [reserved];

(k) [reserved];

(l) [reserved];

(m) [reserved];

(n) any asset if either (A) granting a security interest in such asset would reasonably be expected to result in material adverse tax consequences (after taking into account NOLs) or adverse regulatory consequences to the Lead Borrower or any of its Restricted Subsidiaries or Parent Entities to the

extent such consequences would be enforceable on and after the Petition Date (provided that, this clause (n) shall not apply to any adverse tax consequences, burden, or cost under Section 956 of the Code with respect to any pledge of the stock of any Canadian Subsidiary or (without prejudice to the limitation under clause (b)) any assets directly owned by any Canadian Subsidiary);

(o) assets excluded based on the Collateral and Guarantee Requirement;

(p) [reserved];

(q) proceeds and products of any and all of the foregoing Excluded Property described in clauses (a) through (p) above only to the extent such proceeds and products would constitute property or assets of the type described in clauses (a) through (p) above; and

(r) any Consigned Precious Metals to the extent not purchased and paid for by the applicable Loan Party pursuant to the terms of the applicable Precious Metals Lease (or related agreement) and, in each case, to the extent (i) subject to a Permitted Lien in favor of the consignor of such Consigned Precious Metals to secure the applicable Loan Party's obligations under a Precious Metals Lease and (ii) subject to a Precious Metals Acknowledgment Letter ("Consigned Precious Metals Collateral") and the proceeds thereof; provided, however, that any proceeds of Consigned Precious Metals (including insurance proceeds) constituting Consigned Precious Metals Collateral shall only constitute Excluded Property to the extent of the value of the Consigned Precious Metal attributable to such proceeds (with the value of the Consigned Precious Metal to be determined in accordance with the terms of the applicable Precious Metals Lease);

provided, however, that in each case described in clauses (a), (d), (e) and (i) of this definition, such property shall constitute "Excluded Property" only to the extent and for so long as such permit, contract, lease, license, franchise, charter, consent, permit, authorization or other agreement or applicable Law validly prohibits the creation of a Lien on such property in favor of the Collateral Agent (in each case, after giving effect to the Orders, Sections 9-406, 9-407, 9-408 and 9-409 of the UCC (or similar provisions of the PPSA, if applicable) or any other applicable Law) and, upon the termination of such prohibition (howsoever occurring), such property shall cease to constitute "Excluded Property" (with no requirement to obtain the consent of any Governmental Authority or third party, including, without limitation, no requirement to comply with the Federal Assignment of Claims Act or any similar statute in the United States or Canada).

"Excluded Subsidiary" means, except as contemplated by Section 6.16, (a) any Foreign Subsidiary, (b) [reserved], (c) any Foreign Subsidiary Holding Company, and (d) each Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC. Notwithstanding the foregoing or any other provision of the Loan Documents, (x) a non-U.S. intermediate holding subsidiary (if any) of the Lead Borrower through which the Lead Borrower owns its primary subsidiaries in Canada (a "Primary Canadian Subsidiary Holdco") shall also provide a guarantee subject to the terms that apply to a Canadian Loan Party and (y) no Domestic Subsidiary that guarantees, or is a borrower under, the DIP Term Loan Agreement shall constitute an Excluded Subsidiary.

"Excluded Taxes" means, with respect to any Recipient, (i) Taxes imposed on or measured by such Recipient's net income or branch profits (however denominated, and including (for the avoidance of doubt) any backup withholding in respect thereof under Section 3406 of the Code or any similar provision of state, local or foreign Law), and franchise (and similar) Taxes imposed on it (in lieu of net income Taxes), in each case by a jurisdiction (including any political subdivision thereof) as a result of such Recipient being organized in, having its principal office in, or in the case of any Lender, having its applicable Lending Office in, such jurisdiction, or as a result of any other present or former connection of such Recipient with the jurisdiction imposing such Taxes (other than any such connection arising solely from this Agreement or any other Loan Documents or any transactions contemplated thereunder), (ii) in the case of a Lender, except in the case of a Lender that is an assignee pursuant to a request by the Lead Borrower under Section 2.19, any U.S. federal withholding Tax imposed on any payment by or on account of any obligation of any Loan Party hereunder or under any other Loan Document that is required to be imposed on amounts payable to such Recipient pursuant to Laws in force at the time such Lender becomes a party hereto (or designates a new Lending Office), except to the extent that (A) such Lender is an assignee of any other Lender that was entitled, immediately prior to such assignment or acquisition, to receive additional amounts from any Loan Party with respect to such withholding Tax pursuant to Section 2.17(a), or (B) such Lender was

entitled, immediately prior to the designation of a new Lending Office, to receive additional amounts from any Loan Party with respect to such withholding Tax pursuant to Section 2.17(a), (iii) any Canadian federal withholding tax imposed under Part XIII of the *Income Tax Act* (Canada) as a result of the Recipient not dealing at arm's length (within the meaning of the *Income Tax Act* (Canada)) with any Canadian Loan Party, except where the non-arm's length relationship arises as a result of such Recipient having executed, delivered, become party to, performed obligations or received payments under, received or perfected a Lien or engaged in any other transaction pursuant to, enforced, or sold or assigned an interest in, any Loan or Loan Document, (iv) any withholding Tax that is attributable to such Recipient's failure to comply with Section 2.17(e) or (v) any withholding Tax imposed pursuant to FATCA.

"Existing Letters of Credit" means the letters of credit identified on Schedule 1.01(d).

"Facility" means the Tranche A Revolving Commitments, the Tranche B-1 Revolving Commitments and Tranche B-2 Revolving Commitments, or a given Class of Incremental Commitments, as the context may require, and in each case, the Loans made from time to time on account of such Class of Commitments, and "Facilities" means, any two or more of them, collectively.

"fair market value" means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Lead Borrower in good faith.

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

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

"Fee Letters" means (a) the Fee Letter, dated as of the date hereof, by and between the Lead Borrower and Bank of America, as amended, amended and restated, supplemented or other-wise modified from time to time, and (b) that certain letter agreement, dated as of June [8]³, 2023, by and between the Lead Borrower and FTI Consulting, Inc., as financial advisor to the Administrative Agent.

"Final Order" means an order of the Bankruptcy Court in substantially the form of the Interim Order granting the relief provided in the Interim Order on a final basis, with any changes thereto that are satisfactory to the Administrative Agent (with the consent of the Required Revolving Lenders) in its sole and absolute discretion.

"Final Order Entry Date" means the date on which the Final Order is entered by the Bankruptcy Court.

"Financial Officer" of any person means the Chief Financial Officer or an equivalent financial officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such person.

"Floor" means, (i) with respect to BBSY, the Canadian Prime Rate, the CDOR Rate, EURIBOR and Term SOFR, 0.0% per annum and (ii) for any other benchmark rate, the floor, if any, provided in this Agreement (as of the execution of a modification, amendment or renewal of this Agreement or otherwise) in respect thereof.

"Foreign Availability Assets" has the meaning specified in Section 6.16.

³ [FTI/Skadden to confirm and update.](#)

“GAAP Reserves” means an amount determined by the Administrative Agent, in its Permitted Discretion, as being appropriate to reflect any GAAP balance sheet reserves in excess of the aggregate amount of the Reserves hereunder (other than GAAP Reserves).

“General Partner” has the meaning specified in the definition of “Indebtedness.”

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

“guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that the term “guarantee” will not include endorsements for collection or deposit in the ordinary course of business. The term “guarantee” used as a verb has a corresponding meaning.

“Guarantor” means Holdings, each Borrower (other than as to its own obligations), each Subsidiary Guarantor and any other Person that becomes a Guarantor in accordance with the terms of this Agreement.

~~“Guarantor Subordinated Obligation” means, with respect to a Guarantor, any Indebtedness of such Guarantor (whether outstanding on the Closing Date or thereafter Incurred) that is expressly subordinated in right of payment to the Secured Obligations of such Guarantor under its Guaranty, pursuant to a written agreement, without giving effect to collateral arrangements.]~~

“Guaranty” means (i) the guaranty made by Holdings, each Borrower (other than as to its own obligations) and Subsidiary Guarantors that are Loan Parties in favor of the Administrative Agent on behalf of the Secured Parties, substantially in the form of Exhibit E and (ii) each other guaranty and guaranty supplement delivered by a Loan Party pursuant to Section 6.11 and “Guaranties” means any two or more of them, collectively.

“Hazardous Materials” means any pollutant, contaminant, waste, substance, constituent or material regulated or which can give rise to liability pursuant to any Environmental Law, including, without limitation, any asbestos, any petroleum or petroleum products, any radioactive substance or any polychlorinated biphenyls.

“Hedging Obligations” of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Agreement.

“Holdings” has the meaning specified in the preamble hereto.

“In-Transit Inventory” means Inventory of such Loan Party that would otherwise constitute Eligible Inventory except that such Inventory has been shipped by a vendor or supplier for receipt by a Loan Party but has not yet been received by such Loan Party.

“Incremental Amendment” has the meaning specified in Section 2.09(e).

“Incremental Amount” means \$0.

“Lending Office” means with respect to any Lender, the “Lending Office” of such Lender (or of an Affiliate of such Lender) designated in such Lender’s Administrative Questionnaire or in any applicable Assignment and Assumption pursuant to which such Lender became a Lender hereunder or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Lead Borrower as the office by which its Loans are to be made and maintained.

“Letter of Credit” means, collectively (a) each Existing Letter of Credit, (b) each letter of credit issued pursuant to this Agreement and (c) bank guarantees, bankers’ acceptances and similar documents and instruments; provided that no Issuing Bank shall have any obligation to issue any commercial Letter of Credit or any document or instrument described under hereunder in excess of its LC Commitment without its consent; provided, further, that no Issuing Bank shall have any obligation to issue any Letter of Credit described under clause (c) of this definition without its consent.

“Lien” means, with respect to any asset, (a) any mortgage, pledge, hypothecation, deed of trust, security interest, lien, charge or similar monetary encumbrance in or on such asset and (b) the interest of a vendor or lessor under any conditional sale, capitalized lease or other title retention agreement relating to such asset; provided that in no event shall an operating lease or an agreement to sell be deemed to be a Lien.

“Line Cap” means, as of any date of determination, an amount equal to the lesser of (i) the Aggregate Commitments then in effect and (ii) the Aggregate Borrowing Base at such time, as determined from the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 6.01(e).

“Loan Documents” means, collectively, (i) this Agreement and any promissory notes issued pursuant to this Agreement, (ii) the Guaranties, (iii) the ABL ~~Intercreditor Agreement, any other Acceptable~~ Intercreditor Agreement and any other intercreditor agreement entered into in accordance with the terms of this Agreement, (iv) the Fee Letters, (v) the Collateral Documents (including the Orders), (vi) any Incremental Amendment and (vii) any other document or instrument designated in writing by the Lead Borrower and the Administrative Agent as a “Loan Document”.

“Loan Obligations” means all unpaid principal, interest (including any interest and fees accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and banker’s acceptances), damages and other liabilities of the Loan Parties to the Lenders or the Agents, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities of the Loan Parties payable in respect of the Loans and Letters of Credit or otherwise arising under the Loan Documents.

“Loan Parties” means, collectively, (i) the Borrowers, (ii) Holdings and (iii) each other Guarantor.

“Loans” means the loans and advances made by the Lenders pursuant to this Agreement, including Tranche A Revolving Loans, Swingline Loans, Protective Advances and Tranche B Revolving Loans.

“Material Adverse Effect” means (i) a material adverse effect on the business, results of operations or financial condition of the Lead Borrower and its Subsidiaries, taken as a whole (other than as customarily occurs as a result of the events leading up to and following the commencement of the Cases), (ii) a material adverse effect on the ability of the Loan Parties (taken as a whole) to perform their respective obligations under the Loan Documents or (iii) a material adverse effect on the rights and remedies (taken as a whole) of the Lenders and the Agents under the Loan Documents.

“Maturity Date” means the earliest to occur of: (a) the Scheduled Termination Date with respect to the applicable Facility, (b) the Consummation Date, (c) the consummation of a sale of all or substantially all of the assets of the Borrower and the Guarantors under section 363 of the Bankruptcy Code, (d) the date the Bankruptcy Court orders the conversion of the Cases to a Chapter 7 liquidation or the dismissal of the Cases or the appointment of a trustee or examiner with expanded power in the Cases, (e) the acceleration of the Loans and the termination of the Commitments with respect to the applicable Facility in accordance with this Agreement, (f) the date on which

the assignee/Participant and the taxing jurisdiction (other than a connection arising solely from any Loan Documents or any transactions contemplated thereunder), except, in each case, to the extent that the assignment or other event giving rise to such Assignment Taxes is requested or required by the Lead Borrower.

“Overadvance” means a Tranche A Overadvance, a Tranche B-1 Overadvance or a Tranche B-2 Overadvance, as applicable.

“Parent” means Instant Brands Acquisition Holdings Inc., a Delaware corporation and a Parent Entity of the Lead Borrower.

“Parent Entity” means Parent and any other direct or indirect parent of Holdings or the Lead Borrower (including the Parent) that owns, directly or indirectly, a majority of the Voting Stock of the Lead Borrower.

“Participant” has the meaning specified in Section 10.04.

“Participant Register” has the meaning specified in Section 10.04.

“Payment in Full” or “Paid in Full” means the occurrence of all of the following: (a) all Commitments shall have been terminated or expired, (b) the principal of and interest on each Loan, all fees and other Secured Obligations (other than contingent indemnity obligations with respect to then unasserted claims not then due and payable and obligations in respect of Secured Hedging Agreements or Secured Banking Services Agreements, which for the avoidance of doubt shall survive such Payment in Full) shall have been paid in full in cash and (b) all Letters of Credit shall have expired, terminated, cash collateralized or backstopped and all LC Disbursements shall have been reimbursed in full.

“Payment Recipient” has the meaning specified in Section 2.21(c).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA or Section 412 of the Code and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time in the past six (6) years.

“Permitted Discretion” means a determination made in good faith and in the exercise of commercially reasonable (from the perspective of a secured asset-based lender) business judgment.

“Permitted Holders” means Cornell Capital LLC, Cornell Capital Partners III LP and any of their respective controlled Affiliates, and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including, however, any portfolio company of any of the foregoing.

“Permitted Investments” has the meaning specified in Section 7.13.

“Permitted Liens” has the meaning specified in Section 7.01.

“Permitted Precious Metals Lease” means any Precious Metals Lease to which any Loan Party is a party on the date of this Agreement, and any other Precious Metal Lease entered into in the ordinary course of business of the Lead Borrower and its Restricted Subsidiaries or that is otherwise on terms satisfactory to the Administrative Agent.

“Permitted Variance” means, for purposes of testing whether a Budget Event has occurred, ~~(a-cumulative variance for all)~~ with respect to any Budgeted Disbursements Test (i) conducted on the first Budget Testing Period Date occurring after the Petition Date, a variance of 120% of the estimated aggregate disbursements in each the then-in-effect Approved Budget in effect for each such respective Budget Testing Period, (ii) conducted on the second Budget Testing Date occurring after the Petition Date, a variance of 120% of the estimated aggregate disbursements in the then-in-effect Approved Budget, (iii) conducted on the third Budget Testing Date occurring after the Petition Date, a variance of 115% of the estimated aggregate disbursements in the then-in-effect Approved

Budget and (iv) conducted on any Budget Testing Date thereafter, a variance of 110% of the estimated aggregate disbursements in the then-in-effect Approved Budget and (b) with respect to the Budgeted Receipts Test, 85% of the estimated aggregate receipts in the then-in-effect Approved Budget. For the avoidance of doubt, the fees and expenses of financial and legal advisors to the parties hereto shall not be taken into account in determining the aggregate disbursements and cumulative variance hereunder.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, unlimited liability company, government or any agency or political subdivision hereof or any other entity.

“Petition Date” has the meaning specified in the recitals hereto.

“Platform” has the meaning specified in Section 6.02.

“Pledged Debt” has the meaning specified in the Security Agreements.

“Pledged Equity” has the meaning specified in the Security Agreements.

“PPSA” means the Personal Property Security Act (Ontario) (and other equivalent personal property security legislation in any other applicable Canadian province or territory) and the regulations thereunder, as from time to time in effect; provided that, if attachment, perfection or priority of the security interest in any Collateral is governed by the personal property security laws of any jurisdiction in Canada other than Ontario, with respect to such Collateral, PPSA means those personal property security laws in such other jurisdiction of Canada (including the Civil Code of Quebec in the case of Quebec) for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

“Pre-Petition ABL Agent” means Bank of America, N.A., in its capacities as administrative agent and collateral agent for the lenders under the Pre-Petition ABL Facilities and any successor thereto in such capacities.

“Pre-Petition ABL Credit Agreement” has the meaning specified in the recitals hereto.

“Pre-Petition ABL Facilities” means the credit facilities made available to the Borrowers pursuant to the Pre-Petition ABL Credit Agreement.

“Pre-Petition ABL Lenders” means the “Lenders” under and as defined in the Pre-Petition ABL Credit Agreement.

“Pre-Petition Debt” means, collectively, the Indebtedness of each Debtor outstanding and unpaid on the date on which such Person becomes a Debtor.

“Pre-Petition Outstanding Tranche A Revolving Loans” has the meaning specified in the recitals hereto.

“Pre-Petition Outstanding Tranche B-1 Revolving Loans” has the meaning specified in the recitals hereto.

“Pre-Petition Outstanding Tranche B-2 Revolving Loans” has the meaning specified in the recitals hereto.

“Pre-Petition Term Loan Agent” means Wilmington Trust, National Association, in its capacities as administrative agent and collateral agent for the lenders under the Pre-Petition Term Loan Facility (as successor to Jefferies Finance LLC in such capacities) and any successor thereto in such capacities.

“Pre-Petition Term Loan Agreement” means that certain Credit Agreement, dated as of April 12, 2021 (as amended, restated, supplemented or otherwise modified prior to the Petition Date), among the Lead Borrower, Holdings, the Pre-Petition Term Loan Agent, the other titled agents party thereto and the lenders parties thereto from time to time.

“Pre-Petition Term Loan Facility” means Indebtedness under the Pre-Petition Term Loan Agreement.

“QFC Credit Support” has the meaning specified in Section 10.23.

“Qualified Stock” means, with respect to any Person, any Capital Stock of such Person other than Disqualified Stock.

“Rate Determination Date” means, with respect to the relevant Interest Period, two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Administrative Agent; provided that, to the extent such market practice is not administratively feasible for the Administrative Agent, then “Rate Determination Date” means such other day as otherwise reasonably determined by the Administrative Agent).

“Raw Material Inventory” means Inventory consisting of raw materials.

“Real Property” means all land, tenements, hereditaments and any estate or interest therein, together with the buildings, structures, parking areas and other improvements thereon (including all fixtures) now or hereafter owned or leased by any Loan Party, together with all easements, rights of way, and similar rights relating thereto and all leases, licenses, tenancies and occupancies thereof.

“Recipient” means the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document.

“Refinancing” means (a)(i) the repayment in full of all indebtedness outstanding under the Pre-Petition ABL Credit Agreement, ~~(b)(i)~~ the termination and release of all commitments thereunder (or other arrangements reasonably satisfactory to the Administrative Agent), ~~(e)(iii)~~ except as otherwise agreed by the Administrative Agent, delivery to Administrative Agent of all documents or instruments necessary to release all Liens securing Indebtedness under the Pre-Petition ABL Credit Agreement, ~~and (d)(iv)~~ the cash collateralization or backstop of any letters of credit outstanding thereunder (other than the Existing Letters of Credit) ~~and (b)(i) the repayment in full of the principal of the Sponsor LC Reimbursement Note and all other amounts contemplated by the Sponsor Payoff Letter and (ii) the termination and/or release, together with evidence in form and substance satisfactory to the Required Revolving Lenders of such termination and release, of any security interests (including, for the avoidance of doubt, the URS) and guarantees in connection therewith (or arrangements for such termination and release shall have been made as of the Closing Date as set forth in the Sponsor Payoff Letter).~~

“Refinancing Indebtedness” means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) (collectively, “refinance”, “refinances” and “refinanced” shall have a correlative meaning) any Indebtedness existing on the Closing Date or Incurred in compliance with this Agreement (including Indebtedness of any Borrower that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness; provided, however, that:

(1) (a) if the Stated Maturity of the Indebtedness being refinanced is earlier than the Stated Maturity of the Loans, the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being refinanced or (b) if the Stated Maturity of the Indebtedness being refinanced is later than the Stated Maturity of the Loans, the Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Stated Maturity of the Loans;

(2) (a) in the case of Indebtedness consisting of term loans, the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being refinanced or (b) in the case of Indebtedness consisting of revolving loans, the Refinancing Indebtedness shall not have any scheduled mandatory commitment reduction prior to the Stated Maturity of the Indebtedness being refinanced;

(3) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus, without duplication, any additional Indebtedness Incurred to

“Sponsor LC Issuing Bank” means Goldman Sachs Bank USA (or one of its designated Affiliates).

“Sponsor Payoff Letter” means that certain Payoff Letter, dated as of June [14], 2023, by and among the Borrower and Cornell Capital Partners LP, which Payoff Letter shall be in form and substance satisfactory to the Required Revolving Lenders.

“Sponsor LC Reimbursement Note” means that certain promissory note, dated as of the January 18, 2023, executed by the Lead Borrower in favor of the Sponsor (specifically, Cornell Capital Partners LP, as the initial holder), pursuant to which the Lead Borrower shall be obligated to reimburse the Sponsor for amounts drawn under the Sponsor LC as a deemed loan under such promissory note, with interest and fees payable in respect of such obligations on the terms set forth therein, and which (i) shall be secured only by the assets of URS-1 (Charleroi) LLC and URS-2 (Corning) LLC; and (ii) shall provide that the Administrative Agent shall be an express third-party beneficiary in connection with provisions limiting payments thereof by Loan Parties and Restricted Subsidiaries unless the Payment Conditions are Satisfied.

“Sponsor LC Reimbursement Note Documents” means the Sponsor LC Reimbursement Note and the other “Note Documents” (as defined in the Sponsor LC Reimbursement Note).

“Stated Maturity” means, with respect to any Indebtedness, the date specified in the agreement governing or certificate relating to such Indebtedness as the fixed date on which the final payment of principal of such Indebtedness is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person the payment of which is contractually subordinated to payment of the Secured Obligations to the reasonable written satisfaction of the Administrative Agent; provided, that neither the DIP Term Loan Obligations nor the obligations in respect of the Sponsor LC Reimbursement Note shall be deemed to be Subordinated Indebtedness for purposes hereof.

“Subordinated Obligation” means any Indebtedness of any Borrower (whether outstanding on the Closing Date or thereafter Incurred) that is subordinated or junior in right of payment to the Loans pursuant to a written agreement, without giving effect to collateral arrangements.

“Subsidiary” of any Person means (a) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total ordinary voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or persons performing similar functions) or (b) any partnership, joint venture limited liability company or similar entity of which more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, is, in the case of clauses (a) and (b), at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary will refer to a Subsidiary of the Lead Borrower.

“Subsidiary Guarantor” means each Restricted Subsidiary of the Lead Borrower (other than any Excluded Subsidiary) that is listed on Schedule 1.01(a) that, as of the Closing Date, Guaranties the Loans in accordance with the terms of this Agreement and each other Restricted Subsidiary of the Lead Borrower that becomes a Subsidiary Guarantor in accordance with Section 6.11. For the avoidance of doubt, on and as of the Closing Date, the URS are Subsidiary Guarantors. Notwithstanding the foregoing, the Lead Borrower may from time to time, with the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), elect to cause any Restricted Subsidiary that would otherwise be an Excluded Subsidiary to become a Subsidiary Guarantor hereunder (but shall have no obligation to do so), subject to the satisfaction of the guarantee and collateral requirements consistent with the Collateral and Guarantee Requirement or otherwise reasonably acceptable to the Lead Borrower and the Administrative Agent (which shall include, in the case of a Foreign Subsidiary, guarantee and collateral requirements customary under local law, including customary local limitations to the extent reasonably satisfactory to the Administrative Agent).

“Supermajority Lenders” means, at any time, at least two unaffiliated Revolving Lenders (so long as there are two or more Revolving Lenders) having Revolving Exposure and unused Commitments representing 66 2/3% or more of the sum of the total Revolving Exposure and unused Commitment.

“Superpriority Claim” means a claim against any Debtor in any of the Cases which is an administrative expense claim pursuant to Sections 364(c)(1), 503(b), and 507(a)(2) of the Bankruptcy Code, with priority over all other allowed chapter 11 and chapter 7 administrative expense claims now existing or hereinafter arising, of any kind whatsoever, including expenses of a chapter 11 and chapter 7 trustee.

“Supported QFC” has the meaning specified in Section 10.23.

“Swingline Exposure” means at any time the aggregate principal amount of all outstanding Swingline Loans at such time. The Swingline Exposure of any Revolving Lender at any time shall mean its Tranche A Applicable Percentage of the aggregate Swingline Exposure at such time.

“Swingline Lender” means Bank of America, N.A. in its capacity as lender of Swingline Loans hereunder.

“Swingline Loan” means a Revolving Loan made pursuant to Section 2.05.

“Swingline Loan Notice” means a notice of a Borrowing of Swingline Loans pursuant to Section 2.05(a), which shall be substantially in the form of Exhibit A or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the applicable Borrower.

“T2” means the real time gross settlement system operated by the Eurosystem, or any successor system.

“TARGET Day” means any day on which T2 is open for the settlement of payments in Euro.

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

“Term Priority Collateral” has the meaning assigned to the term ~~“Term DIP Priority Collateral”~~ in the ~~{Orders}~~.

“Term Rate Loan” or “Term Rate Borrowing” means a Term SOFR Loan or an Alternative Currency Term Rate Loan.

“Term SOFR” means (a) for any Interest Period for a Term SOFR Loan, a per annum rate equal to the Term SOFR Screen Rate two (2) U.S. Government Securities Business Days prior to the commencement of such Interest Period, with a term equivalent to such Interest Period (or if such rate is not published prior to 11:00 a.m. on the determination date, the applicable Term SOFR Screen Rate on the U.S. Government Securities Business Day immediately prior thereto), plus the SOFR Adjustment for such Interest Period; and (b) for any interest calculation relating to a Base Rate Loan on any day, a per annum fluctuating rate of interest equal to the Term SOFR Screen Rate with a term of one month commencing that day; provided, that in no event shall Term SOFR determined in accordance with the foregoing be less than the applicable Floor.

“Term SOFR Loan” or “Term SOFR Borrowing” means a Loan or Borrowing that bears interest at a rate based on clause (a) of the definition of Term SOFR. All Term SOFR Loans shall be denominated in Dollars.

“Term SOFR Screen Rate” means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by Administrative Agent from time to time).

“Termination Date” means the date on which (a) all Commitments shall have been terminated or expired, (b) the principal of and interest on each Loan, all fees and other Secured Obligations (other than contingent

indemnity obligations with respect to then unasserted claims not then due and payable and obligations in respect of Secured Hedging Agreements or Secured Banking Services Agreements, which for the avoidance of doubt shall survive such Termination Date) shall have been paid in full and (c) all Letters of Credit shall have expired, terminated, cash collateralized or backstopped and all LC Disbursements shall have been reimbursed in full.

“Threshold Amount” means \$~~5,000,000~~1,000,000.

“Tranche A Aggregate Commitments” means the Tranche A Revolving Commitments of all the Lenders.

“Tranche A Applicable Percentage” means, with respect to any Revolving Lender, (a) a percentage equal to a fraction, (i) the numerator of which is the aggregate Tranche A Revolving Commitment of such Revolving Lender and (ii) the denominator of which is the Tranche A Aggregate Commitment of all the Revolving Lenders (or, if the Tranche A Revolving Commitments have terminated or expired, the Tranche A Applicable Percentage shall be determined based upon such Revolving Lender’s share of the aggregate Tranche A Revolving Exposure).

“Tranche A Availability Conditions” shall be deemed to be satisfied only if:

- (a) the Tranche A Revolving Exposure of each Revolving Lender does not exceed such Revolving Lender’s Tranche A Revolving Commitment;
- (b) the aggregate Tranche A Revolving Exposure of all Revolving Lenders does not exceed the Tranche A Line Cap; and
- (c) the aggregate Canadian Borrower Outstandings do not exceed the Canadian Borrower Sublimit.

“Tranche A Availability Period” means the period from and including the Closing Date to the earliest of (i) the Maturity Date in respect of the Tranche A Revolving Loans, (ii) the date of termination of the Tranche A Revolving Commitments of each Revolving Lender pursuant to Section 2.09 and (iii) the date of termination of the Commitments of each Revolving Lender to make Tranche A Revolving Loans, the termination of the commitment of the Swingline Lender to make Swingline Loans and of the obligations of each Issuing Bank to issue Letters of Credit pursuant to Section 2.06.

“Tranche A Borrowing Base” means, at any time (without duplication), the sum of:

- (a) 90% of Eligible Credit Card Receivables of the Loan Parties, *plus*
- (b) 85% of Eligible Accounts that are not Investment Grade Eligible Accounts of the Loan Parties, *plus*
- (c) 90% of Eligible Accounts that are Investment Grade Eligible Accounts of the Loan Parties, *plus*
- (d) the lesser of (i) 75% of the cost (on a first-in, first-out basis) of Eligible Inventory (other than Eligible In-Transit Inventory, Eligible Retail Finished Goods Inventory and Eligible Raw Materials Inventory) of the Loan Parties and (ii) 85% of the NOLV Percentage of the Eligible Inventory (other than Eligible In-Transit Inventory, Eligible Retail Finished Goods Inventory and Eligible Raw Materials Inventory) of the Loan Parties, *plus*
- (e) 90% of the NOLV Percentage of Eligible Retail Finished Goods Inventory of the Loan Parties, *plus*
- (f) the lesser of (i) 75% of the lesser of cost (on a first-in, first-out basis) or market value of Eligible Raw Materials Inventory of the Loan Parties and (ii) 85% of the NOLV Percentage of Eligible Raw Materials Inventory of the Loan Parties, *plus*

“Tranche B-2 Revolving Lender” means each Lender with a Tranche B-1 Revolving Commitment or that holds a Tranche B-2 Revolving Loan.

“Tranche B-2 Revolving Loans” means the Last-Out Tranche of term loans funded (or deemed to have been funded) on the Closing Date by the Tranche B-2 Revolving Lenders.

“Transaction Costs” has the meaning specified in the definition of “Transactions”.

“Transactions” means the execution and delivery of the Loan Documents and the definitive documentation in respect of the DIP Term Loan Facility to be entered into on the Closing Date and the initial funding (or deemed funding) of the Facilities hereunder and the initial funding of the DIP Term Loan Facility on the Closing Date, together with each of the following transactions to be consummated in connection therewith:

- (a) the Refinancing; and
- (b) the payment of all fees, costs and expenses incurred in connection with the transactions described in the foregoing provisions of this definition (this clause (b), the “Transaction Costs”).

“Type” means, (a) with respect to a Loan, its character as a Base Rate Loan, Term SOFR Loan, Canadian Prime Rate Loan, Alternative Currency Daily Rate Loan or Alternative Currency Term Rate Loan, as applicable or (b) with respect to a Borrowing, its character as a Base Rate Borrowing, Term SOFR Borrowing, Canadian Prime Rate Borrowing, Alternative Currency Daily Rate Borrowing or Alternative Currency Term Rate Borrowing, as applicable.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Secured Parties’ security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“UCP” means the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time).

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

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

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

“Unrestricted Subsidiary” means any Subsidiary of the Lead Borrower listed on Schedule 1.01(e) hereto and any Subsidiary of any entity listed on Schedule 1.01(e) hereto. As of the Closing Date, there are no Unrestricted Subsidiaries, and during the term of the Facilities, there shall be no Unrestricted Subsidiaries.

“URS” means, collectively, URS-1 (Charleroi) LLC, a Delaware limited liability company and URS-2 (Corning) LLC, a Delaware limited liability company.

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

“US Loan Party” means any Loan Party that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“US Security Agreement” means, collectively, the US Security Agreement, dated as of the Closing Date, among Holdings, the Lead Borrower, each other US Loan Party and the Collateral Agent, as amended, amended and restated, supplemented or otherwise modified from time to time, together with each security agreement supplement executed and delivered by a US Loan Party pursuant to Section 6.11.

“US Subsidiary” means any Subsidiary of Holdings organized under the Laws of the United States, any state thereof or the District of Columbia.

“USA PATRIOT Act” has the meaning specified in Section 10.19.

“USD Equivalent” means (a) with respect to any amount denominated in Dollars, such amount and (b) with respect to any amount of any Alternative Currency, on any date, the amount of Dollars that may be purchased with such amount of Alternative Currency at the Exchange Rate (determined in respect of the most recent Revaluation Date or other relevant date of determination).

“Variance Report” has the meaning specified in Section 6.01(i).

~~“Variance Test Period” shall mean (i) initially, the first two weeks after the Petition Date, (ii) second, the first four week period after the Petition Date and (iii) thereafter, each rolling four week period ending two weeks after the prior Variance Test Period.~~

“Voting Stock” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors, managers or trustees, as applicable, of such Person.

“Wholly-Owned Subsidiary” means a Restricted Subsidiary, all of the Capital Stock of which (other than directors’ qualifying shares) is owned, directly or indirectly, by the Lead Borrower or another Wholly-Owned Subsidiary.

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

“Withholding Agent” means any Loan Party, the Administrative Agent and, in the case of any U.S. federal withholding Tax, any other applicable withholding agent.

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

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

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified or extended,

(a) (i)(A) Pre-Petition Tranche A Revolving Commitments in an aggregate amount equal to \$105,000,000 held by the Pre-Petition ABL Lenders as of the Petition Date are deemed to have been substituted and exchanged for Tranche A Revolving Commitments in such aggregate amount hereunder on and as of the Closing Date, (B) the Pre-Petition Outstanding Tranche A Revolving Loans in an aggregate amount equal to \$[●] are deemed to have been repaid by Tranche A Revolving Loans hereunder on and as of the Closing Date and such Tranche A Revolving Loans are deemed to have been funded on and as of the Closing Date, and constitute and are deemed to be Tranche A Revolving Loans hereunder allocated among the Tranche A Revolving Lenders based on their pro rata share of the Tranche A Revolving Commitments and (C) each Tranche A Revolving Lender agrees to make Tranche A Revolving Loans to the Borrowers from time to time during the Tranche A Availability Period denominated in Dollars, Canadian Dollars, British Pounds Sterling, Euros or Australian Dollars, as requested by the applicable Borrower pursuant to Section 2.02, in an aggregate principal amount not to exceed at any time outstanding the amount of such Lender's Tranche A Revolving Commitments; provided, that, after giving effect to any Revolving Borrowing of Tranche A Revolving Loans under this clause (i)(C), the Tranche A Availability Conditions would be satisfied; (ii)(A) Pre-Petition Tranche B-1 Revolving Commitments in an aggregate amount equal to \$12,000,000 held by the Pre-Petition ABL Lenders as of the Petition Date are deemed to have been substituted and exchanged for Tranche B-1 Revolving Commitments in such aggregate amount hereunder on and as of the Closing Date, (B) the Pre-Petition Outstanding Tranche B-1 Revolving Loans in an aggregate amount equal to \$[●] are deemed to have been repaid by Tranche B-1 Revolving Loans hereunder on and as of the Closing Date and the sum of such Tranche B-1 Revolving Loans are deemed to have been funded on and as of the Closing Date, and constitute and are deemed to be Tranche B-1 Revolving Loans hereunder allocated among the Tranche B-1 Revolving Lenders based on their pro rata share of the Tranche B-1 Revolving Commitments and (C) each Tranche B-1 Revolving Lender agrees to make Tranche B-1 Revolving Loans to the Borrowers from time to time during the Tranche B-1 Availability Period denominated in Dollars and Canadian Dollars as requested by the Borrowers pursuant to Section 2.02, in an aggregate principal amount not to exceed at any time outstanding the amount of such Tranche B-1 Revolving Lender's Tranche B-1 Revolving Commitments; provided, that, after giving effect to any Revolving Borrowing of Tranche B-1 Revolving Loans, the Tranche B-1 Availability Conditions would be satisfied; and (iii)(A) Pre-Petition Tranche B-2 Revolving Commitments in an aggregate amount equal to \$8,000,000 held by the Pre-Petition ABL Lenders as of the Petition Date are deemed to have been substituted and exchanged for Tranche B-2 Revolving Commitments in such aggregate amount hereunder on and as of the Closing Date, (B) the Pre-Petition Outstanding Tranche B-2 Revolving Loans in an aggregate amount equal to \$[●] are deemed to have been repaid by Tranche B-2 Revolving Loans hereunder on and as of the Closing Date and the sum of such Tranche B-2 Revolving Loans are deemed to have been funded on and as of the Closing Date, and constitute and are deemed to be Tranche B-2 Revolving Loans hereunder allocated among the Tranche B-2 Revolving Lenders based on their pro rata share of the Tranche B-2 Revolving Commitments and (C) each Tranche B-2 Revolving Lender agrees to make Tranche B-2 Revolving Loans to the Borrowers from time to time during the Tranche B-2 Availability Period denominated in Dollars and Canadian Dollars as requested by the Borrowers pursuant to Section 2.02, in an aggregate principal amount not to exceed at any time outstanding the amount of such Tranche B-2 Revolving Lender's Tranche B-1 Revolving Commitments; provided, that, after giving effect to any Revolving Borrowing of Tranche B-2 Revolving Loans, the Tranche B-2 Availability Conditions would be satisfied; and⁴

(b) within the limits of each Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under Section 2.01(a), prepay under Section 2.11 and re-borrow under Section 2.01(a). Loans denominated in Dollars may be Base Rate Loans or Term SOFR Loans. Loans denominated in British Pounds Sterling shall be Alternative Currency Daily Rate Loans. Loans denominated in Euros, Canadian Dollars and Australian Dollars shall be Alternative Currency Term Rate Loans; provided, that Loans denominated in Canadian Dollars may be Canadian Prime Rate Loans, but such Canadian Prime Rate Loans shall be available solely to the Canadian Borrower and only in the event that the Canadian Borrower is unable to request a Loan bearing interest at the CDOR Rate as a result of any of the circumstances set forth in Section 2.14(a).

⁴ BofA/Skadden to confirm amounts and update.

to an Alternative Currency Term Rate Borrowing denominated in the same Alternative Currency with an Interest Period of one (1) month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Revolving Lenders, so notifies the Borrowers, then, so long as an Event of Default is continuing, (i) no outstanding Borrowing made in Dollars may be converted to or continued as a Term SOFR Borrowing without the consent of the Required Revolving Lenders, (ii) unless repaid, each Term SOFR Borrowing shall be converted to a Base Rate Borrowing at the end of the Interest Period applicable thereto and (iii) each outstanding Borrowing made in an Alternative Currency shall be repaid.

Section 2.09 Reduction, Termination or Increase of Commitments.

(a) Unless previously terminated, all Tranche A Revolving Commitments, Tranche B-1 Revolving Commitments and Tranche B-2 Revolving Commitments shall terminate on the Maturity Date specified therefor. Unless previously terminated, the Commitments of any other Class shall automatically terminate on the Maturity Date specified therefor in the applicable Incremental Amendment.

(b) Commitment Reductions.

~~(+)~~ *Voluntary Commitment Reductions.* The Borrowers shall have the right, upon not less than three (3) Business Days' notice to the Administrative Agent, from time to time, to reduce the amount of the Commitments; provided that no such reduction of the Revolving Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans made on the effective date thereof, either (x) Revolving Exposure of all Revolving Lenders would exceed the Aggregate Commitments or (y) Tranche A Revolving Exposure, Tranche B-1 Revolving Exposure or Tranche B-2 Revolving Exposure would exceed the applicable Class of Commitments the Borrower has requested be reduced. Any such reduction shall be in an amount equal to \$1,000,000 whole multiple thereof and shall reduce permanently the Commitments then in effect; provided, that no Class of Tranche B Revolving Commitments may be reduced unless the Tranche A Revolving Commitments have been terminated in accordance with Section 2.09(c)(i). Each reduction of the Commitments under any Facility shall be made ratably among the Lenders under such Facility in accordance with their respective Commitments thereunder; provided that, with the prior consent of each of the Administrative Agent and the Required Revolving Lenders, reductions may be made to the Commitments of Defaulting Lenders without having to reduce the Commitments of the other Lenders.

~~(ii) [reserved].~~

(c) *Termination of Commitments.*

(i) The Lead Borrower may at any time terminate the Tranche A Revolving Commitments with respect to the Revolving Facility upon (i) the payment in full of all outstanding Tranche A Revolving Loans, together with accrued and unpaid interest thereon and on any Letters of Credit, (ii) the cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit (or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent) equal to 103% of the LC Exposure as of such date), (iii) the payment in full of the accrued and unpaid fees owing to the Tranche A Revolving Lenders in respect of their Tranche A Revolving Loans and Tranche A Revolving Commitments and (iv) the payment in full of all outstanding reimbursable expenses and other Loan Obligations together with accrued and unpaid interest thereon other than, in each case, amounts owing to the Tranche A Revolving Lenders in respect of their Tranche A Revolving Loans or Tranche A Revolving Commitments.

(ii) The Lead Borrower may at any time terminate the Tranche B-1 Revolving Commitments with respect to the Revolving Facility upon the satisfaction of (i) clauses (i)–(iv) set forth in Section 2.09(c)(i), (ii) the payment in full of all outstanding Tranche B-1 Revolving Loans, together with accrued and unpaid interest thereon, (iii) the payment in full of the accrued and unpaid fees in respect of the Tranche B-1 Revolving Loans and Tranche B-1 Revolving Commitments and (iv) the payment in full of all outstanding reimbursable expenses and other Loan Obligations together with accrued and unpaid interest thereon, in each case, owing to the Tranche B-1 Revolving Lenders in respect of their Tranche B-1 Revolving Loans or Tranche B-1 Revolving Commitments.

and the lien and security on such Term Priority Collateral securing the Pre-Petition Term Loan Facility (or any other valid, perfected, non-avoidable lien on such Term Priority Collateral securing such term facilities as of the Petition Date), which Liens shall be senior to the Liens securing the Pre-Petition ABL Credit Facility (the “Primed Liens”) and any Liens to which the Primed Liens are senior or rank *pari passu*, and which shall also prime any Liens granted after the commencement of the Cases to provide adequate protection Liens to the extent of any diminution in the value of the collateral of the Primed Liens as provided in the Orders in respect of any of the Primed Liens, subject in each case only to (1) Permitted Liens that are valid, binding, enforceable, perfected and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and that are not impaired, affected or modified by the Orders and/or that have priority after the Petition Date by operation of Law, (2) the Carve-Out and (3) and as otherwise set forth in the Orders (the “Priming Liens”) and with respect to perfection, solely to the extent it may be achieved by the entry of the Interim Order (and when applicable, the Final Order) and the perfection steps required to be taken under the Collateral Documents; it being agreed that such Collateral shall exclude claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code (collectively “Avoidance Actions”) but include, subject to the entry of the Final Order by the Bankruptcy Court, the proceeds thereof.

(b) The relative priorities of the Liens described in this Section 2.23 with respect to the Collateral shall be as set forth in the Orders, the ABL Intercreditor Agreement, ~~any other applicable Acceptable Intercreditor Agreement~~ and the other Collateral Documents. In accordance with the Interim Order (and when applicable, the Final Order) and the orders of the Canadian Court in the Canadian Recognition Proceedings, all of the Liens described in this Section 2.23 shall be effective and perfected upon entry of the Interim Order (and when applicable, the Final Order) and, in the case of Canadian Collateral, the granting of the orders of the Canadian Court in the Canadian Recognition Proceedings, without the necessity of the execution, recordation or filings by the Debtors of security agreements, control agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent of, or over, any Collateral, as set forth in the Orders.

ARTICLE III.

[RESERVED]

ARTICLE IV.

CONDITIONS PRECEDENT

Section 4.01 Conditions to Borrowing on the Closing Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder on the Closing Date is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent’s receipt of the following, each of which shall be originals delivered by mail or copies delivered by facsimile or electronic mail (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party and by the Administrative Agent and each in form and substance reasonably satisfactory to the Administrative Agent and its legal counsel:

(i) executed counterparts of this Agreement, the Guaranty and the Fee Letters;

(ii) the following:

(A) certificates, if any, representing the Pledged Equity referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank; and

(B) UCC and PPSA financing statements in appropriate form for filing under the UCC and the PPSA, as applicable; and

(C) subject to Section 6.18, evidence that all other actions, recordings and filings required by the Collateral Documents as of the Closing Date or that the Required

Revolving Lenders may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been taken, completed or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent and the Required Revolving Lenders;

(iii) (A) a copy of the certificate or articles of incorporation or organization, including all amendments thereto, of each Loan Party, certified, if applicable, as of a recent date by the Secretary of State or similar Governmental Authority of the jurisdiction of its organization, and a certificate as to the good standing (where relevant) of each Loan Party as of a recent date, from such Secretary of State or similar Governmental Authority and (B) a certificate of the Secretary or Assistant Secretary (or a director in lieu thereof) of each Loan Party, dated the Closing Date and certifying (i) that attached thereto is a true and complete copy of the by-laws, memorandum and articles of association, operating (or limited liability company) agreement or other equivalent Organization Documents of such Loan Party as in effect on the Closing Date, (ii) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors (or equivalent governing body) of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and, in the case of any Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (iii) that the certificate or articles of incorporation or organization of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of incorporation or organization furnished pursuant to clause (A) above, and (iv) as to the incumbency and specimen signature of each Responsible Officer executing any Loan Document on behalf of such Loan Party and countersigned by another officer as to the incumbency and specimen signature of the Secretary, Assistant Secretary or director of such Loan Party executing the certificate pursuant to clause (B) above.

(iv) the initial Approved Budget, in form and substance satisfactory to each Lender in its sole and absolute discretion;

(v) [reserved];

(vi) [reserved];

(vii) a certificate of a Responsible Officer of the Lead Borrower (x) confirming satisfaction of the conditions set forth in Sections 4.01(c), (e), (g), (h), (k), (l) and (m), and (y) attaching a copy of the DIP Term Loan Agreement and certifying the same to be true, complete and effective as of the Closing Date;

(viii) a Borrowing Base Certificate which calculates the Borrowing Base as of May 31, 2023 and evidence of satisfaction of the Tranche A Availability Conditions after giving pro forma effect to the Transactions that are consummated on the Closing Date;

(ix) a Borrowing Notice in accordance with the requirements hereof; and

(x) a properly completed letter of credit application if the issuance of a Letter of Credit will be required on the Closing Date.

~~(b) [Reserved].~~

(b) The Administrative Agent shall have received, at least one (1) Business Day prior to the Closing Date, (i) all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and Parts II.1 and XII.2 of the Criminal Code (Canada) (together, the “AML Legislation”) that has been reasonably requested at least two (2) Business Days in advance of the Closing Date and (ii) if any Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a certification regarding individual beneficial ownership solely to the extent required by the Beneficial Ownership Regulation in relation to such Borrower.

(c) The representations and warranties contained in Article V and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall have been true and correct in all material respects as of such earlier date; provided, however, that any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects after giving effect to such qualification.

(d) All fees required to be paid hereunder (including pursuant to Section 2.12(c)), and all costs and expenses invoiced on or prior to the Closing Date shall have been paid in full in cash or shall be paid on the Closing Date out of the initial Borrowing.

(e) Since the Petition Date, no event, change or condition has occurred that has had, or could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(f) Prior to or substantially concurrently with the initial extension of credit hereunder, the Refinancing shall have been consummated.

(g) No event shall have occurred and be continuing or would result from the making of the Loans on the Closing Date that would constitute an Event of Default or a Default.

(h) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases, and no Debtor shall have applied for, consented to or acquiesced in any such appointment.

(i) Aggregate Excess Availability shall be no less than \$25,000,000 after giving effect to the Transactions and any Credit Extension on the Closing Date.

(j) Prior to or substantially concurrently with the Closing Date, the definitive documentation in respect of the DIP Term Loan Facility, which shall be in form and substance acceptable to the Administrative Agent in its sole and absolute discretion, shall have been duly executed and the initial funding of the DIP Term Loan Facility in an aggregate principal amount of at least \$132,500,000 shall have occurred, and (i) the proceeds thereof shall be used to repay in full the \$55,000,000 principal amount of the Sponsor LC Reimbursement Note, together with all other amounts set forth in the payoff letter in respect thereof; and (ii) the remainder of such proceeds after giving effect to the repayment of the Sponsor LC Reimbursement Note in an amount equal to \$[●]⁵ shall be used to repay the Loan Obligations.

(k) The amount of the Loans made on the Closing Date shall not exceed the amount authorized by the Interim Order.

(l) The Interim Order Entry Date shall have occurred, and the Interim Order shall be in full force and effect.

(m) The Cases of any of the Debtors shall not have been dismissed or converted to cases under Chapter 7 of the Bankruptcy Code.

(n) The Pre-Petition ABL Agent shall have caused the full amount of the Sponsor LC to have been drawn prior to the Closing Date, and the Administrative Agent shall have received the proceeds drawn under the Sponsor LC from (or on behalf of) the Sponsor LC Issuing Bank and applied such proceeds to repay Pre-Petition Tranche A Revolving Loans.

(o) All of the “first day orders” entered by the Bankruptcy Court on or about the Petition Date or the Closing Date (and if any such orders shall have not been entered by the Bankruptcy Court, the form of

⁵ To be confirmed and updated.

(a) Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, each of the leases and subleases relating to the leased Real Property is valid and enforceable in accordance with its terms and is in full force and effect. Each of the Loan Parties and its Restricted Subsidiaries has good and marketable title to, or valid leasehold interests in, all its Real Property and personal property that is necessary for the operation of their respective business as currently conducted and as proposed to be conducted, except for Liens permitted by Section 7.01 and except where the failure to have such title would not reasonably be expected to have a Material Adverse Effect.

(b) Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) each Loan Party and its Restricted Subsidiaries owns, or is licensed or has the right to use, all Intellectual Property necessary to its business as currently conducted, (ii) to the Lead Borrower's knowledge, no written claim has been asserted and is pending by any Person challenging any Loan Party's use of any Intellectual Property or the validity or the enforceability of any Intellectual Property owned by any Loan Party and (iii) to the Lead Borrower's knowledge, neither any Borrower nor any Restricted Subsidiary is infringing, misappropriating, diluting or otherwise violating any Intellectual Property rights of any Person.

(c) Insurance. Schedule 5.08(c) sets forth a summary of all material insurance maintained by or on behalf of the Loan Parties and the Restricted Subsidiaries as of the Closing Date. As of the Closing Date, all premiums in respect of such insurance have been paid. The Lead Borrower and Holdings believe that the insurance maintained by or on behalf of the Loan Parties and the Restricted Subsidiaries is adequate.

Section 5.09 Compliance with Laws and Agreements. Unless stayed by the Cases, each Loan Party and its Restricted Subsidiaries is in compliance with all Requirements of Law applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 5.10 Taxes. Subject to the terms of the ~~Bankruptcy Court DIP~~ Orders and any required approval by the Bankruptcy Court, except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, each Loan Party and its Restricted Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and, subject to the terms of the Orders, has paid or caused to be paid all Taxes due and payable (including in its capacity as a withholding agent), except Taxes that are being contested in good faith by appropriate proceedings and, subject to the terms of the Orders, for which such Loan Party or such Restricted Subsidiary, as applicable, has established adequate reserves determined in accordance with GAAP or the payment of which is stayed by the Cases. The Lead Borrower and Holdings are not aware of any proposed Tax deficiencies or assessments that, in the aggregate, are material to the Loan Parties and their Restricted Subsidiaries, taken as a whole. There are no Liens for any material Taxes on any assets of any Loan Party or any of its Restricted Subsidiaries, other than Permitted Liens.

Section 5.11 ERISA Compliance.

(a) No ERISA Event, Canadian Pension Event or Foreign Benefit Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events or Foreign Benefit Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. Neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that would be subject to Section 4069 or 4212(c) of ERISA, except as would not reasonably be expected to result in a Material Adverse Effect. No Canadian Pension Termination Event has occurred or is reasonably expected to occur that, when taken together with all other such Canadian Pension Termination Events for which liability is reasonably expected to occur, would reasonably be expected to result in liability or obligation to pay in excess of the Threshold Amount.

(b) Except as would not reasonably be expected to have a Material Adverse Effect:

(i) All Canadian Pension Plans are, to the extent applicable, duly registered under the Income Tax Act (Canada), applicable pension standards legislation and any other applicable laws which require registration, and no event has occurred which would reasonably be expected to cause the loss of such registered status. The Canadian Pension Plans have each been administered, funded and invested in accordance with the terms of particular plan, its trust or funding agreement, all applicable laws

light of the circumstances when made and, if such pro forma and projected financial information was delivered prior to the Closing Date, as of the Closing Date.

Section 5.15 [Reserved].

Section 5.16 [Reserved].

Section 5.17 Security Interest in Collateral. Subject to the entry and terms of the Interim Order (and when applicable, the Final Order), the provisions of the Orders create legal and valid Liens on all the Collateral in favor of the Collateral Agent, for its benefit and the benefit of the other Secured Parties. The Collateral Documents further evidence the legal and valid Liens on all the Collateral in favor of the Collateral Agent, for its benefit and the benefit of the other Secured Parties. Such Liens, upon (i) the Interim Order Entry Date, (ii) the filing of financing statements in appropriate form describing the Collateral as “all assets” or using language of similar import or otherwise containing a reasonable description of the Collateral in the applicable filing offices, with respect to Collateral that may be perfected by the filing of a financing statement in such office, (ii) [reserved] or (iii) the obtaining of possession or “control” with respect to Collateral that may be perfected by possession or control, in each case, as applicable, will constitute perfected and continuing Liens on the Collateral securing the Secured Obligations, enforceable (subject to applicable bankruptcy, insolvency, reorganization, moratorium, capital impairment, recognition of judgments or other laws affecting creditors’ rights generally) against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except (a) Permitted Liens, to the extent any such liens would have priority over the Liens in favor of the Collateral Agent pursuant to the Orders (including, without limitation any Liens on Term Priority Collateral securing the DIP Term Loan Obligations permitted hereunder to the extent provided in the ABL Intercreditor Agreement, ~~any other applicable Acceptable Intercreditor Agreement~~ and the Orders); (b) Liens perfected only by possession or control to the extent the Collateral Agent has not obtained or does not maintain possession of such Collateral or has not established control over such Collateral, as applicable; and (c) Liens created pursuant to the Orders.

Section 5.18 Employment Matters. Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, there are no strikes, lockouts or slowdowns against any Loan Party or any Restricted Subsidiary pending or, to the knowledge of the Lead Borrower, threatened. The hours worked by and payments made to employees of the Loan Parties and the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, local or foreign law dealing with such matters except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, all payments due from any Loan Party or any Restricted Subsidiary, or for which any claim may be made against any Loan Party or any Restricted Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Loan Party or such Restricted Subsidiary.

Section 5.19 Anti-Terrorism Law. Each Loan Party and, to the knowledge of the Lead Borrower, their respective officers, directors, employees and agents are in compliance in all material respects with applicable Requirements of Law relating to terrorism or money laundering (“Anti-Terrorism Laws”), including applicable provisions of Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and the USA PATRIOT Act.

Section 5.20 Anti-Corruption Laws and Sanctions.

(a) The Lead Borrower has implemented and maintains in effect policies and procedures reasonably designed to promote compliance by the Lead Borrower and its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and Holdings, the Lead Borrower, its Subsidiaries and their respective officers and employees and, to the knowledge of Holdings or the Lead Borrower, their respective directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (i) Holdings, the Lead Borrower, any Subsidiary or any of their respective directors or officers, or (ii) to the knowledge of Holdings or the Lead Borrower, any employee or agent of Holdings, the Lead Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person.

(b) No Borrowing or Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will violate, any Anti-Corruption Law or applicable Sanctions. This Section 5.20 shall not be interpreted or applied in relation to any Canadian Loan Party or any Subsidiary of a Canadian Loan Party to the extent that the representations made under this Section 5.20 violate, or would result in a breach of, the Foreign Extraterritorial Measures Act (Canada).

Section 5.21 Orders.

(a) The Interim Order (and when applicable, the Final Order) is, following the entry thereof, effective to (i) cause the Secured Obligations to be Superpriority Claims, having the status and priority set forth in Section 2.23 the Interim Order (and when applicable, the Final Order), subject to the Carve-Out in all respects, and (ii) create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable perfected first priority security interest (in accordance with the priorities set forth in Section 2.23 the Interim Order (and when applicable, the Final Order)) in the Collateral without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements or documents.

(b) The Interim Order (and when applicable, the Final Order) is in full force and effect, and has not been vacated, reversed, terminated, stayed, modified or amended in any manner without the consent of the Administrative Agent (with the consent of the Required Revolving Lenders) in its sole and absolute discretion.

(c) Upon the occurrence of the Maturity Date (whether by acceleration or otherwise), the Administrative Agent shall, subject to Article VIII and the applicable provisions of the Interim Order (and when applicable, the Final Order), be entitled to immediate payment of the Loan Obligations and to enforce the remedies provided for under this Agreement and the other Loan Documents in accordance with the terms hereof and thereof, in each case without further application to or order by the Bankruptcy Court.

(d) If the Interim Order (and when applicable, the Final Order) is the subject of a pending appeal in any respect, none of the Interim Order (and when applicable, the Final Order), the extension of credit or the performance by any Loan Party of any of its obligations under this Agreement or any of the other Loan Documents shall be the subject of a presently effective stay pending appeal. The Debtors, the Administrative Agent and the Lenders shall be entitled to rely in good faith upon the Interim Order (and when applicable, the Final Order), notwithstanding objection thereto or appeal therefrom by any interested party. The Debtors, the Administrative Agent and the Lenders shall be permitted and required to perform their respective obligations in compliance with the Loan Documents notwithstanding any such objection or appeal, unless the Interim Order (and when applicable, the Final Order) has been stayed by a court of competent jurisdiction.

Section 5.22 Appointment of Trustee or Examiner; Liquidation. No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases, and no Debtor shall have applied for, consented to or acquiesced in any such appointment. No order has been entered in any of the Cases to convert any of the Cases to a case under Chapter 7 of the Bankruptcy Code or to dismiss any of the Cases.

Section 5.23 Approved Budget and Variance Reports. The then-applicable Approved Budget was prepared in good faith upon assumptions that the Lead Borrower believed to be reasonable assumptions on the date of delivery of the then-applicable Approved Budget. To the knowledge of the Lead Borrower, no facts exist that (individually or in the aggregate) would result in any material change in the then-applicable Approved Budget. On and after the delivery of any Variance Report in accordance with this Agreement, such Variance Report fairly represents, in all material respects, the information covered thereby.

Section 5.24 Adverse Proceedings. Other than the Cases, there are no material unstayed Adverse Proceedings now pending or threatened or affecting Holdings, the Borrowers, the Subsidiary Guarantors or any of their respective Subsidiaries before any court, Governmental Authority or arbitrator.

ARTICLE VI.

AFFIRMATIVE COVENANTS

Until the Termination Date, except as expressly directed otherwise by the Orders, (i) Holdings shall (with respect to Sections 6.04 and 6.05(a) only) and (ii) the Lead Borrower shall, and the Lead Borrower shall cause (except in the case of the covenants set forth in Section 6.01, 6.02 and 6.03) each Restricted Subsidiary to:

Section 6.01 Financial Statements; Borrowing Bases and Other Information. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) within one hundred twenty (120) days after the end of each fiscal year of the Lead Borrower (beginning with the fiscal year ending December 31, 2023), its audited consolidated balance sheet and related statements of income, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, together with a management's discussion and analysis of such financial information in the form customarily prepared by the Lead Borrower, all reported on by independent public accountants of recognized national standing to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Lead Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, accompanied by any management letter prepared by said accountants. Notwithstanding the foregoing, in the event that the Lead Borrower delivers an annual report on Form 10-K for such fiscal year the Lead Borrower will be deemed to have delivered the financial statements required by this clause (a) on the date of such filing;

(b) (i) within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Lead Borrower (beginning with the fiscal quarter ended on June 30, 2023), its consolidated balance sheet and related statements of income, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, together with a customary management's discussion and analysis of such financial information in the form customarily prepared by the Lead Borrower, all certified by a Responsible Officer of the Lead Borrower as presenting fairly in all material respects the financial condition and results of operations of the Lead Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes; and (ii) within thirty (30) calendar days after the end of each fiscal month (or, in the case of the third fiscal month of any fiscal quarter, no later than the date on which consolidated financial statements for such fiscal quarter are required to be delivered pursuant to Section 6.01(a) or 6.01(b)(i), as applicable) of the Lead Borrower (beginning with the first full fiscal month ending after the Closing Date), its consolidated balance sheet and its related statements of income, stockholders' equity and cash flows as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, together with a reconciliation of Consolidated Net Income to Consolidated EBITDA (as such terms are defined in the Pre-Petition ABL Credit Agreement) for the trailing 12-month period ending with such fiscal month, in each case in form reasonably acceptable to the Administrative Agent. Notwithstanding the foregoing, in the event that the Lead Borrower delivers a quarterly report on Form 10-Q for such fiscal quarter, the Lead Borrower will be deemed to have delivered the financial statements required by clause (b)(i) on the date of such filing;

(c) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(a) and 6.01(b), statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements;

~~(d) on the last Business Day of each four week period after the Closing Date, an updated Approved Budget satisfactory to the Administrative Agent (with the consent of the Required Revolving Lenders) in its sole and absolute discretion; provided that the failure of such updated Approved Budget to be satisfactory to the Administrative Agent shall not be deemed to be a violation of this Section 6.01(d) and no Default or Event of Default shall result from the rejection by the Administrative Agent of such updated Approved Budget; provided further that for the avoidance of doubt, the most recently effective Approved Budget shall continue to constitute the Approved Budget for purpose of this Agreement; provided further that such rejection by the Administrative Agent~~

~~shall result in an Event of Default two Business Days prior to the commencement of a weekly period that is not included in the most recently effective Approved Budget;~~

(d) on Wednesday of each week following the Petition Date (prior to 11:59 p.m.), commencing with Wednesday, June 21, 2023, an updated budget (in the form of the Approved Budget), which shall become the Approved Budget upon approval in accordance with the definition thereof;

(e) within three (3) Business Days after the end of each calendar week, a Borrowing Base Certificate which calculates the Aggregate Borrowing Base, the Tranche A Borrowing Base, the Tranche B-1 Borrowing Base and the Tranche B-2 Borrowing Base, and if requested by the Administrative Agent in its Permitted Discretion, supporting information in connection therewith, together with any additional reports with respect to the Borrowing Base as the Administrative Agent may reasonably request, in its Permitted Discretion; provided that for Borrowing Base Certificates delivered prior to July 15, 2023, the certificates shall be the prior month-end Borrowing Base Certificate, updated to include a roll-forward of Accounts and such other information as mutually agreed between the Lead Borrower and the Administrative Agent. In addition, in the event that a Loan Party consummates an Asset Disposition that results in the disposition of ABL Priority Collateral included in the Aggregate Borrowing Base with a value (as reasonably determined by the Lead Borrower) in excess of 10% of the Aggregate Borrowing Base at such time, the Lead Borrower shall deliver an updated Borrowing Base Certificate promptly after the consummation of such disposition;

(f) if requested by the Administrative Agent, in its Permitted Discretion, as soon as available but in any event within 20 calendar days after the end of the calendar month in which the Administrative Agent makes such a request (or such other time as the Administrative Agent may reasonably request), as of the period then ended, all delivered in a manner reasonably acceptable to the Administrative Agent:

(i) a detailed aging of the Accounts of each Loan Party (1) including lists of all invoices aged by invoice date and due date (with an explanation of the terms offered) and (2) reconciled to the Borrowing Base Certificate delivered as of such date prepared in a manner reasonably acceptable to the Administrative Agent, together with a summary specifying the balance due for each Account Debtor;

(ii) a schedule detailing the Inventory of each Loan Party, in form reasonably satisfactory to the Administrative Agent, (1) by location (showing Inventory in transit, any Inventory located with a third party under any consignment, bailee arrangement, or warehouse agreement), by class (raw material, work-in-process and finished goods), by product type, and by volume on hand, and adjusted for Reserves as the Administrative Agent has previously indicated to the Lead Borrower are deemed by the Administrative Agent to be appropriate, (2) including a report of any variances or other results of Inventory counts performed by each Loan Party since the last Inventory schedule (including information regarding sales or other reductions, additions, returns, credits issued by each Loan Party and complaints and claims made against the Lead Borrower), and (3) reconciled to the Borrowing Base Certificate delivered as of such date;

(iii) a worksheet of calculations prepared by each Loan Party to determine Eligible Credit Card Receivables, Eligible Accounts, Investment Grade Eligible Accounts, Eligible Inventory, Eligible In-Transit Inventory, Eligible Raw Material Inventory and Eligible Retail Finished Goods Inventory, such worksheets detailing the applicable Credit Card Receivables, Accounts and Inventory excluded from Eligible Credit Card Receivables, Eligible Accounts, Investment Grade Eligible Accounts, Eligible Inventory, Eligible In-Transit Inventory, Eligible Raw Material Inventory and Eligible Retail Finished Goods Inventory and the reason for such exclusion;

(iv) a reconciliation of the Credit Card Receivables, Accounts, Inventory, In-Transit Inventory, Raw Material Inventory, Retail Finished Goods Inventory of each Loan Party between the amounts shown in the Lead Borrower's general ledger and financial statements and the reports delivered pursuant to clauses (i) and (ii) above; and

(v) a reconciliation of the loan balance per the Lead Borrower's general ledger to the loan balances under this Agreement;

(g) if requested by the Administrative Agent, in its Permitted Discretion, as soon as available but in any event within 20 calendar days after the end of the calendar month in which the Administrative Agent makes such a request (or such other time as the Administrative Agent may reasonably request), as of the period then ended, a schedule and aging of the Lead Borrower's and the other Loan Parties' accounts payable, delivered in a manner reasonably acceptable to the Administrative Agent;

(h) promptly upon the Administrative Agent's request:

(i) copies of invoices in connection with the invoices issued by any Loan Party in connection with any Accounts, credit memos, shipping and delivery documents, and other information related thereto;

(ii) copies of purchase orders, invoices, and shipping and delivery documents in connection with any Inventory purchased by any Loan Party;

(iii) a schedule detailing the balance of all intercompany accounts of the Loan Parties;

(i) on Wednesday of each week following the Petition Date (prior to 11:59 p.m.), commencing with Wednesday of the first full week following the Petition Date, the Lead Borrower shall deliver to the Administrative Agent and the Lenders a budget variance report in ~~a form reasonably satisfactory to the Required Revolving Lenders~~ substantially the form of Exhibit K hereto (each, a "Variance Report") describing in reasonable detail the Loan Parties and their Subsidiaries' aggregate cash receipts and aggregate cash disbursements during the relevant Budget Testing Period, ~~taken together with the aggregate cash disbursements during each prior~~ (or, prior to the completion of any applicable Budget Testing Period, for each full fiscal week completed after the Petition Date and prior to the date of such delivery) as compared to the projected, aggregate cash receipts and disbursements provided ~~in each by the then-current~~ in effect for each such respective Budget Testing Period for the period commencing on the Closing Date and ending on the last day of the relevant Budget Test Period for the same period;

(j) if requested by the Administrative Agent, in its Permitted Discretion, as soon as available but in any event within three (3) Business Days after the end of each calendar week in which the Administrative Agent makes such a request, as of the period then ended, each Loan Party's sales journal, cash receipts journal (identifying trade and non-trade cash receipts) and debit memo/credit memo journal; and

(k) promptly upon delivery thereof to the DIP Term Loan Agent, copies of all financial statements, proxy statements, notices and reports that Holdings, the Borrowers or any Subsidiary shall deliver to the DIP Term Loan Agent or lenders under the DIP Term Loan Agreement (in each case to the extent not theretofore delivered to the Administrative Agent pursuant to this Agreement).

Additionally, not later than thirty (30) calendar days after delivery of both the financial information contemplated by Section 6.01(a) and the financial information contemplated by Section 6.01(d) (or such later date as the Administrative Agent may reasonably agree), at a time to be mutually agreed, the Lead Borrower will hold and participate in an annual conference call for Lenders to discuss the financial information delivered pursuant to Section 6.01(a) and Section 6.01(d).

Notwithstanding the foregoing, the obligations in clauses (a) and (b) of this Section 6.01 may be satisfied with respect to financial information of the Lead Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any direct or indirect parent of the Lead Borrower that holds all of the Equity Interests of the Lead Borrower or (B) the Lead Borrower's (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, with respect to each of clauses (A) and (B), (1) to the extent such information relates to a parent of the Lead Borrower, such information is accompanied by consolidating information that explains in reasonable detail the differences (if any) between the information relating to such parent, on the one hand, and the information relating to the Lead Borrower and the Restricted Subsidiaries on a stand-alone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 6.01(a), such financial statements are audited and accompanied by a report and opinion of

being filed) on behalf of any of the Debtors with the Bankruptcy Court or the Canadian Court or (B) at the same time as such documents are provided by any of the Debtors to any statutory committee appointed in the Cases or the U.S. Trustee, all other notices, filings, motions, pleadings or other information concerning the financial condition of the Borrower or any of its Subsidiaries or other Indebtedness of the Loan Parties or any request for relief under Section 363, 365, 1113 or 1114 of the Bankruptcy Code or Section 9019 of the Federal Rules of Bankruptcy Procedure or Part IV of the CCAA, in each case, other than notices, filings, motions, pleadings or other information concerning less than \$~~1,000,000~~ in value;

(h) as promptly as practicable following any request from the Administrative Agent therefor, such other reasonably available information regarding the operations, business affairs and financial condition of Holdings or any Subsidiary, as the Administrative Agent may reasonably request (for itself or on behalf of any Lender); provided that (x) such financial information is of a type customarily provided to lenders in similar syndicated credit facilities and (y) none of Holdings, the Lead Borrower or any Restricted Subsidiary shall be required to disclose or provide any information (i) that constitutes non-financial trade secrets or non-financial proprietary information of Holdings, the Lead Borrower or any of their respective Subsidiaries or any of their respective customers and/or suppliers, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective representatives) is prohibited by any applicable Requirements of Law, (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product or (iv) in respect of which Holdings, the Lead Borrower or any Restricted Subsidiary owes confidentiality obligations to any third party); provided, that in the event Holdings, the Lead Borrower or any Restricted Subsidiary does not provide information in reliance on the foregoing proviso, the Lead Borrower shall provide notice to the Administrative Agent that such information is being withheld (but solely to the extent both feasible and permitted under applicable Requirements of Law or confidentiality obligation, or without waiving such privilege, as applicable) and the Lead Borrower shall use commercially reasonable efforts to describe the applicable information withheld pursuant to clause (ii), (iii) or (iv) above to the extent both feasible and permitted under applicable Requirements of Law or confidentiality obligation, or without waiving such privilege, as applicable; and

(i) by July 27, 2023 (or such later date as the Administrative Agent may agree in its sole discretion), the Debtors shall have delivered to the Administrative Agent a budget showing the anticipated costs and expenses associated with a wind-down of the Debtors and their Subsidiaries.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(a) or (b) may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which any Borrower posts such documents, or provides a link thereto on such Borrower's website on the Internet at the website address listed on Schedule 10.01; or (ii) on which such documents are posted on such Borrower's behalf on IntraLinks or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) upon written request by the Administrative Agent, the Borrowers shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Lead Borrower shall notify (which may be by facsimile or through the Platform) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents and the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Holdings or the Borrowers with any such request for delivery.

The Borrowers hereby acknowledge that (i) the Administrative Agent and the Arrangers, may make available to the Lenders the Borrower Materials by posting the Borrower Materials on IntraLinksTM, DebtDomain, SyndTrak, ClearPar or another similar electronic system (the "Platform") and (ii) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Lead Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrowers hereby agree that: (w) all the Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear

(g) (i) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any Adverse Proceeding not previously disclosed in writing by the Lead Borrower to the Administrative Agent, or (ii) any material development in any Adverse Proceeding that would reasonably be expected to be adversely determined and that, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or that seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby;

(h) receipt of (and copy of) any proposal or indication of interest for the restructuring or recapitalization of any Debtor or any Subsidiary or the sale of all or any of any Debtor's or any Subsidiary's assets or businesses; and

(i) any motion for the appointment of a trustee or examiner.

Each notice delivered under this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 6.04 Payment of Taxes. Subject to the terms of the Orders and any required approval by the Bankruptcy Court, pay or discharge all Taxes (in the case of any such Person that is a Debtor, solely to the extent arising after the Petition Date), before the same shall become delinquent or in default, except (a) where the validity or amount thereof is being contested in good faith by appropriate proceedings and where such Loan Party or such Restricted Subsidiary has set aside on its books adequate reserves with respect thereto if and to the extent required by GAAP or (b) as would not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 6.05 Existence; Conduct of Business. (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, qualifications, licenses, permits, franchises, governmental authorizations, Intellectual Property rights, licenses and permits material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, in each case, except as would not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under Section 7.04 and (b) carry on and conduct its business in substantially the same fields of enterprise as it is conducted as of the Closing Date or enterprises reasonably similar, ancillary, incidental or reasonably related, corollary, complementary or synergistic thereto or reasonable expansions or extensions thereof.

Section 6.06 Maintenance of Properties. Except as would not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear and casualty and condemnation excepted.

Section 6.07 Insurance. ~~Subject to Section 6.18,~~ the Lead Borrower will maintain or cause to be maintained, in each case, as determined by the Lead Borrower in good faith, with financially sound and reputable insurers, such insurance coverage in respect of all of its material Property 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 (giving effect to self-insurance) and otherwise on such terms and conditions as shall be customary for such Persons. All such insurance shall, to the extent customary (but in any event, not including business interruption insurance and personal injury insurance) (i) provide that no cancellation thereof shall be effective until at least 10 days after receipt by the Collateral Agent of written notice thereof (or such shorter period as the Collateral Agent may agree in its sole discretion) and (ii) name the Collateral Agent as an additional insured party or lenders loss payee, as applicable.

Section 6.08 Compliance with Laws. Except as otherwise excused by the Bankruptcy Code with respect to any Loan Party that is a Debtor or as would not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, comply with all Requirements of Law (including ERISA and Environmental Laws) applicable to it or its property.

Administrative Agent may agree in its reasonable discretion). Notwithstanding anything contained in this Agreement to the contrary, no mortgage shall be executed and delivered (and the Loan Parties shall have no obligation to execute and deliver a mortgage) to the Collateral Agent with respect to any Real Property.

Section 6.14 Use of Proceeds. Use Letters of Credit and the proceeds of the Loans (a) on the Closing Date (i) to consummate the Refinancing and (ii) to pay fees, costs and expenses incurred in connection with the Transactions and other administration costs incurred in connection with the Cases and (b) on and after the Closing Date, for operating expenses, working capital needs of the Lead Borrower and its Subsidiaries (including any purpose not prohibited by the terms of the Loan Documents or the Orders) and other general corporate purposes. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Board, including Regulations T, U and X. No part of the proceeds of any Loan will be used or applied, whether directly or indirectly, in violation of any Anti-Corruption Laws or Sanctions.

Section 6.15 USA PATRIOT Act; Sanctions, etc. Promptly provide following a request by the Administrative Agent or any Lender, all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable “know your customer” and AML Legislation. Additionally (i) comply in all material respects with Anti-Corruption Laws, Sanctions and Anti-Terrorism Laws applicable to it and its property and (ii) maintain in effect policies and procedures reasonably designed to ensure compliance by the Lead Borrower and its Subsidiaries and their respective directors, officers, employees and agents with Sanctions, Anti-Corruption Laws and Anti-Terrorism Laws applicable to it and its property. Notwithstanding the foregoing, the requirements set forth in this Section 6.15, as they pertain to compliance by any Foreign Subsidiary with Sanctions are subject to and limited by any Requirements of Law applicable to such Foreign Subsidiary in its relevant local jurisdiction.

Section 6.16 Further Assurances. Without limiting the foregoing, subject to ~~each Acceptable~~ the ABL Intercreditor Agreement and the Orders, but in each case only to the extent required pursuant to the Collateral and Guarantee Requirement, cause each Loan Party to execute and deliver, or cause to be executed and delivered, to the Collateral Agent such documents, agreements and instruments, or take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings and other documents and such other actions or deliveries of the type required by Section 4.01), which may be required by Law or which the Collateral 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 at the expense of the applicable Loan Party. In addition, from and after the Closing Date, the Loan Parties shall use commercially reasonable efforts to cooperate with the Administrative Agent in connection with collateral diligence, field examinations and inventory appraisals with respect to assets to become “Collateral” hereunder that are of a type that is included in the Aggregate Borrowing Base (the “Foreign Availability Assets”); provided that from and after the Closing Date to the date the Foreign Availability Assets become Collateral (unless the Administrative Agent otherwise consents pursuant to the last sentence of this Section 6.16), neither the Lead Borrower nor any of its Restricted Subsidiaries shall enter into any agreement to Incur or suffer to exist any Lien upon such Foreign Availability Assets in favor of any holder of Indebtedness for borrowed money, in each case other than (x) pursuant to the Loan Documents or (y) to the extent securing DIP Term Loan Obligations; provided that in the case of this clause (y), any such Liens granted by the Lead Borrower or the Guarantors on any such Foreign Availability Assets of the type that would otherwise constitute ABL Priority Collateral shall be junior to the Liens securing the Loan Obligations pursuant to the ABL Intercreditor Agreement ~~or another Acceptable Intercreditor Agreement.~~

Section 6.17 Inventory Appraisals and Field Examinations. At any time that the Administrative Agent requests, the Borrowers and the Restricted Subsidiaries will allow the Administrative Agent, at the sole expense of the Loan Parties, to conduct, or engage a third party to conduct, field examinations and inventory appraisals (or updates thereof) during normal business hours to ensure the adequacy of Collateral included in a Borrowing Base and related reporting and control systems; provided that the Administrative Agent shall conduct only two such inventory appraisals and two such field examinations in any calendar year, except that (i) if an Event of Default shall have occurred and be continuing, the Administrative Agent may conduct such field examinations and appraisals as the Administrative Agent may deem reasonably necessary and (ii) if any Loan Party shall have consummated any acquisition of assets to be included in the Aggregate Borrowing Base, any relevant inventory appraisal and field examination shall, in each case, be at the sole expense of the Loan Parties. For purposes of the

Section 6.23 Certain Bankruptcy Matters. Comply in a timely manner with their obligations and responsibilities as debtors in possession under the Bankruptcy Code and the CCAA and any other order of the Bankruptcy Court or the Canadian Court.

ARTICLE VII.

NEGATIVE COVENANTS

Until the Termination Date, unless the Required Revolving Lenders shall otherwise consent in writing:

Section 7.01 Liens. Except as expressly directed otherwise by the Orders, the Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur or suffer to exist any Lien upon any of its property or assets (including Capital Stock of Restricted Subsidiaries), whether owned on the Closing Date or acquired after that date, other than the following (the Liens identified in clause (a) through clause (vv) below, collectively, "Permitted Liens"):

(a) Liens securing Indebtedness under any DIP Term Loan Facility (and any Refinancing Indebtedness in respect thereof) permitted to be incurred pursuant to Section 7.03(a)(2), Hedging Obligations owing to agents or lenders (or their Affiliates) under such DIP Term Loan Facility (and any Refinancing Indebtedness in respect thereof) and related banking services and cash management obligations owing to agents or lenders (or their Affiliates) under such DIP Term Loan Facility (and any Refinancing Indebtedness in respect thereof) and Liens on assets of Restricted Subsidiaries securing guarantees of Indebtedness and other obligations of the Lead Borrower under such DIP Term Loan Facility (and any Refinancing Indebtedness in respect thereof) permitted to be incurred pursuant to Section 7.03(a)(2); provided that in the case of any such Liens granted by the Lead Borrower or the Guarantors on any ABL Priority Collateral, such Liens shall be junior to the Liens securing the Secured Obligations pursuant to the ABL Intercreditor Agreement ~~or another an Acceptable Intercreditor Agreement~~ and the Orders;

(b) (i) pledges or deposits by such Person under workers' compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness), liability to insurance carriers, letters of intent or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety, release or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import or customs duties or for the payment of rent, in each case Incurred in the ordinary course of business or (ii) to provide "adequate assurance of payment" as that term is used in Section 366 of the Bankruptcy Code, in each case, to the extent permitted by an order of the Bankruptcy Court;

(c) Liens imposed by law, such as carriers', warehousemen's, builder's, materialmen's, workers', repairmen's and mechanics' Liens, in each case for sums not yet overdue for a period of more than 60 days or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP and Incurred in the ordinary course of business;

(d) Liens for Taxes, assessments or other governmental charges (i) not yet overdue for a period of more than 30 days or not yet payable or subject to penalties for nonpayment or (ii) that are being contested in good faith by appropriate proceedings diligently conducted for which appropriate reserves required pursuant to GAAP have been made in respect thereof;

(e) Liens in favor of issuers of surety or performance bonds or letters of credit, bank guarantees, or bankers' acceptances or similar documents or instruments issued pursuant to the request of and for the account of such Person in the ordinary course of its business;

(f) survey exceptions, encumbrances, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, defects or irregularities in title and similar encumbrances) as to the use of Real Property or liens incidental to the conduct of the business of such Person or to

(p) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Holdings, the Lead Borrower or its Restricted Subsidiaries in the ordinary course of business;

(q) [reserved];

(r) Liens securing Refinancing Indebtedness Incurred to refinance, refund, replace, amend, extend or modify, as a whole or in part, Indebtedness that was previously so secured; provided that (1) any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced and (2) any Liens securing any Refinancing Indebtedness that is secured by any or all of the Collateral shall be subject to ~~each applicable Acceptable~~ the ABL Intercreditor Agreement and the Orders and shall have no more senior priority than the Lien securing the Indebtedness that such Refinancing Indebtedness refinanced, refunded, replaced, amended, extended or modified;

(s) any interest or title of a lessor or sublessor under any Capitalized Lease Obligation, operating lease or sublease;

(t) Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of Holdings, the Lead Borrower or another Loan Party in respect of Indebtedness to or other obligations owed by such Restricted Subsidiary to such Loan Party; provided that such Indebtedness or obligations are permitted under Section 7.03;

(u) Liens securing the Secured Obligations;

(v) the reservation in any original grants from any Governmental Authority of any land or interest therein and statutory exceptions to title;

(w) securities to public utilities or to any Governmental Authority when required by the utility or other authority in connection with the supply of services or utilities;

(x) servicing agreements, developing agreements, site plan agreements and other agreements with Governmental Authorities pertaining to the use or development of any of the assets of the Person; provided the same are complied with in all material respects and do not materially interfere with the use of such assets in the operation of the business of such Person;

(y) Liens arising from the right of distress enjoyed by landlords or Liens otherwise granted to landlords (including, without limitation, Liens over rent deposits), in either case, to secure the payment of arrears of rent in respect of leased properties;

(z) [reserved];

(aa) any Lien consisting of rights reserved to or vested in any Governmental Authority by any statutory provision;

(bb) (i) contractual Liens of suppliers (including sellers of goods) to the extent limited to property or assets relating to such contract, and (ii) contractual or statutory Liens of governmental or other customers to the extent limited to the property or assets relating to such contract;

(cc) any (i) customary restriction on the transfer of licensed Intellectual Property rights and (ii) customary provision in any agreement that restricts the assignment of such agreement or any Intellectual Property rights licensed thereunder;

(dd) Liens deemed to exist in connection with Investments permitted hereunder in repurchase agreements for Cash Equivalents;

(ee) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto to the extent permitted hereunder;

(ff) Liens arising under Precious Metals Leases; provided that such Liens only attach to the property being leased thereunder;

(gg) Liens on the proceeds of Escrow Debt and any cash deposits to pay interest in respect thereof, securing the applicable Escrow Debt;

(hh) Liens (i) on Equity Interests in Joint Ventures; provided such Liens secure Indebtedness or other obligations of such Joint Venture, (ii) consisting of customary rights of first refusal and tag, drag and similar rights in Joint Venture agreements and agreements with respect to non-Wholly-Owned Subsidiaries and (iii) consisting of any encumbrance or restriction (including put and call arrangements) in favor of a Joint Venture party with respect to Equity Interests of, or assets owned by, any Joint Venture or similar arrangement pursuant to any joint venture or similar agreement;

(ii) Liens on assets and capital stock of Restricted Subsidiaries that are not Loan Parties (including capital stock owned by such Persons) securing Indebtedness or other obligations of Restricted Subsidiaries that are not Loan Parties permitted pursuant to Section 7.03;

(jj) [reserved];

(kk) Liens on cash, Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Indebtedness to the extent such defeasance, discharge or redemption is not prohibited by the Loan Documents;

(ll) Liens that are customary contractual rights of setoff (i) relating to pooled deposit or sweep accounts of the Lead Borrower or any of the Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or (ii) relating to purchase orders and other agreements entered into with customers of the Lead Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(mm) Liens in favor of a commodity, brokerage or security intermediary who holds a commodity, brokerage or, as applicable, a security account on behalf of the Lead Borrower or a Restricted Subsidiary; provided such Lien encumbers only the related account and the property held therein;

(nn) subject to Section 6.16, Liens on assets of Foreign Subsidiaries securing Indebtedness and other obligations of Foreign Subsidiaries permitted pursuant to Section 7.03; provided that any such Lien may not extend to any property of a Loan Party or any Restricted Subsidiary that is a Domestic Subsidiary;

(oo) Liens on cash collateral, backstop letters of credit and other credit support for letters of credit permitted hereunder;

(pp) with respect to leased Real Property, Liens to which the fee or other superior interest in such Real Property is subject;

(qq) Liens disclosed by the Mortgage Policies (as defined under the DIP Term Loan Facility) and any replacement, extension or renewal of any such Lien; provided that such replacement, extension or renewal Lien shall not cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal; provided, further, that the Indebtedness and other obligations secured by such replacement, extension or renewal Lien are permitted by this Agreement;

(rr) Liens securing Indebtedness permitted to be incurred pursuant to Section 7.03(a)(27), so long as such Liens are ~~junior to the Liens securing the Secured~~ subordinated in right of priority and payment to the Loan Obligations on terms and subject to documentation satisfactory to the Required Revolving Lenders; and

(ss) (i) Liens pursuant to any Prepetition Document, (ii) Liens pursuant to any Loan Document, (iii) the ~~Carve-Out~~ Carve-Out and (iv) Liens granted as adequate protection pursuant to the ~~Bankruptcy Court DIP~~ Orders;

~~(tt) Liens on assets that are not Collateral; and~~

~~(uu) other Liens with respect to property or assets of the Lead Borrower or any Restricted Subsidiary securing obligations in an aggregate outstanding principal amount that, immediately after giving effect to the incurrence of such Liens, would not exceed \$1,000,000; provided that, at the election of the Lead Borrower with respect to any such Liens on Collateral that are secured on a junior priority basis to the Loan Obligations, the holders of such Indebtedness (or a representative thereof) may become party to one or more Acceptable Intercreditor Agreements; provided further that, if such Liens attach to ABL Priority Collateral, such Liens shall be junior to the Liens securing the Loan Obligations pursuant to the ABL Intercreditor Agreement or another Acceptable Intercreditor Agreement.~~

For purposes of determining compliance with this Section 7.01, (A) a Lien securing an item of Indebtedness need not be permitted solely by reference to one category of Permitted Liens (or any portion thereof) described in Sections 7.01(a) through (vv) but may be permitted in part under any combination thereof and (B) in the event that a Lien securing an item of Indebtedness (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens (or any portion thereof) described in Sections 7.01(a) through (vv), the Lead Borrower may, in its sole discretion, classify or reclassify, or later divide, classify or reclassify (as if incurred at such later time), such Lien securing such item of Indebtedness (or any portion thereof) in any manner that complies with this Section 7.01 and at the time of incurrence, classification or reclassification will be entitled to only include the amount and type of such Lien or such item of Indebtedness secured by such Lien (or any portion thereof) in one of the above clauses (or any portion thereof) and such Lien securing such item of Indebtedness (or any portion thereof) will be treated as being incurred or existing pursuant to only such clause or clauses (or any portion thereof) without giving pro forma effect to such item (or any portion thereof) when calculating the amount of Liens or Indebtedness that may be incurred, classified or reclassified pursuant to any other clause (or any portion thereof) at such time.

Accrual of interest, amortization of original issue discount, accrual of dividends, the accretion of accreted value, the payment of interest in the form of additional Indebtedness and the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock and/or any increase in the amount of Indebtedness outstanding solely as a result of any fluctuation in the exchange rate of any applicable currency will be deemed not to be the granting of a Lien for purposes of Section 7.01.

Section 7.02 [Reserved].

Section 7.03 Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness other than:

(1) Indebtedness of the Lead Borrower and the Loan Parties under the Loan Documents;

(2) Indebtedness of the Lead Borrower or any Loan Party Incurred pursuant to (x) the DIP Term Loan Facility in an aggregate outstanding principal amount not to exceed \$175,000,000, and other amounts permitted to be Incurred in lieu thereof any Refinancing Indebtedness in respect thereof and (y) the Pre-Petition Term Loan Agreement, in an aggregate outstanding principal amount not to exceed \$390,937,500;

(3) guarantees by (A) the Borrowers or the Subsidiary Guarantors of Indebtedness Incurred by the Lead Borrower or a Restricted Subsidiary that is expressly permitted by the provisions of this Agreement~~;~~ ~~provided that in the event such Indebtedness that is being guaranteed is a Subordinated Obligation or a Guarantor Subordinated Obligation, then the related guarantee shall be subordinated in right of payment to the Loan Obligations or the Guaranty, as the case may be to the same extent; provided, further, that in the case of any such guarantee by any Borrower or any Subsidiary Guarantor of the obligations of a Non-Guarantor Restricted Subsidiary, the aggregate amount of such guarantee (together~~

~~with all other guarantees by any Borrower or any Subsidiary Guarantor of the obligations of a Non-Guarantor Restricted Subsidiary pursuant to this clause (3)) shall be permitted as an Investment pursuant to Section 7.13 (other than clause (t) thereof), and (B) Non-Guarantor Restricted Subsidiaries of Indebtedness Incurred by the Lead Borrower or its Restricted Subsidiaries that is not prohibited by the provisions of this Agreement];~~

(4) Indebtedness of the Lead Borrower owing to and held by any other Subsidiary or Indebtedness of a Subsidiary owing to and held by the Lead Borrower or any other Subsidiary; provided, however, that (i) such Indebtedness is expressly subordinated in right of payment to the Loan Obligations and (ii) any such Indebtedness owing by non-Guarantor Subsidiaries to Loan Parties shall not exceed \$~~5,000,000~~2,500,000 at any time outstanding;

(5) [reserved];

(6) [reserved];

(7) Indebtedness under Hedging Obligations that are Incurred for non-speculative purposes;

(8) the Incurrence by the Lead Borrower or any of its Restricted Subsidiaries of Indebtedness represented by Capitalized Lease Obligations, mortgage financings or purchase money obligations or other Indebtedness financing the acquisition, lease, construction or improvement of any fixed or capital assets, and extensions, renewals, repair, improvement and replacements of any such assets (real or personal, and whether through the direct purchase of property or the Equity Interests of any person owning such property) Incurred pursuant to this clause (8) (including any Refinancing Indebtedness in respect thereof), in an aggregate principal amount at any time outstanding not to exceed \$250,000;

(9) Indebtedness Incurred in respect of workers' compensation claims, self-insurance obligations, obligations in respect of bids, tenders, trade contracts, governmental contracts and leases, statutory obligations, customs, surety, stay, appeal and performance bonds, and performance and completion guarantees and similar obligations incurred by the Lead Borrower or any Restricted Subsidiary, in each case in the ordinary course of business;

(10) Indebtedness arising from agreements of the Lead Borrower or a Restricted Subsidiary providing for customary guarantees, indemnification, adjustment of purchase price, escrows, holdbacks, transition services agreements or similar obligations (including earnouts, in each case, Incurred or assumed in connection with the disposition of any business, assets or Capital Stock of a Restricted Subsidiary);

(11) [reserved];

(12) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within five (5) Business Days of Incurrence;

(13) [reserved];

(14) to the extent constituting Indebtedness, contingent obligations arising under indemnity agreements to title insurance companies to cause such title insurers to issue Mortgage Policies (as defined under the DIP Term Loan Facility) in the ordinary course of business with respect to any Mortgaged Property (as defined under the DIP Term Loan Facility) of the Lead Borrower or any Restricted Subsidiary;

(15) Indebtedness in respect of repurchase agreements constituting Cash Equivalents;

(16) Indebtedness incurred prior to the Petition Date consisting of promissory notes issued by the Lead Borrower or any Restricted Subsidiary to future, present or former directors, officers, members of management, employees or consultants of the Lead Borrower or any of its Subsidiaries or their respective estates, executors, administrators, heirs, family members, legatees, distributees, spouses or former spouses, domestic partners or former domestic partners to finance the purchase or redemption of Equity Interests of Holdings or any Parent Entity permitted by Section 7.06(a)(2);

(17) to the extent included in the Cash Management Order, cash management obligations and Indebtedness incurred by the Lead Borrower or any Restricted Subsidiary in respect of netting services, overdraft protections, commercial credit cards, stored value cards, purchasing cards and treasury management services, automated clearing-house arrangements, employee credit card programs, controlled disbursement, ACH transactions, return items, interstate deposit network services, dealer incentive, supplier finance or similar programs, Society for Worldwide Interbank Financial Telecommunication transfers, cash pooling and operational foreign exchange management and similar arrangements, in each case entered into in the ordinary course of business in connection with cash management, including among the Lead Borrower and its Restricted Subsidiaries, and deposit accounts;

(18) (i) Indebtedness consisting of the financing of insurance premiums and (ii) take-or-pay obligations constituting Indebtedness of the Lead Borrower or any Restricted Subsidiary, in each case, entered into in the ordinary course of business;

(19) unsecured Indebtedness in respect of obligations of the Lead Borrower or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money;

(20) [reserved];

(21) 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;

(22) Indebtedness in existence on the Petition Date and listed on Schedule 7.03, and any Refinancing Indebtedness in respect of any of the foregoing; provided, however, that the amount of any such Refinancing Indebtedness thereof may be increased (x) as required by the terms of such Indebtedness as in existence on the Closing Date or (y) as otherwise permitted under this Agreement;

(23) [reserved];

(24) [reserved];

(25) [reserved];

(26) [reserved]; and

(27) in addition to the items referred to in clauses (1) through (26) in this Section 7.03(a), Indebtedness of the Lead Borrower or any of the Restricted Subsidiaries in an aggregate outstanding principal amount, together with all other Indebtedness Incurred pursuant to this clause (27) (including any Refinancing Indebtedness in respect thereof), not to exceed ~~\$10,000,000~~ 1,000,000.

(b) For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this Section 7.03:

(1) Indebtedness need not be permitted solely by reference to one category of permitted Indebtedness (or any portion thereof) described in Sections 7.03(a)(1) through (27) but may be permitted in part under any combination thereof;

- (18) payments contemplated by Section 4.01(j);
- (19) transactions permitted by, and complying with, the provisions of Sections 7.04, 7.05, 7.06, 7.13 and 7.18;
- (20) [reserved];
- (21) [reserved]; and
- (22) transactions contemplated by the Sponsor LC and the Sponsor LC Reimbursement Note Documents.

Section 7.09 [Reserved].

Section 7.10 [Reserved].

Section 7.11 [Reserved].

Section 7.12 [Reserved].

Section 7.13 Limitations on Investments. The Lead Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, make Investments other than the following (the Investments permitted by this Section 7.13, collectively, "Permitted Investments"):

- (a) Investments in Holdings, the Lead Borrower or any Restricted Subsidiary in existence on the Petition Date;
- (b) Investments in Holdings, the Lead Borrower or any Subsidiary; provided that the aggregate amount at any one time outstanding of Investments by the Lead Borrower and the Subsidiary Guarantors in Subsidiaries that are not Guarantors pursuant to this clause (b) shall not exceed ~~\$5,000,000~~ 2,500,000;
- (c) cash and Cash Equivalents;
- (d) receivables owing to the Lead Borrower or any Restricted Subsidiary created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Lead Borrower or any such Restricted Subsidiary deems reasonable under the circumstances;
- (e) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;
- (f) [reserved];
- (g) Capital Stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Lead Borrower or any Restricted Subsidiary or in satisfaction of judgments or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of a debtor;
- (h) Investments made as a result of the receipt of non-cash consideration from an Asset Disposition that was made pursuant to and in compliance with Section 7.05 (other than Section 7.05(7));
- (i) Investments in existence on the Petition Date and listed on Schedule 7.13, and any modification, replacement, renewal, or extension thereof; provided, however, that the amount of such Investment may be increased (x) as required by the terms of such Investment as in existence on the Closing Date or (y) as otherwise permitted under this Agreement;

(j) [reserved];

(k) Investments by the Lead Borrower or any Restricted Subsidiary in an aggregate amount at any one time outstanding not to exceed ~~\$5,000,000~~ 1,000,000;

(l) Guarantees issued in accordance with Section 7.03;

(m) Investments consisting of (i) purchases and acquisitions of inventory, supplies, Intellectual Property, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case in the ordinary course of business and (ii) licensing of Intellectual Property pursuant to joint marketing or other arrangements with other Persons;

(n) Investments received as dividends or distributions in respect of existing Investments in Equity Interests; provided that the Loan Parties have complied with all requirements under the Collateral Documents to the extent there are any further requirements are required with respect to such Investments;

(o) Investments (i) consisting of deposits, prepayments or other credits to suppliers; and (ii) in the ordinary course of business consisting of endorsements of negotiable instruments for collection or deposit;

(p) any Investment held by a Person at the time such Person becomes a Restricted Subsidiary of the Lead Borrower or is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Lead Borrower or a Restricted Subsidiary of the Lead Borrower so long as such Investment was not created or acquired in contemplation of such acquisition;

(q) [reserved];

(r) [reserved];

(s) (i) to the extent included in the Cash Management Order, any Investments in any Subsidiary or Joint Venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business; provided that any entity that serves to hold cash balances for the purposes of making such advances to Subsidiaries or Joint Ventures is a Loan Party and (ii) any Investments in the ordinary course of business by the Lead Borrower or any Restricted Subsidiary in any Subsidiary or Joint Venture to enable it to obtain cash management and similar arrangements of the types described in Section 7.03(a)(17);

(t) (i) to the extent constituting Investments, Liens permitted by Section 7.01, fundamental changes permitted by Section 7.04, dispositions permitted by Section 7.05 (other than clause (7) thereof), Restricted Payments permitted by Section 7.06(a) (other than clause (10) or (16) thereof) and transactions permitted by Section 7.08(b)(3) and (ii) Investments consisting of (or resulting from) Indebtedness permitted under Section 7.03 (including guarantees thereof) (other than Indebtedness permitted under Section 7.03(a)(3) or 7.03(a)(4));

(u) Guarantees by the Lead Borrower and the Restricted Subsidiaries of leases of the Lead Borrower and Restricted Subsidiaries (other than Capitalized Lease Obligations) or of other obligations not constituting Indebtedness, in each case permitted under this Agreement and entered into in the ordinary course of business;

(v) Investments made in connection with the funding of contributions under any non-qualified retirement plan or similar employee compensation plan in an amount not to exceed the amount of compensation expense recognized by the Lead Borrower and its Restricted Subsidiaries in connection with such plans;

(w) Investments (other than any Investment in an Unrestricted Subsidiary) made by a Restricted Subsidiary that is not a Loan Party to the extent such Investments are financed with the proceeds received by such Restricted Subsidiary substantially contemporaneously from an Investment in such Restricted Subsidiary by a Loan Party permitted under another clause of this Section 7.13;

(x) [reserved];

subordination terms of any definitive documentation relating to such Junior Financing or (b) make any payment of principal or interest or otherwise on account of any Pre-Petition Debt or amend or modify the terms of the documents governing any Pre-Petition Debt in a manner that is materially adverse to the Agents or the Lenders or their rights and remedies under the Loan Documents (including any such amendment or modification that would have a material and adverse impact on any material portion of the Collateral).

Section 7.16 Minimum Aggregate Excess Availability. The Lead Borrower shall not permit Aggregate Excess Availability to be less than \$5,000,000 at any time.

Section 7.17 No Further Negative Pledges. The Lead Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, agree or covenant with any Person to restrict in any way its ability to grant any Lien on its assets in favor of the Lenders, other than pursuant to ~~an Acceptable~~ the ABL Intercreditor Agreement and the Orders, and except that this Section 7.17 shall not apply to:

(a) any covenants contained in this Agreement or any other Loan Documents or that exist on the Closing Date;

(b) covenants existing under the DIP Term Loan Facility (or any Refinancing Indebtedness in respect thereof), the Pre-Petition ABL Credit Agreement, the Pre-Petition Term Loan Agreement and the credit documents pursuant thereto (in each case so long as the same do not prohibit the granting of Liens to secure Indebtedness pursuant to this Agreement);

(c) customary restrictions contained in the documents governing any Pre-Petition Debt;

(d) covenants and agreements made in connection with any agreement relating to Indebtedness or other obligations secured by a Lien permitted by this Agreement but only if such covenant or agreement applies solely to the specific asset or assets to which such Lien relates;

(e) (i) customary provisions in leases, subleases, licenses or sublicenses and other contracts restricting the right of assignment thereof and (ii) restrictions or conditions imposed by cash and other deposits or net worth provisions in leases and other agreements entered into in the ordinary course of business;

(f) customary provisions in joint venture agreements and other similar agreements applicable to Joint Ventures that are applicable solely to such Joint Venture or the interests in such Joint Venture;

(g) restrictions imposed by law, rule, regulation or order;

(h) customary restrictions and conditions contained in agreements relating to any sale of assets or Equity Interests pending such sale; provided such restrictions and conditions apply only to the Person or property that is to be sold;

(i) contractual obligations binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such contractual obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary;

(j) negative pledges and restrictions on Liens in favor of any holder of Indebtedness for borrowed money entered into after the Closing Date and otherwise permitted under Section 7.03 but only if such negative pledge or restriction expressly permits Liens for the benefit of the Administrative Agent and/or the Collateral Agent and the Secured Parties with respect to the credit facilities established hereunder and the Loan Obligations on a senior basis and without a requirement that such holders of such Indebtedness be secured by such Liens securing the Loan Obligations equally and ratably or on a junior basis;

(k) restrictions on any Subsidiary that is not a Subsidiary Guarantor pursuant to the terms of any Indebtedness of such Subsidiary permitted to be incurred hereunder;

(l) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; and

Holdings shall not incur any Liens on Equity Interests of the Lead Borrower other than non-consensual Liens and those for the benefit of the DIP Term Loan Obligations and the Secured Obligations or subject to the ABL Intercreditor Agreement, and Holdings shall not own any Equity Interests other than those of the Lead Borrower.

Section 7.19 Bankruptcy Matters. Holdings and the Lead Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, without the prior written consent of the Required Revolving Lenders (unless otherwise specified), do any of the following:

(a) ~~(i) amend or modify, or grant any waiver or release under or terminate in any manner, the articles or certificate of incorporation or formation, by-laws, limited liability company agreement, partnership agreement or other organizational documents of Holdings, the Lead Borrower or any of the Restricted Subsidiaries;~~ ~~(ii) amend or modify, or permit the amendment or modification of, any provision of the Pre-Petition ABL Credit Agreement or other documents evidencing or governing the Pre-Petition ABL Facilities or the Pre-Petition Term Loan Agreement or other documents evidencing or governing the Pre-Petition Term Loan Facility, in each case except to the extent expressly permitted by the Orders, or (iii) amend, modify or waive any provision of the DIP Term Loan Agreement or other documents evidencing or governing the DIP Term Loan Facility, including any amendments, modifications or waivers made in connection with or pursuant to any Refinancing Indebtedness with respect thereto;~~ other Loan Parties;

(b) use any portion or proceeds of the credit extensions hereunder or the Collateral for payments or purposes that would violate the terms of the Orders;

(c) incur, create, assume, suffer to exist or permit, except for the Carve-Out or as otherwise expressly permitted by the Orders or any other order of the Bankruptcy Court acceptable to the Required Revolving Lenders in their sole and absolute discretion, any other Superpriority Claim which is *pari passu* with or senior to the claim of the Secured Parties against any Debtor;

(d) subject to the terms of the Orders, assert, join, investigate, support or prosecute any claim or cause of action against any of the Secured Parties (in their capacities as such) or any of the "Secured Parties" (as defined in the Pre-Petition ABL Credit Agreement) (in their capacities as such) or any challenge to the validity, extent or priority of any of their claims or security interests, unless such claim or cause of action is in connection with the enforcement of the Loan Documents against any of the Secured Parties;

(e) other than as provided in any Order, enter into any agreement to return any of its inventory to any of its creditors for application against any Pre-Petition Debt, trade payables arising before the Petition Date or other claims arising before the Petition Date under section 546(c) of the Bankruptcy Code if, after giving effect to any such agreement, the aggregate amount applied to Pre-Petition Debt, trade payables arising before the Petition Date and other claims arising before the Petition Date subject to all such agreements, setoffs and recoupments since the Petition Date would exceed \$[●];

(f) seek, consent to, or permit to ~~resist~~exist any order granting authority to take any action that is prohibited by the terms of this Agreement, the Orders, the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement, the Orders or any of the other Loan Documents;

(g) subject to the terms of the Orders, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the Agents, the Lenders or other Secured Parties with respect to the Collateral following the occurrence of an Event of Default, including without limitation a motion or petition by any Secured Party to lift an applicable stay of proceedings to do the foregoing (*provided* that any Debtor may contest or dispute whether an Event of Default has occurred in accordance with the terms of the Orders and the Loan Documents);

~~(h) make or permit to be made any change to the Orders;~~

(h) ~~(i)~~ file or pursue or support any other Person in filing or pursuing any Reorganization Plan or other chapter 11 plan or disclosure statement in respect of any Loan Party that is not an Acceptable Reorganization Plan or Acceptable Disclosure Statement; ~~or~~

(i) make or permit to be made any change to the Orders; or

(j) ~~pursue any sale or bidding process for any portion of the Collateral without the prior affirmative consent of the Administrative Agent.~~ except as expressly provided or permitted hereunder or as otherwise contemplated in the then-in-effect Approved Budget (including Permitted Variances thereto), make any payment or distribution to any non-Subsidiary Affiliate or insider of any debtor outside of the ordinary course of business.

Section 7.20 Use of Proceeds. Holdings and the Lead Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, use any portion of the Loans or the Collateral:

(a) for any purpose that is prohibited under the Bankruptcy Code or the Orders;

(b) to finance any contested matter, adversary proceeding, suit, arbitration, application, motion or other litigation of any type adverse to the interests of any or all of the Administrative Agent, the Collateral Agent, the Lenders, the Pre-Petition ABL Agent or the Pre-Petition ABL Lenders or their respective rights and remedies under Loan Documents, the Orders or the Pre-Petition ABL Credit Agreement or the other "Loan Documents" referred to therein;

(c) to make any distribution under a Reorganization Plan confirmed in the Cases that does not provide for the Payment in Full of the Loan Obligations on the effective date of such plan; and

(d) to file a motion seeking, consent to, or make any payment in excess of \$10,000 in the aggregate in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior written consent of the Administrative Agent acting at the direction of the Required Revolving Lenders;

Nothing herein shall in any way prejudice or prevent any Agent or any Lender from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest.

Section 7.21 Compliance with Approved Budget. Except as otherwise permitted herein or approved by the Administrative Agent (with the consent of the Required Revolving Lenders), directly or indirectly make any payment (as adequate protection or otherwise), or application for authority to pay, on account of any Indebtedness arising prior to the Petition Date other than payments consistent with the Approved Budget (or any Permitted Variance) and approved by the Bankruptcy Court.

Section 7.22 Additional Bankruptcy Matters. Holdings and the Lead Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, without the prior written consent of the Required Revolving Lenders (unless otherwise specified), do any of the following other than as permitted by the Orders:

(a) use any portion or proceeds of the credit extensions hereunder or the Collateral for payments or purposes that would violate the terms of the Orders;

(b) incur, create, assume, suffer to exist or permit, except for the Carve-Out or as otherwise expressly permitted by the Orders or any other order of the Bankruptcy Court reasonably acceptable to the Required Revolving Lenders, any other superpriority administrative claim which is pari passu with or senior to the claim of the Secured Parties against any Debtor;

(c) subject to the terms of the Orders, assert, join, investigate, support or prosecute any claim or cause of action against any of the Secured Parties (in their capacities as such), unless such claim or cause of action is in connection with the enforcement of the Loan Documents against any of the Secured Parties;

(d) [reserved];

(e) seek, consent to, or permit to exist any order granting authority to take any action that is prohibited by the terms of this Agreement, the Orders, the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement, the Orders or any of the other Loan Documents;

(f) subject to the terms of the Orders, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the Agents, the Lenders or other Secured Parties with respect to the Collateral following the occurrence of an Event of Default, including without limitation a motion or petition by any Secured Party to lift an applicable stay of proceedings to do the foregoing (provided that any Debtor may contest or dispute whether an Event of Default has occurred in accordance with the terms of the Orders and the Loan Documents);

(g) make or permit to be made any change to the Orders;

(h) [reserved];

(i) except as expressly provided or permitted hereunder or as otherwise contemplated in the then-in-effect Approved Budget (including Permitted Variances thereto), make any payment or distribution to any non-Subsidiary Affiliate or insider of any debtor outside of the ordinary course of business; or

(j) assert any right of subrogation or contribution against any other Loan Party under this Agreement or any other Loan Document.

ARTICLE VIII.

EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default.

Any of the following events referred to in any of clauses (a) through (q) inclusive of this Section 8.01 shall constitute an “Event of Default”:

(a) Non-Payment. Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable and (ii) within five (5) Business Days after the same becomes due, any interest on any Loan, any fee or any other amount, payable hereunder or with respect to any other Loan Document.

(b) Specific Covenants.

(i) Failure by any Loan Party to comply with any of its other obligations, covenants or agreements contained in Sections 6.03(a), 6.05(a) (with respect to a Borrower’s legal existence only), 6.22 or in Article VII;

(ii) Failure by a Loan Party to (x) observe or perform the covenant contained in Section 6.19(c), (y) observe or perform any other covenant contained in Sections 6.01 (other than clauses (e) through (j) thereof), 6.02, 6.03 (other than clause (a) thereof), 6.17 or 6.19 (other than Section 6.19(c)) (after a five (5) Business Day grace period) or (z) comply with Section 6.01(e) through (j) (after a three (3) Business Day grace period); or

(iii) Failure by any Loan Party to comply with any of its other obligations, covenants or agreements (other than a default referred to in Sections 8.01(a), (b)(i) and (b)(ii) above) contained in this Agreement or any other Loan Document for thirty (30) days after the earlier of (x) a Responsible Officer of any Loan Party obtaining knowledge of such failure or (y) receipt of written notice of such failure given by the Administrative Agent or the Required Revolving Lenders.

(c) Change of Control. There occurs any Change of Control.

(d) Representations and Warranties. Any representation, warranty or certification made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made, and in either case (other than in respect of the Aggregate Borrowing Base or any Borrowing Base (or any component definitions thereof)) such incorrect or misleading representation or warranty (if curable) shall remain incorrect or misleading for a period of thirty (30) days after notice thereof from the Administrative Agent, including without limitation at the direction of the Required Revolving Lenders to the Lead Borrower;

(e) Cross-Default. ~~Default~~ There occurs any default under (x) the DIP Term Loan Facility or (y) any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by Holdings, the Lead Borrower or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Lead Borrower or any of its Restricted Subsidiaries), other than Indebtedness owed to Holdings, the Lead Borrower or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists, or is created after the Closing Date, which default:

(i) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness after the expiration of any grace period provided with respect to such payment in such Indebtedness; or

(ii) results in the acceleration, or permits the acceleration, of such Indebtedness prior to its maturity;

and, in the case of clause (y), the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a default under clause (i) or (ii) of this Section 8.01(e), exceeds the Threshold Amount; provided, that this clause (e) shall not apply to (1) any Indebtedness outstanding hereunder or (2) any Indebtedness of any Debtor that was incurred prior to the Petition Date unless such Indebtedness has been accelerated and the enforcement of remedies with respect to such Indebtedness shall not have been stayed by the commencement of the Cases.

(f) [Reserved].

(g) [Reserved].

(h) Judgments. Failure by Holdings, the Lead Borrower or any Restricted Subsidiary to pay final judgments (excluding any order of the Bankruptcy Court fixing the amount of any claim in the Cases) aggregating in excess of the Threshold Amount (to the extent not covered by a third party indemnity or insurance, or if covered by insurance, to the extent to which insurer has denied coverage in writing), which judgments are not paid, discharged, bonded, vacated or stayed for a period of ~~sixty~~ thirty (~~60~~ 30) days.

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which, when taken together with all other ERISA Events, has resulted or would reasonably be expected to result in liability of any Loan Party in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect, (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA which would reasonably be expected to result in a Material Adverse Effect, (iii) a Foreign Benefit Event occurs with respect to a Foreign Pension Plan that, when taken together with other such events, would reasonably be expected to result in a Material Adverse Effect or (iv) a Canadian Pension Termination Event occurs with respect to a Canadian Defined Benefit Plan that, when taken together with other such events, would reasonably be expected to result in a liability or obligation to pay in excess of the Threshold Amount.

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or the Payment in Full of all the Loan Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any material provision of any Loan Document; or any Loan Party denies in writing that it has any or further

liability or obligation under any Loan Document (other than as a result of the occurrence of the Termination Date), or purports in writing to revoke or rescind any Loan Document.

(k) Collateral Documents. With respect to any Collateral having a fair market value in excess of the Threshold Amount, any of the Collateral Documents ceases to be in full force and effect, or any of the Collateral Documents ceases to give the Lenders the Liens on any of the Collateral purported to be created thereby (other than, in either case, as the result of a release of such Lien in connection with a transaction permitted in accordance with the terms of this Agreement or the terms of the Collateral Documents), or any of the Collateral Documents is declared null and void or the Lead Borrower or any Restricted Subsidiary denies in writing that it has any further liability under any Collateral Document or gives written notice to such effect (in each case, other than (x) in accordance with the terms of this Agreement or the terms of the Collateral Documents or (y) to the extent resulting from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file Uniform Commercial Code continuation statements).

(l) Dismissal; Conversion. (i) Any of the Cases of the Debtors are dismissed or converted to a case under chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking the dismissal of any Case of any Debtor under section 1112 of the Bankruptcy Code or otherwise without causing Payment in Full of all Loan Obligations hereunder; (ii) a trustee under chapter 11 of the Bankruptcy Code or an examiner with enlarged powers (powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code) under section 1104(b) of the Bankruptcy Code shall be appointed in any of the Cases of the Debtors and the order appointing such trustee or examiner shall not be reversed or vacated within thirty (30) days after the entry thereof (or the Loan Parties or their Affiliates shall have acquiesced to the entry of such order) unless consented to by the Required Revolving Lenders; or (iii) the Canadian Recognition Proceedings or any order granted therein shall be dismissed or a separate proceeding under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, or the CCAA shall be commenced by or in respect of the Debtors.

(m) Superpriority Claims. Other than as permitted by the Orders, an application shall be filed by any Debtor for the approval of (i) any other Superpriority Claim or Lien, or an order of the Bankruptcy Court or the Canadian Court shall be entered granting any other Superpriority Claim or Lien (other than the ~~Carve Out~~ Carve-Out), in any of the Cases of the Debtors or the Canadian Recognition Proceedings that is pari passu with or senior to the claims (as such word is defined in the Bankruptcy Code) or Liens of the Administrative Agent, the Lenders and the other Secured Parties against the Borrowers or any other Loan Party hereunder or under any of the other Credit Documents (including the adequate protection Liens and claims provided for in the Orders) or (ii) except to the extent permitted hereby or thereby, any Liens senior or pari passu with (A) the Liens in respect of the Pre-Petition Debt or (B) the adequate protection Liens granted on account of the Primed Liens.

(n) Stay Relief. The Bankruptcy Court or the Canadian Court shall enter an order or orders granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code or the stay granted in the Canadian Recognition Proceedings to the holder or holders of any security interest to (i) permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Debtors which have a value in excess of \$1,000,000+ in the aggregate or (ii) permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole).

(o) Orders; Actions. (i) The Final Order Entry Date shall not have occurred by the date that is provided for on Schedule 6.22; (ii) an order of the Bankruptcy Court or the Canadian Court shall be entered reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the Interim Order or the Final Order or the orders of the Canadian Court recognizing the foregoing in the Canadian Recognition Proceedings or Holdings, any Borrower or any Subsidiary of the Lead Borrower shall apply for the authority to do so, in each case in a manner that is adverse in any respect to the Administrative Agent or the Lenders, without the prior written consent of the Administrative Agent and the Required Revolving Lenders; (iii) an order of the Bankruptcy Court or the Canadian Court shall be entered denying or terminating use of cash collateral by the Loan Parties or imposing any additional conditions on such use (and such order remains unstayed for more than three (3) Business Days) and the Loan Parties shall have not obtained use of cash collateral pursuant to an order consented to by, and in form and substance reasonably acceptable to, the Administrative Agent (with the consent of the Required Revolving Lenders); (iv) the Interim Order (prior to the entry of the Final Order) or Final

Order (at all times thereafter), or the Canadian Court orders recognizing the foregoing, shall cease to create a valid and perfected Lien on the Collateral described therein or the Final Order shall cease to be in full force and effect; (v) any of the Loan Parties or any Subsidiary of the Lead Borrower shall fail to comply with the Orders in any material respect; (vi) other than with respect to the ~~Carve-Out~~Carve-Out (as provided for in ~~Section 2.19~~Section 2.23), an order in the Cases or the Canadian Recognition Proceedings shall be entered (without the consent of the Administrative Agent and the Required Revolving Lenders) charging any of the Collateral under section 506(c) of the Bankruptcy Code or pursuant to the CCAA against the Lenders; (vii) the entry of an order in the Cases or the Canadian Recognition Proceedings authorizing the use cash collateral or obtaining of financing, including pursuant to section 364 of the Bankruptcy Code (other than the DIP Term Loan Credit Agreement or the Facilities, if any, or as otherwise provided for in the Orders), unless such financing would (and actually does) provide for Payment in Full of all Loan Obligations upon the consummation thereof; (viii) any order shall be entered in the Cases providing superpriority adequate protection liens or claims, other than the Interim Order or Final Order (as applicable) or pursuant to any "first day order" or "second day order" or any other order reasonably acceptable to the Administrative Agent or as otherwise permitted pursuant to Section 8.01(m); or (ix) the Borrower or any of its Subsidiaries shall take any action in support of the items referred to in the foregoing clauses (i)-(viii).

(p) Adverse Actions. Any Loan Party (or any direct or indirect Parent Entity or Subsidiary thereof), or any Person claiming by or through the Loan Parties or any of their Subsidiaries, shall (x) obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against the Administrative Agent or any Lender or Issuing Bank (in any of their respective capacities as such) relating to any Facility, unless such suit or other proceeding is in connection with the enforcement of the Loan Documents against the Administrative Agent or any Lender, in their capacities as such or (y) file, assist or otherwise participate in any pleading that, if the relief requested therein were granted, would result in an Event of Default.

(q) Prepetition Payments. The payment by any Loan Party of any Pre-Petition Debt other than (i) as permitted by any "first day" or "second day" order entered by the Bankruptcy Court on or prior to the Closing Date or (ii) as permitted by any other order of the Bankruptcy Court in amounts reasonably satisfactory to the Administrative Agent, in each case consistent with the Approved Budget.

(r) Confirmation Order. ~~The~~Any Loan Party shall file a motion requesting the entry of an order confirming any Reorganization Plan or other chapter 11 plan in respect of any Loan Party that is not an Acceptable Confirmation Order.

(s) Cash Management Order. The failure by the Debtors to maintain and observe their cash management system as approved by the Cash Management Order or as otherwise agreed by the Administrative Agent in its sole and absolute discretion.

(t) Budget Event. The occurrence of any Budget Event.

(u) Alternate Financing. Any Loan Party shall file a motion in the Cases or the Canadian Recognition Proceedings without the express written consent of Required Revolving Lenders, to obtain additional financing under Section 364(d) of the Bankruptcy Code or pursuant to the CCAA that (i) is not permitted under Section 7.03 and (ii) does not provide for the Payment in Full of the Loan Obligations upon the incurrence of such additional financing.

Section 8.02 Remedies Upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Revolving Lenders, shall, subject to the terms of the Orders, without further order or application of the Bankruptcy Court, take any or all of the following actions:

(a) declare the Commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be

immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;

(c) require that the Lead Borrower cash collateralize outstanding Letters of Credit (in an amount equal to the then outstanding amount thereof); and

(d) exercise on behalf of itself and the Secured Parties all rights and remedies available to it and the Secured Parties under the Loan Documents or applicable Law.

provided that the enforcement of Liens or other remedies shall be subject to, and in accordance with, the terms of the Orders, as in effect at such time.

Section 8.03 [Reserved].

Section 8.04 Application of Funds.

(a) After the exercise of remedies provided for above (or after the Loans have automatically become immediately due and payable and the LC Exposure has automatically been required to be cash collateralized as set forth above) any amounts received on account of the Secured Obligations (other than proceeds of Collateral) shall, subject to the ABL Intercreditor Agreement and ~~any other Acceptable Intercreditor Agreement~~ and the Orders, be applied in the following order:

First, to the payment of all reasonable costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization including, without limitation, compensation to the Administrative Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent in connection therewith;

Second, to the payment of all other reasonable costs and out-of-pocket expenses of such sale, collection or other realization including, without limitation, costs and expenses and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith (other than Secured Obligations in connection with Secured Hedging Agreements or Secured Banking Services Agreements);

Third, to interest then due and payable on the Swingline Loans;

Fourth, to the principal balance of the Swingline Loans and Protective Advances outstanding until the same has been paid in full;

Fifth, to interest then due and payable on Tranche A Revolving Loans and other amounts due pursuant to Sections 2.15, 2.16 and 2.17;

Sixth, to cash collateralize all LC Exposures (to the extent not otherwise cash collateralized pursuant to the terms hereof) plus any accrued and unpaid interest thereon;

Seventh, to the principal balance of Borrowings of Tranche A Revolving Loans then outstanding and payment of any Secured Obligations that are *pari passu* with the Tranche A Revolving Loans with respect to Secured Hedging Agreements up to the amount of the applicable Secured Hedging Reserves and Secured Banking Services Agreements up to the amount of the applicable Secured Banking Services Reserves, ratably;

Eighth, to interest then due and payable on Tranche B-1 Revolving Loans and other amounts due pursuant to Sections 2.15, 2.16 and 2.17;

Ninth, to interest then due and payable on Tranche B-2 Revolving Loans and other amounts due pursuant to Sections 2.15, 2.16 and 2.17;

Tenth, to the principal balance of Borrowings of Tranche B-1 Revolving Loans then outstanding, ratably;

Eleventh, to the principal balance of Borrowings of Tranche B-2 Revolving Loans then outstanding, ratably;

Twelfth, to payment of any Secured Obligations with respect to Secured Hedging Agreements in excess of the applicable Secured Hedging Reserves, any Secured Banking Services Agreements in excess of the applicable Secured Banking Services Reserves and any other Secured Obligations, ratably; and

Thirteenth, the balance, if any, to the Person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns).

(b) After the exercise of remedies provided for above (or after the Loans have automatically become immediately due and payable and the LC Exposure has automatically been required to be cash collateralized as set forth above) any proceeds of Collateral received shall, subject to the ABL Intercreditor Agreement and ~~any other Acceptable Intercreditor Agreement and~~ the Orders, be applied in the following order ratably:

first, to pay any fees, indemnities, or expense reimbursements then due including amounts then due to the Administrative Agent and the Issuing Bank from, or on behalf of, any Loan Party (other than Secured Obligations in connection with Secured Hedging Agreements or Secured Banking Services Agreements),

second, to pay any fees or expense reimbursements then due to the Lenders from, or on behalf of, any Loan Party (other than Secured Obligations in connection with Secured Hedging Agreements or Secured Banking Services Agreements);

third, to pay interest due in respect of the Protective Advances made to, or on behalf of, any Loan Party;

fourth, to pay the principal of such Protective Advances;

fifth, to pay interest then due and payable on the Tranche A Revolving Loans made to, or on behalf of, any Loan Party (other than the Protective Advances) ratably;

sixth, to pay an amount to the Administrative Agent equal to one hundred three percent (103%) of the aggregate undrawn face amount of all outstanding Letters of Credit requested by, or on behalf of, any Loan Party and the aggregate amount of any unpaid LC Disbursements in respect of Letters of Credit requested by, or on behalf of, such Loan Party, to be held as cash collateral for such Secured Obligations;

seventh, to prepay principal on the Tranche A Revolving Loans made to, or on behalf of, any Loan Party (other than the Protective Advances and unreimbursed LC Disbursements in respect of Letters of Credit requested by the Lead Borrower) and payment of any Secured Obligations with respect to Secured Hedging Agreements up to the amount of the applicable Secured Hedging Reserves and Secured Banking Services Agreements up to the amount of the applicable Secured Banking Services Reserves, ratably;

eighth, to pay interest then due and payable on the Tranche B-1 Revolving Loans made to, or on behalf of, any Loan Party (other than the Protective Advances) ratably;

ninth, to pay interest then due and payable on the Tranche B-2 Revolving Loans made to, or on behalf of, any Loan Party (other than the Protective Advances) ratably;

tenth, to prepay principal on the Tranche B-1 Revolving Loans made to, or on behalf of, any Loan Party (other than the Protective Advances) and payment of any Secured Obligations that are *pari passu* with the Tranche B-1 Revolving Loans with respect to Secured Hedging Agreements up to the amount of the applicable Secured Hedging Reserves and Secured Banking Services Agreements up to the amount of the applicable Secured Banking Services Reserves, ratably;

eleventh, to prepay principal on the Tranche B-2 Revolving Loans made to, or on behalf of, any Loan Party (other than the Protective Advances) and payment of any Secured Obligations that are *pari passu* with the Tranche B-2 Revolving Loans with respect to Secured Hedging Agreements up to the amount of the applicable Secured Hedging Reserves and Secured Banking Services Agreements up to the amount of the applicable Secured Banking Services Reserves, ratably;

twelfth, to payment of any Secured Obligations with respect to Secured Hedging Agreements in excess of the applicable Secured Hedging Reserves and Secured Banking Services Agreements in excess of the applicable Secured Banking Services Reserves, ratably;

thirteenth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender; and

fourteenth, the balance, if any, to the Person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns).

ARTICLE IX.

AGENTS

Section 9.01 Appointment and Authority.

(a) Administrative Agent. Each of the Lenders, the Issuing Banks and other Secured Parties hereby irrevocably appoint Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except as expressly otherwise provided in this Agreement or the other Loan Documents, the Administrative Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions which the Administrative Agent is expressly entitled to take or assert under this Agreement and the other Loan Documents, including the exercise of remedies pursuant to Article VIII, and any action so taken or not taken shall be deemed consented to by the Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents and (b) execute and deliver as Administrative Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document. The Administrative Agent alone is authorized to determine eligibility and applicable advance rates under the Aggregate Borrowing Base or any Borrowing Base, whether to impose or release any Reserve, or whether any conditions to funding or issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate the Administrative Agent from liability to any Secured Party or other Person for any error in judgment.

(b) Collateral Agent. The Administrative Agent and each of the Lenders, the Issuing Banks and the other Secured Parties hereby designate and appoint Bank of America to act as the Collateral Agent under the Collateral Documents, and the Administrative Agent and each of the Lenders hereby irrevocably authorizes the Collateral Agent to enter into any Precious Metals Acknowledgment Letter and take such other action on its behalf under the provisions of the Collateral Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement, the Collateral Documents and the other Loan Documents, together with such powers as are reasonably incidental thereto, and in connection therewith hereby authorizes the Administrative Agent to execute and deliver the ABL Intercreditor Agreement ~~and any Acceptable Intercreditor Agreement~~ (or any joinder to ~~either~~ such agreement) whereby the Administrative Agent, on behalf of itself and the Lenders, agrees to be bound by the terms of the ABL Intercreditor ~~Agreement, any other Acceptable Intercreditor~~ Agreement and the other Collateral Documents in their capacities as a "Secured Party". In this connection, the Collateral Agent, as "Collateral Agent", and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent pursuant to the Collateral Documents for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Secured Parties required pursuant to the terms of the Collateral

Administrative 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 Administrative Agent shall have made any demand on any 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 Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Administrative Agent under Sections 2.09 and 10.04) 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) 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 the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.12 and 10.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Loan Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.10 Collateral and Guaranty Matters.

(a) The Administrative Agent shall, or shall cause the Collateral Agent, to execute, deliver or acknowledge (at the Borrowers' expense) such instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this Agreement or the Collateral Documents. Neither the Administrative Agent nor the Collateral Agent shall be liable for any such release and any such release shall without recourse to or warranty of the Administrative Agent or Collateral Agent. Notwithstanding anything to the contrary contained herein, (i) no Collateral shall be released if an Overadvance exists or would result therefrom and (ii) in the case of any release of Collateral in excess of 10% of the Aggregate Borrowing Base at such time (after giving effect thereto on a pro forma basis), the Borrowers shall deliver an updated Borrowing Base Certificate to the Administrative Agent giving effect to such release on a pro forma basis.

(b) Each Lender irrevocably authorizes the Collateral Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.01(a), (j), (ff), (gg), (hh) and (ii).

(c) Each Lender hereby irrevocably appoints, designates and authorizes the Administrative Agent to enter into the ABL Intercreditor Agreement, ~~any Acceptable Intercreditor Agreement (including, for the avoidance of doubt, any~~ (or other subordination or intercreditor agreement pertaining to any Subordinated Indebtedness, Junior Financing or any other Indebtedness secured by Liens permitted pursuant to Sections 7.01(a), (n), (o) or (uu) on its behalf and to take such action on its behalf under the provisions of ~~each applicable Acceptable~~ the ABL Intercreditor Agreement and any such other agreement. Each Lender further agrees to be bound by the terms and conditions of each such agreement.

(d) The Collateral Agent has no obligation to assure that any Collateral exists or is owned by a Loan Party, or is cared for, protected or insured, nor to assure that the Collateral Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral. To the extent required under the laws of any foreign jurisdiction, each Secured Party hereby grants to the Administrative Agent any required power of attorney to take any action with respect to Collateral or to execute any Loan Document on the Secured Party's behalf.

(x) be enforced against a Defaulting Lender without its consent if such waiver, amendment or modification affects Defaulting Lenders in a disproportionate manner;

provided, further, that:

(x) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Banks or the Swingline Lenders hereunder without the prior written consent of the Administrative Agent, the Issuing Banks or the Swingline Lenders, as the case may be (it being understood that any change to Section 2.20 shall require the consent of the Administrative Agent, the Swingline Lenders and the Issuing Banks); and

(y) any such agreement that shall amend, modify or otherwise affect the rights or duties of the Lenders holdings Loans or Commitments of a particular Class (but not the Lenders holdings Loans or Commitments of any other Class) will require only the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto if such Class of Lenders were the only Class of Lenders.

The Administrative Agent may also amend the Commitment Schedule and/or the Tranche A Applicable Percentage, in each case to reflect (x) adjustments to the Commitments pursuant to Section 2.09 and/or (y) Commitment reductions effected in accordance herewith and assignments entered into pursuant to Section 10.04. 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 the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded from a vote of the Lenders hereunder requiring any consent of the Lenders).

(c) The Lenders and any other holders of Secured Obligations hereby irrevocably authorize the Administrative Agent and the Collateral Agent to release any Liens granted to such Agent by the Loan Parties on any Collateral in accordance with Section 10.21. Except as provided in the preceding sentence, the neither Agent will not release any Liens on Collateral without the prior written authorization of the Required Revolving Lenders; provided that, either Agent may in its discretion release any of its Liens in connection with, or subordinate any of its Liens to, Liens permitted by Section 7.01(j), (ff), (gg), (hh) or (ii). Any such release shall not in any manner discharge, affect, or impair the Secured Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(d) Notwithstanding anything to the contrary contained in this Section 10.02,

(x) guarantees, collateral security documents and related documents executed by Loan Parties or any Subsidiaries of the Lead Borrower in connection with this Agreement may be in a form reasonably determined by either Agent and may be, together with this Agreement, amended, supplemented and waived with the consent of either Agent at the request of the Lead Borrower without the need to obtain the consent of any other Lender if such amendment, supplement or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure any ambiguity, typographical error, defect or inconsistency or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents and

(y) the Lead Borrower and either Agent may, without the input or consent of any other Lender, effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Lead Borrower and the Administrative Agent to effect the provisions of Sections 1.12 and 2.14.

The Administrative Agent shall be entitled to extend any deadline or requirement in connection with compliance with guarantee and security provisions in the Loan Documents ~~{(including Section 6.18)}~~ without the consent of any other Lender.

(e) If the Administrative Agent and the Lead Borrower shall have jointly identified an obvious error, mistake or ambiguity or any error or omission of a technical or administrative nature in any Loan Document, then the Administrative Agent and the Lead Borrower shall be permitted to amend such provision without further action or consent of any other party if the same is not objected to in writing by the Required Revolving Lenders to the Administrative Agent within five (5) business days following receipt of notice thereof.

(f) The consent of the Lead Borrower and the Administrative Agent (but not the Required Revolving Lenders or any other Lender) will be required to effectuate any amendment to any Loan Document that adds one or more provisions to the Loan Document that are, or modifies any existing provision in the Loan Documents in a manner that is, in the reasonable judgment of the Administrative Agent, more favorable to the Lenders in connection with any Incremental Commitments, or the DIP Term Loan Facility or Refinancing Indebtedness in respect of any of the foregoing.

(g) [Reserved].

(h) Notwithstanding the foregoing, no Lender consent is required to effect any amendment or supplement to the ABL ~~Intercreditor Agreement, any other Acceptable~~ Intercreditor Agreement or other intercreditor agreement or arrangement permitted under this Agreement that is for the purpose of adding the holders of any other Indebtedness permitted hereunder to be secured by a Lien on Collateral, as expressly contemplated by the terms of such ABL Intercreditor Agreement, ~~such other Acceptable Intercreditor Agreement~~ or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing).

Section 10.03 Expenses; Indemnity; Damage Waiver.

(a) Holdings and the Borrowers jointly and severally agree to pay upon written demand (together with reasonable backup documentation supporting such demand) (i) all reasonable and documented out-of-pocket expenses incurred by each Agent and their respective Affiliates (including the reasonable fees, charges and disbursements of one counsel (absent an actual or perceived conflict of interest)) for each Agent and reasonably necessary local counsel in applicable jurisdictions (retained after consultation with the Lead Borrower)) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Banks in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable documented out-of-pocket expenses incurred by each Agent, any Issuing Bank or any Lender (including the reasonable documented fees, charges and disbursements of any counsel for the Administrative Agent or any Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.03, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit; provided that Holdings and the Borrowers shall not be required to reimburse the legal fees and expenses of more than one outside counsel (absent an actual or perceived conflict of interest) and reasonably necessary local counsel in applicable jurisdictions for all Persons indemnified under this Section 10.03(a):

(i) subject to Section 6.17, appraisals and insurance reviews;

(ii) subject to Section 6.17, field examinations and the preparation of Reports based on the fees charged by a third party retained by the Administrative Agent or the internally allocated fees for each Person employed by the Administrative Agent with respect to each field examination;

(iii) Taxes, fees and other charges for (A) lien searches and (B) filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens; and

Section 10.19 Alternative Currency Loans.

If by reason of internal policies, legal requirements and limitations or lack of ready access to certain currencies, certain Lenders may not be able to make and maintain Commitments to or make Loans to certain of the Borrowers, Bank of America may agree to assume such Commitments or make such Loans in place of such Lenders. If Bank of America agrees to make such Commitments, it shall agree with each such Lender that it will make or maintain one or more Commitments in the place of such Lender and shall record its agreement with respect thereto in the Register and such Lender shall thereby be released from such Commitment or shall not be required to make or maintain such Loans and such Commitment shall thereafter be included within Bank of America's Commitment for all purposes hereunder.

Section 10.20 ABL Intercreditor ~~Agreements~~ Agreement; Orders Control. Each Lender (on behalf of itself and any Secured Party that may be its Affiliate): (a) consents to the subordination of Liens provided for in the ABL Intercreditor Agreement, ~~each other applicable Acceptable Intercreditor Agreement~~ and in the Orders and (b) agrees that it will be bound by and will take no actions contrary to the provisions of ~~each applicable Acceptable~~ the ABL Intercreditor Agreement and the Orders. Notwithstanding anything herein or in any other Loan Document to the contrary, in the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control. To the extent that any specific provision hereof, or in the ABL ~~Intercreditor Agreement or in any other applicable Acceptable~~ Intercreditor Agreement is inconsistent with any of the Orders, the Interim Order or Final Order (as applicable) shall control.

Section 10.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

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

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

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

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

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

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

Section 10.22 Release of Liens and Guarantees.

(a) The Lenders, the Issuing Banks and the other Secured Parties hereby irrevocably agree that the Liens granted to the Collateral Agent by the Loan Parties on any Collateral shall be automatically released:

(i) in full upon the occurrence of the Termination Date as set forth in Section 10.22(d);

(ii) upon the disposition of such Collateral by any Loan Party to a Person that is not (and is not required to become) a Loan Party in a transaction not prohibited by this Agreement (and each

Schedule 6.22

Milestones

1. The Petition Date shall occur no later than June 12, 2023.
2. The Bankruptcy Court shall enter the Interim Order approving this Agreement and the DIP Term Credit Agreement on an interim basis in form and substance satisfactory to the Administrative Agent and the Required Revolving Lenders in their sole and absolute discretion no later than 3 days after the Petition Date; and the Canadian Court shall enter an order recognizing the Interim Order in the Canadian Recognition Proceedings in form and substance satisfactory to the Administrative Agent and the Required Revolving Lenders in their sole and absolute discretion no later than 10 days after entry of the Interim Order by the Bankruptcy Court.
3. The Debtors will deliver to the Administrative Agent the confidential information memorandum for a sale of substantially all of the Debtors' assets (the "Sale"), no later than 9 days after the Petition Date.
4. The Bankruptcy Court shall enter an order approving bidding procedures (the "Bid Procedures Order") for the Sale, in each case in form and substance satisfactory to the Administrative Agent and the Required Revolving Lenders in their sole and absolute discretion no later than 35 days after the Petition Date.
5. The Bankruptcy Court shall enter the Final Order approving this Agreement and the DIP Term Credit Agreement in form and substance satisfactory to the Administrative Agent and Required Revolving Lenders in their sole and absolute discretion no later than 35 days after the Petition Date; and the Canadian Court shall enter an order recognizing the Final Order in the Canadian Recognition Proceedings in form and substance satisfactory to the Administrative Agent and the Required Revolving Lenders in their sole and absolute discretion no later than 10 days after entry of the Final Order by the Bankruptcy Court.
6. If applicable, the deadline for submitting initial indications of interest with respect to a Sale will be 45 days after the Petition Date.
7. If applicable, the deadline for submitting qualified bids pursuant to the Bid Procedures Order will be no later than 70 days after the Petition Date.
8. If applicable, an auction to select a winning bid pursuant to the Bid Procedures Order will conclude no later than 77 days after the Petition Date.
9. If applicable, the Bankruptcy Court shall hold a hearing to approve the winning bid and will enter an order approving the Sale (a "Sale Order") in form and substance satisfactory to the Administrative Agent and Required Revolving Lenders in their sole and absolute discretion no later than 81 days after the Petition Date; and the Canadian Court shall enter an order recognizing the Sale Order in the Canadian Recognition Proceedings in form and substance satisfactory to the Administrative Agent and the Required Revolving Lenders in their sole and absolute discretion no later than 10 days after entry of the Sale Order by the Bankruptcy Court.
10. If a Sale Order is entered, the Sale will close no later than 87 days after the Petition Date.

It is further acknowledged and agreed that (x) during the pendency of the Cases, the Debtors, the Administrative Agent, the Required Revolving Lenders and the Required Lenders (under and as defined in the DIP Term Loan Agreement) may agree that the Debtors shall pursue a reorganization or other plan process and (y) in such eventuality, the Milestones set forth in this Schedule 6.22 may, with the consent of the Required Revolving Lenders, be amended and replaced with alternative milestones reflecting such reorganization or plan process.

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Delete	237
Move From	24
<u>Move To</u>	24
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Table Delete	0
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Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	576

EXHIBIT 3

~~Filing Draft—Subject to Borrower, Agent and Lender Approval~~

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT
AGREEMENT

dated as of June [●15], 2023

among

INSTANT BRANDS HOLDINGS INC.,
a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code,
as the Borrower,

INSTANT BRANDS ACQUISITION INTERMEDIATE HOLDINGS INC.,
a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code,
as Holdings,

THE LENDERS FROM TIME TO TIME PARTY HERETO,
and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Administrative Agent and Collateral Agent

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- Exhibit H - Form of Compliance Certificate
- Exhibit I - [Form of](#) Approved Budget
- Exhibit J - [Form of](#) Interim Order
- [Exhibit K - Form of Variance Report](#)

This SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “Agreement”) is entered into as of June [●15], 2023, among INSTANT BRANDS HOLDINGS INC., a Delaware corporation and a Debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code (the “Borrower”), INSTANT BRANDS ACQUISITION INTERMEDIATE HOLDINGS INC., a Delaware corporation and a Debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code (the “Holdings”), WILMINGTON TRUST, NATIONAL ASSOCIATION (“Wilmington”), as Administrative Agent and Collateral Agent, and each Lender from time to time party hereto.

PRELIMINARY STATEMENTS

WHEREAS, the Loan Parties (as defined herein) have commenced voluntary cases (the “Chapter 11 Cases”) under Chapter 11 of the Bankruptcy Code (as defined herein) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Bankruptcy Court”), and the Loan Parties continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, Instant Brands Canada, in its capacity as foreign representative on behalf of the Debtors, filed or will file an application with the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario, Canada (the “Canadian Court”) under Part IV of the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”) to recognize the Cases as “foreign main proceedings” and grant certain customary related relief (the “Canadian Recognition Proceedings”);

WHEREAS, the Borrower has asked the Lenders to make post-petition loans and advances to the Borrower comprising a term loan facility in an aggregate principal amount of \$132,500,000. The Lenders have severally, and not jointly, agreed to extend such credit to the Borrower subject to the terms and conditions hereinafter set forth; and

WHEREAS, to provide security for the repayment of the Loans (as defined herein), and the payment of the other Secured Obligations (as defined herein) of the Loan Parties hereunder and under the Loan Documents (as defined herein), the Loan Parties will provide and grant to the Collateral Agent, for its benefit and the benefit of the Secured Parties, certain security interests, liens, and other rights and protections pursuant to the terms hereof, and security interests and liens pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and super-priority administrative expense claims pursuant to Section 364(c)(1) of the Bankruptcy Code, and other rights and protections, as more fully described herein.

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

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below. Unless otherwise defined herein, all terms defined in the UCC and used but not defined in this Agreement have the meanings specified in the UCC (or the equivalent term in the PPSA, as applicable):

“ABL Administrative Agent” means Bank of America, N.A., in its capacity as administrative agent and/or collateral agent for the lenders under the ABL DIP Credit Agreement and any successor thereto.

“ABL DIP Credit Agreement” means that certain Superpriority Senior Secured Priming Debtor-in-Possession Asset Based Revolving Credit Agreement, dated as of the date hereof, among Holdings, the Borrower, Instant Brands Canada, as the Canadian Borrower, the lenders party thereto from time to time and the ABL Administrative Agent, as amended, restated, supplemented or otherwise modified or refinanced or extended from time to time in accordance with the Loan Documents.

“ABL Intercreditor Agreement” means the ABL Intercreditor Agreement, dated as of October 9, 2020, by and among the Prepetition ABL Agent, the Prepetition Term Agent, the Borrower and the Guarantors.

“ABL Lenders” means “Lenders” as defined in the ABL DIP Credit Agreement.

“ABL Obligations” means all “Secured Obligations” as defined in the ABL DIP Credit Agreement.

“ABL Priority Collateral” means “ABL DIP Priority Collateral” as defined in the Interim Order.

“Acceptable Disclosure Statement” means the disclosure statement relating to an Acceptable Reorganization Plan in form and substance acceptable to the Required Lenders in their sole discretion.

“Acceptable Reorganization Plan” means a Plan of Reorganization for each of the Chapter 11 Cases that (i) provides for the payment in full in cash of all of the Secured Obligations on the date of consummation of such Plan of Reorganization, (ii) contains release, indemnification and other exculpatory provisions for the Agents, the Lenders, the Prepetition Term Agent and the Prepetition Term Lenders satisfactory to the Agents and the Required Lenders in their sole discretion and (iii) is otherwise in form and substance satisfactory to the Required Lenders in their sole discretion.

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

“Administrative Agent” means Wilmington, in its capacity as administrative agent under the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02 or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire substantially in the form of Exhibit C-2 or in any other form approved by the Administrative Agent.

“Adverse Proceeding” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Holdings, any Borrower, any Subsidiary Guarantor or any Subsidiary of the foregoing), at law or in equity, or before or by any Governmental Authority, domestic or foreign, whether pending or, to the knowledge of Holding, any Borrower or any Subsidiary Guarantor, threatened against Holdings, any Borrower, any Subsidiary Guarantor or any Subsidiary of the foregoing or any property thereof.

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

“Affiliate” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the possession, directly or indirectly, of the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. For purposes of this definition, the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Affiliate Transaction” has the meaning specified in Section 7.08(a).

“Agency Fee Letter” means that certain Agency Fee Letter, dated as of June [●15], 2023, by and among the Borrower and Agents.

“Agent Parties” has the meaning specified in Section 10.02(c).

“Agents” means, collectively, the Administrative Agent and the Collateral Agent.

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

“AML Legislation” means applicable “know-your-customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and Parts II.1 and XII.2 of the Criminal Code (Canada).

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption, including the Foreign Corrupt Practices Act of 1977, as the same may be amended from time to time, and the Corruption of Foreign Public Officials Act (Canada), as the same may be amended from time to time.

“Anti-Terrorism Laws” has the meaning specified in Section 5.19.

“Applicable Rate” means, with respect to any Loan, a percentage per annum equal to: (a) for SOFR Loans, 10.00% and (b) for Base Rate Loans, 9.00%.

[“Approved Budget” means a ~~budget in the form attached hereto as Exhibit I or any other updated budget agreed to by~~ projected statement of sources and uses of cash for the Borrower and the other Debtors on a weekly basis for the following 13 calendar weeks including the anticipated uses of Loans provided hereunder and the Loans (as defined in the ABL DIP Credit Agreement) provided pursuant to the ABL DIP Credit Agreement for each week during such period, in substantially the form of Exhibit I hereto. As used herein, “Approved Budget” shall initially refer to the initial Approved Budget delivered in accordance with Section 4.01(f) and thereafter shall refer to the most recent budget delivered by the Borrower in accordance with Section 6.01(c), to the extent that the Borrower and the Required Lenders ~~(have approved such budget as the Approved Budget in their sole and absolute discretion).~~”][†]

“Approved Fund” means any Fund that is administered, advised or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

[†] ~~Budget/variance subject to agreement between Moelis/Ankura/Alix~~

“Benchmark Transition Event” means, with respect to any then-current Benchmark the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark (or such component), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component) or (b) all Available Tenors of such Benchmark (or such component) are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

“Benchmark Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03.

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

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

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

“Board of Directors” means, as to any Person, the board of directors or managers (or other equivalent governing body), as applicable, of such Person or any duly authorized committee thereof.

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

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a borrowing consisting of simultaneous Loans of the same Type and, in the case of SOFR Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

“Budget Event” shall mean any of the following:

(a) the aggregate amount of actual receipts during any Budget Testing Period shall be less than the aggregate receipts in the Approved Budget for such Budget Testing Period by an amount greater than the Permitted Variance (this clause (a), the “Budgeted Receipts Test”); or

(b) the aggregate amount of actual disbursements during any Budget Testing Period shall exceed the projected aggregate disbursements in the Approved Budget for such Budget

Testing Period by an amount greater than the Permitted Variance (this clause (b), the “Budgeted Disbursements Test”).²

“Budget Testing Date” means ~~under negotiation; definition to follow~~ (a) with respect to any Budgeted Disbursements Test, (i) the second Friday after the Petition Date (i.e. June 23, 2023) and (ii) each Friday of each week thereafter and (b) with respect to any Budgeted Receipts Test, (i) the fourth Friday after the Petition Date (i.e. July 7, 2023) and (ii) each Friday of each week thereafter.

“Budget Testing Period” means, as of any date of determination, the period beginning on the applicable Budget Testing Period Commencement Date and ending on the Budget Testing Date immediately succeeding such date of determination. For the avoidance of doubt, each Budget Testing Period ending on or after July 7, 2023 shall be a four calendar week period.

“Budget Testing Period Commencement Date” means (a)(i) with respect to any Budgeted Disbursements Test conducted on any Budget Testing Date occurring on or prior to July 7, 2023, in each case, the first Sunday prior to the Petition Date (i.e. June 11, 2023) and (ii) with respect to any Budgeted Disbursements Test conducted on the Budget Testing Date occurring on or after July 14, 2023, (x) the first Sunday after the Petition Date (i.e. June 18, 2023) and (y) each Sunday of each week thereafter, respectively and (b)(i) with respect to any Budgeted Receipts Test conducted on the first Budget Testing Date in respect thereof occurring on July 7, 2023, the first Sunday prior to the Petition Date (i.e. June 11, 2023) and (ii) with respect to any Budgeted Receipts Test conducted on any Budget Testing Date occurring on or after July 14, 2023, (x) the first Sunday after the Petition Date (i.e. June 18, 2023) and (y) each Sunday of each week thereafter, respectively. For the avoidance of doubt, with respect to any Budget Testing Date occurring on or after July 7, 2023, the applicable Budget Testing Period Commencement Date shall in each case be the fourth Sunday preceding such Budget Testing Date.

“Budgeted Disbursements Test” has the meaning specified in clause (b) of the definition of “Budget Event”.

“Budgeted Receipts Test” has the meaning specified in clause (a) of the definition of “Budget Event”.

~~“Budget Testing Period” means under negotiation; definition to follow.~~

“Business Day” means any day other than a Saturday, Sunday or other day which is a federal holiday or any day on which commercial banks are authorized or obligated by law, regulation or executive order to remain closed; provided that for purposes of determining the borrowing, payment or continuation of, or determination of interest rate on, SOFR Loans, “Business Day” shall exclude any day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“Canadian Court” has the meaning specified in the recitals hereto.

“Canadian Defined Benefit Plan” shall mean a Canadian Pension Plan with a “defined benefit provision” as such term is defined in the Income Tax Act (Canada).

² ~~NTD: Subject to ongoing negotiation.~~

“Canadian Loan Party” shall mean any Loan Party that is organized or incorporated under the laws of Canada or any province or territory thereof.

“Canadian Multi-Employer Plan” shall mean a “multi-employer pension plan”, as such term is defined in the Pension Benefits Act (Ontario), or any equivalent under pension standards legislation of another jurisdiction in Canada, to which any Loan Party contributes or has or may have any obligation to contribute for its employees or former employees employed in Canada.

“Canadian Pension Event” shall mean (i) the issuance of any notice, order or charge which may give rise to the imposition of any fine or penalty to or in respect of any Canadian Pension Plan or the issuance of such fine or penalty, (ii) the failure by any Loan Party or Subsidiary to remit any contribution to a Canadian Pension Plan or Canadian Multi-Employer Plan when due or the receipt of any notice from an administrator, a trustee or other funding agent or any other Person that any Loan Party or Subsidiary has failed to remit any contribution to a Canadian Pension Plan or Canadian Multi-Employer Plan or a similar notice from a Governmental Authority relating to a failure to pay any fees or other amounts, (iii) the occurrence of any transaction that is prohibited under any applicable Requirements of Law that would reasonably be expected to result in the incurrence of any liability by any Loan Party or any Subsidiary, or (iv) the imposition on any Loan Party or any Subsidiary of any fine, excise tax or penalty resulting from any noncompliance with any applicable requirement of Law.

“Canadian Pension Plan” shall mean a pension plan or plan that is a “registered pension plan” as defined in the Income Tax Act (Canada) or that is subject to the funding requirements of the Pension Benefits Act (Ontario), or any similar pension benefits standards legislation in any Canadian jurisdiction, and which is maintained or contributed to by, or to which there is or may be an obligation to contribute by any Loan Party or Subsidiary in respect of its employees or former employees employed in Canada, and for greater certainty does not include a Canadian Multi-Employer Plan or the Canada Pension Plan or Quebec Pension Plan.

“Canadian Pension Termination Event” shall mean (i) the termination or wind-up in whole or in part of a Canadian Defined Benefit Plan, (ii) the occurrence of any circumstance or event that would provide any basis for a Governmental Authority to take steps to cause the termination or wind-up, in whole or in part, of any Canadian Defined Benefit Plan, (iii) the issuance of a notice (or a notice of intent to issue such a notice) to cause the termination or wind-up in whole or in part any Canadian Defined Benefit Plan; (iv) the occurrence of any circumstance or event that would provide any basis for a Governmental Authority to take steps to revoke the registration or appoint a new administrator of a Canadian Defined Benefit Plan; and (v) the receipt of a notice of intent from a Governmental Authority to revoke the registration or appoint a new administrator of a Canadian Defined Benefit Plan.

| “Canadian Recognition Proceedings” has the meaning specified in the recitals hereto.

“Canadian Security Agreement” means, collectively, the Canadian Security Agreement, dated as of the Closing Date among each Canadian Loan Party and Wilmington, as Collateral Agent, as it may be amended, amended and restated, supplemented or otherwise modified from time to time, together with each security agreement supplement executed and delivered by a Canadian Loan Party pursuant to Section 6.11.

“Canadian Subsidiary” means any Subsidiary of Holdings formed and existing under the laws of Canada or any province or territory thereof.

“Capital Stock” of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person,

(8) solely with respect to any Subsidiary that is a Foreign Subsidiary, investments of comparable tenor and credit quality to those described in clauses (1) through (7) above customarily utilized in countries in which such Foreign Subsidiary operates for short term cash management purposes; and

(9) interests in any investment company or money market fund that invests 95% or more of its assets in instruments of the type specified in clauses (1) through (8) above.

“Cash Management Orders” has the meaning specified in Section 4.01(i).

“Casualty” means any casualty, loss, damage, destruction or other similar loss with respect to real or personal property or improvements.

“CCAA” has the meaning specified in the recitals hereto.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty; (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (iii) the compliance by any Lender with any written request, guideline or directive (whether or not having the force of law, but if not having force of law, then being one with which the relevant party would customarily comply) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. No. 111-203) and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued and with respect to any Lender claiming increasing costs or charges pursuant to Section 3.01 or 3.04, only to the extent such Lender imposes the same charges on other similarly situated borrowers under comparable facilities.

“Change of Control” means the occurrence of any of the following:

(1) the Permitted Holders shall cease to beneficially own, either directly or indirectly (within the meaning of Rules 13d-3 or 13d05 under the Exchange Act), Capital Stock representing more than 50% of the total voting power of the Voting Stock of Holdings (or its successor by merger, amalgamation, consolidation or purchase of all or substantially all of its assets); or

(3) Holdings shall cease to own, directly or indirectly, 100% of the Equity Interests in the Borrower (other than in connection with a merger, amalgamation or consolidation permitted under Section 7.04, (after which Holdings continues to own, directly or indirectly, 100% of the Equity Interests in the surviving Borrower)).

Notwithstanding the foregoing: (i) any holding company whose only significant asset is Capital Stock of the Borrower or any of its direct or indirect parent companies shall not itself be considered a “person” or “group” for purposes of clause (1) above; (ii) the term “Change of Control” shall not include a merger, amalgamation or consolidation of the Borrower with, or the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the Borrower’s assets to, an Affiliate incorporated or organized solely for the purpose of reincorporating or reorganizing the Borrower in

another jurisdiction in the United States and/or for the sole purpose of forming or collapsing a holding company structure; and (iii) a “person” or “group” shall not be deemed to have beneficial ownership of securities subject to a stock purchase agreement, merger agreement or similar agreement (or voting or option agreement related thereto) until the consummation of the transactions contemplated by such agreement.

“Chapter 11 Cases” has the meaning specified in the recitals hereto.

“Closing Date” means June [●15], 2023, which is the first date on which all conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 4.01.

“Code” means the United States Internal Revenue Code of 1986.

“Collateral” means any and all property and tangible and intangible assets of any Loan Party, whether now owned or hereafter acquired other than Excluded Property.

“Collateral Agent” means Wilmington, in its capacity as “Collateral Agent” under this Agreement, the other Loan Documents, the ABL Intercreditor Agreement and the other Collateral Documents (including the Bankruptcy Court DIP Orders), and any successor thereto in such capacity.

“Collateral and Guarantee Requirement” means, at any time, subject to (x) any applicable limitations set forth in this Agreement (including Sections 6.11 and 6.13), the Guaranty or the other Loan Documents and (y) the time periods (and extensions thereof) set forth in Sections 6.11, 6.13 and 6.18, the requirement that:

(a) the Administrative Agent shall have received from (i) each US Loan Party, (A) either (x) a counterpart of the Guaranty duly executed and delivered on behalf of such Person or (y) in the case of any such Person that becomes or is required to become a US Loan Party after the Closing Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Guaranty in accordance with Section 6.11, duly executed and delivered on behalf of such Person and (B) either (x) a counterpart of the US Security Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes or is required to become a US Loan Party after the Closing Date (including by ceasing to be an Excluded Subsidiary), a supplement to the US Security Agreement in accordance with Section 6.11, duly executed and delivered on behalf of such Person, in each case of this clause (a)(i)(y) together with documents of the type referred to in Section 4.01(a)(ii) and (iii); (ii) each Canadian Loan Party, (A) either (x) a counterpart of the Guaranty duly executed and delivered on behalf of such Person or (y) in the case of any such Person that becomes or is required to become a Canadian Loan Party after the Closing Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Guaranty in accordance with Section 6.11, duly executed and delivered on behalf of such Person and (B) either (x) a counterpart of the Canadian Security Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes or is required to become a Canadian Loan Party after the Closing Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Canadian Security Agreement in accordance with Section 6.11, duly executed and delivered on behalf of such Person, in each case of this clause (a)(ii)(y) together with documents of the type referred to in Section 4.01(a)(ii) and (iii); and (iii) each Loan Party, either (x) an acknowledgement counterpart of the ABL Intercreditor Agreement duly executed and delivered on behalf of such Person or (y) in the case of any such Person that becomes or is required to become a Loan Party after the Closing Date (including by ceasing to be an Excluded Subsidiary), an executed acknowledgement to the ABL Intercreditor Agreement if the ABL DIP Credit Agreement is then-outstanding, in the form specified therein or in another form as may be reasonably agreed by the Administrative Agent and the Required Lenders; and

(b) (x) the Secured Obligations shall have been secured by a valid and perfected first-priority security interest in substantially all tangible and intangible assets of the Loan Parties (other than Excluded Property and as more fully set forth the Bankruptcy Court DIP Orders) and (y) the Collateral Agent shall have received from each Subsidiary that is required to comply with the requirements set forth in this definition pursuant to Section 6.11, (i) if such Subsidiary owns issued, registered or applied for (A) patents, (B) industrial designs, (C) trademarks and/or (D) copyrights that constitute Collateral, Intellectual Property Security Agreements contemplated by the applicable Security Agreement for filing with the Canadian Intellectual Property Office, the United States Patent and Trademark Office and the United States Copyright Office, as applicable; (ii) (x) with respect to each Canadian Loan Party, all Instruments, Documents of Title and Chattel Paper (in each case, as defined in the PPSA) of the Canadian Loan Party required to be delivered pursuant to the Canadian Security Agreement and (y) with respect to each US Loan Party, all Instruments and Chattel Paper (in each case, as defined in the UCC) of such Subsidiary required to be delivered pursuant to the US Security Agreement; (iii) PPSA or UCC financing statements, as applicable, or financing change statements in appropriate form for filing in such jurisdictions as the Required Lenders may reasonably request; (iv) the certificates, if any, representing all of the certificated Equity Interests of the Borrower and each other applicable Subsidiary (other than any such Equity Interests constituting Excluded Property), together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all "Intercompany Notes" (as defined in the applicable Security Agreement) owing to any Loan Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of the applicable Loan Party; and (v) control agreements with respect to deposit accounts and securities accounts as contemplated by the applicable Security Agreement; ~~and~~.

~~(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each owned Real Property located in the United States or Canada (other than any such owned Real Property that constitutes an Excluded Property) duly executed and delivered by the record owner of such Real Property, (ii) a policy or policies of title insurance (or marked unconditional commitment to issue such policy or policies) in the amount equal to not less than 100% (or such lesser amount as reasonably agreed to by the Required Lenders) of the fair market value of such Mortgaged Property and fixtures, issued by a nationally recognized title insurance company reasonably acceptable to the Required Lenders insuring the Lien of each such Mortgage as a first priority Lien (subject to any Liens not prohibited hereunder) on the Mortgaged Property described therein, free of any other Liens except as expressly permitted by Section 7.01, together with such endorsements (other than a creditor's rights endorsement), coinsurance and reinsurance as the Administrative Agent and the Required Lenders may reasonably request to the extent available in the applicable jurisdiction at commercially reasonable rates, (iii) such affidavits and instruments of indemnification (including a so called "gap" indemnification) as are customarily requested by the title company to induce the title company to issue the title policies and endorsements contemplated above, (iv) evidence reasonably acceptable to the Administrative Agent and the Required Lenders of payment of all title policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages and issuance of the title policies referred to above, (v) a survey of each Mortgaged Property in such form as shall be required by the title company to issue the so called comprehensive and other survey related endorsements and to remove the standard survey exceptions from the title policies and endorsements contemplated above (provided, however, that a survey shall not be required to the extent that the issuer of the applicable title insurance policy provides reasonable and customary survey related coverages (including, without limitation, survey related endorsements) in the applicable title insurance policy based on an existing survey and/or such other documentation as may be reasonably satisfactory to the title insurer), (vi) such customary legal opinions as the Administrative Agent and the Required Lenders may reasonably request with respect to any such Mortgage and (vii) (A) a completed "Life of Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property, which Flood Certificate shall (1) be addressed to~~

~~the Collateral Agent, (2) be completed by a company which has guaranteed the accuracy of the information contained therein and (3) otherwise comply with the Flood Insurance Laws; and (B) evidence that the property is not located in a special flood hazard area.~~

Notwithstanding anything to the contrary herein or in any other Loan Document, (i) the Required Lenders may grant extensions of time (including after the expiration of any relevant period, which apply retroactively) for the creation and perfection of security interests in, or obtaining of title insurance, legal opinions, surveys or other deliverables with respect to, particular assets or the provision of any Guaranty by any Subsidiary, and each Lender hereby consents to any such extension of time, (ii) any Lien required to be granted from time to time pursuant to the definition of "Collateral and Guarantee Requirement" shall be subject to the exceptions and limitations set forth in the Bankruptcy Court DIP Order or the Collateral Documents, (iii) other than with respect to any deposit account or securities account subject to the control of the ABL Administrative Agent while the ABL Obligations remain outstanding under the ABL DIP Credit Agreement, perfection by control shall not be required with respect to any asset requiring perfection through control agreements or other control arrangements, including deposit accounts, securities accounts and commodities accounts (other than control of pledged Capital Stock and/or Instruments, in each case, constituting Collateral and are required to be pledged and delivered to the Collateral Agent pursuant to the Bankruptcy Court DIP Order, the Collateral Documents or this Agreement) and no blocked account agreement, account control agreement or similar agreement shall be required, (iv) no Loan Party shall be required to seek any landlord waiver, bailee letter, estoppel, warehouseman waiver or other collateral access or similar letter or agreement, (v) other than with respect to Capital Stock issued by, and assets of, any Foreign Subsidiary that becomes a Guarantor as set forth in the definition of "Subsidiary Guarantor" or any Intermediate Parent that is a Foreign Subsidiary, no Loan Party will be required to (1) take any action or grant or perfect any security interest in any asset located outside of the U.S. or Canada or conduct any foreign lien search (other than any lien search in Canada), (2) execute any foreign law guarantee, security agreement, pledge agreement, mortgage, deed or charge (other than any guarantee or Collateral Document governed by the laws of Canada), (3) make any Intellectual Property filing, conduct any Intellectual Property search or prepare any Intellectual Property schedule with respect to any Intellectual Property assets of any Loan Party, in each case, in any jurisdiction outside the United States or Canada or (4) or enter into any source code escrow arrangement, (vi) in no event will the Collateral include any Excluded Property, (vii) no action shall be required to perfect any Lien with respect to (x) any vehicle or other asset subject to a certificate of title and/or (y) Letter-of-Credit Rights (as defined in Article 9 of the UCC), in each case to the extent that a security interest therein cannot be perfected by filing a Form UCC-1 (or equivalent under the PPSA) "all assets" financing statement without the requirement to list any VIN, serial or other number and (viii) no Loan Party shall be required to grant a Lien on, or require the perfection of any Lien granted in, those assets as to which the cost, burden, difficulty or consequence (including any effect on the ability of the relevant Loan Party to conduct its operations and business in the ordinary course of business) of obtaining or perfecting such Lien (including any mortgage, stamp, intangibles or other tax or expenses relating to such Lien) outweighs, or is excessive in relation to, the benefit to the Lenders of the security afforded thereby as determined in good faith by the Borrower and the Required Lenders (provided that, this clause shall not apply to any cost, burden, difficulty, or consequence under Section 956 of the Code with respect to any pledge of the stock of any Canadian Subsidiary or (without prejudice to the limitation under clause (b) of "Excluded Property" definition) any assets directly owned by any Canadian Subsidiary).

Notwithstanding the foregoing, (i) no action shall be required to create or perfect a Lien in any asset in respect of which the creation or perfection of a security interest therein would (1) be prohibited by enforceable anti-assignment provisions (taking into account the imposition of the automatic stay under Section 362 of the Bankruptcy Code) set forth in any contract that is permitted or otherwise not prohibited by the terms of this Agreement (after giving effect to the applicable anti-assignment provisions (taking into account the imposition of the automatic stay under Section 362 of the Bankruptcy Code) of

subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee 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 (iii) has become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender or (f) has a parent company or material Subsidiary as to which one of the events in clauses (a) through (f) occurs.

“DIP Lender” has the meaning specified therefor in the Fronting Letter.

“DIP Proceeds Account” means a deposit account of the Borrower maintained ~~with~~at a commercial bank acceptable to the Administrative Agent and the Required Lenders.

“DIP Superpriority Claim” means allowed superpriority expense claims pursuant to Bankruptcy Code Sections 364(c)(1), 503 and 507 granted by the Bankruptcy Court DIP Order.

“Disqualified Stock” means, with respect to any Person, any Capital Stock of such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

(1) matures (excluding any maturity as a result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Qualified Stock) pursuant to a sinking fund obligation or otherwise;

(2) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock that is convertible or exchangeable solely at the option of the Borrower or a Subsidiary); or

(3) is redeemable at the option of the holder of the Capital Stock (other than for Qualified Stock) in whole or in part,

in each case on or prior to the date that is 91 days after the earlier of the date (a) of the Maturity Date or (b) on which there are no Loan Obligations outstanding; provided that only the portion of Capital Stock that so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; provided, further, that any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Borrower to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (each defined in a substantially similar manner to the corresponding definitions in this Agreement) shall not constitute Disqualified Stock if the terms of such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) provide that the Borrower may not repurchase or redeem any such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) pursuant to such provision prior to compliance by the Borrower with Section 7.05 and such repurchase or redemption complies with Section 7.06.

“Dividing Person” has the meaning specified in the definition of “Division.”

“Division” means the division of the assets, liabilities and/or obligations of a Person (the “Dividing Person”) among two or more Persons (whether pursuant to a “plan of division” or similar

arrangement pursuant to the Laws of the State of Delaware (or any comparable event under the Laws of any other applicable jurisdiction)), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

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

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

“Domestic Subsidiary” means any Subsidiary of Holdings that is a Canadian Subsidiary or a US Subsidiary.

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

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

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

“Electing DIP Term Lender” has the meaning specified in Section 2.01(b).

~~“Electing DIP Term Lender Funding Date” has the meaning specified in Section 2.01(b).~~

“Election Deadline” means 5:00 p.m. (New York City time) on the date that is ~~two~~one (21) Business Days after the Closing Date.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii), (iv) and (v) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, land surface, sediments, and subsurface strata & natural resources such as wetlands, flora and fauna.

“Environmental Law” means any applicable federal, state, local or foreign Laws relating to pollution or the protection of the Environment or human health or safety in relation to exposure to Hazardous Materials, as well as laws and regulations relating to Hazardous Materials.

“Environmental Liability” means any liability, obligation, loss, claim, action, suit, order or cost, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Loan Party or any of their respective Subsidiaries directly or indirectly arising from, resulting from or based upon (i) actual or alleged violation of any Environmental Law,

(r) any Consigned Precious Metals to the extent not purchased and paid for by the applicable Loan Party pursuant to the terms of the applicable Precious Metals Lease (or related agreement) and, in each case, to the extent (i) subject to a Permitted Lien in favor of the consignor of such Consigned Precious Metals to secure the applicable Loan Party's obligations under a Precious Metals Lease ~~and~~ (ii) subject to a Precious Metals Acknowledgment Letter³ ("Consigned Precious Metals Collateral") and the proceeds thereof; provided, however, that any proceeds of Consigned Precious Metals (including insurance proceeds) constituting Consigned Precious Metals Collateral shall only constitute Excluded Property to the extent of the value of the Consigned Precious Metal attributable to such proceeds (with the value of the Consigned Precious Metal to be determined in accordance with the terms of the applicable Precious Metals Lease);

provided, however, that (i) in each case described in clauses (a), (d), (e) and (i) of this definition, such property shall constitute "Excluded Property" only to the extent and for so long as such permit, contract, lease, license, franchise, charter, consent, permit, authorization or other agreement or applicable Law validly prohibits the creation of a Lien on such property in favor of the Collateral Agent (in each case, after giving effect to Sections 9-406, 9-407, 9-408 and 9-409 of the UCC (or similar provisions of the PPSA, if applicable) or any other applicable Law) and, upon the termination of such prohibition (howsoever occurring), such property shall cease to constitute "Excluded Property" (with no requirement to obtain the consent of any Governmental Authority or third party, including, without limitation, no requirement to comply with the Federal Assignment of Claims Act or any similar statute in the United States or Canada) and (ii) no asset located in the United States or Canada (other than, for the avoidance of doubt, voting Equity Interests of Foreign Subsidiaries in excess of 65% of the voting rights of all such Equity Interests in each such Foreign Subsidiary) and pledged under the ABL DIP Credit Agreement shall constitute Excluded Property.

"Excluded Subsidiary" means (a) any Foreign Subsidiary other than a Primary Canadian Subsidiary Holdco, (b) [reserved], (c) any Foreign Subsidiary Holding Company and (d) each Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC other than a Primary Canadian Subsidiary Holdco. Notwithstanding the foregoing or any other provision of the Loan Documents, ~~(x) a non-U.S. intermediate holding subsidiary (if any) of the Borrower through which the Borrower owns its primary subsidiaries in Canada (a "Primary Canadian Subsidiary Holdco") shall also provide a guarantee subject to the terms that apply to a Canadian Loan Party and (y) no Domestic Subsidiary that guarantees, or is a borrower under, the ABL DIP Credit Agreement shall constitute an Excluded Subsidiary.~~

"Excluded Taxes" means, with respect to any Recipient, (i) Taxes imposed on or measured by such Recipient's net income or branch profits and franchise (and similar) Taxes imposed on it (in lieu of net income Taxes), in each case by a jurisdiction (including any political subdivision thereof) as a result of such Recipient being organized in, having its principal office in, or in the case of any Lender, having its applicable Lending Office in, such jurisdiction, or as a result of any other present or former connection of such Recipient with the jurisdiction imposing such Taxes (other than any such connection arising from this Agreement or any other Loan Documents or any transactions contemplated thereunder), (ii) in case of a Lender, except in the case of a Lender that is an assignee pursuant to a request by the Borrower under Section 10.13, any U.S. federal withholding Tax imposed on any payment by or on account of any obligation of any Loan Party hereunder or under any other Loan Document that is required to be imposed on amounts payable to such Recipient pursuant to Laws in force at the time such Lender becomes a party hereto (or designates a new Lending Office), except to the extent that (A) such Lender is an assignee of any other Lender that was entitled, immediately prior to such assignment or acquisition, to receive

~~³ Company to confirm whether still needed.~~

additional amounts from any Loan Party with respect to such withholding Tax pursuant to Section 3.01(a), or (B) such Lender was entitled, immediately prior to the designation of a new Lending Office, to receive additional amounts from any Loan Party with respect to such withholding Tax pursuant to Section 3.01(a), (iii) any withholding Tax that is attributable to such Recipient's failure to comply with Section 3.01(e), (iv) any Canadian federal withholding tax imposed under Part XIII of the Income Tax Act (Canada) as a result of the Recipient not dealing at arm's length (within the meaning of the Income Tax Act (Canada)) with any Canadian Loan Party, except where the non-arm's length relationship arises as a result of such Recipient having executed, delivered, become party to, performed obligations or received payments under, received or perfected a Lien or engaged in any other transaction pursuant to, enforced, or sold or assigned an interest in, any Loan or Loan Document or (v) any U.S. federal withholding Tax imposed pursuant to FATCA.

"Exit Conversion" has the meaning specified in Section 2.07(b).

"Exit Event" means the occurrence of either (a) a Credit Bid Sale Transaction or (b) an Exit Conversion.

"Exit Fee" has the meaning specified in Section 2.09(b).

"fair market value" means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

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

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) on such day on such transactions as determined by the Administrative Agent and (c) if the Federal Funds Rate is less than 0%, it shall be deemed to be 0% hereunder.

~~"Federal Reserve Bank of New York's Website" means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.~~

"Final Loan" has the meaning specified in Section 2.01(a).

"Final Loan Amount" has the meaning specified in Section 2.01(a).

"Final Loan Date" means the date on which the conditions specified in Section 4.02 are satisfied (or waived in accordance herewith) and the Final Loan is funded in accordance with the terms hereof.

“Final Order” means an order of the Bankruptcy Court in substantially the form of the Interim Order granting the relief provided in the Interim Order on a final basis, with any changes thereto that are satisfactory to the Agents and the Required Lenders in their sole and absolute discretion.

“Final Order Entry Date” means the date on which the Final Order is entered by the Bankruptcy Court.

~~“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) Biggert Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.~~

~~“Flood Insurance Laws” means the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board of Governors of the Federal Reserve System).~~

“Floor” means 1.00% *per annum*.

“Foreign Benefit Event” means, with respect to any Foreign Pension Plan, (i) the existence of unfunded liabilities in excess of the amount permitted under any applicable Requirements of Law or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (ii) the failure to make the required contributions or payments under any applicable Requirements of Law on or before the due date for such contributions or payments, (iii) the receipt of a notice from a Governmental Authority relating to its intention to terminate in whole or in part any such Foreign Pension Plan or to appoint a trustee or similar official to administer any such Foreign Pension Plan, or alleging the insolvency of any such Foreign Pension Plan, (iv) the incurrence of any liability by any Loan Party or any Subsidiary under any applicable Requirements of Law on account of the complete or partial termination of such Foreign Pension Plan or the complete or partial withdrawal of any participating employer therein, (v) the occurrence of any transaction that is prohibited under any applicable Requirements of Law and that would reasonably be expected to result in the incurrence of any liability by any Loan Party or any Subsidiary or (vi) the imposition on any Loan Party or any Subsidiary of, any fine, excise tax or penalty resulting from any noncompliance with any applicable Requirements of Law.

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

“Foreign Pension Plan” means any pension plan, fund (including, without limitation, any superannuation fund) or other similar program established, maintained or contributed to outside the United States or Canada by any Loan Party or any Subsidiary for their respective employees residing outside the United States or Canada (other than any plans, funds, or other similar programs that are maintained exclusively by a Governmental Authority), which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA.

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

“Foreign Subsidiary Holding Company” means any Domestic Subsidiary that has no material assets other than Capital Stock of one or more Foreign Subsidiaries that are CFCs (other than a Foreign Subsidiary that is a Primary Canadian Subsidiary Holdco).

“Fronting Fee Letter” means that certain fee letter, dated as of the date hereof, between the Borrower and the Fronting Lender.

“Fronting Lender” means Jefferies Capital Services, LLC, as fronting lender for the Backstop Lenders and the Electing DIP Term Lenders.

“Fronting Letter” means that certain letter agreement, dated as of the date hereof, among the Fronting Lender, and the ~~Backstop Lenders and, if applicable, the Electing DIP Term~~ Lenders.

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

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. All ratios and computations based on GAAP contained in this Agreement will be computed in conformity with GAAP, except that in the event the Borrower is acquired in a transaction in which purchase accounting is applied to the financial statements of the Borrower, the effects of the application of purchase accounting in such instance shall be disregarded in the calculation of such ratios and other computations.

“General Partner” has the meaning specified in the definition of “Indebtedness.”

“Governmental Authority” means the government of the United States of America, Canada or any other nation, or of any political subdivision thereof, including state, local, provincial or otherwise, 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).

“Grant” means any grant, award, credit, financial assistance, payment or other similar benefit provided by a Governmental Authority to the Borrower or any of its Subsidiaries in support of a project contingent on job creation or job retention.

“Granting Lender” has the meaning specified in Section 10.06(g).

“guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that the term “guarantee” will not include endorsements for

(2) such Person or a Subsidiary of such Person is a general partner of the Joint Venture (a “General Partner”); and

(3) there is recourse, by contract or operation of law, with respect to the payment of such Indebtedness to property or assets of such Person or a Subsidiary of such Person; and then such Indebtedness shall be included in an amount not to exceed:

(a) the lesser of (i) the net assets of the General Partner and (ii) the amount of such obligations to the extent that there is recourse, by contract or operation of law, to the property or assets of such Person or a Subsidiary of such Person; or

(b) if less than the amount determined pursuant to clause (a) immediately above, the actual amount of such Indebtedness that is recourse to such Person or a Subsidiary of such Person, if the Indebtedness is evidenced by a writing and is for a determinable amount.

“Indemnified Taxes” means all Taxes imposed on or with respect to, or measured by, any payment by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, other than Excluded Taxes or Other Taxes.

“Indemnitee” has the meaning specified in Section 10.04(b).

“Instant Brands Canada” means Instant Brands Inc., a corporation amalgamated under the Canada Business Corporations Act.

“Intellectual Property” has the meaning assigned to such term in the Security Agreements.

“Intellectual Property Security Agreements” means, collectively, all Copyright Security Agreements, Patent Security Agreements and Trademark Security Agreements substantially in the form of Exhibits 3A, 3B, 3C or 3D attached to the US Security Agreement or the Canadian Security Agreement, as applicable, between the Collateral Agent and the Loan Parties party thereto, in each case as amended, supplemented or otherwise modified.

“Interest Payment Date” means (a) the last Business Day of each month (beginning with the month ending July 31, 2023) and (b) the Maturity Date.

“Interest Period” means, as to each SOFR Loan, the period commencing on the date such SOFR Loan is disbursed or converted to or continued as a SOFR Loan and ending on the date that is one (1), three (3) or six (6) months thereafter or, to the extent agreed by each Lender of such SOFR Loan, twelve months thereafter, as selected by the Borrower in the applicable Committed Loan Notice; provided that:

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

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

with the terms of this Agreement, (iv) the Collateral Documents, (v) the Agency Fee Letter and the Fronting Fee Letter, and (vi) any other document or instrument designated in writing by the Borrower and the Administrative Agent (or the Required Lenders) as a “Loan Document”.

“Loan Obligations” means all unpaid principal, interest (including any interest, fees and expenses at the rate provided for in the documentation with respect thereto, whether or not such interest fees or expenses are allowed or allowable under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and banker’s acceptances), damages and other liabilities of the Loan Parties and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities of the Loan Parties, in each case payable in respect of the Loans or otherwise arising under the Loan Documents.

“Loan Parties” means, collectively, (i) the Borrower, (ii) Holdings and (iii) each other Guarantor.

“Loans” means, collectively, the Interim Loans and Final Loans made by the Lenders on the Closing Date and the Final Loan Date, as applicable, to the Borrower pursuant to Section 2.01.

“Master Consent” means that certain Master Consent to Assignment, dated as of the date hereof, among the Borrower, the Administrative Agent and the Fronting Lender.

“Material Adverse Effect” means (i) a material adverse effect on the business, results of operations or financial condition of the Borrower and its Subsidiaries, taken as a whole (other than as customarily occurs as a result of the events leading up to and following the commencement of the Chapter 11 Cases), (ii) a material adverse effect on the ability of the Loan Parties (taken as a whole) to perform their respective obligations under the Loan Documents or (iii) a material adverse effect on the rights and remedies (taken as a whole) of the Lenders and the Agents under the Loan Documents.

“Maturity Date” means the earliest of (a) December [—12], 2023⁴ or if such day is not a Business Day, the preceding Business Day, (b) the date of the substantial consummation (as defined in Section 1101(2) of the Bankruptcy Code) of a Plan ~~or of~~ Reorganization acceptable to the Required Lenders (in their sole discretion), (c) the date the Bankruptcy Court converts any of the Chapter 11 Cases to a Chapter 7 case, (d) the date the Bankruptcy Court dismisses any of the Chapter 11 Cases, (e) the date on which the Loan Parties consummate a sale of all or substantially all of the assets of the Loan Parties pursuant to section 363 of the Bankruptcy Code or otherwise, and (f) such earlier date on which the Loans shall become due and payable by acceleration or otherwise in accordance with the terms of this Agreement and the other Loan Documents.

“Maximum Rate” has the meaning specified in Section 10.09.

“Milestones” shall have the meaning set forth in Section 6.22.

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

~~“Mortgages” means, collectively, the deeds of trust, trust deeds, hypothecs and mortgages, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, creating and evidencing a Lien on a Mortgaged Property made by the Loan Parties in favor or for the benefit of the Collateral Agent for the benefit of the Secured Parties in form and substance reasonably~~

⁴ ~~NTD: To be 180 days after closing.~~

~~satisfactory to the Administrative Agent and the Required Lenders with such modifications as may be required by local law.~~

~~“Mortgage Policies” has the meaning specified in Section 6.18(i).~~

“Mortgaged Property” means each parcel of fee owned Real Property with respect to which a ~~Mortgage~~security interest is granted pursuant to ~~Section 6.13~~the Bankruptcy Court DIP Order; provided that no Loan Party shall be required to grant a ~~Mortgage on~~security interest in any Real Property constituting Excluded Property.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001 (a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or in the past six (6) years has made or been obligated to make contributions.

“Net Cash Proceeds” means:

(i) with respect to any Asset Disposition or Event of Loss, the aggregate cash proceeds (including cash proceeds received by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received in cash) received by any Loan Party pursuant to such Asset Disposition or Event of Loss, net of (A) with respect to an Asset Disposition, the direct costs relating to such sale (including sales commissions and legal, accounting and investment banking fees), (B) with respect to an Asset Disposition, amounts reserved against any potential liability for any indemnity obligation or purchase price adjustment associated with such Asset Disposition (but only so long as and to the extent that the seller is required to maintain such reserve), (C) cash taxes paid or reasonably estimated by Holdings to be payable in cash by Holdings or any Subsidiary as a result thereof (after taking into account any available related tax credits or deductions and any tax sharing arrangements) and (D) amounts required to be applied to the repayment of any Indebtedness secured by a Permitted Lien on the asset subject to such Asset Disposition or Event of Loss that has priority over the Lien securing the Loan Obligations;

(ii) with respect to any issuance or sale of Capital Stock, means the cash proceeds of such issuance or sale net of attorneys’ fees, accountants’ fees, underwriters’ or placement agents’ fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually Incurred in connection with such issuance or sale and permitted by the Bankruptcy ~~Code~~Court DIP Orders and net of cash taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing arrangements); and

(iii) solely for the purposes of Section 2.05(b), with respect to the Incurrence of any Indebtedness by Holdings, the Borrower or any Subsidiary, the excess, if any, of (x) the sum of the cash received in connection with such Incurrence over (y) the investment banking fees, underwriting discounts, commissions, costs and other out-of-pocket expenses and other customary expenses, incurred by Holdings, the Borrower or such Subsidiary in connection with such Incurrence and permitted by the Bankruptcy ~~Code~~Court DIP Orders.

“Non-Bank Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(3).

which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time in the past six (6) years.

~~“Perfection Certificate” has the meaning specified in the Security Agreements.~~

“Permitted Investments” has the meaning specified in Section 7.13.

“Permitted Liens” has the meaning specified in Section 7.01.

“Permitted Precious Metals Lease” means any Precious Metals Lease to which any Loan Party is a party on the date of this Agreement, and any other Precious Metal Lease entered into in the ordinary course of business of the Borrower and its Subsidiaries or that is otherwise on terms satisfactory to the Required Lenders.

~~“Permitted Variance” means [under negotiation; definition to follow].~~

“Permitted Variance” means, for purposes of testing whether a Budget Event has occurred, (a) with respect to any Budgeted Disbursements Test (i) conducted on the first Budget Testing Date occurring after the Petition Date, a variance of 120% of the estimated aggregate disbursements in the then-in-effect Approved Budget, (ii) conducted on the second Budget Testing Date occurring after the Petition Date, a variance of 120% of the estimated aggregate disbursements in the then-in-effect Approved Budget, (iii) conducted on the third Budget Testing Date occurring after the Petition Date, a variance of 115% of the estimated aggregate disbursements in the then-in-effect Approved Budget and (iv) conducted on any Budget Testing Date thereafter, a variance of 110% of the estimated aggregate disbursements in the then-in-effect Approved Budget and (b) with respect to the Budgeted Receipts Test, 85% of the estimated aggregate receipts in the then-in-effect Approved Budget. For the avoidance of doubt, the fees and expenses of financial and legal advisors to the parties hereto shall not be taken into account in determining the aggregate disbursements and cumulative variance hereunder.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision hereof or any other entity.

“Petition Date” means June ~~10~~12, 2023.

“PIK Equity Interest Election” has the meaning specified in Section 2.09(c).

“Plan of Reorganization” means a plan of reorganization with respect to the Loan Parties and their Subsidiaries pursuant to the Chapter 11 Cases.

“Platform” has the meaning specified in Section 6.02.

“Pledged Debt” has the meaning specified in the Security Agreements.

“Pledged Equity” has the meaning specified in the Security Agreements.

“PPSA” means the Personal Property Security Act (Ontario) (and other equivalent personal property security legislation in any other applicable Canadian province or territory) and the regulations thereunder, as from time to time in effect; provided that, if attachment, perfection or priority of the security interest in any Collateral is governed by the personal property security laws of any jurisdiction in

“Prepetition Obligations” means all (i) Prepetition Term Obligations and (ii) Prepetition ABL Indebtedness of the Loan Parties to the Prepetition Indebtedness Holders incurred prior to the Petition Date.

“Prepetition Term Agent” means Wilmington, as successor to Jefferies Finance LLC, in its capacities as administrative agent and collateral agent under the Prepetition Term Documents, or any successor administrative agent and collateral agent under the Prepetition Term Documents.

“Prepetition Term Credit Agreement” means that certain term Senior Secured Credit Agreement, dated as of April 12, 2021 (as amended, supplemented or otherwise modified on or prior to the date hereof), by and among the Borrower, Initial Holdings, the lenders party thereto and the Prepetition Term Agent.

“Prepetition Term Documents” means the Prepetition Term Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith.

“Prepetition Term Lender” means any lender under the Prepetition Term Credit Agreement.

“Prepetition Term Loan” means any loan made pursuant to the Prepetition Term Credit Agreement.

“Prepetition Term Obligations” means “Loan Obligations” (as defined in the Prepetition Term Credit Agreement).

“Primary Canadian Subsidiary Holdco” has the meaning specified in the definition of “Excluded Subsidiary.”

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

“Pro Rata Share” means, with respect to each Lender at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Loans of such Lender at such time and the denominator of which is the amount of the aggregate Commitments (or aggregate Loans) at such time.

“Proceeds” has the meaning specified in the UCC.

“Property” means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

“Public Lender” has the meaning specified in Section 6.02.

“QFC” has the meaning specified in Section 10.23.

“QFC Credit Support” has the meaning specified in Section 10.23.

“Qualified Stock” means, with respect to any Person, any Capital Stock of such Person other than Disqualified Stock.

“Real Property” means all land, tenements, hereditaments and any estate or interest therein, together with the buildings, structures, parking areas and other improvements thereon (including all fixtures) now or hereafter owned or leased by any Loan Party, together with all easements, rights of way, and similar rights relating thereto and all leases, licenses, tenancies and occupancies thereof.

“Recipient” means any Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document.

~~“Refinancing” means (i) the repayment in full of the principal, accrued and unpaid interest and other amounts under the Sponsor LC Reimbursement Note and each other Sponsor LC Reimbursement Note Document pursuant to the Sponsor Payoff Letter and (ii) the termination and/or release, together with evidence in form and substance satisfactory to the Required Lenders of such termination and release, of any security interests (including, for the avoidance of doubt, the URS) and guarantees in connection therewith (or arrangements for such termination and release shall have been made as of the Closing Date as set forth in the Sponsor Payoff Letter).~~

“Refinancing Indebtedness” means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) (collectively, “refinance”, “refinances” and “refinanced” shall have a correlative meaning) any Indebtedness existing on the Closing Date or Incurred in compliance with this Agreement (including Indebtedness of the Borrower that refinances Indebtedness of any Subsidiary and Indebtedness of any Subsidiary that refinances Indebtedness of another Subsidiary) including Indebtedness that refinances Refinancing Indebtedness; provided, however, that:

(1) (a) if the Stated Maturity of the Indebtedness being refinanced is earlier than the Stated Maturity of the Loans, the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being refinanced or (b) if the Stated Maturity of the Indebtedness being refinanced is later than the Stated Maturity of the Loans, the Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Stated Maturity of the Loans;

(2) (a) in the case of Indebtedness consisting of term loans, the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being refinanced or (b) in the case of Indebtedness consisting of revolving loans, the Refinancing Indebtedness shall not have any scheduled mandatory commitment reduction prior to the Stated Maturity of the Indebtedness being refinanced;

(3) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus, without duplication, any additional Indebtedness Incurred to pay interest or premiums required by the instruments governing such existing Indebtedness and fees and expenses Incurred in connection therewith);

(4) if the Indebtedness being refinanced is subordinated in right of payment to the Loans or the Guaranty, such Refinancing Indebtedness is subordinated in right of payment to the

Loans or the Guaranty on terms at least as favorable to the Lenders with such Loans as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; and

(5) to the extent such Refinancing Indebtedness extends, replaces, refunds, refinances, renews or defeases secured Indebtedness, the Liens securing such Refinancing Indebtedness shall be of no higher priority, and attach to no additional assets, than the Liens securing the Indebtedness being refinanced.

“Register” has the meaning specified in Section 10.06(c).

~~“Registered Equivalent Notes” means, with respect to any notes originally issued in an offering pursuant to Rule 144A under the Securities Act or other private placement transaction under the Securities Act, substantially identical notes (having the same guarantees) issued in a dollar for dollar exchange therefor pursuant to an exchange offer registered with the SEC.~~

“Regulated Bank” has the meaning specified in Section 10.01.

“Regulation S” means Regulation S under the Securities Act.

“Related Business” means any business that is consistent with Section 6.05(b).

“Related Business Assets” means any property, plant, equipment or other assets (excluding assets that are qualified as current assets under GAAP) to be used or useful by the Borrower or a Subsidiary in a Related Business or capital expenditures relating thereto.

“Related Part(y)(ies)” means, with respect to any specified Person, such Person’s Affiliates, and the respective partners, managers, members, officers, directors, employees, agents (including sub-agents and co-agents), representatives, trustees, advisors and attorneys-in-fact of such Person and its Affiliates.

“Release” means any release, spill, emission, discharge, dispersal, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection, migration or leaching into or through the Environment, or within, from or into any building, structure, facility or fixture.

“Relevant Transaction” has the meaning specified in Section 2.05(b)(ii)(A).

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

~~“Required Backstop Lenders” means at least 50.1% of the Backstop Lenders~~

“Required Lenders” means, as of any date of determination, Lenders holding more than 50% of the sum of the aggregate outstanding amount of Loans and unused Commitments as of such date.

“Requirements of Law” means, as to any Person, the Organization Documents of such Person, and any law, treaty, rule or regulation or final, non-appealable determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or to which any of its material property is subject.

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

“Responsible Officer” means, as to any Loan Party, the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or the Secretary of such Loan Party or any other officer or similar official thereof responsible for the administration of the obligations of such Loan Party in respect of this Agreement, if such Loan Party is a partnership or a limited liability company that has no such officers, a person duly authorized under applicable law by the general partner, managers, members or a similar body to act on behalf of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Capital Stock of any Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to such Person’s stockholders, partners or members (or the equivalent Persons thereof).

~~“Retained Asset Sale Proceeds” means, at any date of determination, an amount determined on a cumulative basis, that is equal to the aggregate cumulative sum of all Net Cash Proceeds of asset dispositions not permitted by Section 7.05(a) hereof received by the Borrower or any of its Subsidiaries that are or were not required to be applied as a prepayment of Loans pursuant to Section 2.05(b)(ii).~~

“Rule 144A” means Rule 144A under the Securities Act.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global Inc., and any successor thereto.

“Same Day Funds” means immediately available funds.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of comprehensive Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the U.S. Department of Commerce, or by the United Nations Security Council, any Governmental Authority of Canada or the European Union or Her Majesty’s Treasury of the United Kingdom, (b) any Person located, organized or resident in a Sanctioned Country or (c) any Person owned 50% or more or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, Her Majesty’s Treasury of the United Kingdom or any Governmental Authority of Canada, in each case with jurisdiction over the Loan Parties.

“Sponsor LC Reimbursement Note Documents” means Refinancing means (i) the repayment in full of the principal of the Sponsor LC Reimbursement Note and the other “~~Note Documents~~” (as defined all other amounts contemplated by the Sponsor Payoff Letter and (ii) the termination and/or release, together with evidence in form and substance satisfactory to the Required Lenders of such termination and release, of any security interests (including, for the avoidance of doubt, the URS) and guarantees in connection therewith (or arrangements for such termination and release shall have been made as of the Closing Date as set forth in the Sponsor ~~LC Reimbursement Note~~ Payoff Letter).

“Sponsor Payoff Letter” means that certain Payoff Letter, dated as of June [—14], 2023, by and among the Borrower and Cornell Capital Partners LP, which Payoff Letter shall be in form and substance satisfactory to the Required Lenders.

“Stated Maturity” means, with respect to any Indebtedness, the date specified in the agreement governing or certificate relating to such Indebtedness as the fixed date on which the final payment of principal of such Indebtedness is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

“Subsidiary” of any Person means (a) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total ordinary voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or persons performing similar functions) or (b) any partnership, joint venture limited liability company or similar entity of which more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, is, in the case of clauses (a) and (b), at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary will refer to a Subsidiary of the Borrower.

“Subsidiary Guarantor” means each Subsidiary of the Borrower (other than any Excluded Subsidiary). For the avoidance of doubt, on and as of the Closing Date, the URS are Subsidiary Guarantors.

“Supported QFC” has the meaning specified in Section 10.23.

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

“Term Priority Collateral” has the meaning assigned to the term “Term DIP Priority Collateral” in the Interim Order.

“Term SOFR” means the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such

first preceding Business Day is not more than three (3) Business Days prior to such Periodic Term SOFR Determination Day; provided that if Term SOFR as so determined shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“Term SOFR Adjustment” means a percentage per annum as set forth below:

<u>Interest Period</u>	<u>Percentage</u>
One month	0.11448%
Three months	0.26161%
Six months	0.42826%

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

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

“Termination Date” means the date on which (a) the Commitments shall have been terminated or expired and (b) the principal of and interest on each Loan, all fees and other Secured Obligations (other than contingent indemnity obligations with respect to then unasserted claims not then due and payable) shall have been paid in full.

“Threshold Amount” means, at any date of determination, \$1,000,000.

“Transaction Costs” has the meaning specified in the definition of “Transactions”.

“Transactions” means the (a) execution and delivery of the Loan Documents and the definitive documentation in respect of the ABL DIP Credit Agreement to be entered into on the Closing Date, (b) the consummation of the [Sponsor LC Reimbursement Note](#) Refinancing, and (c) the initial funding (or deemed funding) of ABL DIP Credit Agreement and the Interim Loan on the Closing Date, together with each transaction to be consummated in connection therewith, including the [Sponsor LC Reimbursement Note](#) Refinancing and the payment of all fees, costs and expenses incurred in connection with such transactions (the “Transaction Costs”).

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a SOFR Loan.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Secured Parties’ security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from

time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

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

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

“URS” means, collectively, URS-1 (Charleroi) LLC, a Delaware limited liability company and URS-2 (Corning) LLC, a Delaware limited liability company.

“US Loan Party” means any Loan Party that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“US Security Agreement” means, collectively, the US Security Agreement, dated as of the Closing Date, among Holdings, the Borrower and each other US Loan Party and Wilmington, as Collateral Agent, as it may be amended, amended and restated, supplemented or otherwise modified from time to time, together with each security agreement supplement executed and delivered by a US Loan Party pursuant to Section 6.11.

“US Subsidiary” means any Subsidiary of Holdings organized under the Laws of the United States, any state thereof or the District of Columbia.

“USA PATRIOT Act” has the meaning specified in Section 10.19.

“Variance Report” has the meaning specified in Section 6.01(ed).

“Voting Stock” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors, managers or trustees, as applicable, of such Person.

“Wholly-Owned Subsidiary” means a Subsidiary, all of the Capital Stock of which (other than directors’ qualifying shares and nominee shares) is owned, directly or indirectly, by the Borrower or another Wholly-Owned Subsidiary.

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

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

“Withholding Agent” means any Loan Party, the Administrative Agent and, in the case of any U.S. federal withholding Tax, any other applicable withholding agent.

“Write-Down and Conversion Powers” means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which

Section 1.10 [Reserved].

Section 1.11 Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement) or any relevant adjustments thereto, including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Administrative Agent and its Related Parties may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE II

THE COMMITMENTS AND BORROWINGS

Section 2.01 The Loans.

(a) Subject to the terms and conditions set forth herein (including in Section 4.01 or Section 4.02, as applicable) and in the Bankruptcy Court DIP Orders, each Lender severally agrees to make Loans on the Closing Date and the Final Loan Date to the Borrower denominated in Dollars in an aggregate amount equal to such Lender's Commitment in respect of the Interim Loan Amount or the Final Loan Amount, as applicable. There shall be no more than two Borrowings with respect to the Lenders' Commitments which Borrowings shall consist of (i) (A) loans (the "Interim Loans") on the Closing Date in an aggregate principal amount equal to \$100,000,000, which shall be made by each Lender in accordance with its respective Pro Rata Share of the Interim Loan Amount, (B) \$13,250,000 in Loans deemed to be made and issued to the Fronting Lender (for the account of the Backstop Lenders) in payment of the Backstop Fee owed to such Backstop Lenders in the amounts reflected on Schedule 2.01, and (C) \$6,625,000 in Loans deemed to be made and issued to the Fronting Lender (for the account of the ~~Backstop~~ DIP Lenders) in payment of the Commitment Fee owed to such Lenders in the amounts reflected on Schedule 2.01 (the sum of the amounts in clauses (i)(A), (i)(B) and (i)(C), the "Interim Loan Amount"), and (ii) loans (the "Final Loans") in an aggregate principal amount equal to \$32,500,000 (the "Final Loan Amount") on the Final Loan Date, which shall be made by each Lender in accordance with its respective Pro Rata Share of the Final Loan Amount. The Commitments in respect of the Interim Loans shall terminate automatically after the making of the Interim Loans on the Closing Date, and the Commitments in respect of the Final Loans shall terminate automatically after the making of the Final Loans on the Final Loan Date.

(b) Each Lender as of the Closing Date and the Borrower hereby acknowledge and agree that (i) each Prepetition Term Lender that is not a Backstop Lender (in such capacity, an “Electing DIP Term Lender”) may participate with the other Electing DIP Term Lenders to provide its pro rata portion of the Interim Loans and Final Loans, by executing a joinder agreement to the Fronting Letter in the form attached as an exhibit to the Fronting Letter no later than the Election Deadline. Such participation shall be on a pro rata basis in accordance with the proportion of (1) the principal amount of the ~~obligations~~Prepetition Term Obligations under the Prepetition Term Credit Agreement owed to each such Prepetition Term Lender to (2) the principal amount of the ~~obligations~~Prepetition Term Obligations owed to all Prepetition Term Lenders under the Prepetition Term Credit Agreement on the Election Deadline, as applicable. Each such Electing DIP Term Lender shall become a Lender upon the assignment to such Electing DIP Term Lender of its portion of the Interim Loan by the Fronting Lender in accordance with the Fronting Letter. Within two (2) Business Days following the Election Deadline, Schedule 1 to the Master Consent and Annex A to the Fronting Fee Letter shall be revised with the consent of the parties thereto (not to be unreasonably withheld or delayed), and the Fronting Letter (including Annex A thereto) shall be revised with the consent of the Fronting Lender and the approval of the Backstop Lender Advisors, in each case to reflect the participation of the Electing DIP Term Lenders in the Interim Loans and Final Loans.

(c) It is understood and agreed for the avoidance of doubt that (i) neither the Borrower nor any other Loan Party shall be required to take any action to facilitate the participation by any Electing DIP Term Lender in the Interim Loans and Final Loans hereunder other than (A) to facilitate the posting of notices to the Prepetition Term Lenders through the Prepetition Term Agent, as applicable, and (B) as separately agreed between any Loan Party and the Fronting Lender and (ii) in no event shall any transaction contemplated by Section 2.01(b) result in a reduction in the aggregate amount of Commitments or Loans available to the Borrower under this Agreement. Notwithstanding anything contained in this Section 2.01 to the contrary, in no event shall the Administrative Agent have any obligations with respect to the determination or funding of any Commitments or Loans by, or assignments of any Commitments or Loans to, any Electing DIP Term Lender or Backstop Lender other than as set forth in Section 10.06 or as separately agreed between the Administrative Agent and the Fronting Lender.

Section 2.02 Borrowings and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of SOFR Loans shall be made upon the Borrower’s irrevocable written notice to the Administrative Agent in the form of a Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each such notice must be received by the Administrative Agent not later than noon New York City time (i) three (3) Business Days prior to the requested date of any Borrowing or continuation of SOFR Loans or any conversion of Base Rate Loans to SOFR Loans, and (ii) one (1) Business Day before the requested date of any Borrowing of Base Rate Loans, or such shorter time, in each case, as may be agreed in writing between the Administrative Agent, the Required Lenders and the Borrower. Each Borrowing of, conversion to or continuation of SOFR Loans shall be in a minimum principal amount of \$500,000, or a whole multiple of \$100,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of SOFR Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, a SOFR Loan with a duration of

Borrower or any of the Loan Parties or any of their Subsidiaries, Affiliates or direct or indirect equity owners or reserved against as a result thereof) to the repayment of the Loans pursuant to this Section 2.05(b), (B) to the extent that the Borrower has determined in good faith that the prepayment of Loans that would otherwise be required to be paid pursuant to Sections 2.05(b)(i) or (ii) from any of or all of the Net Cash Proceeds attributable to any Subsidiary would be prohibited or result in a material breach or default under a Contractual Obligation (other than a Contractual Obligation with an Affiliate thereof) or the Organization Documents of the relevant Subsidiary, an amount equal to the portion of such Net Cash Proceeds so affected will not be required to be applied to repay Loans at the times provided in this Section 2.05(b) so long, but only so long, as the applicable Contractual Obligation or Organization Document would prohibit such prepayment, and once such prepayment of any of such funds is permitted under the applicable Contractual Obligation or Organization Document, an amount equal to such Net Cash Proceeds, as applicable, will be promptly applied (net of costs and expenses incurred and additional taxes payable by the Borrower or any of the Loan Parties or any of their Subsidiaries, Affiliates or direct or indirect equity owners or reserved against as a result thereof) to the repayment of the Loans pursuant to this Section 2.05(b) and (C) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Cash Proceeds would have material adverse tax or cost consequences to the Borrower or any of the Loan Parties or any of their Subsidiaries, Affiliates or direct or indirect equity owners (including the imposition of material withholding taxes) with respect to such Net Cash Proceeds, an amount equal to the portion of such Net Cash Proceeds attributable to Foreign Subsidiaries so affected will not be required to be applied to repay Loans at the times provided in this Section 2.05(b); provided that, in the case of this clause (C), if such Net Cash Proceeds are repatriated by such Foreign Subsidiary, an amount equal to such repatriated funds (net of costs and expenses incurred and additional taxes payable by the Borrower or any of the Loan Parties or any of their Subsidiaries, Affiliates or direct or indirect equity owners or reserved against as a result thereof) will be promptly applied to prepayments pursuant to this Section 2.05(b).

Section 2.06 Termination or Reduction of Commitments. The Commitment with respect to the Interim Loan of each Lender shall be automatically and permanently reduced to \$0 upon the funding of the Interim Loan on the Closing Date and with respect to the Final Loan on the Final Loan Date, as applicable.

Section 2.07 Repayment of Loans. On the Maturity Date, the Borrower shall either (a) repay in cash to the Administrative Agent for the ratable account of each Lender, the aggregate principal amount of such Lender's Loans outstanding on such date, together with all other Obligations hereunder or (b) subject to the prior written consent of the Required Lenders in their sole discretion, convert the Loans into an exit term loan that is on terms and conditions satisfactory to the Required Lenders in their sole discretion and subject to documents acceptable to the Agents and the Required Lenders in their sole discretion (such conversion, an "Exit Conversion"). Each Lender shall be entitled to designate its participation in any such Exit Conversion to any Affiliate or managed fund.

Section 2.08 Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to Adjusted Term SOFR for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate. Notwithstanding anything to the contrary herein, but subject to the immediately succeeding sentence, on each Interest Payment Date,⁵ the Borrower shall

⁵ ~~[NTD: Interest Period concept only applies to SOFR Loans.]~~

pay-in-kind (in lieu of cash payment) a portion of the interest accrued during from the immediately prior Interest Payment Date (or the Closing Date, as applicable) to such Interest Payment Date in respect of any Loans equal to 7.00% per annum (the “PIK Interest Portion”), in which case, on and as of such Interest Payment Date for such Loans, an amount equal to the PIK Interest Portion in respect of such Loans for such Interest Period shall be automatically capitalized and added to the then-outstanding principal amount of such Loans. Notwithstanding anything to the contrary in the foregoing or any other provision of this Agreement, in no event shall the portion of accrued interest payable or paid in cash under this Agreement on the Loans in respect of any individual Interest Period be less than an amount equal to (i) with respect to SOFR Loans, Adjusted Term SOFR plus the 3.00% per annum and (ii) with respect to Base Rate Loans, the Base Rate plus the 2.00% per annum.

(b) During the continuance of an Event of Default under Section 8.01(a), the Borrower shall pay interest on past due amounts owing by it hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on such amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment.

Section 2.09 Fees.

(a) Commitment Fee. The Borrower agrees to pay on the Closing Date for the account of each Lender in accordance with its Pro Rata Share, a commitment fee in Dollars equal to 5.00% of the aggregate amount of Commitments (the “Commitment Fee”), which such Commitment Fee shall be, without duplication, payable-in-kind in accordance with Section 2.01(a). The Commitment Fee shall be fully earned and payable-in-kind on the Closing Date.

(b) Exit Fee. Upon the occurrence of an Exit Event, the Borrower shall pay (or cause to be paid) to the Administrative Agent for the account of each Lender in accordance with its Pro Rata Share, an exit fee in Dollars equal to 5.00% of the Commitments as in effect on the Closing Date (the “Exit Fee”), which such Exit Fee shall be (i) payable-in-kind in connection with any Credit Bid Sale Transaction (and shall, for purpose of any credit bid, be deemed added to the principal balance of the Loans immediately prior to any such credit bid); or (ii) otherwise, payable in cash upon any repayment of the Loans ~~or (iii) at.~~ At the election of the Required Lenders in their sole discretion, ~~payable in the form of the Exit Fee for all Lenders may be converted into~~ Equity Interests, subject to terms, conditions and agreements to be agreed by the Required Lenders and the Borrower. The Exit Fee shall be fully earned on the making of the Interim Loan and payable on the date of the applicable Exit Event.

(c) Backstop Fee. The Borrower agrees to pay on the Closing Date for the account of each Backstop Lender in accordance with its Pro Rata Share, a backstop fee equal to 10.0% of the aggregate amount of Commitments as in effect on the Closing Date (the “Backstop Fee”), which such Backstop Fee shall be, without duplication, payable-in-kind ~~(or in accordance with Section 2.01(a) (and,~~ at the election of the Required Lenders in their sole discretion, ~~payable in the form of the Backstop Fee for all Lenders may be converted into~~ Equity Interests, subject to terms, conditions and agreements to be agreed by the Required Lenders and the Borrower). The Backstop Fee shall be fully earned and payable on the Closing Date.

(d) Other Fees. The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in the Agency Fee Letter or otherwise in writing in the amounts and at the times so specified.

Borrower and the Administrative Agent, and the Administrative Agent promptly shall transmit the notice to each other Lender and (i) in the case of any SOFR Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such SOFR Loans, and interest upon the SOFR Loans of such Lender thereafter shall accrue interest at the rate then applicable to Reference Rate Loans of the same type hereunder, and (ii) the Borrower shall not be entitled to elect the SOFR Option (including in any borrowing, conversion or continuation then being requested) until such Lender determines that it would no longer be unlawful or impractical to do so.

(c) The obligations of the Loan Parties under this Section 3.08 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

ARTICLE IV

CONDITIONS PRECEDENT

Section 4.01 Conditions to Closing Date and Availability of the Interim Loan. The obligation of each Lender to make the Interim Loan hereunder on the Closing Date is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's and the Required Lenders' (or their respective counsel) receipt of the following, each properly executed by a Responsible Officer of the signing Loan Party and by the other parties thereto and each in form and substance reasonably satisfactory to the Agents, the Required Lenders, and their respective legal counsel:

(i) executed counterparts of this Agreement and the Guaranty;

(ii) executed counterparts of each Security Agreement, together with:

(A) certificates, if any, representing the Pledged Equity referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank;

(B) UCC and PPSA financing statements in appropriate form for filing under the UCC or the PPSA, as applicable, filings with the United States Patent and Trademark Office and the United States Copyright Office (to the extent indicated in the schedules to the applicable Security Agreement) and the Canadian Intellectual Property Office, in each case, in appropriate form for filings; and

(C) subject to Section 6.18, evidence that all other actions, recordings and filings required by the Collateral Documents as of the Closing Date or that the Required Lenders may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been taken, completed or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent and the Required Lenders;

(iii) (A) a copy of the certificate or articles of incorporation or organization, including all amendments thereto, of each Loan Party, certified, if applicable, as of a recent date by the Secretary of State or similar Governmental Authority of the jurisdiction of its organization, and a certificate as to the good standing (where relevant) of each Loan Party as of a recent date, from such Secretary of State or similar

Governmental Authority and (B) a certificate of the Secretary or Assistant Secretary (or a director in lieu thereof) of each Loan Party, dated the Closing Date and certifying (i) that attached thereto is a true and complete copy of the by-laws, memorandum and articles of association, operating (or limited liability company) agreement or other equivalent Organization Documents of such Loan Party as in effect on the Closing Date, (ii) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors (or equivalent governing body) of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (iii) that the certificate or articles of incorporation or organization of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of incorporation or organization furnished pursuant to clause (A) above, and (iv) as to the incumbency and specimen signature of each Responsible Officer executing any Loan Document on behalf of such Loan Party and countersigned by another officer as to the incumbency and specimen signature of the Secretary, Assistant Secretary or director of such Loan Party executing the certificate pursuant to clause (B) above.

(iv) [reserved];

(v) a certificate of a Responsible Officer of the ~~Lead~~-Borrower (x) confirming satisfaction of the conditions set forth in Sections 4.01(c), (d), (h), (i), (j) and (m), and (y) attaching a copy of the ABL DIP Credit Agreement and certifying the same to be true, complete and effective as of the Closing Date; and

(vi) a Committed Loan Notice in accordance with the requirements hereof.

(b) The Administrative Agent shall have received, at least one (1) Business Day prior to the Closing Date, (i) all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and Parts II.1 and XII.2 of the Criminal Code (Canada) (together, the “AML Legislation”) that has been reasonably requested at least two (2) Business Days in advance of the Closing Date and (ii) if the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a certification regarding individual beneficial ownership solely to the extent required by the Beneficial Ownership Regulation in relation to the Borrower.

(c) (i) The representations and warranties contained in Article V and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall have been true and correct in all material respects as of such earlier date; provided, however, that any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects after giving effect to such qualification and (ii) no Default or Event of Default shall exist or would result from such proposed Borrowing or from the application of the proceeds therefrom.

(d) Since the Petition Date, no event, change or condition has occurred that has had, or could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(e) [Reserved].

- (f) The Lenders and the Administrative Agent shall have received the Approved Budget.
- (g) The Chapter 11 Cases shall have been commenced and all of the pleadings related to the “first day orders” shall be in form and substance reasonably satisfactory to the Required Lenders.
- (h) The amount of the Loans made on the Closing Date shall not exceed the amount authorized by the Interim Order.
- (i) The Interim Order Entry Date shall have occurred, and the Interim Order shall be in full force and effect.
- (j) The Chapter 11 Cases of any of the Debtors shall not have been dismissed or converted to cases under Chapter 7 of the Bankruptcy Code
- (k) All of the “first day orders” entered by the Bankruptcy Court on or about the Petition Date or the Closing Date (and if any such orders shall have not been entered by the Bankruptcy Court, the form of such orders submitted to the Bankruptcy Court for approval) regarding, relating to or impacting (i) the Debtors’ cash management systems and arrangements (such order, the “Cash Management Order”), (ii) any rights or remedies of any Secured Party, (iii) this Agreement or the ABL DIP Credit Agreement, (iv) the Collateral, any Liens thereon or any DIP Superpriority Claims, (v) the use of cash collateral, (vi) debtor-in-possession financing, (vii) adequate protection or otherwise relating to the Prepetition Term Credit Agreement or the Prepetition ABL Credit Agreement or (viii) any plan of reorganization shall, in each case, be in form and substance satisfactory to the Agents and the Required Lenders in their sole and absolute discretion.
- (l) All orders entered by the Bankruptcy Court pertaining to any payment of the Loan Parties’ vendors, shippers, or other trade counterparties and all motions and other documents filed, and submitted to, the Bankruptcy Court in connection therewith shall be in form and substance reasonably satisfactory to the Required Lenders.
- (m) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Chapter 11 Cases, and no Debtor shall have applied for, consented to or acquiesced in any such appointment.
- (n) The [Sponsor LC Reimbursement Note](#) Refinancing shall have been consummated, or shall be consummated substantially concurrently with the funding of the Interim Loan.

For purposes of determining whether the conditions specified in this Section 4.01 have been satisfied on the Closing Date, by funding the Interim Loan hereunder, each Lender that has executed this Agreement (or an Assignment and Acceptance on the Closing Date) shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to such Lender, as the case may be.

Section 4.02 Conditions to Availability of the Final Loan. The obligation of each Lender to make the Final Loan hereunder after the Closing Date is subject to satisfaction of the following conditions precedent:

- (a) the representations and warranties contained in Article V and the other Loan Documents shall be true and correct in all material respects on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall have been true

and correct in all material respects as of such earlier date; provided, however, that any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” shall be true and correct on and as of such date;

(b) no Default or Event of Default shall exist or would result from such proposed Borrowing or from the application of the proceeds therefrom;

(c) all outstanding fees, expenses and costs of the Lenders and the Agents (including, for the avoidance of doubt, all costs, fees, expenses and professional fees of the Agents and Lenders, including the fees and expenses of the Backstop Lender Advisors) shall have been paid;

(d) within ~~15~~35 days of the Petition Date, the Final Order Entry Date shall have ~~occurred~~occurred and the Administrative Agent and the Lenders shall have received a true and complete copy of the Final Order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders and the Agents;

(e) the Loan Parties and their Subsidiaries shall be in compliance in all material respects with the Bankruptcy Court DIP Order;

(f) the Administrative Agent and the Lenders shall have received a certificate of a Responsible Officer of the Borrower confirming satisfaction of the conditions set forth in Sections 4.02(a) and (b); and

(g) the Administrative Agent and the Lenders shall have received copies of UCC, PPSA, United States Patent and Trademark Office, United States Copyright Office, Canadian Intellectual Property Office, tax and judgment lien searches and other equivalent lien searches in Canada, in each case as of a recent date with respect to the Loan Parties in such offices and the states (or other jurisdictions) of formation of such Persons or in which the chief executive office of each such Person is located, in each case as indicated in the schedules to the applicable Security Agreement, together with copies of the financing statements (or similar documents) disclosed by such search and either (i) reflecting no Liens other than Permitted Liens or (ii) accompanied by evidence satisfactory to the Required Lenders that the Liens (other than Permitted Liens) indicated in any such financing statement (or similar document) have been or will be contemporaneously released or terminated.

Each Committed Loan Notice (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of SOFR Loans) submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Section 4.02(a) and (b) have been satisfied on and as of the date of the applicable Borrowing. For purposes of determining whether the conditions specified in this Section 4.02 have been satisfied on the Final Loan Date, by funding the Final Loan hereunder, each Lender that has executed this Agreement (or an Assignment and Acceptance on or prior to the Final Loan Date) shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to such Lender, as the case may be.

office and (iii) any other filings contemplated hereby and by the Collateral Documents, in each case, as applicable, constitute further evidence that such Liens are perfected and continuing Liens on the Collateral securing the Loan Obligations, enforceable (subject to applicable bankruptcy, insolvency, reorganization, moratorium, capital impairment, recognition of judgments or other laws affecting creditors' rights generally) against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except Permitted Liens, to the extent any such liens would have priority over the Liens in favor of the Collateral Agent pursuant to the Bankruptcy Court DIP Orders (including, without limitation any Liens on ABL Priority Collateral securing the ABL Obligations permitted hereunder to the extent provided in the Bankruptcy Court DIP Orders and the ABL Intercreditor Agreement).

Section 5.18 Employment Matters. Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, there are no strikes, lockouts or slowdowns against any Loan Party or any Subsidiary pending or, to the knowledge of the Borrower, threatened. The hours worked by and payments made to employees of the Loan Parties and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, local or foreign law dealing with such matters except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, all payments due from any Loan Party or any Subsidiary, or for which any claim may be made against any Loan Party or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Loan Party or such Subsidiary.

Section 5.19 Anti-Terrorism Law. Each Loan Party and, to the knowledge of the Borrower, their respective officers, directors, employees and agents are in compliance in all material respects with applicable Requirements of Law relating to terrorism or money laundering ("Anti-Terrorism Laws"), including applicable provisions of Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and the USA PATRIOT Act.

Section 5.20 Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures reasonably designed to promote compliance by the Borrower and its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and Holdings, the Borrower, its Subsidiaries and their respective officers and employees and, to the knowledge of Holdings or the Borrower, their respective directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (i) Holdings, the Borrower, any Subsidiary or any of their respective directors or officers, or (ii) to the knowledge of Holdings or the Borrower, any employee or agent of Holdings, the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing, use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions. This Section 5.20 shall not be interpreted or applied in relation to any Loan Party or any Subsidiary of a Loan Party to the extent that the representations made under this Section 5.20 violate, or would result in a breach of, the Foreign Extraterritorial Measures Act (Canada).

Section 5.21. Purpose of Loans. The proceeds of the Loans will be used in accordance in all material respects with the terms of the Bankruptcy Court DIP Orders and the Loan Documents, including, without limitation: (i) to repay outstanding principal balance of the Prepetition ABL Credit Agreement, in an aggregate amount not less than \$[]⁶¹, (ii) pay amounts due to Lenders and the Agents hereunder

⁶¹ NTD: ~~To be confirmed~~ BofA/Skadden to confirm.

and professional fees and expenses (including legal, financial advisor, appraisal and valuation-related fees and expenses) incurred by Lenders, the Agents and the Loan Parties, including those incurred in connection with the preparation, negotiation, documentation and court approval of the transactions contemplated hereby and (iii) to provide working capital, and for other general corporate purposes of the Loan Parties, and to pay administration costs of the Chapter 11 Cases and to fund all other obligations benefiting from the Carve Out (without regard to whether such obligations are provided for in the Approved Budget) and claims or amounts approved by the Bankruptcy Court and for any other purpose not prohibited by the terms hereof, in all cases, subject to the Approved Budget as then in effect.

Section 5.22 Approved Budget and Financial Plan. The Approved Budget was prepared in good faith based on assumptions believed by the Loan Parties to be reasonable at the time made and upon information believed by the Responsible Officers of the Loan Parties to have been reasonable based upon the information available at the time such Approved Budget was furnished; it being understood and agreed that the information and/or projections included in the Approved Budget are not to be viewed as facts and are subject to significant contingencies, many of which are not within the control of the Loan Parties and/or any Subsidiary, and that projected or estimated information may differ from actual results, and such differences may be material. On and after the delivery of any Variance Report in accordance with this Agreement, such Variance Report fairly represents, in all material respects, the information covered thereby. To the knowledge of the Borrower, no facts exist that (individually or in the aggregate) would result in any material change in the then-applicable Approved Budget.

Section 5.23. Bankruptcy Court DIP Orders.

(a) The Interim Order (and when applicable, the Final Order) is, following the entry thereof, effective to (i) cause the Secured Obligations to be DIP Superpriority Claims, having the status and priority set forth in ~~Section 2.23~~the Interim Order (and when applicable, the Final Order), subject to the Carve-Out in all respects, and (ii) create in favor of the ~~Administrative~~Collateral Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable perfected first priority security interest (in accordance with the priorities set forth in ~~Section 2.23~~the Interim Order (and when applicable, the Final Order)) in the Collateral without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements or documents.

(b) The Interim Order (and when applicable, the Final Order) is in full force and effect, and has not been vacated, reversed, terminated, stayed, modified or amended in any manner without the consent of the Agents and the Required Lenders in their sole and absolute discretion.

(c) Upon the occurrence of the Maturity Date (whether by acceleration or otherwise), the ~~Administrative Agent~~Agents shall, subject to Article VIII and the applicable provisions of the Interim Order (and when applicable, the Final Order), be entitled to immediate payment of the Loan Obligations and to enforce the remedies provided for under this Agreement and the other Loan Documents in accordance with the terms hereof and thereof, in each case without further application to or order by the Bankruptcy Court.

(d) If the Interim Order (and when applicable, the Final Order) is the subject of a pending appeal in any respect, none of the Interim Order (and when applicable, the Final Order), the extension of credit or the performance by any Loan Party of any of its obligations under this Agreement or any of the other Loan Documents shall be the subject of a presently effective stay pending appeal. The Debtors, the ~~Administrative Agent~~Agents and the Lenders shall be entitled to rely in good faith upon the Interim Order (and when applicable, the Final Order), notwithstanding objection thereto or appeal therefrom by any interested party. The Debtors, the ~~Administrative Agent~~Agents and the Lenders shall be permitted and required to perform their respective obligations in compliance with the Loan Documents

Notwithstanding the foregoing, in the event that the Borrower delivers a quarterly report on Form 10-Q for such fiscal quarter, the Borrower will be deemed to have delivered the financial statements required by this clause (b) on the date of such filing; ~~and~~

(e) ~~[Variance Report under negotiation; provision to follow].~~

(c) on Wednesday of each week following the Petition Date (prior to 11:59 p.m.), commencing with Wednesday, June 21, 2023, the Borrower shall deliver to the Administrative Agent and the Lenders an updated budget (in the form of the Approved Budget), which shall become the Approved Budget upon approval in accordance with the definition thereof; and

(d) on Wednesday of each week following the Petition Date (prior to 11:59 p.m.), commencing with Wednesday of the first full week following the Petition Date, the Borrower shall deliver to the Administrative Agent and the Lenders a budget variance report in substantially the form of Exhibit K hereto (each, a "Variance Report") describing in reasonable detail the Loan Parties and their Subsidiaries' aggregate cash receipts and aggregate cash disbursements during the relevant Budget Testing Period (or, prior to the completion of any applicable Budget Testing Period, for each full fiscal week completed after the Petition Date and prior to the date of such delivery) as compared to the projected, aggregate cash receipts and disbursements provided by the then-current Approved Budget for the same period.

Additionally, at least weekly, at a time mutually agreed with the Required Lenders that is after the delivery of the information required pursuant to ~~clause~~clauses (ed) above, upon the request of the Required Lenders or the Backstop Lender Advisors, participate in one conference call for the Lenders, the Backstop Lender Advisors and counsel to 11th Lane Holdings, LLC as a Lender (and its Affiliates that are Lenders) to discuss the financial condition and results of operations of the Loan Parties and their Subsidiaries, the Approved Budget and Variance Report and any other information regarding the business and operations requested by the Backstop Lender Advisors or any counsel to 11th Lane Holdings, LLC as a Lender (and its Affiliates that are Lenders); provided for any week in which the conference call described above does not take place, upon the request of the Required Lenders, the Borrower shall use commercially reasonable efforts to cause its financial advisor to be available for a call with Lenders to discuss the matters described above; it being understood that the foregoing cannot be construed to create any obligation on any of the aforementioned professionals to provide such information, absent an express contractual requirement to do so, nor can any of the foregoing be construed to override existing confidentiality and other obligations owed by the Loan Parties to such of its professionals, including with respect to the sharing of any such information with third parties.

Section 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) concurrently with any delivery of financial statements under clause (a) or (b) (other than the financial statements for the fiscal quarter ending on June 30, 2023) of Section 6.01, a Compliance Certificate signed by a Responsible Officer of the Borrower;

(b) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by Holdings, the Borrower or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, as the case may be;

(c) no later than five (5) Business Days prior to the effectiveness thereof, copies of substantially final drafts of any proposed amendment, waiver or other modification with respect to any Indebtedness (other than intercompany Indebtedness);

(d) concurrently with any delivery of the financial statements pursuant to clause (a) of Section 6.01, a report setting forth the information required by Section 5.3 of the Security Agreements or confirming that there has been no change in such information since the Closing Date or the date of the last such report;

(e) concurrently with any delivery of financial statements pursuant to clause (a) of Section 6.01 (and at such other times as the Collateral Agent requests during the continuation of an Event of Default), notice of any filing by any Loan Party, either directly or through any agent, employee or designee, of an application for the registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office or the United States Copyright Office and the Canadian Intellectual Property Office, and such Loan Party shall execute, deliver and file any Intellectual Property Security Agreements to evidence the Collateral Agent's security interest on such Patent, Trademark or Copyright in the United States and Canada, and the General Intangibles (as defined in Article 9 of the UCC (or equivalent, if applicable, under the PPSA) of such Loan Party relating thereto or represented thereby;

(f) as soon as reasonably practicable in advance of filing with the Bankruptcy Court or delivering to the Creditors' Committee or the U.S. Trustee, as the case may be, the Final Order and all other proposed orders, motions, filings and pleadings related to the Loans and the Loan Documents, any Plan of Reorganization and/or any disclosure statement related thereto and (ii) by the earlier of (A) three (3) Business Days prior to being filed (and if impracticable, then as soon as possible and in no event later than promptly after being filed) on behalf of any of the Debtors with the Bankruptcy Court or (B) at the same time as such documents are provided by any of the Debtors to any statutory committee appointed in the Chapter 11 Cases or the U.S. Trustee, all other notices, filings, motions, pleadings or other information concerning the financial condition of the Borrower or any of its Subsidiaries or other Indebtedness of the Loan Parties or any request for relief under Section 363, 365, 1113 or 1114 of the Bankruptcy Code or Section 9019 of the Federal Rules of Bankruptcy Procedure or Part IV of the CCAA, in each case, other than notices, filings, motions, pleadings or other information concerning less than \$[1,000,000] in value;

(g) promptly following any request from the Administrative Agent therefor, (x) copies of (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Loan Party or any ERISA Affiliate with the Internal Revenue Service with respect to each Pension Plan; (ii) the most recent actuarial valuation report for each Pension Plan; and (iii) such other documents or governmental reports or filings relating to any Pension Plan or Canadian Pension Plan as the Administrative Agent shall reasonably request and (y) with respect to any Multiemployer Plan, (i) any documents described in Section 101(k) of ERISA that any Loan Party or any ERISA Affiliate has received from such Multiemployer Plan and (ii) any notices described in Section 101(1) of ERISA that any Loan Party or any ERISA Affiliate has received from such Multiemployer Plan; and

(h) as promptly as practicable following any request from the Administrative Agent or the Required Lenders therefor, such other reasonably available information regarding the operations, business affairs and financial condition of Holdings or any Subsidiary, as the Administrative Agent (for itself or on behalf of any Lender) or the Required Lenders may reasonably request; provided that (x) such financial information is of a type customarily provided

to lenders in similar syndicated credit facilities and (y) none of Holdings, the Borrower or any Subsidiary shall be required to disclose or provide any information (i) that constitutes non-financial trade secrets or non-financial proprietary information of Holdings, the Borrower or any of their respective Subsidiaries or any of their respective customers and/or suppliers, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective representatives) is prohibited by any applicable Requirements of Law, (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product or (iv) in respect of which Holdings, the Borrower or any Subsidiary owes confidentiality obligations to any third party); provided that in the event Holdings, the Borrower or any Subsidiary does not provide information in reliance on the foregoing proviso, the Borrower shall provide notice to the Administrative Agent that such information is being withheld (but solely to the extent both feasible and permitted under applicable Requirements of Law or confidentiality obligation, or without waiving such privilege, as applicable) and the Borrower shall use commercially reasonable efforts to describe the applicable information withheld pursuant to clause (ii), (iii) or (iv) above to the extent both feasible and permitted under applicable Requirements of Law or confidentiality obligation, or without waiving such privilege, as applicable.

(i) promptly after the same are available and to the extent feasible not later than three (3) days prior to the filing thereof (other than in exigent circumstances in which case as soon as practicable), all pleadings, motions, applications and any other documents to be filed by or on behalf of the Loan Parties; and

(j) by ~~5:00 p.m.~~ 11:59 p.m. (New York City Time) on the Wednesday of each week (or, if such Wednesday is not a Business Day, the immediately preceding Business Day), commencing with the week ending June ~~1~~ 23, 2023, the Borrower shall deliver to the Administrative Agent and the Lenders (i) ~~a 13-week cash flow forecast of Borrower and its Subsidiaries, prepared by the Loan Parties, setting forth in reasonable detail all sources and uses of the Loan Parties' cash for the succeeding 13-week period,~~ (ii) sales flash reporting for such week, together with weekly and month-to-date sales detail by segment and product and a comparison to the prior fiscal year ~~and the Approved Budget,~~ in each case, in form and consistent with such reporting prepared by the Borrower prior to the Petition Date and ~~(iii)~~ any Borrowing Base Certificate (as defined in the ABL DIP Credit Agreement) or other calculation of the Borrowing Base (as defined in the ABL DIP Credit Agreement) delivered to the ABL Administrative Agent or ABL Lenders during the immediately preceding week.

(l) no later than the date that is the earlier of (x)(A) for the fiscal month ended April 30, 2023, June ~~14~~ 21, 2023, (B) for the fiscal month ended May 31, 2023, June ~~30~~ 23, 2023 and (C) for each fiscal month ended after the Closing Date, twenty (20) days following the fiscal month-end for each fiscal month ended after the Closing Date and (y) the date on which the lenders under the ABL DIP Credit Agreement receive such information, an unaudited (on an internal reporting basis) consolidated statement of comprehensive income or operations of the Borrower and its Subsidiaries for such fiscal month, which such unaudited statements shall include (i) ~~an~~ ana consolidated income statement, balance sheet and cash flows ~~by business and region~~ in form and detail acceptable to the Required Lenders, (ii) to be provided solely to the Backstop Lender Advisors (but not to the Administrative Agent or the Lenders), management key performance indicator reporting including performance by business unit, product/brand and region and supporting commentary relative to ~~plan~~ the prior year and, solely beginning with the month ending June 30, 2023, relative to the projection model, acceptable to the Required Lenders; and (iii) an updated Borrowing Base (as defined in the ABL DIP Credit Agreement) forecast; ;

~~(iv) management KPI reporting and (v) updated monthly 3-statement projection model (Income Statement, Balance Sheet and Cash Flows)m~~ to be provided solely to the Backstop Lender Advisors (but not to the Administrative Agent or the Lenders) no later than 11:59 p.m. (New York City Time) on June 23, 2023, an updated business plan monthly through 2024 and quarterly thereafter through 2026 with a consolidated income statement, balance sheet and cash flows, including a detailed operating income statement support by business unit, product, brand and region, ~~along with projected liquidity and other such~~ and a monthly liquidity model for North America including detailed working capital and capital expenditures by business unit, and such other detailed information ~~acceptable to~~ available to the Borrower that is requested by the Required Lenders; ~~and~~

~~(mn)~~ promptly upon request, such other information concerning the condition or operations, financial or otherwise, of any Loan Party or any Subsidiary as any Lender may from time to time may reasonably request; ~~and~~

(o) by July 27, 2023 (or such later date as the Required Lenders may agree in their sole discretion), the Debtors shall have delivered to the Administrative Agent and the Required Lenders a budget showing the anticipated costs and expenses associated with a wind-down of the Debtors and their Subsidiaries.

Documents required to be delivered pursuant to Section 6.01 (a) or (b) or Section 6.02(a) or (b) may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents and the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Holdings or the Borrower with any such request for delivery.

The Borrower hereby acknowledges that (i) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of Holdings and the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (ii) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that: (w) all the Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat the Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws

(provided, however, that to the extent the Borrower Materials constitute Confidential Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information”; and (z) the Administrative Agent shall be entitled to treat Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.” Notwithstanding the foregoing, the Borrower shall not be under any obligation to mark Borrower Materials “PUBLIC.” Notwithstanding anything herein to the contrary, any Loan Documents, financial statements delivered pursuant to Sections 6.01(a) and (b) and Compliance Certificates delivered pursuant to Section 6.02(a) shall be deemed to be suitable for posting on a portion of the Platform designated “Public Side Information.”

Section 6.03 Notices of Material Events. Furnish to the Administrative Agent and each Lender promptly after a Responsible Officer of Holdings or the Borrower obtains knowledge thereof written notice of any material event related to the Borrower or its Subsidiaries, including of the following:

- (a) the occurrence of any Default or Event of Default;
- (b) receipt of any written notice of any governmental investigation or any litigation or proceeding commenced or threatened against any Loan Party that would reasonably be expected to have a Material Adverse Effect;
- (c) the occurrence of any ERISA Event, Canadian Pension Event or Foreign Benefit Event that, alone or together with any other ERISA Events or Foreign Benefit Events that have occurred, would reasonably be expected to have a Material Adverse Effect;
- (d) the occurrence of any Canadian Pension Termination Event that, alone or together with any other Canadian Pension Termination Events that have occurred, would reasonably be expected to result in liability or an obligation to pay in excess of the Threshold Amount;
- (e) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect;
- (f) receipt (and copy of) of any proposal or indication of interest for the restructuring or recapitalization of the Borrower or any Subsidiary or the sale of all or any of the Borrower’s or any ~~Subsidiary’s~~Subsidiary’s assets or businesses;
- (g) any motion for the appointment of a trustee or examiner; and
- (h) receipt of any written notice of a default or event of default delivered to any Loan Party under any debt agreements or instruments in respect of Indebtedness in excess of the Threshold Amount.
- (i) (i) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any Adverse Proceeding not previously disclosed in writing by the Borrower to the Administrative Agent and the Required Lenders, or (ii) any material development in any Adverse Proceeding that would reasonably be expected to be adversely determined and that, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or that seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby;

Each notice delivered under this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 6.04 Payment of Taxes. Subject to the terms of the Bankruptcy Court DIP Orders and any required approval by the Bankruptcy Court, pay or discharge all Taxes before the same shall become delinquent or in default, except (a) where the validity or amount thereof is being contested in good faith by appropriate proceedings and where such Loan Party or such Subsidiary has set aside on its books adequate reserves with respect thereto if and to the extent required by GAAP, (b) as would not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect or (c) unless stayed by the Chapter 11 Cases.

Section 6.05 Existence; Conduct of Business. (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, qualifications, licenses, permits, franchises, governmental authorizations, Intellectual Property rights, licenses and permits material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, in each case, except as would not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under Section 7.04 and (b) carry on and conduct its business in substantially the same fields of enterprise as it is conducted as of the Closing Date or enterprises reasonably similar related, corollary, complementary, ancillary, synergistic or incidental thereto or reasonable expansions or extensions thereof.

Section 6.06 Maintenance of Properties. Except as would not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear and casualty and condemnation excepted.

Section 6.07 Insurance.

~~(a).~~ Subject to Section 6.18, the Borrower will maintain or cause to be maintained, in each case, as determined by the Borrower in good faith, with financially sound and reputable insurers, such insurance coverage in respect of all of its material Property 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 (giving effect to self-insurance) and otherwise on such terms and conditions as shall be customary for such Persons. All such insurance shall, to the extent customary (but in any event, not including business interruption insurance and personal injury insurance) (i) provide that no cancellation thereof shall be effective until at least 10 days after receipt by the Collateral Agent of written notice thereof (or such shorter period as the ~~Collateral Agent~~Required Lenders may agree in its sole discretion) and (ii) name the Collateral Agent as an additional insured party or loss payee, as applicable.

~~(b) [Reserved].~~

~~(c) If any improvement to any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws, then Borrower or applicable Loan Party shall (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in amounts and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the~~

~~Administrative Agent and Collateral Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent and Collateral Agent, including, without limitation, evidence of annual renewals of such insurance.~~

Section 6.08 Compliance with Laws.

Unless stayed by the Chapter 11 Cases or except as would not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, comply with all Requirements of Law (including ERISA and Environmental Laws) applicable to it or its property.

Section 6.09 Books and Records. Keep proper books of record and account in which full, true and correct entries in all material respects in conformity with GAAP are made of all material dealings and transactions in relation to its business and activities.

Section 6.10 Inspection Rights. Permit any representatives designated by the Administrative Agent or Required Lenders or, during the continuation of an Event of Default, any Lender (including employees of the Administrative Agent, any Lender or any consultants, accountants, lawyers and appraisers retained by the Administrative Agent or the Required Lenders), upon reasonable prior notice during normal business hours, to visit and inspect its properties, to examine and make extracts from its books and records, including environmental assessment reports and Phase I studies, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided, however, that financial officers of the Borrower shall be entitled to participate in any discussion or meeting with the accountants. Nothing in this Section 6.10 shall be construed to cause Holdings, any Loan Party or any of its or their Subsidiaries to divulge any trade secrets, research data or proprietary information or any materials covered by an attorney-client privilege that has not been waived or any materials otherwise subject to confidentiality or disclosure restrictions that would prohibit or restrict such disclosure (so long as such confidentiality or disclosure restrictions were not entered into in contemplation of the requirements of this Section 6.10) or any materials in respect of which disclosure is prohibited by Applicable Law.

Section 6.11 Future Guarantees and Security. Subject to applicable Law, cause each of its Domestic Subsidiaries formed or acquired after the date of this Agreement that is not an Excluded Subsidiary (which, for the purposes of this paragraph, shall include (x) any previously non-wholly-owned Domestic Subsidiary that becomes wholly-owned and is not an Excluded Subsidiary, (y) any Domestic Subsidiary which guarantees any ABL Obligations and (z) any Subsidiary which ceases to be an Excluded Subsidiary) in accordance with the terms of this Agreement to become a Loan Party and to comply with the requirements set forth in the definition of “Collateral and Guarantee Requirement”. The foregoing actions shall be taken by the earlier of (a) the date that any such Subsidiary guarantees any ABL Obligations and (b) the date that is ten (10) days after the formation or acquisition of such Subsidiary (or, in each case, such later date as the Required Lenders may agree).

Section 6.12 [Reserved].

Section 6.13 Additional Collateral. If any material assets (including any owned Real Property located in the United States or Canada) are acquired by the Borrower or any Subsidiary that is a Loan Party after the Closing Date (other than (x) assets constituting Collateral under any Collateral Document that become subject to the Lien in favor of the Collateral Agent upon acquisition thereof and (y) Excluded Property), notify the Collateral Agent and the Lenders thereof, and, if requested by the Collateral Agent or the Required Lenders, but in each case only to the extent required pursuant to the Collateral and Guarantee Requirement, the Loan Parties, as applicable, shall cause such assets to be subjected to a Lien securing the Loan Obligations and will take, and cause Subsidiaries that are Loan Parties to take, such

actions as shall be necessary or reasonably requested by the Collateral Agent to grant and perfect such Liens, including actions described in Section 6.11 and Section 6.16, all at the expense of the applicable Loan Party, within ten (10) days after such acquisition (or, in the case of any Real Property, ~~the later of (i) 90 days and (ii) with respect to any Real Property that is at any time located in an area identified by the Federal Emergency Management Act (or any successor agency) as a special flood hazard area, the date that Collateral Agent has received a Flood Certificate for such Real Property and if applicable, related notices and evidence of flood insurance as required by Section 6.07(e)~~) (or, in each case, such later date as the ~~Agents and the~~ Required Lenders may agree in their reasonable discretion).

Section 6.14 Use of Proceeds. The proceeds of the Loans will be used in accordance in all material respects with the terms of the Bankruptcy Court DIP Order and the Loan Documents, including, without limitation: (i) to repay obligations under the Prepetition ABL Credit Agreement, in an aggregate amount not to exceed \$[]²; (ii) pay amounts due to Lenders and the Agents hereunder and professional fees and expenses (including legal, financial advisor, appraisal and valuation-related fees and expenses) incurred by Lenders, the Agents and the Loan Parties, including those incurred in connection with the preparation, negotiation, documentation and court approval of the transactions contemplated hereby and (iii) to provide working capital, and for other general corporate purposes of the Loan Parties, and to pay administration costs of the Chapter 11 Cases and to fund all other obligations benefiting from the Carve Out (without regard to whether such obligations are provided for in the Approved Budget) and claims or amounts approved by the Bankruptcy Court and for any other purpose not prohibited by the terms hereof subject to the Approved Budget as then in effect.— No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

Section 6.15 USA PATRIOT Act; Sanctions, etc.

(a) Promptly provide following a request by any Agent or any Lender, all documentation and other information that any Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable “know your customer” and AML Legislation.

(b) Additionally (i) comply in all material respects with Anti-Corruption Laws, Sanctions and Anti-Terrorism Laws applicable to it and its property and (ii) maintain in effect policies and procedures reasonably designed to ensure compliance by the Borrower and its Subsidiaries and their respective directors, officers, employees and agents with Sanctions, Anti-Corruption Laws and Anti-Terrorism Laws applicable to it and its property. Notwithstanding the foregoing, the requirements set forth in this Section 6.15, as they pertain to compliance by any Foreign Subsidiary with Sanctions are subject to and limited by any Requirements of Law applicable to such Foreign Subsidiary in its relevant local jurisdiction.

(c) Not, and not authorize any of their respective directors, officers, employees, agents and representatives to, directly or indirectly, use any part of the proceeds of the Loans, or otherwise make available such proceeds, directly or indirectly, to any Person, (i) for the purpose of financing the activities of any Person that, at the time of such financing, is a Sanctioned Person (except to the extent authorized by applicable Requirements of Law) or (ii) in any other manner that would (x) constitute or give rise to a violation of Sanctions by, or (y) reasonably be expected to result in the designation as a target of Sanctions of, Holdings, the Borrower, each of the Borrower’s Subsidiaries or, to the knowledge of Holdings or the Borrower, any other party hereto, including any Lenders.

² NTD: BofA/Skadden to confirm.

(d) No provision of Section 6.14 or this Section 6.15 shall apply to or in favor of any Loan Party or any Subsidiary of a Loan Party if and to the extent that it would violate or result in a breach, by or in respect of such Person, of the Foreign Extraterritorial Measures Act (Canada).

Section 6.16 Further Assurances. Without limiting the foregoing, subject to ~~each~~ ~~Acceptable~~ the ABL Intercreditor Agreement and the Bankruptcy Court DIP Orders, but in each case only to the extent required pursuant to the Collateral and Guarantee Requirement, cause each Loan Party to execute and deliver, or cause to be executed and delivered, to the Collateral Agent such documents, agreements and instruments, or take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, ~~Mortgages~~ and other documents and such other actions or deliveries of the type required by Section 4.01 ~~or, with respect to after-acquired owned Real Property (other than Excluded Property), Section 6.18, as applicable~~), which may be required by Law or which the Collateral 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 at the expense of the applicable Loan Party.

Section 6.17 Maintenance of Ratings. In respect of the Borrower, use commercially reasonable efforts to (a) cause the Loans to be continuously rated (but not any specific rating) from both of S&P and Moody's within thirty (30) days of the Petition Date and (b) maintain public corporate ratings and corporate family ratings (but, in each case, not to obtain a specific rating) from both of Moody's and S&P.

Section 6.18 Post-Closing Requirements. As promptly as practicable, and in any event within the time periods after the Closing Date specified in Schedule 6.18 or such later date as the Required Lenders agrees to in writing, including to reasonably accommodate circumstances unforeseen on the Closing Date, deliver the documents or take the actions specified on Schedule 6.18.⁷

Section 6.19 Change in Fiscal Year. Maintain its current fiscal year-end (provided that any Subsidiary of the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to the same fiscal year end as the Borrower) or, upon written notice to the Administrative Agent, maintain a fiscal year that ends on a day reasonably acceptable to the Required Lenders or, in the case of a Foreign Subsidiary, required by Law, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 6.20 Certain Bankruptcy Matters. Comply in a timely manner with their obligations and responsibilities as debtors in possession under the Bankruptcy Code and the CCAA and any other order of the Bankruptcy Court or the Canadian Court.

Section 6.21 [Reserved].

Section 6.22 Milestones. ~~By the times specified on~~ Schedule 6.22 hereto, comply with each of the milestones set forth on Schedule 6.22 hereto (each a "Milestone" and, collectively, the "Milestones").

⁷ ~~NTD: To include delivery of security documents, joinder to ABL Intercreditor Agreement and delivery of mortgages for UnSub properties.~~

than proceeds or products thereof and after acquired property of, and Equity Interests in, such acquired Subsidiary subjected to a Lien pursuant to the terms existing at the time of the acquisition by the Borrower or a Subsidiary);

(p) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Holdings, the Borrower or its Subsidiaries in the ordinary course of business;

(q) [reserved];

(r) Liens securing Refinancing Indebtedness Incurred to refinance, refund, replace, amend, extend or modify, as a whole or in part, Indebtedness that was previously so secured; provided that (1) any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced and (2) any Liens securing any Refinancing Indebtedness that is secured by any or all of the Collateral shall be subject to ~~each applicable Acceptable~~the ABL Intercreditor Agreement and shall have no more senior priority than the Lien securing the Indebtedness that such Refinancing Indebtedness refinanced, refunded, replaced, amended, extended or modified;

(s) any interest or title of a lessor or sublessor under any Capitalized Lease Obligation, operating lease or sublease;

(t) Liens granted by a Subsidiary that is not a Loan Party in favor of Holdings, the Borrower or another Loan Party in respect of Indebtedness to or other obligations owed by such Subsidiary to such Loan Party; provided that such Indebtedness or obligations are permitted under Section 7.03;

(u) Liens securing the Secured Obligations;

(v) the reservation in any original grants from any Governmental Authority of any land or interest therein and statutory exceptions to title;

(w) securities to public utilities or to any Governmental Authority when required by the utility or other authority in connection with the supply of services or utilities;

(x) servicing agreements, developing agreements, site plan agreements and other agreements with Governmental Authorities pertaining to the use or development of any of the assets of the Person; provided the same are complied with in all material respects and do not materially interfere with the use of such assets in the operation of the business of such Person;

(y) Liens arising from the right of distress enjoyed by landlords or Liens otherwise granted to landlords (including, without limitation, Liens over rent deposits), in either case, to secure the payment of arrears of rent in respect of leased properties;

(z) [reserved];

(aa) any Lien consisting of rights reserved to or vested in any Governmental Authority by any statutory provision;

(oo) Liens on cash collateral, backstop letters of credit and other credit support for letters of credit permitted hereunder;

(pp) with respect to leased Real Property, Liens to which the fee or other superior interest in such Real Property is subject;

(qq) Liens disclosed by ~~the Mortgage Policies~~ mortgage policies and any replacement, extension or renewal of any such Lien; provided that such replacement, extension or renewal Lien shall not cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal; provided, further, that the Indebtedness and other obligations secured by such replacement, extension or renewal Lien are permitted by this Agreement;

(rr) Liens securing Indebtedness permitted to be incurred pursuant to Section 7.03(a)(27), so long as such Liens are subordinated in right of priority and payment to the Loan Obligations on terms and subject to documentation satisfactory to the Required Lenders; and

(ss) (i) Liens pursuant to any Prepetition Document, (ii) Liens pursuant to any Loan Document, (iii) the Carve Out and (iv) Liens granted as adequate protection pursuant to the Bankruptcy Court DIP Orders.

For purposes of determining compliance with this Section 7.01, (A) a Lien securing an item of Indebtedness need not be permitted solely by reference to one category of Permitted Liens (or any portion thereof) described in Sections 7.01(a) through (ss) but may be permitted in part under any combination thereof and (B) in the event that a Lien securing an item of Indebtedness (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens (or any portion thereof) described in Sections 7.01(a) through (vv), the Borrower may, in its sole discretion, classify or reclassify, or later divide, classify or reclassify (as if incurred at such later time), such Lien securing such item of Indebtedness (or any portion thereof) in any manner that complies with this Section 7.01 and at the time of incurrence, classification or reclassification will be entitled to only include the amount and type of such Lien or such item of Indebtedness secured by such Lien (or any portion thereof) in one of the above clauses (or any portion thereof) and such Lien securing such item of Indebtedness (or any portion thereof) will be treated as being incurred or existing pursuant to only such clause or clauses (or any portion thereof) without giving pro forma effect to such item (or any portion thereof) when calculating the amount of Liens or Indebtedness that may be incurred, classified or reclassified pursuant to any other clause (or any portion thereof) at such time.

Accrual of interest, amortization of original issue discount, accrual of dividends, the accretion of accreted value, the payment of interest in the form of additional Indebtedness and the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock and/or any increase in the amount of Indebtedness outstanding solely as a result of any fluctuation in the exchange rate of any applicable currency will be deemed not to be the granting of a Lien for purposes of Section 7.01.

Section 7.02 [Reserved].

Section 7.03 Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Borrower will not, and will not permit any of its Subsidiaries to, Incur any Indebtedness other than:

- (1) Indebtedness of the Borrower and the Loan Parties under the Loan Documents;
- (2) Indebtedness of the Borrower or any Subsidiary Incurred pursuant to (x) the ABL DIP Credit Agreement, in an aggregate outstanding principal amount not to exceed \$125,000,000 and any Refinancing Indebtedness in respect thereof and (y) Prepetition Term Credit Agreement, in an aggregate outstanding principal amount not to exceed \$~~125,000,000~~⁸\$390,937,500;
- (3) guarantees by (A) the Borrower or the Subsidiary Guarantors of Indebtedness Incurred by the Borrower or a Subsidiary that is expressly permitted by the provisions of this Agreement;
- (4) Indebtedness of the Borrower owing to and held by any other Subsidiary or Indebtedness of a Subsidiary owing to and held by the Borrower or any other Subsidiary; provided, however, that, such Indebtedness is expressly subordinated in right of payment to the Loan Obligations and (ii) any such Indebtedness owing by non-Guarantor Subsidiaries to Loan Parties shall not exceed \$~~1,000,000~~2,500,000 at any time outstanding;
- (5) [reserved];
- (6) Indebtedness under Hedging Obligations that are Incurred for non-speculative purposes;
- (7) the Incurrence by the Borrower or any of its Subsidiaries of Indebtedness represented by Capitalized Lease Obligations, mortgage financings or purchase money obligations or other Indebtedness financing the acquisition, lease, construction or improvement of any fixed or capital assets, and extensions, renewals, repair, improvement and replacements of any such assets (real or personal, and whether through the direct purchase of property or the Equity Interests of any person owning such property) Incurred pursuant to this clause (8), in an aggregate principal amount at any time outstanding not to exceed \$250,000;
- (8) Indebtedness Incurred in respect of workers' compensation claims, self-insurance obligations, obligations in respect of bids, tenders, trade contracts, governmental contracts and leases, statutory obligations, customs, surety, stay, appeal and performance bonds, and performance and completion guarantees and similar obligations incurred by the Borrower or any Subsidiary, in each case in the ordinary course of business;
- (9) Indebtedness arising from agreements of the Borrower or a Subsidiary providing for customary guarantees, indemnification, adjustment of purchase price, escrows, holdbacks, transition services agreements or similar obligations (including earnouts, in each case, Incurred or assumed in connection with the disposition of any business, assets or Capital Stock of a Subsidiary);
- (10) [reserved];
- (11) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against

⁸ ~~NTD: To be the amount outstanding at closing.~~

insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within five (5) Business Days of Incurrence;

(12) [reserved];

(13) to the extent constituting Indebtedness, contingent obligations arising under indemnity agreements to title insurance companies to cause such title insurers to issue ~~Mortgage Policies~~mortgage policies in the ordinary course of business with respect to any Mortgaged Property of the Borrower or any Subsidiary;

(14) Indebtedness in respect of repurchase agreements constituting Cash Equivalents;

(15) Indebtedness incurred prior to the Petition Date consisting of promissory notes issued by the Borrower or any Subsidiary to future, present or former directors, officers, members of management, employees or consultants of the Borrower or any of its Subsidiaries or their respective estates, executors, administrators, heirs, family members, legatees, distributees, spouses or former spouses, domestic partners or former domestic partners to finance the purchase or redemption of Equity Interests of Holdings or any Parent Entity permitted by Section 7.06(a)(2);

(16) to the extent included in the Cash Management Orders, cash management obligations and Indebtedness incurred by the Borrower or any Subsidiary in respect of netting services, overdraft protections, commercial credit cards, stored value cards, purchasing cards and treasury management services, automated clearing-house arrangements, employee credit card programs, controlled disbursement, ACH transactions, return items, interstate deposit network services, dealer incentive, supplier finance or similar programs, Society for Worldwide Interbank Financial Telecommunication transfers, cash pooling and operational foreign exchange management and similar arrangements, in each case entered into in the ordinary course of business in connection with cash management, including among the Borrower and its Subsidiaries, and deposit accounts;

(17) (i) Indebtedness consisting of the financing of insurance premiums and (ii) take-or-pay obligations constituting Indebtedness of the Borrower or any Subsidiary, in each case, entered into in the ordinary course of business;

(18) unsecured Indebtedness in respect of obligations of the Borrower or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money;

(19) [reserved];

(20) 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;

(21) Indebtedness in existence on the Petition Date and listed on Schedule 7.03;

(22) [reserved];

(16) transactions undertaken in good faith (as certified by a Responsible Officer of the Borrower) for the purpose of improving the consolidated tax efficiency of Holdings and its Subsidiaries and not circumventing any covenant set forth in this Agreement;

(17) the Transactions and the payment of fees and expenses in connection therewith;

(18) [reserved]; and

(19) transactions permitted by, and complying with, the provisions of Sections 7.04, 7.05, 7.06, 7.13 and 7.18.

Section 7.09 [Reserved].

Section 7.10 [Reserved].

Section 7.11 [Reserved].

Section 7.12 [Reserved].

Section 7.13 Limitation on Investments. The Borrower shall not, and shall not permit any of its Subsidiaries to, make Investments other than the following (the Investments permitted by this Section 7.13, collectively, "Permitted Investments"):

(a) Investments in Holdings, the Borrower or any other Loan Party in existence on the Petition Date and listed on Schedule 7.13;

(b) Investments in Holdings, the Borrower or any Subsidiary; provided that the aggregate amount at any one time outstanding of Investments by the Borrower and the Subsidiary Guarantors in Subsidiaries that are not Guarantors pursuant to this clause (b) shall not exceed \$~~1,000,000~~2,500,000;

(c) cash and Cash Equivalents;

(d) receivables owing to the Borrower or any Subsidiary created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Borrower or any such Subsidiary deems reasonable under the circumstances;

(e) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(f) [reserved];

(g) Capital Stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Borrower or any Subsidiary or in satisfaction of judgments or pursuant to any Plan of Reorganization or similar arrangement upon the bankruptcy or insolvency of a debtor;

(h) Investments made as a result of the receipt of non-cash consideration from an Asset Disposition that was made pursuant to and in compliance with Section 7.05 (other than Section 7.05(7));

The amount of any Investment made other than in the form of cash or cash equivalents shall be the fair market value thereof (as determined by the Borrower in good faith) valued at the time of the making thereof, and without giving effect to any subsequent change in value.

For purposes of determining compliance with this covenant, (A) an Investment need not be permitted solely by reference to one category of Permitted Investments (or portion thereof) described in the above clauses but may be permitted in part under any combination thereof and (B) in the event that an Investment (or any portion thereof) meets the criteria of one or more of the categories of Permitted Investments (or any portion thereof) described in the above clauses, the Borrower may, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such Permitted Investment (or any portion thereof) in any manner that complies with this covenant and at the time of classification or reclassification will be entitled to only include the amount and type of such Investment (or any portion thereof) in one of the categories of Permitted Investments (or any portion thereof) described in the above clauses.

Section 7.14 [Reserved].

Section 7.15 Prepayments, Etc. of Indebtedness. Except as expressly permitted by the terms and conditions set forth in the Bankruptcy ~~Code~~Court DIP Orders, the Borrower and its Subsidiaries shall not (a) make any payment of principal or interest or otherwise on account of any Prepetition Obligations or payables under the Prepetition Documents, other than (i) payments agreed to in writing by the Required Lenders, and (ii) payments approved by the Bankruptcy Court DIP Order and, if necessary, authorized by the Bankruptcy Court (including any adequate protection payment); or (b) amend or modify the terms of the Prepetition Documents in a manner that is materially adverse to the Agents or the Lenders or their rights and remedies under the Loan Documents (including any such amendment or modification that would have a material and adverse impact on any material portion of the Collateral).-

Section 7.16 [Reserved].

Section 7.17 No Further Negative Pledges. The Borrower shall not, and shall not permit any of its Subsidiaries to, agree or covenant with any Person to restrict in any way its ability to grant any Lien on its assets in favor of the Secured Parties, other than pursuant to the ABL Intercreditor Agreement and the Bankruptcy Court DIP Orders, except that this Section 7.17 shall not apply to:

(a) any covenants contained in this Agreement or any other Loan Documents or that exist on the Closing Date;

(b) covenants existing under the ABL DIP Credit Agreement (or any Refinancing Indebtedness in respect thereof), the Prepetition ABL Credit Agreement, the Prepetition Term Credit Agreement and the credit documents pursuant thereto (in each case so long as the same do not prohibit the granting of Liens to secure Indebtedness pursuant to this Agreement);

(c) [reserved];

(d) covenants and agreements made in connection with any agreement relating to Indebtedness or other obligations secured by a Lien permitted by this Agreement but only if such covenant or agreement applies solely to the specific asset or assets to which such Lien relates;

(e) (i) customary provisions in leases, subleases, licenses or sublicenses and other contracts restricting the right of assignment thereof and (ii) restrictions or conditions imposed by

(b) Incur, create, assume or suffer to exist or permit any other superpriority administrative claim which is *pari passu* with or senior to the DIP Superpriority Claims of the Administrative Agent, the Collateral Agent and the Lenders hereunder, except for the Carve Out.

Section 7.21 Compliance With Approved Budget. Except as otherwise provided herein or approved by the Required Lenders (or the Administrative Agent at the direction of the Required Lenders), directly or indirectly make any payment (as adequate protection or otherwise), or application for authority to pay, on account of any ~~Claim or~~ Indebtedness arising prior to the Petition Date other than payments consistent with the Approved Budget (or any Permitted Variance) and approved by the Bankruptcy Court.

Section 7.22 Additional Bankruptcy Matters. Do any of the following other than as permitted by the Bankruptcy Court DIP Orders.

(a) use any portion or proceeds of the credit extensions hereunder or the Collateral for payments or purposes that would violate the terms of the Bankruptcy Court DIP Orders;

(b) incur, create, assume, suffer to exist or permit, except for the Carve-Out or as otherwise expressly permitted by the Bankruptcy Court DIP Orders or any other order of the Bankruptcy Court reasonably acceptable to the Required Lenders, any other superpriority administrative claim which is *pari passu* with or senior to the claim of the Secured Parties against any Debtor;

(c) subject to the terms of the Bankruptcy Court DIP Orders, assert, join, investigate, support or prosecute any claim or cause of action against any of the Secured Parties (in their capacities as such), unless such claim or cause of action is in connection with the enforcement of the Loan Documents against any of the Secured Parties;

(d) other than as provided in any Bankruptcy Court DIP Order, enter into any agreement to return any of its inventory to any of its creditors for application against any ~~Pre-Petition Debt~~Prepetition Indebtedness, trade payables arising before the Petition Date or other claims arising before the Petition Date under section 546(c) of the Bankruptcy Code if, after giving effect to any such agreement, the aggregate amount applied to ~~Pre-Petition Debt~~Prepetition Indebtedness, trade payables arising before the Petition Date and other claims arising before the Petition Date subject to all such agreements, setoffs and recoupments since the Petition Date would exceed \$~~[-]~~250,000;

(e) seek, consent to, or permit to exist any order granting authority to take any action that is prohibited by the terms of this Agreement, the Bankruptcy Court DIP Orders, the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement, the Bankruptcy Court DIP Orders or any of the other Loan Documents;

(f) subject to the terms of the Bankruptcy Court DIP Orders, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the Agents, the Lenders or other Secured Parties with respect to the Collateral following the occurrence of an Event of Default, including without limitation a motion or petition by any Secured Party to lift an applicable stay of proceedings to do the foregoing (*provided* that any Debtor may contest or dispute whether an Event of Default has occurred in accordance with the terms of the Bankruptcy Court DIP Orders and the Loan Documents);

(g) make or permit to be made any change to the Bankruptcy Court DIP Orders;

(h) without the consent of the Required Lenders, move to assume or reject any material lease, license or other material contract of any Loan Party pursuant to Section 365 of the Bankruptcy Code;

(i) hold any proceeds of the Loans in any account other than the DIP Proceeds Account, except to the extent such proceeds are transferred to the Company's operating and disbursement account in accordance with the Approved Budget;

(j) except as expressly provided or permitted hereunder or as otherwise contemplated in the then-in-effect Approved Budget (including Permitted Variances thereto), make any payment or distribution to any non-Subsidiary Affiliate or insider of any debtor outside of the ordinary course of business; ~~or~~

(k) assert any right of subrogation or contribution against any other Loan Party under this Agreement, any other Loan Document, the ABL DIP Credit Agreement or any other Loan Document (as defined in the ABL DIP Credit Agreement);

(l) amend or modify, or grant any waiver or release under or terminate in any manner, the articles or certificate of incorporation or formation, by-laws, limited liability company agreement, partnership agreement or other organizational documents of Holdings, the Borrower or any of the other Loan Parties; or

(m) file or pursue or support any other Person in filing or pursuing any Reorganization Plan or other chapter 11 plan or disclosure statement in respect of any Loan Party that is not an Acceptable Reorganization Plan or Acceptable Disclosure Statement.

Section 7.23 Minimum Aggregate Excess Availability. The Borrower shall not permit Aggregate Excess Availability (as defined in the ABL Credit Agreement) to be less than \$5,000,000 at any time.

~~Section 7.24 URS. Permit the URS to incur, hold, or receive any ABL Priority Collateral or Exclusive ABL DIP Collateral (as defined in the Interim Order) without the prior written consent of the Required Lenders.~~

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default. Any of the following events referred to in any of clauses (a) through (k) inclusive of this Section 8.01 shall constitute an "Event of Default":

(a) Non-Payment. Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan and (ii) within two (2) Business Days after the same becomes due, any interest on any Loan, any fee or any other amount, payable hereunder or with respect to any other Loan Document.

(b) Specific Covenants.

(i) Failure by any Loan Party to comply with any of its obligations, covenants or agreements contained in Sections 6.01(c), 6.026.01(jd), 6.03(a), 6.05(a) (with respect to the Borrower's legal existence only), 6.20, or 6.22 or 7.24 or in Article VII.

(ii) Failure by any Loan Party (A) for ~~thirtyfive (305) days~~ Business Days after ~~receipt of the earlier of (x)~~ written notice given by the Administrative Agent or the Required Lenders or (y) a Responsible Officer of any Loan Party obtaining knowledge of such failure to observe or perform any covenant contained in Sections 6.01 (other than clauses (c) and (d) thereof), 6.02, 6.03 (other than clause (a) thereof), 6.19 (other than clause (c) thereof), or (B) for thirty (30) days after the earlier of (x) written notice given by the Administrative Agent or the Required Lenders or (y) a Responsible Officer of any Loan Party obtaining knowledge of such failure, to comply with any of its other obligations, covenants or agreements (other than a default referred to in Sections 8.01(a) and (b)(i) above) contained in this Agreement or any other Loan Document.

(c) Change of Control. There occurs any Change of Control.

(d) Representations and Warranties. Any representation, warranty or certification made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made, and in either case, such incorrect or misleading representation or warranty (if curable) shall remain incorrect or misleading for a period of thirty (30) days after notice thereof from the Administrative Agent, including without limitation at the direction of the Required Lenders to the Borrower.

(e) Cross-Default. There occurs any default under (x) the DIP ABL Credit Agreement or (y) any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by Holdings, the Borrower or any of its Subsidiaries (or the payment of which is guaranteed by the Borrower or any of its Subsidiaries), other than Indebtedness owed to Holdings, the Borrower or a Subsidiary, whether such Indebtedness or guarantee now exists, or is created after the Closing Date, which default:

(i) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness after the expiration of any grace period provided with respect to such payment in such Indebtedness; or

(ii) results in the acceleration, or permits the acceleration, of such Indebtedness prior to its maturity;

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a default under clause (i) or (ii) of this Section 8.01(e), exceeds the Threshold Amount; provided, that, notwithstanding the foregoing, an Event of Default under this Section 8.01(e) with respect to Section 8.01 of the DIP ABL Credit Agreement shall not be an Event of Default until such default shall continue unremedied for a period of 60 days after the date of such default (during which period such default is not waived or cured) or until the administrative agent and/or the lenders under the DIP ABL Credit Agreement have exercised their remedies as a result of such default (it being understood that the exercise of "cash dominion" shall not constitute an exercise of remedies); provided, further, that this clause (e) shall not apply to (x) any Indebtedness outstanding hereunder or (y) any Indebtedness of any Debtor that was incurred prior to the Petition Date unless such Indebtedness has been accelerated and the enforcement of remedies with respect to such Indebtedness shall not have been stayed by the commencement of the Chapter 11 Cases.

(f) [Reserved].

(g) [Reserved].

(h) Judgments. Failure by Holdings, the Borrower or any Subsidiary to pay final judgments (excluding any order of the Bankruptcy Court fixing the amount of any claim in the Chapter 11 Cases) aggregating in excess of the Threshold Amount (to the extent not covered by a third party indemnity or insurance, or if covered by insurance, to the extent to which insurer has denied coverage in writing), which judgments are not paid, discharged, bonded, vacated or stayed for a period of thirty (30) days.

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which, when taken together with all other ERISA Events, has resulted or would reasonably be expected to result in liability of any Loan Party in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect, (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA which would reasonably be expected to result in a Material Adverse Effect (iii) a Foreign Benefit Event occurs with respect to a Foreign Pension Plan that, when taken together with other such events, would reasonably be expected to result in a Material Adverse Effect or (iv) a Canadian Pension Termination Event occurs with respect to a Canadian Defined Benefit Plan that, when taken together with other such events, would reasonably be expected to liability or obligation to pay in excess of the Threshold Amount.

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or the satisfaction in full in cash of all the Loan Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any material provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of the occurrence of the Termination Date), or purports in writing to revoke or rescind any Loan Document.

(k) Collateral Documents. Any of the Collateral Documents ceases to be in full force and effect, or the Interim Order, the Final Order or any of the Collateral Documents ceases to give the Secured Parties the Liens on any of the Collateral purported to be created thereby (other than, in either case, as the result of a release of such Lien in connection with a transaction permitted in accordance with the terms of this Agreement or the terms of the Collateral Documents), or any of the Collateral Documents is declared null and void or the Borrower or any Subsidiary denies in writing that it has any further liability under any Collateral Document or gives written notice to such effect (in each case, other than in accordance with the terms of this Agreement or the terms of the Collateral Documents).

(l) Budget Event. There occurs any Budget Event.

(m) Alternate Financing. Any Loan Party shall file a motion in the Chapter 11 Cases or the Canadian Recognition Proceedings without the express written consent of Required Lenders, to obtain additional financing under Section 364(d) of the Bankruptcy Code that (i) is not permitted under Section 7.03 and (ii) does not provide for the payment of the Loan Obligations in full and in cash upon the incurrence of such additional financing.

(n) Prepetition Claims. Any Loan Party shall file a motion seeking an order (i) approving payment of any prepetition claim other than (x) as provided for in the “first day” or “second day” orders, (y) contemplated by the Approved Budget (including Permitted Variances), or (z) otherwise consented to by the Required Lenders in writing, (ii) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of \$100,000 in the aggregate, or (iii) except with respect to the Prepetition Obligations as provided in the Bankruptcy Court DIP Orders, approving any settlement or other stipulation not approved by the Required Lenders and not included in the Approved Budget with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor.

(o) Appointment of Trustee or Examiner. An order is entered in any of the Chapter 11 Cases appointing, or any Loan Party, or any Subsidiary of a Loan Party shall file an application for an order seeking the appointment of, (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation of the Loan Parties’ business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code.

(p) Dismissal or Conversion of Chapter 11 Cases. (i) An order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, in each case, which does not contain a provision for termination of the Commitments, and payment in full in cash of all Loan Obligations (other than contingent indemnification obligations as to which no claim has been asserted) of the Loan Parties hereunder and under the other Loan Documents upon entry thereof; or (ii) the Canadian Recognition Proceedings or any order granted therein shall be dismissed or a separate proceeding under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, or the CCAA shall be commenced by or in respect of the Debtors.

(q) Bankruptcy Court DIP Orders. An order is entered by the Bankruptcy Court in any of the Chapter 11 Cases or the Canadian Recognition Proceedings without the express prior written consent of the Required Lenders and the Administrative Agent, (i) to revoke, reverse, stay, modify, supplement or amend the Bankruptcy Court DIP Order or the orders of the Canadian Court recognizing the foregoing in the Canadian Recognition Proceedings in a manner that is inconsistent with this Agreement that is not otherwise consented to by the Required Lenders, (ii) to permit any superpriority adequate protection lien or claim, in each case other than the Carve Out or adequate protection with respect to “ABL Priority Collateral” (as defined in the ABL Intercreditor Agreement), to have administrative priority as to the Loan Parties equal or superior to the priority of the DIP Superpriority Claim shall be entered by the Bankruptcy Court without the express prior written consent of the Required Lenders, except as otherwise permitted under this Agreement or (iii) dismissing any of the Chapter 11 Cases which does not contain a provision for termination of all Commitments, and payment in full of all Loan Obligations upon entry thereof.

(r) Violation of Bankruptcy Court DIP Order. Any Loan Party violates any term, provision or condition in the Interim Order or Final Order, as applicable; provided that in the event such violation is immaterial and such violation has been cured within three (3) days after receipt by the Borrower of written notice thereof from the Administrative Agent, such violation shall not constitute an Event of Default.

(s) Application for Order By Third Party. An application for any of the orders described in clauses 8.01(o), (p), (q), (r) and (t) shall be made by a Person (including, for the

avoidance of doubt, the Loan Parties) and such application is not contested by the Loan Parties in good faith and such Person actually obtains entry of a final, non-appealable, order under § 506(c) of the Bankruptcy Code against any Secured Party or obtains a final, non-appealable, order materially adverse to any Secured Party or any of their respective rights and remedies under the Loan Documents or in the Collateral.

(t) Right to File Chapter 11 Plan. The entry of an order by the Bankruptcy Court terminating or ~~modifying~~shortening the exclusive right of any Loan Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the Required Lenders.

(u) Liens. (i) Any Loan Party shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of the Collateral Agent, the Administrative Agent and/or the Lenders, claims or rights against such Person or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code or pursuant to the CCAA, (ii) the Lien or security interest created by Collateral Documents or the Bankruptcy Court DIP Orders with respect to the Collateral shall, for any reason, on and after the entry of the Bankruptcy Court DIP Order, cease to be valid or (iii) any action is commenced by the Loan Parties which contests the validity, perfection or enforceability of any of the Liens and security interests of the Collateral Agent, the Administrative Agent and/or the Lenders created by any of the Bankruptcy Court DIP Order, this Agreement, or any Collateral Document.

(v) Invalidation of Claims. Any Loan Party shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of such Loan Party) any other Person's motion to, disallow in whole or in part the Agents' and Lenders' claim in respect of the Loan Obligations or contest any material provision of any Loan Document or any material provision of any Loan Document shall cease to be effective (other than in accordance with its terms).

(w) Milestones. The failure of the Borrower to timely satisfy any of the Milestones, unless such Milestone is waived or extended by written consent of the Required Lenders (email from counsel being sufficient).

(x) 363 Sale. The Loan Parties or any of their Subsidiaries attempt to consummate a sale of substantially all of its assets via a Plan of Reorganization or a 363 sale without consent of the Required Lenders.

(y) Plan of Reorganization. There shall be any Plan of Reorganization confirmed in the Chapter 11 Cases that does not provide for the repayment of the Prepetition Term Loans and the Loans in full and in cash on the effective date of such Plan of Reorganization.

(z) Stay Relief. The Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code or the stay granted in the Canadian Recognition Proceedings to the holder or holders of any security interest to (i) permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Debtors which have a value in excess of \$~~1,000,000~~ in the aggregate or (ii) permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole).

(aa) Cash Collateral. An order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Loan Parties or imposing any additional conditions on such use (and such order remains unstayed for more than three (3) Business Days).

(bb) Adverse Actions. Any Loan Party (or any direct or indirect Parent Entity or Subsidiary thereof), or any Person claiming by or through the Loan Parties or any of their Subsidiaries, shall (x) obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against any Agent or ~~Any~~ Lender (in any of their respective capacities as such) relating to ~~any Facility~~ the Loans or the Loan Documents, unless such suit or other proceeding is in connection with the enforcement of the Loan Documents against such Agent or such Lender, in their capacities as such or (y) file, assist or otherwise participate in any pleading that, if the relief requested therein were granted, would result in an Event of Default.

(cc) Prepetition Payments. The payment by any Loan Party of any Prepetition Indebtedness other than (i) as permitted by any “first day” or “second day” order entered by the Bankruptcy Court on or prior to the Closing Date or (ii) as permitted by any other order of the Bankruptcy Court in amounts reasonably satisfactory to the ~~Agents and the~~ Required Lenders, in each case consistent with the Approved Budget.

Section 8.02 Remedies Upon Event of Default. Subject to the Bankruptcy Court DIP Order, if any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall, subject to the terms of the Bankruptcy Court DIP Orders, take any or all of the following actions:

(a) declare the Commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(c) exercise on behalf of itself and the Secured Parties all rights and remedies available to it and the Secured Parties under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under Debtor Relief Laws, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case, without further act of the Administrative Agent or any Lender.

Section 8.03 [Reserved].

Section 8.04 Application of Funds.

(a) After the occurrence and during the continuance of an Event of Default, at the election of (A) the Administrative Agent or (B) the Required Lenders (or automatically after the Loans have become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received under any Collateral Documents or in respect of the Secured Obligations shall, subject to the ABL Intercreditor Agreement and the Bankruptcy Court DIP Orders, be applied by the Administrative Agent as follows:

or thereunder or in connection herewith or therewith, (c) the performance or observance of any of the covenants, agreements, or other terms or conditions set forth herein or therein, the use of the proceeds of the Loans, or the occurrence or possible occurrence of any Default or Event of Default, (d) the execution, validity, enforceability, effectiveness, genuineness, collectibility or sufficiency of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, preservation, perfection, maintenance or continuation of perfection, or priority of any Lien or security interest created or purported to be created by the Collateral Documents, (e) the value or sufficiency of any Collateral, (f) whether the Collateral exists, is owned by Borrower, the other Loan Parties or any of their Subsidiaries, is cared for, protected, insured or maintained or has been encumbered, or meets the eligibility criteria applicable in respect thereof, (g) the satisfaction of any condition set forth in Article IV or elsewhere, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, or the inspection of the properties, books or records of any Loan Party or any Affiliate thereof, or (h) the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Loan Obligations.

(j) Any corporation or association into which the Administrative Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate agency business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Administrative Agent is a party, will be and become the Administrative Agent under this Agreement and the other Loan Documents and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

Section 9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, order, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the Lender specified in the Register with respect to any amounts owing hereunder as the owner thereof for all purposes including any voting, direction or other Lender thresholds.

Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document (including pursuant to Sections 8.02 and 10.22) unless, and subject to the protections of Section 9.03, (x) it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.02 and 10.01) and (y) it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any

(d) change (i) Section 8.04 in a manner that would alter the application of payments required thereby without the written consent of each Lender directly and adversely affected thereby or (ii) the order of application of any prepayment of Loans from the application thereof set forth in the applicable provisions of Section 2.05(b), in any manner that adversely affects the Lenders without the written consent of each Lender directly and adversely affected thereby;

(e) (x) change any provision of this Section 10.01, Section 2.14, or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender directly and adversely affected thereby or (y) amend or modify the DIP Superpriority Claim status of the Lenders under the Bankruptcy Court DIP Orders or under any Loan Document without the written consent of each Lender directly and adversely affected thereby;

(f) release all or substantially all of the Collateral in any transaction or series of related transactions or subordinate the Secured Obligations or any Liens on any Collateral securing the Secured Obligations, without the written consent of each Lender; provided that the Collateral Agent may, without consent from any Lender, release any Collateral in compliance with Section 10.22 (in which case such release shall be made by the Administrative Agent and/or the Collateral Agent acting alone);

(g) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 10.22 (in which case such release shall be made by the Administrative Agent acting alone);

(h) be enforced against a Defaulting Lender without its consent if such waiver, amendment or modification affects Defaulting Lenders in a disproportionate manner;

~~(i)~~ (i) amend, waive or otherwise modify Section 10.06(a)(x) without the consent of each Lender; or

~~(i)~~ (i) amend, waive, consent to departure from or otherwise modify any term or provision of this Agreement or any other Loan Documents which expressly names 11th Lane Holdings, LLC (and/or its Affiliates) (which, for the avoidance of doubt, shall be solely the last paragraph in Section 6.01, this Section 10.01(j) and clause (iv) in the proviso below) without the written consent of 11th Lane Holdings, LLC (or an Affiliate thereof) for so long as any such Person is a Lender hereunder.

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by each Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, such Agent under this Agreement or any other Loan Document (it being understood that any change to Section 2.13 shall require the consent of the Administrative Agent); (ii) Section 10.06(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; (iii) only the consent of the Agents and the Borrower shall be required to amend, waive or otherwise modify any provision of the Agency Fee Letter; and (iv) any amendment, waiver or consent that requires the consent or other approval of the Required Lenders ~~and/or the Required Backstop Lenders~~ shall be shared with 11th Lane Holdings, LLC (and its Affiliates) in

advance and 11th Lane Holdings, LLC (and its Affiliates) shall have a reasonable opportunity to review prior to the effectiveness thereof for so long as any such Person is a Lender hereunder.

Notwithstanding anything to the contrary herein, Schedule 6.22 may be amended, supplemented or otherwise modified solely with the consent of the Borrower and the Required Lenders (which consent may be provided via email).

Notwithstanding anything to the contrary contained in this Section 10.01, guarantees, collateral security documents and related documents executed by Loan Parties or any Subsidiaries of the Borrower in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended, supplemented and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment, supplement or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure any ambiguity, typographical error, defect or inconsistency or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents. The Administrative Agent shall be entitled to extend any deadline or requirement in connection with compliance with guarantee and security provisions in the Loan Documents (including Section 6.18) without the consent of any other Lender.

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 the Commitment of, or Maturity Date with respect to the Loans held by, such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded from a vote of the Lenders hereunder requiring any consent of the Lenders).

If the Administrative Agent and the Borrower shall have jointly identified an obvious error, mistake or ambiguity or any error or omission of a technical or administrative nature in any Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend such provision without further action or consent of any other party if the same is not objected to in writing by the Required Lenders to the Administrative Agent within five (5) business days following receipt of notice thereof.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender or each Lender adversely affected thereby and that has been approved by the Required Lenders, the Borrower may replace such non-consenting Lender in accordance with Section 10.13.

Notwithstanding anything to the contrary in any Loan Document, in connection with any determination as to whether the requisite Lenders have (A) consented (or not consented) to any waiver, amendment or modification of any provision of this Agreement or any other Loan Document or any departure by any Loan Party therefrom, (B) otherwise acted on any matter related to this Agreement or any Loan Document or (C) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to, or under, this Agreement or any other Loan Document, any Lender (or any Affiliate of such Lender (provided that for purposes of this clause (e), Affiliates shall not include Persons that are subject to customary procedures to prevent the sharing of confidential information between such Lender and such Person and such Person is managed having independent fiduciary duties to the investors or other equityholders of such Person)) (other than any Lender that is a Regulated Bank) that, as a result of its (or its Affiliates') interest in any total return swap, total rate of return swap, credit default swap or other derivative contract (other than any such total return swap, total rate of return swap, credit default swap or other derivative contract entered into pursuant to

be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement. Notwithstanding anything herein to the contrary, any assignment of Loans by the Fronting Lender will be exclusive of, and will not contain any portion of, any unfunded Commitment held by the Fronting Lender at the time of the assignment of such Loans.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section 10.06 and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required; provided that the Borrower shall be deemed to have consented to any assignment of any Commitments or Loans unless it shall have objected thereto by notice to the Administrative Agent within ten (10) Business Days after the Borrower has received written notice thereof; provided, further, that no consent of the Borrower shall be required for (i) an assignment of all or any portion of the Loans to a Lender, an Affiliate of a Lender or an Approved Fund, (ii) if an Event of Default under Section 8.01(a) has occurred and is continuing, (2) any assignment by the Fronting Lender, or (3) an assignment of all or a portion of the Loans by a Granting Lender to an SPC pursuant to Section 10.06(g); and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Commitments or Loans if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund (and any assigning Lender shall, in connection with any potential assignment, provide to the Borrower a copy of its request (including the name of the prospective assignee) concurrently with its delivery of the same request to the Administrative Agent unless an Event of Default described in Section 8.01(a) has occurred and is continuing); provided that no such consent of the Administrative Agent or notice to the Borrower shall be required in connection with any assignment of Loans by the Fronting Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute (except as otherwise contemplated in the penultimate sentence of Section 10.13) and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500, which shall be paid, in each case, by the ~~Borrower~~ "Assignee" pursuant to such Assignment and Assumption; provided, however, that (x) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any such assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire, all applicable tax forms, and all "know your customer" information requested by the Administrative Agent.

(v) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section 10.06, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Administrative Agent and Collateral Agent

By: _____
Name:
Title:

|

[JEFFERIES] CAPITAL SERVICES, LLC,
as Lender

By: _____
Name:
Title:

Schedule 6.22

Milestones

1. The Petition Date shall occur no later than June 12, 2023,
2. The Bankruptcy Court shall enter the Interim ~~DIP~~ Order approving this Agreement and the ABL DIP Credit Agreement on an interim basis in form and substance satisfactory to the Agents and the Required Lenders in their sole and absolute discretion no later than ~~three~~ 3 days after the Petition Date; and the Canadian Court (as defined below) shall enter an order recognizing the Interim Order in the Canadian Recognition Proceedings (as defined below) in form and substance satisfactory to the Agents and the Required Lenders in their sole and absolute discretion no later than 10 days after entry of the Interim Order by the Bankruptcy Court.
3. The Debtors will deliver to the ~~Lenders the marketing materials~~ Agents the confidential information memorandum for a sale of substantially all of the Debtors' assets (the "Sale"), no later than 9 days after the Petition Date.
4. The Bankruptcy Court shall enter an order approving bidding procedures (the "Bid Procedures Order") for the Sale, in each case in form and substance satisfactory to the Agents and the Required Lenders in their sole and absolute discretion no later than ~~20~~ 35 days after the Petition Date.
5. The Bankruptcy Court shall enter the Final Order approving this Agreement and the ABL DIP Credit Agreement in form and substance satisfactory to the Agents and Required Lenders in their sole and absolute discretion no later than 35 days after the Petition Date; and the Canadian Court shall enter an order recognizing the Final Order in the Canadian Recognition Proceedings in form and substance satisfactory to the Agents and the Required Lenders in their sole and absolute discretion no later than 10 days after entry of the Final Order by the Bankruptcy Court.
6. If applicable, the deadline for submitting initial indications of interest with respect to a Sale will be 45 days after the Petition Date.
7. ~~The~~ If applicable, the deadline for submitting qualified bids pursuant to the Bid Procedures Order will be no later than 70 days after the Petition Date.
8. If applicable, an auction to select a winning bid pursuant to the Bid Procedures Order will conclude no later than 77 days after the Petition Date.
9. ~~The~~ If applicable, the Bankruptcy Court shall hold a hearing to approve the winning bid and will enter an order approving the Sale (a "Sale Order") in form and substance satisfactory to the Agents and Required Lenders in their sole and absolute discretion no later than 81 days after the Petition Date; and the Canadian Court shall enter an order recognizing the Sale Order in the Canadian Recognition Proceedings in form and substance satisfactory to the Agents and the Required Lenders in their sole and absolute discretion no later than 10 days after entry of the Sale Order by the Bankruptcy Court.
10. If a Sale Order is entered, the Sale will close no later than 87 days after the Petition Date.

It is further acknowledged and agreed that (x) during the pendency of the Cases, the Debtors, the Agents, the Required Lenders and the Required Revolving Lenders (under and as defined in the ABL DIP Credit

Agreement) may agree that the Debtors shall pursue a reorganization or other plan process and (y) in such eventuality, the Milestones set forth in this Schedule 6.22 may, with the consent of the Required Lenders, be amended and replaced with alternative milestones reflecting such reorganization or plan process.

Summary report: Litera Compare for Word 11.3.0.46 Document comparison done on 6/14/2023 4:30:28 PM	
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Delete	336
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<u>Table Insert</u>	0
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<u>Table moves from</u>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	704