

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)



Order Filed on March 1, 2024  
by Clerk  
U.S. Bankruptcy Court  
District of New Jersey

In Re:

THRASIO HOLDINGS, INC., et al.,

Case No.: 24-11840

Chapter: 11

Hearing Date: 3/1/2024

Judge: Christine M. Gravelle

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN  
POSTPETITION SECURED FINANCING, (II) GRANTING LIENS AND  
PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III)  
AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING  
ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, AND  
(VI) SCHEDULING A FINAL HEARING**

.....  
The relief set forth on the following pages, numbered three (3) through seventy-four (74)

is **ORDERED**.

**DATED: March 1, 2024**

  
Honorable Christine M. Gravelle  
United States Bankruptcy Judge



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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

**Caption in Compliance with D.N.J. LBR 9004-1(b)**

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In re:

THRASIO HOLDINGS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11840 (CMG)

(Joint Administration Requested)

<sup>1</sup> The last four digits of Debtor Thrasio Holdings, Inc.'s tax identification number are 8327. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.kccllc.net/Thrasio>. The Debtors' service address for purposes of these chapter 11 cases is 85 West Street, 3rd Floor, Walpole, MA, 02081.

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Debtors: THRASIO HOLDINGS, INC., *et al.*

Case No. 24-11840 (CMG)

Caption of Order: INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION SECURED FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, AND (VI) SCHEDULING A FINAL HEARING

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in the above captioned chapter 11 cases (collectively, the “Cases”), pursuant to sections 105, 361, 362, 363, 364, 506(c) (subject to the entry of the Final Order), 507, and 552 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 4001-1, 4001-3, 9013-1, 9013-2, 9013-3, and 9013-4 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”), seeking entry of this interim order (this “Interim Order”):

(i) authorizing Thrasio, LLC, in its capacity as borrower (the “DIP Borrower”), to obtain postpetition financing, and for each of the other Debtors (such other Debtors and subsidiaries, the “DIP Guarantors”) to guarantee unconditionally, on a joint and several basis, the DIP Borrower’s obligations in connection with a superpriority senior secured multiple draw term loan credit facility (the “DIP Facility”) in the aggregate principal amount of \$360,000,000 (the “DIP Loans”), consisting of:

(a) New Money Loans. A superpriority senior secured multiple draw term loan credit facility in the principal amount of \$90,000,000 (the “New Money Commitments” and the term loans made thereunder, the “New Money Loans”), of which (x) \$35,000,000 shall be available from and after entry of this Interim Order (the “Interim DIP Amount”), (y) \$35,000,000 shall be available from and after entry of the Final Order (as defined below) (the “Final DIP Amount”), and (z) up to \$20,000,000 shall be committed upon entry of the Final Order and available upon entry of the Confirmation Order (or available up to five business days prior to the estimated entry of the Confirmation Order, solely with the consent of the Required DIP Lenders, in their sole and absolute discretion) (the “Delayed Draw Amount”), in each case pursuant to the terms and conditions of this Interim Order, the Final Order, the DIP Credit Agreement (as defined below), attached hereto as Exhibit A, and the other DIP Documents (as defined below);

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<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to such terms in the Motion or the DIP Credit Agreement (as defined herein).

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Debtors: THRASIO HOLDINGS, INC., *et al.*

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(b) Roll-Up Loans. A superpriority term loan facility in the principal amount of \$270,000,000 (the “Roll-Up Loans”), of which (x) \$35,000,000 shall be deemed funded in accordance with clause (i) below upon entry of this Interim Order, and (y) \$235,000,000 shall be deemed funded in accordance with clause (ii) below, subject to the entry of and the terms of the Final Order, which Roll-Up Loans shall be deemed converted from an equal amount of Prepetition First Lien Loans (as defined below) into and exchanged for such Roll-Up Loans, in each case, at the times, and in accordance with the terms and conditions set forth in the DIP Credit Agreement and the other DIP Documents and as set forth below;

(i) On the date of this Interim Order, concurrently with the making of the New Money Loans in the Interim DIP Amount as described above, \$35,000,000 in aggregate principal amount of Prepetition First Lien Loans (the Prepetition First Lien Loans rolled-up pursuant to this clause (b)(i), the “Initial Rolled-Up Prepetition First Lien Loans” and the remaining Prepetition First Lien Loans, the “Remaining Prepetition First Lien Loans”) shall be deemed converted into and exchanged for Roll-Up Loans, and Roll-Up Loans in an aggregate principal amount of \$35,000,000 shall be deemed funded on the date of this Interim Order, without constituting a novation, and shall satisfy and discharge the Initial Rolled-Up Prepetition First Lien Loans. The Roll-Up Loans deemed funded on the date of this Interim Order shall be deemed to be made by each Backstop Party (as defined in the DIP Credit Agreement) (or an investment advisor, manager, or beneficial owner for the account of a Backstop Party, or an affiliated fund or trade counterparty designated by such Backstop Party) (such initial lender holding such Roll-Up Loans, the “Closing Date Roll-Up Lenders”) in an amount equal to the lesser of (x) the aggregate principal amount of the Prepetition First Lien Loans owing to the applicable Closing Date Roll-Up Lenders on the date of this Interim Order and (y) an amount equal to (I) \$35,000,000 multiplied by (II) the quotient of the amount set forth next to each Backstop Party’s name on Schedule 1.01 of the DIP Credit Agreement divided by the sum of all amounts set forth on Schedule 2.12(b) of the DIP Credit Agreement;

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(ii) On the date of the entry of the Final Order, concurrently with the making of the New Money Loans in the Final DIP Amount and the commitment of the New Money Loans in the Delayed Draw Amount, each as described in clause (a) above, \$235,000,000 in aggregate principal amount of Remaining Prepetition First Lien Loans shall be deemed converted into and exchanged for Roll-Up Loans, and Roll-Up Loans in an aggregate principal amount of \$235,000,000 shall be deemed funded on the date of the Final Order, without constituting a novation, and shall satisfy and discharge \$235,000,000 in aggregate principal amount of Prepetition First Lien Loans;

(iii) On the terms set forth in the syndication procedures in form and substance reasonably satisfactory to the Prepetition First Lien Agent as it relates to any of its obligations (the “Syndication Procedures”), upon entry of the Interim Order, each Prepetition First Lien Lender (as defined below) that has properly executed and returned to counsel to the Debtors (Kirkland & Ellis LLP) a signature page to the Restructuring Support Agreement shall be offered the right to purchase and/or fund the DIP Loans (including Roll-Up Loans) on a pro rata basis based on their Prepetition First Lien Loans;

(c) Interim Facility. Upon entry of this Interim Order, the maximum amount of the New Money Loans that will be disbursed to the Borrower shall be \$35,000,000;

(ii) authorizing the DIP Borrower and the DIP Guarantors to enter into and perform under that certain Super-Priority Senior Secured Debtor-in-Possession Credit Agreement, attached hereto as **Exhibit A**, among the DIP Borrower, Thrasio Holdings, Inc., as Holdings, Thrasio Intermediate Sub, LLC, as Intermediate Holdings (as defined therein), the lenders party thereto (in such capacities, collectively, the “DIP Lenders”), and Wilmington Savings Fund Society, FSB, as Administrative Agent and Collateral Agent (each as defined therein) (in such capacities, the “DIP Agent” and, together with the DIP Lenders, the “DIP Secured Parties”) (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “DIP Credit Agreement” and, together with this Interim Order, the Final Order, and all other agreements, documents, and instruments delivered or executed in connection therewith, in each case as may be amended, restated, supplemented, waived or otherwise modified from time to time in

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accordance with the terms thereof, collectively, the “DIP Documents”), and to perform such other and further acts as may be required in connection with the DIP Documents;

(iii) authorizing the Debtors to use the proceeds of the DIP Loans and the Prepetition Collateral (as defined below), including Cash Collateral (as defined below), (x) solely in accordance with the Approved DIP Budget (as defined below) (subject to any Permitted Variance set forth herein and in the DIP Documents), (y) to effectuate the exchange of Prepetition First Lien Loans for Roll-Up Loans in accordance with the DIP Credit Agreement, this Interim Order, and, upon entry, the Final Order, and (z) to provide working capital for, and for other general corporate purposes of, the Debtors and certain of the Debtors’ subsidiaries, in accordance with the Approved DIP Budget, including for funding the Carve Out (as defined below) and for payment of any Adequate Protection Payments (as defined below);

(iv) granting adequate protection to the Prepetition First Lien Secured Parties (as defined below) to the extent of any Diminution in Value (as defined below) of their interests in the Prepetition Collateral (as defined below);

(v) granting valid, enforceable, binding, non-avoidable, and fully perfected first priority priming liens on and senior security interests in substantially all of the property, assets, and other interests in property and assets of the Debtors, whether such property is presently owned or after-acquired, and each Debtor’s estate as created by section 541 of the Bankruptcy Code, of any kind or nature whatsoever, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date (as defined below), subject only to the (x) Carve Out (as defined below) and (y) Permitted Prior Liens (as defined below);

(vi) granting superpriority administrative expense claims against each of the Debtors’ estates to the DIP Agent and the DIP Lenders with respect to the DIP Obligations (as defined below) with priority over any and all administrative expenses of any kind or nature subject and subordinate only to the payment of the Carve Out on the terms and conditions set forth herein and in the DIP Documents;

(vii) subject to entry of a Final Order solely in respect of the Prepetition Collateral, but effective as of the Petition Date, waiving the Debtors’ and the estates’ right to surcharge against the Prepetition Collateral or DIP Collateral (each as defined below) pursuant to section 506(c) of the Bankruptcy Code;



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(viii) subject to entry of a Final Order solely in respect of the Prepetition Collateral, but effective as of the Petition Date, for the “equities of the case” exception under Bankruptcy Code section 552(b) to not apply to such parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable;

(ix) subject to entry of a Final Order, but effective as of the Petition Date, waiving the equitable doctrine of marshaling with respect to the DIP Secured Parties and the Prepetition First Lien Secured Parties; and

(x) scheduling a final hearing (the “Final Hearing”) to consider the relief requested in the Motion and the entry of a final order (the “Final Order”), and approving the form of notice with respect to the Final Hearing.

This Court having considered the Motion, the exhibits thereto, the *Declaration of Josh Burke, Chief Financial Officer of Thrasio Holdings, Inc., in Support of First Day Motions* [Docket No. 38] (the “First Day Declaration”), the *Declaration of Terrence F. Grossman in Support of the Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Scheduling a Final Hearing* (the “Grossman Declaration”), and the *Declaration of Samuel M. Greene in Support of the Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Scheduling a Final Hearing*, (the “Greene Declaration”), and the other evidence submitted or adduced and the arguments of counsel made at the interim hearing

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held pursuant to Bankruptcy Rule 4001(b)(2) on March 1, 2024; and this Court having heard and resolved or overruled any objections, reservations of rights, or other statements with respect to the relief requested in the Motion; and the Court having noted the appearances of all parties in interest; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the Debtors' entry into the DIP Credit Agreement and the other DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and the Debtors having provided notice of the Motion as set forth in the Motion, and it appearing that no other or further notice of the interim relief granted herein need be given under the circumstances; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

**BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. Petition Date. On February 28, 2024 (the "Petition Date"), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.



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Court for the District of New Jersey (the “Court”) commencing these Cases. On March 1, 2024, the Court entered an order approving joint administration of the Cases.

B. Debtors in Possession. The Debtors continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

C. Jurisdiction and Venue. The Court has jurisdiction over the Motion, these Cases, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered on July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Court may enter a final order consistent with Article III of the United States Constitution. Venue for these Cases and proceedings on the Motion is properly before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Committee. As of the date hereof, no official committee of unsecured creditors has been appointed in these Cases pursuant to section 1102 of the Bankruptcy Code (any such committee, the “Committee”).

E. Debtors’ Stipulations. The Debtors admit, acknowledge, stipulate, and agree that (collectively, paragraphs E(i) through (vii) below are referred to herein as the “Debtors’ Stipulations”):

(i) Pre-Petition Credit Agreement. Under that certain Credit Agreement, dated as of December 18, 2020 (as amended or otherwise modified by that certain First Amendment to

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Credit Agreement, dated as of May 28, 2021, that certain Second Amendment and Waiver to Credit Agreement, dated as of September 17, 2021, that certain Third Amendment to Credit Agreement, dated as of June 30, 2023, that certain Forbearance and Fourth Amendment to Credit Agreement, dated as of September 29, 2023, and that certain Forbearance and Fifth Amendment to Credit Agreement, dated as of December 29, 2023, and as may be further amended, restated, waived, amended and restated, supplemented or otherwise modified from time to time, and as in effect on the Petition Date, the “Pre-Petition Credit Agreement” and, together with all other documentation executed in connection therewith, including without limitation, the Collateral Documents and each other Loan Document (each as defined in the Pre-Petition Credit Agreement) executed in connection therewith, the “Prepetition First Lien Loan Documents”), by and among Thrasio, LLC (“Prepetition Borrower”), Royal Bank of Canada, as administrative agent and as collateral agent (in such capacities and including any assignees thereof and successors thereto, the “Prepetition First Lien Agent”), the revolving lenders and Issuing Banks under the Revolving Facility (each as defined in the Pre-Petition Credit Agreement) from time to time party thereto (such lenders and Issuing Banks, the “Revolving Lenders”), and the Term Lenders (as defined in the Pre-Petition Credit Agreement) from time to time party thereto (together with the Revolving Lenders, the “Prepetition First Lien Lenders” and, together with the Prepetition First Lien Agent and each of the other Secured Parties (as defined in the Pre-Petition Credit Agreement), the “Prepetition First Lien Secured Parties”), the Borrower was provided with a first lien secured term loan and revolving credit facility (the loans borrowed thereunder, the “Prepetition First Lien Loans”). As

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used herein, the “Prepetition Loan Parties” shall mean, collectively, the Prepetition Borrower, Holdings, the Subsidiary Guarantors (as defined in the Pre-Petition Credit Agreement), and the other Loan Parties (as defined in the Pre-Petition Credit Agreement).

(ii) *Prepetition First Lien Obligations.* As of the Petition Date, the Prepetition Loan Parties were jointly and severally indebted to the Prepetition First Lien Secured Parties pursuant to the Prepetition First Lien Loan Documents, without objection, defense, counterclaim, or offset of any kind, (x) in the aggregate principal amount of \$62.5 million of outstanding Revolving Loans (as defined in the Pre-Petition Credit Agreement) and \$2.5 million of letters of credit outstanding under the Pre-Petition Credit Agreement, (y) in the aggregate principal amount of not less than \$723,900,754 on account of outstanding Term Loans under (and as defined in) the Pre-Petition Credit Agreement, *plus*, (z) in the case of each of the preceding clauses (x) and (y), accrued and unpaid interest with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys’, accountants’, consultants’, appraisers’, financial advisors’, and other professionals’ fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, in each case to the extent reimbursable pursuant to the terms of the Prepetition First Lien Loan Documents and all other Obligations (as defined in the Pre-Petition Credit Agreement) owing under or in connection with the Prepetition First Lien Loan Documents (clauses (x), (y), and (z), collectively, the “Prepetition First Lien Obligations”).

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(iii) *Prepetition Collateral.* In connection with the Pre-Petition Credit Agreement, certain of the Debtors entered into the Security Agreement and the Collateral Documents (each as defined in the Pre-Petition Credit Agreement). Pursuant to the Collateral Documents, and the other Prepetition First Lien Loan Documents, the Prepetition First Lien Obligations are secured by valid, binding, perfected, and enforceable first-priority security interests in and liens on (the “Prepetition First Priority Liens”) all of the Collateral (as defined in the Collateral Documents) consisting of substantially all of each Prepetition Loan Party’s assets (the “Prepetition Collateral”).

(iv) *Validity, Perfection, and Priority of Prepetition First Priority Liens and Prepetition First Lien Obligations.* Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date: (i) the Prepetition First Priority Liens encumber all of the Prepetition Collateral, as the same existed on the Petition Date; (ii) the Prepetition First Priority Liens are valid, binding, enforceable, non-avoidable, and properly perfected liens on and security interests in the Prepetition Collateral; (iii) the Prepetition First Priority Liens are subject and subordinate only to valid, perfected and enforceable prepetition liens (if any) which are senior to the Prepetition First Lien Secured Parties’ liens or security interests as of the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, and that are senior to the Prepetition First Lien Secured Parties’ liens or security interests as of the Petition Date (such liens, the “Permitted Prior Liens”); (iv) the Prepetition First Priority Liens were granted to or for

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the benefit of the Prepetition First Lien Agent on behalf of the Prepetition First Lien Secured Parties for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the loans and/or commitments and other financial accommodations secured thereby; (v) the Prepetition First Lien Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors; (vi) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition First Priority Liens or Prepetition First Lien Obligations exist, and no portion of the Prepetition First Priority Liens or Prepetition First Lien Obligations is subject to any challenge, cause of action, or defense, including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, offset, contest, defense, counterclaims, cross-claims, or “claim” (as defined in the Bankruptcy Code), pursuant to the Bankruptcy Code or applicable nonbankruptcy law; and (vii) the Debtors and their estates have no claims, objections, challenges, causes of actions, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including “lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Prepetition First Lien Secured Parties or any of their respective affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees arising out

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of, based upon, or related to the Prepetition First Lien Loan Documents, the Prepetition First Lien Obligations, or the Prepetition First Priority Liens.

(v) *Cash Collateral.* Substantially all of the Debtors' cash, including any amounts generated by the collection of accounts receivable, all cash proceeds of the Prepetition Collateral, and the Debtors' banking, checking, or other deposit accounts with financial institutions as of the Petition Date or deposited into the Debtors' banking, checking, or other deposit accounts with financial institutions after the Petition Date constitutes "cash collateral" of the Prepetition First Lien Secured Parties within the meaning of Bankruptcy Code section 363(a) (the "Cash Collateral").

(vi) *Bank Accounts.* The Debtors acknowledge and agree that, as of the Petition Date, none of the Debtors has either opened or maintains any bank accounts other than the accounts listed in the exhibit attached to any order authorizing the Debtors to continue to use the Debtors' existing cash management system.

(vii) *Intercreditor Provisions.* Pursuant to section 510 of the Bankruptcy Code, any applicable intercreditor or subordination provisions contained in any of, or entered into as permitted by and in accordance with, the Prepetition First Lien Loan Documents shall (i) remain in full force and effect and (ii) not be deemed to be amended, altered or modified by the terms of this Interim Order or the DIP Documents, in each case, unless expressly set forth herein or therein.



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F. *Findings Regarding the DIP Facility and Use of Cash Collateral.*

(i) The Debtors have an immediate need to obtain the DIP Facility and to use Cash Collateral (solely to the extent consistent with the Approved DIP Budget, subject to any Permitted Variance set forth herein and in the DIP Documents) to, among other things, (A) permit the orderly continuation of their businesses; (B) pay certain Adequate Protection Payments; and (C) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors and certain subsidiaries thereof. The DIP Facility will also reassure the Debtors' customers and employees that the Debtors will have access to additional liquidity to meet its commitments during the Cases and that the Debtors' businesses are likely to continue as a going concern post-emergence. The ability of the Debtors to obtain sufficient working capital and liquidity through the incurrence of the new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the Debtors' going concern value and successful reorganization. The Debtors will not have sufficient sources of working capital and financing to operate their businesses in the ordinary course of business throughout the Cases without access to the DIP Facility and authorized use of Cash Collateral, and subject to the Carve Out (defined below) as provided herein.

(ii) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors also are unable to obtain secured credit allowable under sections 364(c)(1),

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364(c)(2), and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Documents without the Debtors granting to the DIP Secured Parties the DIP Liens (as defined below) and the DIP Superpriority Claims (as defined below) under the terms and conditions set forth in this Interim Order and the DIP Documents.

(iii) The DIP Facility has been negotiated in good faith and at arm's length among the Debtors and the DIP Secured Parties, and all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with the DIP Facility and the DIP Documents, including, without limitation, all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents and all other obligations under the DIP Documents (collectively, the "DIP Obligations") shall be deemed to have been extended by the DIP Secured Parties in "good faith" as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code and reflects the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Obligations, the DIP Liens, and the DIP Superpriority Claims shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, and any liens or claims granted to, or payments made to the DIP Agent or the DIP Lenders hereunder prior to the effective date of any such vacatur, reversal, or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein.

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(iv) Roll-Up Loans. Upon entry of this Interim Order, without any further action by the Debtors or any other party, \$35,000,000 of the Prepetition First Lien Loans shall be converted into DIP Obligations, as Roll-Up Loans. Such conversion (or “roll-up”) shall be authorized as compensation for, in consideration for, and solely on account of, the Prepetition First Lien Lenders that are also DIP Lenders or affiliates thereof to fund the New Money Loans and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Obligations. The Prepetition First Lien Lenders would not otherwise consent to the use of their Cash Collateral, or the subordination of their liens to DIP Liens, and the DIP Lenders would not be willing to provide the DIP Loans without the inclusion of the Roll-Up Loans in the DIP Obligations.

(v) Adequate Protection. Each of the Prepetition First Lien Secured Parties are entitled, pursuant to sections 105, 361, 362 and 363(c) of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, including Cash Collateral, for any diminution in the value thereof.

(vi) Sections 506(c), 552(b), and Marshaling. In light of the Prepetition First Lien Secured Parties’ agreement to subordinate their liens and superpriority claims to the DIP Obligations and the Carve Out and to permit the use of their Cash Collateral as set forth herein, the Prepetition First Lien Secured Parties are entitled to the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to and upon entry of the Final Order, (i) a waiver of any “equities of the case” claims under section 552(b) of the Bankruptcy Code, (ii) a waiver of the

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provisions of section 506(c) of the Bankruptcy Code, and (iii) a waiver of the equitable doctrine of marshaling.

(vii) Consent by Prepetition First Lien Agent. The Prepetition First Lien Agent (at the direction of the Required Lenders (as defined in the Pre-Petition Credit Agreement)), on behalf and for the benefit of each of the Prepetition First Lien Secured Parties, has consented to, conditioned on the entry of this Interim Order, the Debtors' incurrence of the DIP Facility, and proposed use of Cash Collateral on the terms and conditions set forth in this Interim Order, including, without limitation, the terms of the adequate protection provided for in this Interim Order.

G. No Control. None of the Prepetition First Lien Secured Parties control the Debtors or their properties or operations, has authority to determine the manner in which any of the Debtors' operations are conducted or is a control person or insider of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from this Interim Order and/or the Prepetition First Lien Loan Documents, the Prepetition First Lien Obligations, or the Prepetition First Priority Liens.

H. Findings Regarding Corporate Authority. Each Debtor has all requisite corporate or limited liability company authority to execute and deliver the DIP Loan Documents to which it is a party and to perform its obligations thereunder.

I. Good Cause Shown; Best Interest. Good cause has been shown for entry of this Interim Order, and entry of this Interim Order is in the best interests of the Debtors' respective

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estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing business and enhance the Debtors' prospects for a successful reorganization. Absent granting the relief sought by this Interim Order, the Debtors' estates will be immediately and irreparably harmed.

J. Notice. In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and the Local Rules, notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested herein, and of the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and applicable Local Rules.

K. Arm's Length, Good Faith Negotiations. The terms of this Interim Order were negotiated in good faith and at arm's length between the Debtors and the Prepetition First Lien Secured Parties. The Prepetition First Lien Secured Parties have acted without negligence or violation of public policy or law in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the Debtors' incurrence of the DIP Facility and the Debtors' use of Cash Collateral, including in respect of all of the terms of this Interim Order, all documents related thereto, and all transactions contemplated by the foregoing.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

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IT IS HEREBY ORDERED THAT:

1. DIP Financing Approved. The Motion is granted on an interim basis as set forth herein, the DIP Facility is approved on an interim basis, and the use of Cash Collateral on an interim basis is authorized, subject to the terms of this Interim Order.

2. Objections Overruled. Any objections, reservations of rights, or other statements with respect to the Motion and entry of this Interim Order, to the extent not withdrawn or resolved, are overruled on the merits. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2) and the Local Rules. This Interim Order shall become effective immediately upon its entry.

3. Authorization of the DIP Facility and the DIP Documents.

(a) The DIP Borrower and the DIP Guarantors are hereby immediately authorized and empowered to enter into, execute and deliver, the DIP Documents, including the DIP Credit Agreement, and such additional documents, instruments, certificates and agreements as may be reasonably required or requested by the DIP Secured Parties to implement the terms or effectuate the purposes of this Interim Order and the DIP Documents and to effectuate the exchange of Prepetition First Lien Loans for Roll-Up Loans. To the extent not entered into as of the date hereof, the Debtors and the DIP Secured Parties shall negotiate the DIP Documents in good faith, and in all respects such DIP Documents shall be, subject to the terms of this Interim Order and the Final Order, materially consistent with the terms of the DIP Credit Agreement and otherwise reasonably acceptable to the DIP Agent (acting at the direction of the Required Lenders



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under and pursuant to the DIP Credit Agreement (the “Required DIP Lenders”)) and the Required DIP Lenders. Any material DIP Documents not entered into as of the date hereof shall be filed with the Bankruptcy Court and subject to review by all parties in interest, who reserve the right to object and schedule a hearing. Upon entry of this Interim Order and until execution and delivery of the DIP Credit Agreement and other DIP Documents required to be delivered thereunder, the Debtors and the DIP Secured Parties shall be bound by (x) the terms, conditions and other provisions set forth in the other executed DIP Documents, with the same force and effect as if duly executed and delivered to the DIP Agent by the Debtors, and (y) this Interim Order and the other executed DIP Documents shall govern and control the DIP Facility. Upon entry of this Interim Order, the Interim Order, the DIP Credit Agreement, and other DIP Documents shall govern and control the DIP Facility. The DIP Agent is hereby authorized to execute and enter into its respective obligations under the DIP Documents, subject to the terms and conditions set forth therein and this Interim Order. Upon execution and delivery thereof, the DIP Documents shall constitute valid and binding obligations of the Debtors enforceable in accordance with their terms. To the extent there exists any conflict among the terms and conditions of the Motion, the DIP Documents and this Interim Order, the terms and conditions of this Interim Order shall govern and control. To the extent there is a conflict between the terms and conditions of the Motion and the DIP Documents, the terms and conditions of the DIP Documents shall govern and control.

(b) Upon entry of this Interim Order, the DIP Borrower is hereby authorized to borrow, and the DIP Guarantors are hereby authorized to guaranty, borrowings up to an aggregate

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principal amount of \$70,000,000 of DIP Loans (inclusive of the Roll-Up Loans described in paragraph (c) below), with \$35,000,000 of New Money Loans available to be drawn on an interim basis, subject to and in accordance with this Interim Order, without any further action by the Debtors or any other party.

(c) Upon the entry of this Interim Order, without any further action by the Debtors or any other party, the Debtors shall be authorized and deemed to have effectuated the exchange of \$35,000,000 in aggregate principal amount of Prepetition First Lien Loans for Roll-Up Loans, subject to the occurrence of the Closing Date (as defined in the DIP Credit Agreement).

(d) Entry of this Interim Order shall constitute final approval of the Backstop Payment (as defined in the Restructuring Support Agreement) to be paid to the Backstop Parties. Further, upon entry of this Interim Order, the terms and conditions of the Backstop Payment shall have been fully satisfied by the DIP Lenders and the Backstop Parties and the Backstop Payment shall have been fully and finally earned as a bargained for and integral part of the DIP Facility contemplated in these Chapter 11 Cases.

(e) In accordance with the terms of this Interim Order and the other DIP Documents, proceeds of the DIP Loans shall be used solely for the purposes permitted under this Interim Order and the DIP Documents, and in accordance with the Approved DIP Budget, subject to the Carve Out and any Permitted Variance as set forth in this Interim Order and the DIP Documents. Attached as **Exhibit B** hereto and incorporated herein by reference is a budget

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prepared by the Debtors and approved by the Required DIP Lenders in accordance with the DIP Credit Agreement (the “Initial DIP Budget”).

(f) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized, and the automatic stay imposed by section 362 of the Bankruptcy Code is hereby lifted solely to the extent necessary to perform all acts and to make, execute, and deliver all instruments and documents (including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage to the extent contemplated thereby or by the DIP Credit Agreement and any other DIP Documents), and to pay all fees (including all amounts owed to the DIP Lenders and the DIP Agent under the DIP Documents) that may be reasonably required or necessary for the Debtors’ performance of their obligations under the DIP Facility, including, without limitation:

- (1) the execution, delivery, and performance of the DIP Documents, including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage to the extent required thereby;
- (2) the execution, delivery, and performance of one or more amendments, waivers, consents, or other modifications to and under the DIP Documents (in each case in accordance with the terms of the applicable DIP Documents and in such form as the Debtors, the DIP Agent, and the Required DIP Lenders may reasonably agree), it being understood that no further approval of the Court shall be required for amendments, waivers, consents, or other

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modifications to and under the DIP Documents or the DIP Obligations that are not material;

- (3) the non-refundable payment to each of and/or on behalf of the DIP Secured Parties, as applicable, of the premiums or fees referred to in the DIP Documents, including (a) all fees and other amounts owed to the DIP Agent and the DIP Lenders and (b) all reasonable and documented costs and expenses as may be due from time to time, including, without limitation, the reasonable and documented fees and expenses of counsel and other professionals retained as provided for in the DIP Documents and this Interim Order (whether incurred before, on or after the Petition Date), including, for the avoidance of doubt, (x) Gibson, Dunn & Crutcher LLP (as counsel), Evercore Group L.L.C. (as financial advisor), and Sills Cummis & Gross, P.C. (as local bankruptcy counsel) (collectively, the “DIP/First Lien Advisors”) necessary to represent the interests of the DIP Lenders and the ad hoc group of the Prepetition First Lien Lenders (the “DIP/First Lien Group”) in connection with the Cases; and (y) ArentFox Schiff LLP, as counsel to the DIP Agent, to the extent necessary for the DIP Agent to exercise its rights and fulfill its obligations under the DIP Documents (the “DIP Agent Advisors”), which such fees and expenses shall not be subject to the approval of the Court, nor shall any

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recipient of any such payment be required to file with respect thereto any monthly, interim or final fee applications with the Court, *provided* that any fees and expenses of a professional shall be subject to the provisions of paragraph 18 of this Interim Order; and

- (4) the performance of all other acts required under or in connection with the DIP Documents. The Prepetition First Lien Agent and the DIP Agent are authorized to take all actions reasonably necessary in furtherance of the Syndication Procedures, and all reasonable and documented fees and out-of-pocket expenses arising from or related to any such action of the Prepetition First Lien Agent and DIP Agent will be paid by the Debtors, which such fees and expenses shall not be subject to the approval of the Court. The terms of the Pre-Petition Credit Agreement, including all exculpatory provisions in Section 8.03 thereof, will apply to actions taken by the Prepetition First Lien Agent pursuant to this paragraph 3(f).

(g) Upon entry of this Interim Order, the DIP Documents, the DIP Obligations, and the DIP Liens shall constitute valid, binding, and non-avoidable obligations of the Debtors enforceable against each Debtor in accordance with their respective terms and the terms of this Interim Order for all purposes during the Cases, any subsequently converted Case of any Debtor to a case under chapter 7 of the Bankruptcy Code or after the dismissal of any Case. No obligation, payment, transfer, or grant of security under the DIP Credit Agreement, the other DIP Documents,

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or this Interim Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 542, 544, 548, or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim. All payments or proceeds remitted (a) to or on behalf of the DIP Agent on behalf of any DIP Secured Parties or (b) to or on behalf of the Prepetition First Lien Secured Parties and/or the Prepetition First Lien Agent, in each case, pursuant to the DIP Documents, the provisions of this Interim Order, or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment, or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) or the “equities of the case” exception of section 552(b) of the Bankruptcy Code (and, solely in the case of waivers of rights under sections 506(c) and 552(b) with respect to the Prepetition First Lien Secured Parties, subject to the entry of the Final Order).

(h) The DIP Guarantors are hereby authorized and directed to jointly, severally, and unconditionally guarantee, and upon entry of this Interim Order shall be deemed to have guaranteed, in full, all of the DIP Obligations of the DIP Borrower.

4. Budget and Variance Reporting.

(a) On or before the Friday before the end of each Budget Period (as defined below) beginning with the fourth full week following the Petition Date (or more frequently if



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determined by the Debtors), the Debtors will deliver to the DIP Agent, the DIP Agent Advisors, the DIP/First Lien Advisors, the Prepetition First Lien Agent Advisors, and any statutory committees appointed in these cases, an updated budget for the subsequent 13-week period (a “Subsequent DIP Budget”), which shall be in form and substance satisfactory to the Required DIP Lenders in their sole discretion (acting in good faith). The Initial DIP Budget or any Subsequent DIP Budget shall be deemed to constitute the “Approved DIP Budget” for purposes of this Interim Order with the most recently delivered budget constituting the “Approved DIP Budget” solely upon approval by the Required DIP Lenders (which must be in writing, email being sufficient, or which shall be deemed an Approved DIP Budget absent objection by the Required DIP Lenders within five days’ after delivery of the Budget) in their sole discretion (acting in good faith). In the event the conditions for the most recently delivered Subsequent DIP Budget to constitute an “Approved DIP Budget” are not met as set forth herein, the prior Approved DIP Budget shall remain in full force and effect and the Debtors shall be required to work in good faith with the Required DIP Lenders to modify such Subsequent DIP Budget until the Required DIP Lenders approve such Subsequent DIP Budget as an “Approved DIP Budget.” “Budget Period” means the initial four-week period set forth in the Approved DIP Budget in effect at such time.

(b) Commencing on the Friday of the second full calendar week after the Petition Date, Permitted Variances (as defined below) shall be tested weekly on Friday (each such date, a “Testing Date”). If such Testing Date is not a Business Day, the Testing Date shall be the next day that is a Business Day. On each Testing Date, the Debtors shall deliver to the DIP Agent,

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the DIP/First Lien Advisors, the Prepetition First Lien Agent Advisors, and any statutory committees appointed in these cases, a budget variance report/reconciliation in form and substance reasonably satisfactory to the DIP/First Lien Group (the “Approved DIP Budget Variance Report”), setting forth in detail (i) the Debtors’ actual disbursements (the “Actual Disbursements”), including, without limitation, capital expenditures and M&A transaction costs, on a line-by-line and aggregate basis for the trailing two, three, or four-weeks, as applicable,<sup>4</sup> preceding the applicable Testing Date; (ii) the Debtors’ actual ordinary course receipts (the “Actual Receipts”), excluding, for the avoidance of doubt, any intercompany transactions, on a line-by-line and aggregate basis for the applicable Variance Testing Period; (iii) a comparison (whether positive or negative, in dollars and expressed as a percentage) for the applicable Variance Testing Period of the Actual Receipts (and each line item thereof), the Actual Disbursements (and each line item thereof), and the fees and expenses of Professional Persons (as defined below) for such applicable Variance Testing Period to the amount of Debtors’ projected cash receipts (and each line item thereof) set forth in the Approved DIP Budget for such applicable Variance Testing Period and the Debtors’ projected disbursements (and each line item thereof),

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<sup>4</sup> Notwithstanding anything to the contrary herein, for (i) the first Testing Date on March 2, 2024, the Variance Testing Period shall be the two-week period ending on the Friday of the second calendar week occurring after the Petition Date (the “Two-Week Variance Testing Period”), (ii) the second Testing Date on March 9, 2024, the Variance Testing Period shall be the three-week period ending on the Friday of the third calendar week occurring after the Petition Date (the “Three-Week Variance Testing Period”), and (iii) for the third Testing Date as of March 16, 2024 and thereafter, the Variance Testing Period shall be the four-week period preceding the applicable Testing Date (the “Four-Week Variance Testing Period” and together with the Two-Week Variance Testing Period and the Three-Week Variance Testing Period, the “Variance Testing Periods”).

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respectively, set forth in the Approved DIP Budget for such applicable Variance Testing Period; and (iv) management commentary on any individual line item with positive or negative variance compared to the Approved Budget for the applicable Variance Testing Period, including a judgment as to whether such variance is temporary or permanent and an explanation in reasonable detail for any material variance in accordance with past practices.

(c) As of any Testing Date, the Debtors shall not permit: (i) (A) during the Two-Week Variance Testing Period and the Three-Week Variance Testing Period, the Debtors' Actual Disbursements to be more than 130% of the projected disbursements as set forth in the Approved DIP Budget in the aggregate for such period (the "Initial Permitted Disbursement Variances") and (B) during the Two-Week Variance Testing Period and the Three-Week Variance Testing Period, the Debtors' Actual Receipts for such period to be less than 70% of the projected receipts as set forth in the Approved DIP Budget in the aggregate for such period (the "Initial Permitted Receipt Variances") and, together with the Initial Permitted Disbursement Variances, the "Initial Permitted Variances"), and (ii) (A) during the Four-Week Variance Testing Period, the Debtors' Actual Disbursements to be more than 120% of the projected disbursements as set forth in the Approved DIP Budget in the aggregate for such period (the "Permitted Disbursement Variances") and (B) during the Four-Week Variance Testing Period, the Debtors' Actual Receipts for any Variance Testing Period during such Budget Period to be less than 80% of the projected receipts as set forth in the Approved DIP Budget in the aggregate for such period (the "Permitted Receipt Variances") and, together with the Permitted Disbursement Variances, the "Permitted Variances"; all

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references in this Interim Order and the DIP Documents to “Approved DIP Budget” shall mean the Approved DIP Budget as it is subject to the Initial Permitted Variances or Permitted Variances, as applicable). Commencing with the first full calendar week after the Petition Date, the Debtors shall maintain Liquidity (as defined in the DIP Credit Agreement) of not less than \$30,000,000 as of the last business day of every calendar week. For purposes of Permitted Variances testing, the fees and expenses of Professional Persons (as defined below), the Prepetition First Lien Agent Advisors, the DIP/First Lien Advisors, and the DIP Agent Advisors shall be excluded.

5. Access to Records. The Debtors shall provide the DIP/First Lien Advisors and the DIP Agent Advisors with all reporting and other information required to be provided to the DIP Agent under the DIP Documents. In addition to, and without limiting, whatever rights to access the DIP Secured Parties have under the DIP Documents, upon reasonable notice to counsel to the Debtors (email being sufficient), at reasonable times during normal business hours, the Debtors shall permit representatives, professionals, agents, and employees of the DIP Secured Parties to have reasonable access to (i) inspect the Debtors’ assets, and (ii) reasonably requested information (including historical information and the Debtors’ books and records) and personnel, including regularly scheduled meetings as mutually agreed with senior management of the Debtors and other advisors of the Debtors (during normal business hours), and the DIP Secured Parties shall be provided with access to all information they shall reasonably request, excluding any information for which confidentiality is owed to third parties, information subject to attorney-client or similar privilege, or where such disclosure would not be permitted by any applicable requirements of law.

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6. DIP Superpriority Claims. Subject to, and subordinated in all respects to, the Carve Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors' estates (the "DIP Superpriority Claims") (without the need to file any proof of claim) with priority over any and all administrative expenses, adequate protection claims, diminution claims, and all other claims against the Debtors, their estates or their property, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(b), 506(c) (subject to entry of a Final Order), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall for the purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, without limitation, subject to entry of the Final Order, any proceeds or property recovered in connection with the pursuit of claims or causes of action arising under chapter 5 of the Bankruptcy Code, if any (the "Avoidance Actions"), subject only to the payment of the Carve Out. Except as set forth in this Interim Order or the Final Order, no other superpriority claims shall be granted or allowed in these Cases.

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7. DIP Liens. As security for the DIP Obligations, effective and perfected upon the date of this Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements, or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the following security interests and liens are hereby granted by the Debtors to the DIP Agent, for the benefit of the DIP Secured Parties (all property identified in clause (a), (b), and (c) below being collectively referred to as the “DIP Collateral”), subject only to (x) Permitted Prior Liens and (y) the Carve Out (all such liens and security interests granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the “DIP Liens”):

(a) First Priority Lien On Any Unencumbered Property. Subject only to the Carve Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically, and properly perfected first priority senior security interest in and lien upon all property of the Debtors and non-Debtor Loan Parties, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected, and non-avoidable liens (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code), including, without limitation (in each case, to the extent not subject to valid, perfected, and non-avoidable liens), a 100% equity pledge of all first-tier foreign subsidiaries and all unencumbered assets of the Debtors; all prepetition property and post-petition property of the Debtors’ estates, and the proceeds, products, rents and



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profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, unencumbered cash (and any investment of such cash) of the Debtors (whether maintained with the DIP Agent or otherwise); all equipment, all goods, all accounts, cash, payment intangibles, bank accounts and other deposit or securities accounts of the Debtors (including any accounts opened prior to, on, or after the Petition Date); all insurance policies and proceeds thereof, equity interests, instruments, intercompany claims, accounts receivable, other rights to payment, all general intangibles, all contracts and contract rights, securities, investment property, letters of credit and letter of credit rights, chattel paper, all interest rate hedging agreements of the Debtors; all owned real estate, real property leaseholds and fixtures of the Debtors; patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property of the Debtors; all commercial tort claims of the Debtors; and all claims and causes of action (including causes of action arising under section 549 of the Bankruptcy Code, claims arising on account of transfers of value from a Debtor to (x) another Debtor and (y) a non-Debtor affiliate incurred on or following the Petition Date); any and all proceeds, products, rents, and profits of the foregoing, and, subject to entry of the Final Order, all proceeds and property recovered in respect of Avoidance Actions (collectively, the “Previously Unencumbered Property”); *provided*, for the avoidance of doubt, and notwithstanding anything to the contrary contained herein, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to this Interim Order shall attach to the Debtors’ economic rights, including, without limitation, any and all proceeds of the foregoing.

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(b) Liens Priming the Prepetition First Priority Liens. Subject only to the Carve Out, pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all property of the Debtors and non-Debtor Loan Parties that was subject to the Prepetition First Priority Liens, including, without limitation, the Prepetition Collateral and Cash Collateral; *provided*, for the avoidance of doubt, and notwithstanding anything to the contrary contained herein, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to this Interim Order shall attach to the Debtors' economic rights, including, without limitation, any and all proceeds of the foregoing.

(c) Liens Junior to Certain Other Liens. Subject only to the Carve Out, pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all prepetition and post-petition property of the Debtors that is subject to the Permitted Prior Liens. Subject to the Carve Out, the Permitted Prior Liens, and the rights and limitations set forth in paragraph 11 (if applicable), and except as expressly set forth in this Interim Order, the DIP Liens: (i) shall not be made subject to or *pari passu* with (A) any lien or security interest heretofore or hereinafter granted in any of the Cases or any successor cases, and shall be valid and enforceable against the Debtors, their estates, any trustee or any other estate representative appointed or elected in the Cases or any successor cases and/or upon the dismissal of any of the Cases or any successor cases and (B) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code; and (ii)

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shall not be subject to sections 506(c) (subject to entry of the Final Order, but effective as of the Petition Date), 510, 549, 550, or 551 of the Bankruptcy Code *provided that* any liens attaching to proceeds or property recovered in connection with the pursuit of claims or causes of action arising under chapter 5 of the Bankruptcy Code, if any, shall be subject to entry of the Final Order.

8. Adequate Protection for the Prepetition First Lien Secured Parties. Subject only to the payment of the Carve Out, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), for any diminution in value of such interests (each such diminution, a “Diminution in Value”), resulting from, among other things, the imposition of the priming DIP Liens on the Prepetition Collateral, the Carve Out, the Debtors’ use of the Prepetition Collateral (including Cash Collateral), and the imposition of the automatic stay, in each case, from and after the Petition Date, the Prepetition First Lien Agent, for the benefit of itself and the Prepetition First Lien Secured Parties, is hereby granted the following (collectively, the “Adequate Protection Obligations”):

(a) Adequate Protection Liens. As security for any Diminution in Value, additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens as of the date of this Interim Order (together, the “Adequate Protection Liens”), without the necessity of the execution by the Debtors (or recordation or other filing), of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all DIP Collateral

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and, upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions. Subject to the terms of this Interim Order, the Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) the DIP Liens, and (C) Permitted Prior Liens. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code).

(b) Adequate Protection Superpriority Claims. As further adequate protection, and to the extent provided by sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, allowed administrative expense claims in each of the Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of any postpetition Diminution in Value (the “Adequate Protection Superpriority Claims”), but junior to the Carve Out and the DIP Superpriority Claims. Subject to the Carve Out and the DIP Superpriority Claims in all respects, the Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113 and 1114 of the Bankruptcy Code.

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(c) Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of paragraph 18 of this Interim Order, all reasonable and documented fees and out-of-pocket expenses, whether incurred before, on or after the Petition Date, to the extent not duplicative of any fees and/or expenses paid pursuant to paragraph 3(f)(3) hereof, including all reasonable and documented fees and expenses of counsel and other professionals retained as provided for in the DIP Documents and this Interim Order, including, for the avoidance of doubt, of (i) Simpson Thacher & Bartlett LLP, as counsel, and Porzio, Bromberg & Newman, P.C., as local counsel to the Prepetition First Lien Agent (the “Prepetition First Lien Agent Advisors”), and (ii) the DIP/First Lien Advisors (all payments referenced in this sentence, collectively, the “Adequate Protection Payments”). The Debtors shall also pay, in accordance with and as and when due under the Prepetition First Lien Loan Documents, any administration or agency fees of the Prepetition First Lien Agent, whether such amounts are due prior to or after the Petition Date. None of the Adequate Protection Payments or such agency fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any monthly, interim, or final fee application with respect thereto or otherwise seek the Court’s approval of any such payments.

(d) Right to Seek Additional Adequate Protection. This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition First Lien Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request. Nothing herein

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shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition First Lien Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition First Lien Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition First Lien Secured Parties against any Diminution in Value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

(e) *Other Covenants.* The Debtors shall maintain their cash management arrangements in a manner consistent with the cash management order approving the Debtors' cash management motion. The Debtors shall comply with the covenants contained in the DIP Credit Agreement regarding conduct of business, including, without limitation, preservation of rights, qualifications, licenses, permits, privileges, franchises, governmental authorizations and intellectual property rights material to the conduct of their business and the maintenance of properties and insurance.

(f) *Reporting Requirements.* As additional adequate protection to the Prepetition First Lien Secured Parties, the Debtors shall comply with all reporting requirements set forth in the DIP Credit Agreement.

(g) *Miscellaneous.* Except for (i) the Carve Out and (ii) as otherwise provided in paragraphs 6 and 7, the Adequate Protection Liens and Adequate Protection Superpriority

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Claims granted to the Prepetition First Lien Secured Parties pursuant to paragraph 8 of this Interim Order shall not be subject, junior, or *pari passu*, to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under the Bankruptcy Code, including, without limitation, pursuant to section 551 or otherwise, and shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim under the Bankruptcy Code, including, without limitation, pursuant to section 364 or otherwise.

9. Carve Out.

(a) Carve Out. As used in this Interim Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below) with respect to the Cases; (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and the Creditors' Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals") and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out



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Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$4.5 million incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtors, their lead restructuring counsel, counsel to the DIP Lenders, the U.S. Trustee, and counsel to the Creditors’ Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Carve Out Reserves. Notwithstanding the occurrence of an Event of Default, on the day on which a Carve Out Trigger Notice is given by the DIP Agent to the Debtors with a copy to counsel to the Creditors’ Committee (the “Termination Declaration Date”), the Carve Out Trigger Notice shall (i) be deemed a draw request and notice of borrowing by the Debtors for New Money Loans (on a pro rata basis based on the then outstanding New Money Commitments), in an amount equal to the then unpaid amounts of the Allowed Professional Fees (any such amounts actually advanced shall constitute New Money Loans, as applicable) and (ii) also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a

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segregated account at the DIP Agent in trust to pay such then unpaid Allowed Professional Fees (the “Pre-Carve Out Trigger Notice Reserve”) prior to any and all other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also (i) be deemed a request by the Debtors for New Money Loans (on a pro rata basis based on the then outstanding New Money Commitments), in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute New Money Loans) and (ii) constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account at the DIP Agent in trust to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the “Post-Carve Out Trigger Notice Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve, the “Carve Out Reserves”) prior to any and all other claims. On the first business day after the DIP Agent gives such notice to such DIP Lenders, notwithstanding anything in the DIP Credit Agreement to the contrary, including with respect to the existence of a Default (as defined in the DIP Credit Agreement) or Event of Default, the failure of the Debtors to satisfy any or all of the conditions precedent for New Money Loans under the DIP Facility, any termination of the Commitments with respect to New Money Loans following an Event of Default, or the occurrence of the Maturity Date, each DIP Lender of New Money Loans with an outstanding Commitment (on a pro rata basis based on the then outstanding Commitments) shall make available to the DIP Agent such DIP Lender’s pro rata share with

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respect to such borrowing in accordance with the DIP Facility. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Prepetition First Lien Parties in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “Post-Carve Out Amounts”), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Prepetition First Lien Parties in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the DIP Documents, or this Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph 9, then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in this paragraph 9, prior to making any payments to the DIP Agent or the

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Prepetition First Lien Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve Out Trigger Notice, the DIP Agent and the Prepetition First Lien Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Documents. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Loans (as defined in the DIP Credit Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Initial Budget, Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors *provided*, however, in no event shall the DIP Lenders be obligated to make DIP Obligations in excess of the aggregate amount of New Money Loans set forth in the DIP Documents. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Facility, or in any Prepetition Secured Facilities, the Carve Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Liens, and the 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Secured Obligations.

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(c) Payment of Allowed Professional Fees Prior to the Termination Declaration

Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(d) No Direct Obligation To Pay Allowed Professional Fees. The Prepetition

First Lien Parties and Prepetition First Lien Agent reserve the right to object to the allowance of any fees and expenses, whether or not such fees and expenses were incurred in accordance with the Approved Budget. Except for permitting the funding of the Carve Out Reserves as provided herein, none of the DIP Agent, DIP Lenders, or the Prepetition First Lien Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person or any fees or expenses of the U.S. Trustee or Clerk of the Court incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Agent, the DIP Lenders, or the Prepetition First Lien Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) Payment of Carve Out On or After the Termination Declaration

Date. Following the delivery of the Carve Out Trigger Notice, all Allowed Professional Fees shall be paid from the applicable Carve Out Reserve, and no Professional Person shall seek payment of any Allowed Professional Fees from any other source until the applicable Carve Out Reserve has been exhausted. Any payment or reimbursement made on or after the occurrence of the

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Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim Order, the DIP Documents, the Bankruptcy Code, and applicable law.

10. Reservation of Rights of the DIP Agent, DIP Lenders, and Prepetition First Lien Secured Parties. Subject only to the Carve Out, notwithstanding any other provision in this Interim Order or the other DIP Documents to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the rights of any of the Prepetition First Lien Secured Parties to seek any other or supplemental relief in respect of the Debtors including the right to seek additional adequate protection at and following the Final Hearing; *provided* that any such further or different adequate protection shall at all times be subordinate and junior to the Carve Out and the claims and liens of the DIP Secured Parties granted under this Interim Order and the other DIP Documents; (b) any of the rights of the DIP Secured Parties or the Prepetition First Lien Secured Parties under the DIP Documents, the Prepetition First Lien Loan Documents, any intercreditor agreement, or the Bankruptcy Code or under non-bankruptcy law (as applicable), including, without limitation, the right of any of the DIP Secured Parties or the Prepetition First Lien Secured Parties to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases, conversion of any of the Cases to cases under chapter 7, or appointment of a

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chapter 11 trustee or examiner with expanded powers in any of the Cases, (iii) seek to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Secured Parties or the Prepetition First Lien Secured Parties. The delay in or failure of the DIP Secured Parties and/or the Prepetition First Lien Secured Parties to seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the DIP Secured Parties' or the Prepetition First Lien Secured Parties' rights and remedies. For all adequate protection purposes throughout the Cases, each of the Prepetition First Lien Secured Parties shall be deemed to have requested relief from the automatic stay and adequate protection for any Diminution in Value from and after the Petition Date. For the avoidance of doubt, such request will survive termination of this Interim Order.

11. Reservation of Certain Committee and Third Party Rights and Bar of Challenges and Claims. The stipulations, admissions, waivers, and releases contained in this Interim Order, including the Debtors' Stipulations, shall be binding upon the Debtors, their estates, and any of their respective successors in all circumstances and for all purposes and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. The stipulations, admissions, and waivers contained in this Interim Order, including, the Debtors' Stipulations, shall be binding upon all other parties in interest, including any Committee and any other person acting on behalf of the Debtors' estates, unless and to the extent that a party in interest with proper standing granted by order of the Court (or other court of competent



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jurisdiction) has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules (i) as to any party in interest other than the Committee, sixty (60) calendar days after entry of the Final Order, and in the case of any such adversary proceeding or contested matter filed by any Committee, sixty (60) calendar days after the appointment of such Committee (the “Challenge Period” and the date of expiration of the Challenge Period, the “Challenge Period Termination Date”); *provided*, that if, prior to the end of the Challenge Period, (x) the cases convert to chapter 7, or (y) if a chapter 11 trustee is appointed, then, in each such case, the Challenge Period shall be extended by the later of (A) the time remaining under the Challenge Period plus ten (10) days or (B) such other time as ordered by the Court solely with respect to any such trustee, commencing on the occurrence of either of the events discussed in the foregoing clauses (x) and (y); (ii) seeking to avoid, object to, or otherwise challenge the findings or Debtors’ Stipulations regarding: (a) the validity, enforceability, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition First Lien Secured Parties; or (b) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition First Lien Obligations (any such claim, a “Challenge”), and (iii) in which the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter. Upon the expiration of the Challenge Period Termination Date without the filing of a Challenge (or if any such Challenge is filed and overruled): (a) any and all such Challenges by any party (including the Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Cases, and any chapter 7 trustee and/or examiner or

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other estate representative appointed or elected in any successor case) shall be forever barred; (b) the Prepetition First Lien Obligations shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in the Cases and any successor cases; (c) the Prepetition First Priority Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims, not subject to recharacterization, subordination, or avoidance; and (d) all of the Debtors' stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition First Lien Secured Parties' claims, liens, and interests contained in this Interim Order shall be of full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Cases and any successor cases. If any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules and remains pending and the Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such adversary proceeding or contested matter on behalf of the Debtors' estates. Furthermore, if any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules, the stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive on any Committee and any other person or entity except to the extent that such stipulations and admissions were expressly challenged in such adversary proceeding or contested matter prior to the Challenge Period Termination Date. Any individual can request a modification

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of the Challenge Period for cause. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including, without limitation, any Committee appointed in the Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation any challenges (including a Challenge) with respect to the Prepetition First Lien Loan Documents, the Prepetition First Priority Liens, and the Prepetition First Lien Obligations, and a separate order of the Court conferring such standing on any Committee or other party-in-interest shall be a prerequisite for the prosecution of a Challenge by such Committee or such other party-in-interest. Upon a successful Challenge brought pursuant to this paragraph 11, including but not limited to a Challenge to the Prepetition First Priority Liens comprised of the roll-ups granted in this Interim Order, the Court may fashion an appropriate remedy.

12. Termination Date. On the Termination Date (as defined below), consistent with the DIP Credit Agreement, (a) all DIP Obligations shall be immediately due and payable, all Commitments will terminate, and the Carve Out Reserves shall be funded as set forth in this Interim Order; (b) all authority to use Cash Collateral shall cease upon three (3) business days' notice; *provided, however*, that during the Remedies Notice Period (as defined below), the Debtors may use Cash Collateral solely to fund the Carve Out and pay payroll and other expenses critical to the administration of the Debtors' estates in accordance with the Approved DIP Budget (except severance during this period), subject to any Permitted Variances set forth herein and in the DIP

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Documents; and (c) the DIP Secured Parties shall be otherwise entitled to exercise rights and remedies under the DIP Documents in accordance with this Interim Order.

13. Events of Default. The occurrence of any of the following events, unless waived in writing (email being sufficient) by the Required DIP Lenders in accordance with the terms of the DIP Documents, shall constitute an event of default (collectively, the “Events of Default”): (a) the failure of the Debtors to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order, (b) the failure of the Debtors to comply with any of the Required Milestones (as defined below) or (c) the occurrence of an “Event of Default” under the DIP Credit Agreement (which Events of Default are explicitly incorporated by reference into this Interim Order). The Required DIP Lenders shall provide written notice of any Event of Default to the Debtors, any Committee, and the U.S. Trustee.

14. Milestones. The Debtors’ failure to comply with any of the case milestones set forth in section 5.20 of the DIP Credit Agreement (collectively, the “Required Milestones”) shall constitute an “Event of Default” in accordance with the terms of the DIP Credit Agreement unless waived or extended by the DIP Lenders.

15. Rights and Remedies Upon Event of Default. Subject to the terms of the applicable DIP Documents, immediately upon the occurrence and during the continuation of an Event of Default notwithstanding the provisions of section 362 of the Bankruptcy Code (which is expressly vacated and modified for such purposes), without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Interim Order and the Remedies

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Notice Period (defined below), (a) the DIP Agent (at the direction of the Required DIP Lenders) or the Required DIP Lenders may declare (any such declaration shall be referred to herein as a “Termination Declaration”) (i) all DIP Obligations owing under the DIP Documents to be immediately due and payable, and thereupon the principal of the DIP Obligations so declared to be due and payable, together with accrued interest thereon and all fees and other applicable DIP Obligations, shall become due and payable immediately, in each case, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, which is waived by the Debtors pursuant to the DIP Credit Agreement, (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (iii) termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, (iv) that the Carve Out shall be triggered, through the delivery of the Carve Out Trigger Notice to the DIP Borrower, and (v) that the default rate of interest under the DIP Facility has been triggered, and (b) subject to paragraph 12(b), the DIP Agent (at the direction of the Required DIP Lenders) or the Required DIP Lenders may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral (the date on which a Termination Declaration is delivered, the “Termination Date”). The automatic stay in the Cases otherwise applicable to the DIP Agent, the DIP Lenders, and the Prepetition First Lien Secured Parties is hereby modified so that five (5) business days after the Termination Date, with written notice having been provided to the Debtors, any Committee, and

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the U.S. Trustee (the “Remedies Notice Period”): (a) the DIP Secured Parties shall be entitled to exercise their respective rights and remedies in accordance with the DIP Documents and this Interim Order to satisfy the DIP Obligations, DIP Superpriority Claims, and DIP Liens, subject to the Carve Out; (b) subject to the foregoing clause (a), the applicable Prepetition First Lien Secured Parties shall be entitled to exercise their respective rights and remedies in accordance with the applicable Prepetition First Lien Loan Documents and this Interim Order with respect to the Debtors’ use of Cash Collateral. During the Remedies Notice Period, the Debtors, the Committee (if appointed), and/or any party in interest shall be entitled to seek an emergency hearing within the Remedies Notice Period with the Court for the sole purpose of contesting whether an Event of Default has occurred or is continuing. Except as set forth in this paragraph 15 or otherwise ordered by the Court prior to the expiration of the Remedies Notice Period, after the Remedies Notice Period, the Debtors shall waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent, the DIP Lenders, or the Prepetition First Lien Secured Parties under this Interim Order. Unless the Court orders otherwise prior to the expiration of the Remedies Notice Period, the automatic stay, as to all of the DIP Agent, DIP Lenders, and Prepetition First Lien Secured Parties shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP Secured Parties and the Prepetition First Lien Secured Parties shall be permitted to exercise all remedies set forth herein, and in the DIP Documents, and as

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otherwise available at law without further order of or application or motion to this Court consistent with this Interim Order; *provided* that the Prepetition First Lien Secured Parties shall be permitted to exercise remedies to the extent available solely with respect to the Debtors' use of Cash Collateral.

16. Limitation on Charging Expenses Against Collateral. No expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from (a) the DIP Collateral (except to the extent of the Carve Out), the DIP Agent, or the DIP Lenders or (b) subject to entry of the Final Order, the Prepetition Collateral (except to the extent of the Carve Out) or the Prepetition First Lien Secured Parties, in each case, pursuant to sections 105(a) or 506(c) (subject to entry of a Final Order) of the Bankruptcy Code or any similar principle of law or equity, without the prior written consent of the DIP Agent, the DIP Lenders, and the Prepetition First Lien Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, or the Prepetition First Lien Secured Parties.

17. Use of Cash Collateral. The Debtors are hereby authorized to use all Cash Collateral of the Prepetition First Lien Secured Parties, but solely for the purposes set forth in this Interim Order and in accordance with the Approved DIP Budget (subject to Permitted Variances as set forth in this Interim Order and the DIP Documents), including, without limitation, to make payments on account of the Adequate Protection Obligations provided for in this Interim Order,



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from the date of this Interim Order through and including the date of termination of the DIP Credit Agreement. Except in accordance with the terms and conditions of this Interim Order, the Debtors shall be enjoined and prohibited from at any time using any Cash Collateral.

18. Expenses and Indemnification.

(a) The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become due and without need to obtain further Court approval, including, without limitation, backstop, fronting, closing, arrangement or commitment payments (including all payments and other amounts owed to the DIP Lenders), administrative agent's fees, and collateral agent's fees (including all fees and other amounts owed to the DIP Agent), the reasonable and documented fees and disbursements of counsel and other professionals to the extent set forth in paragraphs 3(f)(3) and 8(c) of this Interim Order, whether or not such fees arose before, on or after the Petition Date, all to the extent provided in this Interim Order or the DIP Documents. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date (as defined in the DIP Documents) all reasonable and documented fees, costs, and expenses, including the fees and expenses of counsel to the DIP Lenders, the DIP Agent, the Prepetition First Lien Agent, and the DIP/First Lien Group, incurred on or prior to such date without the need for any professional engaged by the DIP Lenders, the DIP Agent, the Prepetition

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First Lien Agent, or the DIP/First Lien Group to first deliver a copy of its invoice as provided for herein.

(b) The Debtors shall be jointly and severally obligated to pay all fees and expenses described above, which obligations shall constitute the DIP Obligations. The Debtors shall pay the reasonable and documented professional fees, expenses, and disbursements of professionals to the extent provided for in paragraphs 3(f)(3) and 8(c) of this Interim Order (collectively, the “Lender Professionals” and, each, a “Lender Professional”) no later than ten (10) business days (the “Review Period”) after the receipt by counsel for the Debtors, any Committee, and the U.S. Trustee of each of the invoices therefor (the “Invoiced Fees”) and without the necessity of filing formal fee applications or complying with the U.S. Trustee Guidelines, including such amounts arising before the Petition Date. Invoiced Fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of the Cases, and such invoice summary shall not be required to contain time entries, but shall include a general, brief description of the nature of the matters for which services were performed, provided that the Debtors, the U.S. Trustee, and any statutory committee appointed in these cases may request additional information regarding Invoiced Fees; and provided, further, that invoice summaries for Invoiced Fees may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any work product doctrine, privilege or protection, common interest doctrine privilege or protection, any other evidentiary privilege or protection recognized under applicable law, or any other confidential information, and the

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provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under applicable law. The Debtors, any Committee, or the U.S. Trustee may dispute the payment of any portion of the Invoiced Fees (the “Disputed Invoiced Fees”) if, within the Review Period, a Debtor, any Committee that may be appointed in these Cases, or the U.S. Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees (to be followed by the filing with the Court, if necessary, of a motion or other pleading, with at least ten (10) days prior written notice to the submitting party of any hearing on such motion or other pleading). For avoidance of doubt, the Debtors shall promptly pay in full all Invoiced Fees other than the Disputed Invoiced Fees.

(c) In addition, the Debtors will indemnify each of the DIP Lenders, the DIP Agent, and each of their respective affiliates, successors, and assigns and the officers, directors, employees, agents, attorneys, advisors, controlling persons, and members of each of the foregoing, in each chase, in their respective capacity as such, pursuant to the DIP Credit Agreement.

19. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

20. Section 507(b) Reservation. Subject only to the Carve Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition First Lien Secured Parties is insufficient to

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compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition First Lien Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition First Lien Secured Parties against any Diminution in Value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

21. Insurance. Until the DIP Obligations have been indefeasibly paid in full, at all times the Debtors shall maintain casualty and loss insurance coverage for the Prepetition Collateral and the DIP Collateral on substantially the same basis as maintained prior to the Petition Date and shall name the DIP Agent as loss payee or additional insured, as applicable, thereunder.

22. No Waiver for Failure to Seek Relief. The failure or delay of the DIP Agent or the Required DIP Lenders to exercise rights and remedies under this Interim Order, the DIP Documents, or applicable law, as the case may be, shall not constitute a waiver of their respective rights or remedies hereunder, thereunder, or otherwise. All such rights and remedies are expressly reserved and preserved.

23. Perfection of the DIP Liens and Adequate Protection Liens.

(a) The DIP Agent and the Prepetition First Lien Agent are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, depository account control agreements, notices of lien, or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted hereunder or under the DIP

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Documents. Whether or not the DIP Agent or the Prepetition First Lien Agent shall (at the direction of the applicable required lenders) choose to file such financing statements, intellectual property filings, mortgages, notices of lien, or similar instruments, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not, subject to the Challenge Period, subject to challenge, dispute, or subordination as of the date of entry of this Interim Order. If the DIP Agent or the Prepetition First Lien Agent (at the direction of the applicable required lenders) determines to file or execute any financing statements, agreements, notice of liens, or similar instruments, the Debtors shall use commercially reasonable efforts to cooperate and assist in any such execution and/or filings as reasonably requested by the DIP Agent or the Prepetition First Lien Agent (at the direction of the applicable required lenders), and the automatic stay shall be modified solely to allow such filings as provided for in this Interim Order.

(b) A certified copy of this Interim Order may, at the direction of the applicable Required DIP Lenders, be filed with or recorded in filing or recording offices by the DIP Agent or the Prepetition First Lien Agent in addition to or in lieu of such financing statements, mortgages, notices of lien, or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Interim Order for filing and recording; *provided, however*, that notwithstanding the date of any such filing, the date of such perfection shall be the date of this Interim Order.

(c) Any provision of any lease, license, contract or other agreement that requires (i) the consent or approval of one or more landlords, lessors, or other parties or (ii) the

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payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, license, contract or other agreement or the proceeds thereof, or other collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code, subject to applicable law. Any such provision shall have no force and effect with respect to the granting of the DIP Liens and the Adequate Protection Liens on such leasehold interest, license, contract or other agreement, or the proceeds of any assignment and/or sale thereof by any Debtor in accordance with the terms of the DIP Credit Agreement or this Interim Order, subject to applicable law.

24. Release. Effective upon entry of this Interim Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf of each of their predecessors, their successors, and assigns, shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge, effective upon entry of this Interim Order, each of the DIP Secured Parties and each of their respective affiliates, former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, assigns, and predecessors in interest, each in their capacity as such (collectively, the "Related Parties"), and, effective upon entry of the Interim Order, each of the Prepetition First Lien Secured Parties and each of their respective Related Parties, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions,

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suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the DIP Obligations, the DIP Liens, the DIP Documents, the Prepetition First Lien Obligations, the Prepetition First Priority Liens or the Prepetition First Lien Loan Documents, as applicable, including, without limitation: (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition First Lien Secured Parties; *provided* that nothing in this paragraph shall in any way limit or release the obligations of any DIP Secured Party under the DIP Documents.

25. Credit Bidding. The DIP Agent (at the direction of the Required DIP Lenders) and the Prepetition First Lien Agent (at the direction of the Required Lenders (as defined in the Pre-Petition Credit Agreement)) shall have the right to credit bid (either directly or through one or more acquisition vehicles), up to the full amount of the underlying lenders' respective claims, including, for the avoidance of doubt, Adequate Protection Superpriority Claims, if any, in any sale of all or any portion of the Prepetition Collateral or the DIP Collateral including, without



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limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to confirmation under Bankruptcy Code section 1129(b)(2)(A)(ii)-(iii).

26. Preservation of Rights Granted Under this Interim Order.

(a) Unless and until all DIP Obligations are indefeasibly paid in full, in cash, and all Commitments are terminated, the Prepetition First Lien Secured Parties shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted pursuant to the Prepetition First Lien Loan Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against the DIP Collateral; and (ii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral, except as set forth in paragraph 23 herein.

(b) In the event this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, any liens or claims granted to the DIP Secured Parties or the Prepetition First Lien Secured Parties hereunder arising prior to the effective date of any such vacatur, reversal, or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein, and DIP Secured Parties and the Prepetition First Lien Secured Parties shall be entitled to all the rights, remedies, privileges, and benefits afforded in section 364(e) of the Bankruptcy Code.

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(c) Unless and until all DIP Obligations, Prepetition First Lien Obligations, and Adequate Protection Payments are indefeasibly paid in full, in cash, and all Commitments are terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly (i) except as permitted under the DIP Documents or, if not provided for therein, with the prior written consent of the DIP Agent, the Required DIP Lenders, and the Prepetition First Lien Agent (acting at the direction of the Required Lenders, and, if impacting the rights and obligations of the Prepetition First Lien Agent, with the approval of the Prepetition First Lien Agent), (x) any modification, stay, vacatur, or amendment of this Interim Order or (y) a priority claim for any administrative expense or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in sections 503(b), 507(a), or 507(b) of the Bankruptcy Code) in any of the Cases, *pari passu* with or senior to the DIP Superpriority Claims, the Adequate Protection Superpriority Claims, or the Prepetition First Lien Obligations, or (z) any other order allowing use of the DIP Collateral; (ii) except as permitted under the DIP Documents (including the Carve Out), any lien on any of the DIP Collateral or the Prepetition Collateral with priority equal or superior to the DIP Liens, the Adequate Protection Liens or the Prepetition First Priority Liens, as applicable; (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Interim Order; and (iv) except as set forth in the DIP Documents, the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor.

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(d) Notwithstanding any order dismissing any of the Cases entered at any time, (x) the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and the other administrative claims granted pursuant to this Interim Order shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate Protection Payments are indefeasibly paid in full in cash (and such DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, Adequate Protection Superpriority Claims, and the other administrative claims granted pursuant to this Interim Order, shall, notwithstanding such dismissal, remain binding on all parties in interest); and (y) to the fullest extent permitted by law the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens, and security interests referred to in clause (x) above.

(e) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Agent, the DIP Lenders, and the Prepetition First Lien Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired, or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission, (ii) the entry of an order approving the sale of any Prepetition Collateral or DIP Collateral pursuant to section 363(b) of the Bankruptcy Code, or (iii) the entry of an order confirming a chapter 11

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plan in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code. The DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Secured Parties and the Prepetition First Lien Secured Parties granted by the provisions of this Interim Order shall continue in full force and effect until the DIP Obligations and the Adequate Protection Payments are indefeasibly paid in full, in cash or, with respect to the DIP Obligations, otherwise satisfied in a manner agreed to by the Required DIP Lenders and the DIP Agent (acting at the direction of the Required DIP Lenders).

(f) Other than as set forth in this Interim Order, subject to the Carve Out, neither the DIP Liens nor the Adequate Protection Liens shall be made subject to or *pari passu* with any lien or security interest granted in any of the Cases or arising after the Petition Date, and neither the DIP Liens nor the Adequate Protection Liens shall be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code.

27. Limitation on Use of DIP Facility Proceeds, DIP Collateral, and Cash Collateral.

Notwithstanding anything to the contrary in this Interim Order, none of the DIP Facility, the DIP Collateral, the Prepetition Collateral, including Cash Collateral, or the Carve Out or proceeds

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thereof may be used: (a) to investigate (including by way of examinations or discovery proceedings), initiate, assert, prosecute, join, commence, support, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other litigation of any type (i) against any of the DIP Secured Parties or the Prepetition First Lien Secured Parties (each in their capacities as such), and each of their respective affiliates, officers, directors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, any so-called “lender liability” claims and causes of action, or seeking relief that would impair the rights and remedies of the DIP Secured Parties or the Prepetition First Lien Secured Parties (each in their capacities as such) under the DIP Documents, the Prepetition First Lien Loan Documents, or this Interim Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Committee appointed in these Cases in connection with the assertion of or joinder in any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of any of the DIP Secured Parties or the Prepetition First Lien Secured Parties to recover on the DIP Collateral or the Prepetition Collateral or seeking affirmative relief against any of the DIP Secured Parties or the Prepetition Parties related to the DIP Obligations or

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the Prepetition First Lien Obligations; (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the DIP Obligations or the Prepetition First Lien Obligations, or the DIP Agent's, the DIP Lenders', and the Prepetition First Lien Secured Parties' liens or security interests in the DIP Collateral or Prepetition Collateral, as applicable; or (iii) for monetary, injunctive, or other affirmative relief against the DIP Secured Parties or the Prepetition First Lien Secured Parties, or the DIP Agent's, the DIP Lenders', the Prepetition First Lien Secured Parties' respective liens on or security interests in the DIP Collateral or the Prepetition Collateral that would impair the ability of any of the DIP Secured Parties or the Prepetition First Lien Secured Parties, as applicable, to assert or enforce any lien, claim, right, or security interest or to realize or recover on the DIP Obligations or the Prepetition First Lien Obligations, to the extent applicable; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the Prepetition First Priority Liens) held by or on behalf of each of the Prepetition First Lien Secured Parties related to the Prepetition First Lien Obligations, or by or on behalf of the DIP Agent and the DIP Lenders related to the DIP Obligations; (c) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to the DIP Obligations, the DIP Liens, the Prepetition First Lien Obligations, or the Prepetition First Priority Liens; or (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of: (x) any of the DIP Liens or any other rights or interests of the DIP Agent or the DIP Lenders related to the DIP Obligations or the

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DIP Liens, or (y) any of the Prepetition First Priority Liens or any other rights or interests of any of the Prepetition First Lien Secured Parties related to the Prepetition First Lien Obligations or the Prepetition First Priority Liens, *provided* that no more than \$50,000 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by any Committee appointed in these Cases, if any, solely to investigate or prosecute, within the Challenge Period (as defined below), the claims, causes of action, adversary proceedings, or other litigation against the Prepetition First Lien Secured Parties solely concerning the legality, validity, priority, perfection, enforceability or extent of the claims, liens, or interests (including the Prepetition First Priority Liens) held by or on behalf of each of the Prepetition First Lien Secured Parties related to the Prepetition First Lien Obligations.

28. Conditions Precedent. Except as provided for in the Carve Out, no DIP Lender shall have any obligation to make any DIP Loan under the respective DIP Documents unless all of the conditions precedent to the making of such extensions of credit under the applicable DIP Documents have been satisfied in full or waived in accordance with such DIP Documents.

29. Intercreditor Provisions. Pursuant to section 510 of the Bankruptcy Code, any applicable intercreditor or subordination provisions contained in any of the Prepetition First Lien Loan Documents shall remain in full force and effect; *provided* that nothing in this Interim Order shall be deemed to provide liens to any Prepetition First Lien Secured Party on any assets of the Debtors except as set forth herein.



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30. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Secured Parties, the Prepetition First Lien Secured Parties, any Committee appointed in these Cases, and the Debtors and their respective successors and permitted assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured Parties and the applicable Prepetition First Lien Secured Parties; *provided* that, except to the extent expressly set forth in this Interim Order, the Prepetition First Lien Secured Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan (whether under the DIP Credit Agreement, a promissory note or otherwise) to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Secured Parties and the Prepetition First Lien Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors, or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

31. Limitation of Liability. In determining to make any loan under the DIP Documents, permitting the use of Cash Collateral, or in exercising any rights or remedies as and when permitted

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pursuant to this Interim Order or the DIP Documents, the DIP Secured Parties and the Prepetition First Lien Secured Parties shall not, solely by reason thereof, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this Interim Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or any Prepetition First Lien Secured Parties of any liability for any claims arising from the prepetition or post-petition activities of any of the Debtors.

32. No Requirement to File Claim for DIP Obligations. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, neither the DIP Agent nor any DIP Lender shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the DIP Obligations, all of which shall be due and payable in accordance with the DIP Documents without the necessity of filing any such proof of claim or request for payment of administrative expenses, and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the DIP Documents or of any indebtedness, liabilities, or obligations

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arising at any time thereunder or prejudice or otherwise adversely affect the DIP Agent's or any DIP Lender's rights, remedies, powers, or privileges under any of the DIP Documents, this Interim Order, or applicable law. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

33. No Requirement to File Claim for Prepetition First Lien Obligations.

Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, neither the Prepetition First Lien Agent nor any Prepetition First Lien Lender shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the Prepetition First Lien Obligations; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the Prepetition First Lien Loan Documents or of any indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise adversely affect the Prepetition First Lien Agent's or any Prepetition First Lien Lender's rights, remedies, powers, or privileges under any of the Prepetition First Lien Loan Documents, this Interim Order, or applicable law. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest. However, in order to facilitate the processing of claims, to ease the burden

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upon the Court and to reduce any unnecessary expense to the Debtors' estates, the Prepetition First Lien Agent is authorized (but not directed), to file in the Debtors' lead Chapter 11 Case (Case No. 24-11840 (CMG)), a master proof of claim on behalf of their respective Prepetition First Lien Secured Parties, as applicable, on account of any and all of their respective claims arising under the Prepetition First Lien Loan Documents and hereunder (as applicable) (each, a "Master Proof of Claim") against each of the applicable Debtors. Upon the filing of any such Master Proof of Claim, the Prepetition First Lien Agent shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims of any type or nature whatsoever with respect to the applicable Prepetition First Lien Loan Documents, and the claim of each applicable Prepetition First Lien Secured Party (and each of its successors and assigns), named in a Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of the Chapter 11 Cases of the applicable Debtors. The Master Proofs of Claim shall not be required to attach any instruments, agreements, or other documents evidencing the obligations owing by the Debtors to the applicable Prepetition First Lien Secured Parties. Any proof of claim filed by the Prepetition First Lien Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition First Lien Secured Parties. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Chapter 11 Cases or any Successor Cases shall not apply to the Prepetition First Lien Secured Parties with respect to the Prepetition First Lien Obligations or any claims arising under the Prepetition First Lien Loan Documents.

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Caption of Order: INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION SECURED FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, AND (VI) SCHEDULING A FINAL HEARING

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34. No Marshaling. The DIP Agent and the DIP Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral, and proceeds of the DIP Collateral shall be received and applied pursuant to this Interim Order, the DIP Documents and the Prepetition First Lien Loan Documents, notwithstanding any other agreement or provision to the contrary, and subject to entry of the Final Order, the Prepetition First Lien Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral.

35. Application of Proceeds of DIP Collateral. Subject to entry of a Final Order, the DIP Obligations, at the option of the Required DIP Lenders, to be exercised in their sole and absolute discretion, shall be repaid (a) first, from the DIP Collateral comprising Previously Unencumbered Property and (b) second, from all other DIP Collateral.

36. Equities of the Case. The DIP Secured Parties shall each be entitled to all the rights and benefits of section 552(b) of the Bankruptcy Code, subject to and upon entry of the Final Order, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties with respect to proceeds, product, offspring, or profits of any of the DIP Collateral (including the Prepetition Collateral). The Prepetition First Lien Secured Parties shall be entitled to all the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to and upon entry of the Final Order, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition First Lien Secured Parties with respect to proceeds, product, offspring, or profits of any of the Prepetition Collateral.

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Debtors: THRASIO HOLDINGS, INC., *et al.*

Case No. 24-11840 (CMG)

Caption of Order: INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION SECURED FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, AND (VI) SCHEDULING A FINAL HEARING

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37. Final Hearing. The Final Hearing on the Motion shall be held on **March 27, 2024**, at 10:00 a.m., prevailing Eastern time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on **March 20, 2024**, and shall be served on: (a) the Debtors; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Ave, New York, NY 10022, Attn: Kirkland & Ellis LLP, 300 LaSalle Street, Chicago, Illinois 60654; Attn: Anup Sathy, P.C., and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Matthew C. Fagen, P.C., Francis Petrie, and Evan Swager; (c) proposed co-counsel to the Debtors, Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn: Michael D. Sirota, Esq., Warren A. Usatine, Esq., Felice R. Yudkin, Esq., Jacob S. Frumkin, Esq.; (d) counsel to the DIP Lenders and the DIP/First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Ave., New York, NY 10166, Attn: Scott J. Greenberg, Esq., Joseph Zujkowski, Esq., Michelle Choi, Esq., and Matthew Rowe, Esq.; (e) co-counsel to the DIP Lenders and the DIP/First Lien Group, Sills Cummis & Gross, P.C., One Riverfront Plaza, Newark, NJ 07102, Attn: Andrew H. Sherman, Esq., S. Jason Teele, Esq. and Gregory A. Kopacz, Esq.; (f) counsel to the DIP Agent, ArentFox Schiff LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019, Attn: Jeffrey R. Gleit, Esq. and Brett D. Goodman, Esq.; (g) counsel to the Prepetition First Lien Agent, Simpson Thacher & Bartlett LLP, 425 Lexington Ave, New York, NY 10017, Attn: Nicholas Baker, Esq., Hyang-Sook Lee, Esq., and Philip L. DiDonato, Esq. (h) the United States Trustee, Attn: Jeffrey M. Sponder and Lauren Bielskie; and (i) counsel to any statutory committee appointed in these chapter 11 cases. In the

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Debtors: THRASIO HOLDINGS, INC., *et al.*

Case No. 24-11840 (CMG)

Caption of Order: INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION SECURED FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, AND (VI) SCHEDULING A FINAL HEARING

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event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

38. Effect of this Interim Order. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon execution hereof.

39. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Interim Order.

40. Retention of Jurisdiction. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.



**EXHIBIT A**

**DIP Credit Agreement**

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**SUPER-PRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION  
CREDIT AGREEMENT**

**dated as of March 1, 2024**

**among**

**THRASIO, LLC,  
as the Borrower and a Debtor,**

**THRASIO INTERMEDIATE SUB, LLC,  
as Intermediate Holdings and a Debtor,**

**THRASIO HOLDINGS, INC.,  
as Holdings and a Debtor**

**THE FINANCIAL INSTITUTIONS PARTY HERETO,  
as Lenders,**

**and**

**WILMINGTON SAVINGS FUND SOCIETY, FSB,  
as Administrative Agent**

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EXHIBITS:

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Exhibit A-2	–	Form of Assignment and Assumption
Exhibit B	–	Form of Borrowing Request
Exhibit C	–	Form of Withdrawal Notice
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SUPER-PRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION  
CREDIT AGREEMENT

SUPER-PRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of March 1, 2024 (this “Agreement”), by and among Thrasio Holdings, Inc., a Delaware corporation and a debtor and a debtor-in-possession (“Holdings”), Thrasio Intermediate Sub, LLC, a Delaware limited liability company and a debtor and a debtor-in-possession (“Intermediate Holdings”), Thrasio, LLC, a Delaware limited liability company and a debtor and a debtor-in-possession (the “Borrower”), the Lenders from time to time party hereto and Wilmington Savings Fund Society, FSB (“WSFS”), in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its successors and assigns, the “Administrative Agent”).

RECITALS

WHEREAS, on February 28, 2024, (the “Petition Date”) Holdings, Intermediate Holdings, the Borrower and certain other Subsidiary Guarantors (together with any of their Subsidiaries and Affiliates that are or become debtors under the Chapter 11 Cases, collectively, the “Debtors”, and each individually, a “Debtor”) voluntarily commenced Chapter 11 Cases, jointly administered under Chapter 11 Case No. 24-11840(CMG) (collectively, the “Chapter 11 Cases” and each individually, a “Chapter 11 Case”) in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, prior to the Petition Date, the Lenders (or certain Affiliates or Related Funds thereof) provided financing to the Borrower pursuant to that Credit Agreement, dated as of December 18, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, including by that certain First Amendment to Credit Agreement, dated as of May 28, 2021, that certain Second Amendment to Credit Agreement, dated as of September 17, 2021, that certain Third Amendment to Credit Agreement, dated as of June 30, 2023, that certain Forbearance and Fourth Amendment to Credit Agreement, dated as of September 29, 2023, and that certain Forbearance and Fifth Amendment to Credit Agreement, dated as of December 29, 2023 the “Pre-Petition Credit Agreement”), among Intermediate Holdings, the Borrower, Royal Bank of Canada as administrative agent (the “Pre-Petition Administrative Agent”), the lenders from time to time party thereto (the “Pre-Petition Lenders”) and the other parties thereto;

WHEREAS, on the Petition Date, the outstanding principal balance of the Loans (as defined in the Pre-Petition Credit Agreement (the “Existing Loans”)) under the Pre-Petition Credit Agreement was approximately \$786,400,000;

WHEREAS, the Borrower has requested, and, upon the terms and subject to the conditions set forth in this Agreement, the Lenders have agreed to make available to the Borrower, a super-priority senior secured debtor-in-possession credit facility of up to \$360,000,000 (the “DIP Facility”), consisting of (i) new money term loans in an aggregate principal amount of \$90,000,000 (the “DIP Loans”) and (ii) a term loan facility in an aggregate principal amount not to exceed \$270,000,000 (the “Roll-Up Loans”), which Roll-Up Loans resulted from the roll-up and exchange of certain of the Existing Loans, in each case, subject to certain conditions set forth herein and the DIP Order, in order to fund the general corporate purposes and working capital requirements of the Borrower during the pendency of the Chapter 11 Cases, solely pursuant to and in accordance with the Approved Budget (subject to the Permitted Variance);

WHEREAS, subject to the terms of this Agreement, the other Loan Documents and the DIP Order, Holdings, Intermediate Holdings, the Borrower and the other Subsidiary Guarantors have agreed to secure all of their Obligations under the Loan Documents by granting to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, a first priority priming security interest in and lien upon

substantially all of their property, whether now existing or acquired after the date hereof, subject to exceptions specified herein or in the other Loan Documents;

NOW, THEREFORE, the Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

## ARTICLE 1

### DEFINITIONS

**Section 1.01. Defined Terms.** As used in this Agreement, the following terms have the meanings specified below:

“ABR” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Alternate Base Rate.

“ACH” means automated clearing house transfers.

“Actual Disbursement Amounts” means the actual disbursements, including, without limitation, capital expenditures and M&A transaction costs, made by the Debtors on a line-by-line and aggregate basis during the applicable Variance Testing Period.

“Actual Net Cash Flows” means the Debtors’ net cash flow during the applicable Variance Testing Period, calculated by subtracting Actual Disbursement Amounts from Actual Receipts.

“Actual Receipts” means the Debtors’ actual receipts, excluding, for the avoidance of doubt, any intercompany transactions, on a line-by-line and aggregate basis during the applicable Variance Testing Period.

“Actual Restructuring Related Amounts” means the Debtors’ disbursements in respect of restructuring professional fees (including, without limitation, payments made to the pre-petition secured parties on account of professional fees pursuant to the DIP Order, and professional fee payments to other creditors or creditor groups) during the applicable Variance Testing Period.

“Additional Roll-Up Amount” has the meaning assigned to such term in Section 2.01(b)(ii).

“Additional Roll-Up Lenders” has the meaning assigned to such term in Section 2.01(b)(ii).

“Adequate Protection Claims” has the meaning assigned to such term in the Order.

“Adequate Protection Obligations” has the meaning assigned to such term in the Order.

“Adjusted Daily Simple SOFR” means an interest rate per annum equal to (a) Daily Simple SOFR plus (b) 0.26161%.

“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; provided that, if the Interest Period with respect to the applicable SOFR Loan is a SOFR Non-Standard Interest Period, then Adjusted Term SOFR shall be the SOFR Interpolated Rate.

“Administrative Agent” has the meaning assigned to such term in the preamble to this Agreement.

“Administrative Agent Fee Letter” means that certain Fee Letter, dated as of the Closing Date, by and among the Borrower and the Administrative Agent.

“Administrative Questionnaire” means a customary administrative questionnaire in the form provided by the Administrative Agent.

“Advent” means Advent International Corporation.

“Adverse Proceeding” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claim), whether pending or, to the knowledge of Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries, threatened in writing, against or affecting Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries or any property of Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries.

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

“Affiliate” means, as applied to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, that Person. No Person shall be an “Affiliate” of the Borrower and/or any Subsidiary solely because it is an unrelated portfolio company of the Sponsor and none of the Administrative Agent, any Lender (other than any Affiliated Lender or any Debt Fund Affiliate) or any of their respective Affiliates shall be considered an Affiliate of Holdings or any subsidiary thereof.

“Affiliated Lender” means any Non-Debt Fund Affiliate, Holdings, Intermediate Holdings, the Borrower and/or any subsidiary of the Borrower.

“Affiliated Lender Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Affiliated Lender (with the consent of any party whose consent is required by Section 9.05) and accepted by the Administrative Agent in the form of Exhibit A-1 or any other form approved by the Administrative Agent and the Borrower.

“Agreement” has the meaning assigned to such term in the preamble to this Credit Agreement.

“Alternate Base Rate” means, for any day, a rate per annum equal to the highest of (a) the Federal Funds Effective Rate in effect on such day plus 0.50%, (b) Adjusted Term SOFR for a one-month tenor in effect for such day plus 1.00%, (c) the Prime Rate and (d) 2.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR, as the case may be, shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR, as the case may be.

“Applicable Percentage” means, with respect to any Lender, a percentage equal to a fraction the numerator of which is the aggregate outstanding principal amount of the Loans and unused Commitments of such Lender and the denominator of which is the aggregate outstanding principal amount of the Loans and unused Commitments of all Lenders.

“Applicable Rate” means, (a) with respect to Roll-Up Loans, (i) for ABR Loans, 9.00% and (ii) for SOFR Loans, 10.00% and (b) with respect to DIP Loans, (i) for ABR Loans, 7.00% and (ii) for SOFR Loans, 8.00%.

“Approved Budget” means the then most current budget prepared by the Borrowers and approved by the Required Lenders in accordance with Section 5.18. As of the Closing Date, the Approved Budget is attached hereto as Exhibit P.

“Approved DIP Budget Variance Report” means a report provided by the Debtors to the Administrative Agent showing, in each case, (i) the Actual Disbursement Amounts as of the last day of the Prior Week and the Variance Testing Period then ended; (ii) the Actual Receipts as of the last day of the Prior Week and the Variance Testing Period then ended; (iii) Actual Net Cash Flows during the applicable Variance Testing Period; (iv) Actual Restructuring Related Amounts during the applicable Variance Testing Period; (v) a comparison (whether positive or negative, in dollars and expressed as a percentage) of the aggregate and line-item Actual Receipts and Actual Disbursement Amounts, and aggregate Actual Net Cash Flows and Actual Restructuring Related Amounts, for the applicable Variance Testing Period to Budgeted Receipts and Budgeted Disbursement Amounts, and aggregate Budgeted Net Cash Flows and Budgeted Restructuring Related Amounts for such Variance Testing Period; and (vi) management commentary on any individual line item with positive or negative variance compared to the Approved Budget for the applicable Variance Testing Period, including a judgment as to whether such variance is temporary or permanent and an explanation in reasonable detail for any material variance in accordance with past practices. Such reports shall be certified by a Responsible Officer of the Borrower and shall be in the form attached as Exhibit B to the DIP Order or otherwise in a form satisfactory to the Required Lenders in their reasonable discretion.

“Approved Fund” means, with respect to any Lender, 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 and is administered, advised or managed (including pursuant to a separately managed account) on an exclusive discretionary basis by (a) such Lender, (b) any Affiliate of such Lender or (c) any entity or any Affiliate of any entity that administers, advises or manages such Lender.

“Assignment Agreement” means, collectively, each Assignment and Assumption and each Affiliated Lender Assignment and Assumption.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.05), and accepted by the Administrative Agent in the form of Exhibit A-2 or any other form approved by the Administrative Agent and the Borrower.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (e) of Section 2.14.

“Backstop Parties” means each of the entities set forth on Schedule 1.01(b).

“Backstop Premium” has the meaning assigned to such term in Section 2.12(d).

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Banking Services” means each and any of the following bank services: commercial credit cards, stored value cards, purchasing cards, treasury management services, netting services, overdraft protections, check

drawing services, automated payment services (including depository, overdraft, controlled disbursement, ACH transactions, return items and interstate depository network services), employee credit card programs, cash pooling services and any arrangements or services similar to any of the foregoing and/or otherwise in connection with Cash management and Deposit Accounts.

“Banking Services Obligations” means any and all obligations of any Loan Party, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under any arrangement in connection with Banking Services that is in effect on the Closing Date or entered into at any time on or after the Closing Date between any Loan Party and (a) a counterparty that is (or is an Affiliate of) the Administrative Agent or any Lender as of the Closing Date or at the time such arrangement is entered into and/or (b) any other Person designated by the Borrower to the Administrative Agent, in each case, that have been designated to the Administrative Agent in writing by the Borrower as being Banking Services Obligations for the purposes of the Loan Documents, it being understood that each counterparty thereto shall be deemed (A) to appoint the Administrative Agent as its agent under the applicable Loan Documents and (B) to agree to be bound by the provisions of Article 8, Section 9.03 and Section 9.10.

“Bankruptcy Code” means Title 11 of the United States Code (11 USC § 101 *et seq.*), as it has been, or may be, amended, from time to time.

“Bankruptcy Court” has the meaning assigned to such term in the recitals to this Agreement.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as the same may be amended from time to time, in effect and applicable to the Chapter 11 Cases.

“Benchmark” means, initially, Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.14.

“Benchmark Replacement” means with respect to any Benchmark Transition Event, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent (acting at the Direction of the Required Lenders) for the applicable Benchmark Replacement Date:

(a) Adjusted Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Required Lenders (in consultation with the Administrative Agent) and the Borrower as the replacement for the then-current Benchmark giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than 1.00% with respect to the Loans, the Benchmark Replacement will be deemed to be 1.00% for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Required Lenders (in consultation with the Administrative Agent) and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or



determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities. Each Benchmark Replacement Adjustment shall be subject to the consent of the Borrower (not to be unreasonably withheld or delayed).

“Benchmark Replacement Conforming Changes” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.14 and other technical, administrative or operational matters) that the Administrative Agent decides, in consultation with the Borrower, may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means a date and time determined by the Administrative Agent (acting at the Direction of the Required Lenders), in consultation with the Borrower, which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event”, the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);



(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board, the Federal Reserve Bank of New York, the Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means the period (if any) (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 2.14 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 2.14.

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

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

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Bermuda Loan Party” means any Loan Party that is a Bermuda Subsidiary.

“Bermuda Subsidiary” means any Subsidiary of the Borrower organized under the laws of Bermuda.

“Blocked Account Agreement” has the meaning assigned to such term in Section 5.13.

“Board” means the Board of Governors of the Federal Reserve System of the US.

“Borrower” has the meaning assigned to such term in the recitals to this Agreement.

“Borrower Materials” has the meaning assigned to such term in Section 9.01(d).

“Borrowing” means any Loans of the same Type made, converted or continued on the same date and, in the case of Term SOFR Loans, as to which a single Interest Period is in effect.

“Borrowing Request” means a written request by the Borrower for a Borrowing in accordance with Section 2.03 and substantially in the form attached hereto as Exhibit B or such other form that is reasonably acceptable to the Administrative Agent and the Borrower.

“Building” means a structure with two (2) or more outside rigid walls and a fully secured roof that, that is principally above ground and affixed to a permanent site, other than a gas or liquid storage tank, including while in the course of construction as defined in (and to the extent eligible for coverage under) the Flood Program.

“Budgeted Disbursement Amounts” means the projected disbursements, excluding Budgeted Restructuring Related Amounts, to be made by the Debtors on a line-by-line and aggregate basis during the applicable Variance Testing Period as set forth in the Approved Budget.

“Budgeted Net Cash Flows” means the Debtors’ projected net cash flow during the applicable Variance Testing Period, calculated by subtracting Budgeted Disbursement Amounts from Budgeted Receipts.

“Budgeted Receipts” means the Debtors’ projected cash receipts on a line-by-line and aggregate basis during the applicable Variance Testing Period as set forth in the Approved Budget.

“Budgeted Restructuring Related Amounts” means the Debtors’ projected disbursements in respect of restructuring professional fees (including, without limitation, payments made to the pre-petition secured parties on account of professional fees pursuant to the DIP Order, and professional fee payments to other creditors or creditor groups) during the applicable Variance Testing Period as set forth in the Approved Budget.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or London are authorized or required by law to remain closed; provided that when used in connection with a Term SOFR Loan, or any other calculation or determination involving SOFR, the term “Business Day” means any day that is a U.S. Government Securities Business Day.

“Capital Lease” means, subject to Section 1.04, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease or finance lease on the balance sheet of that Person; provided, that for the avoidance of doubt, the amount of obligations attributable to any Capital Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“Capital Stock” means any and all shares, interests, participations, preferred equity certificates, convertible preferred equity certificates or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing, but excluding for the avoidance of doubt any Indebtedness convertible into or exchangeable for any of the foregoing.

“Captive Insurance Subsidiary” means any Subsidiary of Holdings that is subject to regulation as an insurance company (or any Subsidiary thereof).

“Carve-Out” has the meaning assigned to such term in the DIP Order.

“Cash” means money, currency or a credit balance in any Deposit Account, in each case determined in accordance with GAAP.

“Cash Equivalents” means, as at any date of determination, (a) readily marketable securities (i) issued or directly and unconditionally guaranteed or insured as to interest and principal by the US government or (ii) issued by any agency or instrumentality of the US the obligations of which are backed by the full faith and credit

of the US, in each case maturing within one year after such date and, in each case, repurchase agreements and reverse repurchase agreements relating thereto; (b) readily marketable direct obligations issued by any state of the US or any political subdivision of any such state or any public instrumentality thereof or by any foreign government, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) and, in each case, repurchase agreements and reverse repurchase agreements relating thereto; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency); (d) deposits, money market deposits, time deposit accounts, certificates of deposit or bankers' acceptances (or similar instruments) maturing within one year after such date and issued or accepted by any Lender or by any bank organized under, or authorized to operate as a bank under, the laws of the US, any state thereof or the District of Columbia or any political subdivision thereof or any foreign bank or its branches or agencies and that has capital and surplus of not less than \$100,000,000 and, in each case, repurchase agreements and reverse repurchase agreements relating thereto; (e) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank having capital and surplus of not less than \$100,000,000; (f) shares of any money market mutual fund that has (i) substantially all of its assets invested in the types of investments referred to in clauses (a) through (e) above, (ii) net assets of not less than \$250,000,000 and (iii) a rating of at least A-2 from S&P or at least P-2 from Moody's (or, if at any time either S&P or Moody's are not rating such fund, an equivalent rating from another nationally recognized statistical rating agency); and (g) solely with respect to any Captive Insurance Subsidiary, any investment that such Captive Insurance Subsidiary is not prohibited to make in accordance with applicable law. "Cash Equivalents" shall also include (x) Investments of the type and maturity described in clauses (a) through (g) above of foreign obligors, which Investments or obligors (or the parent companies thereof) have the ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (y) other short-term Investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in Investments that are analogous to the Investments described in clauses (a) through (g) and in this paragraph.

"Cash Management Order" means any interim or final order authorizing and approving the Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to (I) Continue to Operate Their Cash Management System, (II) Honor Certain Prepetition Obligations Related Thereto, (III) Maintain Existing Business Forms, and (IV) Perform Intercompany Transactions filed at Docket No. 67.

"Change in Law" means (a) the adoption of any law, treaty, rule or regulation after the Closing Date, (b) any change in any law, treaty, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date (other than any such request, guideline or directive to comply with any law, rule or regulation that was in effect on the Closing Date). For purposes of this definition and Section 2.15, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or US or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case described in clauses (a), (b) and (c) above, be deemed to be a Change in Law, regardless of the date enacted, adopted, issued or implemented.

"Change of Control" means the earliest to occur of:

- (a) [reserved];

(b) at any time on or after an IPO, the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) (including any group acting for the purpose of acquiring, holding or disposing of Securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), but excluding (i) any employee benefit plan and/or Person acting as the trustee, agent or other fiduciary or administrator therefor, (ii) one or more Permitted Holders and (iii) any underwriter in connection with any IPO), of Capital Stock representing more than the greater of (x) 35% of the outstanding voting power of the Qualified Capital Stock of Holdings (on an as-converted-to-common-stock basis) and (y) the percentage of the total voting power of all of the outstanding voting power of the Qualified Capital Stock of Holdings (on an as-converted-to-common-stock basis) owned, directly or indirectly, beneficially by the Permitted Holders;

(c) Holdings ceasing to own, directly or indirectly, 100% of the Capital Stock of Intermediate Holdings; and

(d) Intermediate Holdings ceasing to own, directly or indirectly, 100% of the Capital Stock of the Borrower.

For purposes of this definition, (1) a Person or group shall not be deemed to beneficially own Capital Stock or voting power subject to a stock or asset purchase agreement, merger agreement or similar agreement (or voting or similar agreement related thereto) until the consummation of the acquisition of the Capital Stock or voting power pursuant to the transactions contemplated by such agreement, (2) if any group includes one or more Permitted Holders, the issued and outstanding Capital Stock of the relevant Person that are directly or indirectly owned by the Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of this definition and (3) a Person or group will not be deemed to beneficially own the Capital Stock of another Person as a result of its ownership of the Capital Stock or other securities of such other Person's parent company (or any related contractual right) unless it owns 50% or more of the total voting power of the Capital Stock entitled to vote for the election of directors of such Person's parent company having a majority of the aggregate votes on the board of directors (or equivalent governing body) of such Person's parent company.

"Charge" means any fee, loss, charge, expense, cost, accrual or reserve of any kind.

"Charged Amounts" has the meaning assigned to such term in Section 9.19.

"Chapter 11 Case" or "Chapter 11 Cases" has the meaning assigned to such term in the recitals to this Agreement.

"Class" when used in reference to any Commitment, Loan or Borrowing, means whether such Loan, or the Loans comprising such Borrowing, or the Loans that would be disbursed under such Commitment, are DIP Loans or Roll-Up Loans.

"Closing Date" means March 1, 2024.

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

"Collateral" means any and all property of any Loan Party subject (or purported to be subject) to a Lien under any Collateral Document and any and all other property of any Loan Party, now existing or hereafter acquired, that is or becomes subject (or purported to be subject) to a Lien pursuant to any Collateral Document to secure the Secured Obligations. For the avoidance of doubt, in no event shall "Collateral" include any Excluded Asset.

“Collateral and Guarantee Requirement” means, at any time, subject to (x) the applicable limitations set forth in this Agreement and/or any other Loan Document and (y) the time periods (and extensions thereof) set forth in Section 5.12, Section 5.13 and/or Section 5.15, as applicable, the requirement that:

(a) on the Closing Date, the Administrative Agent shall have received from each Guarantor, a counterpart of a Loan Guaranty, in each case duly executed and delivered on behalf of such person;

(b) on the Closing Date (i) (x) all outstanding Capital Stock of the Borrower and all other outstanding Capital Stock, in each case, directly owned by the Loan Parties (other than the Capital Stock of any German Loan Parties), other than Excluded Assets, and (y) all Indebtedness owing to any Loan Party, other than Excluded Assets, shall have been pledged or assigned for security purposes pursuant to the Loan Documents and (ii) the Administrative Agent shall have received certificates, updated share registers (where necessary under the laws of any applicable jurisdiction in order to create a perfected security interest in such Capital Stock) or other instruments (if any) representing such Capital Stock (and any notes or other instruments required to be delivered pursuant to the applicable Loan Documents), together with stock powers, note powers or other instruments of transfer with respect thereto (as applicable) endorsed in blank; provided that this clause (ii) shall be satisfied with respect to any certificates representing Capital Stock or notes, together with stock powers, note powers or other instruments of transfer with respect thereto (as applicable) endorsed in blank, if the same have been delivered to the Pre-Petition Administrative Agent;

(c) in the case of any person that becomes a Subsidiary Guarantor after the Closing Date, the Administrative Agent shall have received (i) a counterpart of a Loan Guaranty duly executed and delivered on behalf of such person and (ii) Loan Documents, or supplements to one or more of the Loan Documents, if applicable, in the form specified therefor or otherwise reasonably acceptable to the Administrative Agent (in each case, acting at the Direction of the Required Lenders in their reasonable discretion), in each case, duly executed and delivered on behalf of such Subsidiary Guarantor;

(d) after the Closing Date, (x) all outstanding Capital Stock of any person that becomes a Subsidiary Guarantor after the Closing Date and (y) all Capital Stock directly acquired by a Loan Party after the Closing Date, in each case, other than Excluded Assets, shall have been pledged pursuant to the Loan Documents, together with stock powers or other instruments of transfer with respect thereto (as applicable) endorsed in blank;

(e) except as otherwise contemplated by this Agreement or any other Loan Document, all documents and instruments and all other actions reasonably requested by the Required Lenders (including those required by applicable Requirements of Law) to be delivered, filed, registered or recorded to create the Liens intended to be created by the Loan Documents (in each case, including any supplements thereto) and perfect such Liens to the extent required by, and with the priority required by, the Loan Documents, shall have been delivered, filed, registered or recorded or delivered to the Administrative Agent for filing, registration or the recording concurrently with, or promptly following, the execution and delivery of each such Loan Document;

(f) on the Closing Date, evidence of the insurance required by the terms of Section 5.05 hereof shall have been delivered to the Administrative Agent; and

(g) after the Closing Date, the Administrative Agent shall have received (i) such other Loan Documents as may be required to be delivered pursuant to Section 5.14 or the Loan Documents, and (ii) upon reasonable request by the Administrative Agent (acting at the Direction of the Required Lenders), evidence of compliance with any other requirements of Section 5.14.



“Collateral Documents” means, collectively (i) the Security Agreement, (ii) any Non-US Security Agreement, including the UK Security Documents, (iii) each Intellectual Property Security Agreement, (iv) any supplement to any of the foregoing delivered to the Administrative Agent pursuant to the definition of “Collateral and Guarantee Requirement” and (v) each of the other instruments and documents pursuant to which any Loan Party grants (or purports to grant) a Lien on any Collateral as security for payment of the Secured Obligations.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make DIP Loans hereunder, as set forth on the Commitment Schedule.

“Commitment Schedule” means the Schedule attached hereto as Schedule 1.01(a).

“Commodity Exchange Act” means the Commodity Exchange Act (7 USC § 1 *et seq.*).

“Company Competitor” means any competitor of the Borrower and/or any of its subsidiaries.

“Competitor Debt Fund Affiliate” means, with respect to any Company Competitor or any Affiliate thereof, any debt fund, investment vehicle, regulated bank entity or unregulated lending entity (in each case, other than any Disqualified Lending Institution) that is (a) primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business for financial investment purposes and (b) managed, sponsored or advised by any person that is controlling, controlled by or under common control with the relevant Company Competitor or Affiliate thereof, but only to the extent that no personnel involved with the investment in the relevant Company Competitor or its Affiliates, or the management, control or operation thereof, (i) makes (or has the right to make or participate with others in making) investment decisions on behalf of, or otherwise cause the direction of the investment policies of, such debt fund, investment vehicle, regulated bank entity or unregulated entity or (ii) has access to any information (other than information that is publicly available) relating to the Borrower and/or any entity that forms part of its business (including any of its subsidiaries).

“Concentration Accounts” has the meaning assigned to such term in Section 5.13.

“Confidential Information” has the meaning assigned to such term in Section 9.13.

“Confirmation Order” has the meaning set forth in the RSA.

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

“Contractual Obligation” means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

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

“Copyright” means the following: (a) all copyrights, rights and interests in copyrights, works protectable by copyright whether published or unpublished, copyright registrations and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights corresponding to any of the foregoing.

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

“Debt Fund Affiliate” means any Affiliate of any Investor (other than a natural Person) that is a bona fide debt fund or investment vehicle (in each case with one or more bona fide investors to whom its managers owe fiduciary duties independent of their fiduciary duties to the applicable Investor) that is primarily engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course.

“Debtor” or “Debtors” has the meaning assigned to such term in the recitals to this Agreement.

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

“Default” means the non-compliance with any provision of a Loan Document which upon notice, lapse of time or both would become an Event of Default.

“Defaulting Lender” means any Person that has (a) defaulted in (or is otherwise unable to perform) its obligations under this Agreement, including its obligations, to make a Loan within two (2) Business Days of the date required to be made by it hereunder unless such Person notifies the Administrative Agent in writing that such failure is the result of such Person’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) notified the Administrative Agent or the Borrower in writing that it does not intend to satisfy or perform any such obligation or has made a public statement to the effect that it does not intend to comply with its funding or other obligations under this Agreement or under agreements in which it commits to extend credit generally (unless such writing indicates that such position is based on such Person’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan cannot be satisfied), (c) failed, within two (2) Business Days after the request of the Administrative Agent or the Borrower, to confirm in writing that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans; provided that such Person shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent, (d) become (or any parent company thereof has become) insolvent or been determined by any Governmental Authority having regulatory authority over such Person or its assets, to be insolvent, or the assets or management of which has been taken over by any Governmental Authority or (e)(i) become (or any parent company thereof has become) either the subject of (A) a bankruptcy or insolvency proceeding or (B) a Bail-In Action, (ii) has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian, appointed for it, or (iii) has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in, any such proceeding or appointment, unless in the case of any Person subject to this clause (e), the Borrower and the Administrative Agent have each determined that such Person intends, and has all approvals required to enable it (in form and substance satisfactory to the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders)), to continue to perform its obligations hereunder; provided that no Person shall be deemed to be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in such Person or its parent by any Governmental Authority; provided that such action does not result in or provide such Person with immunity from the jurisdiction of courts within the US or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contract or agreement to which such Person is a party.



“Delaware Divided LLC” means any Delaware LLC which has been formed upon the consummation of a Delaware LLC Division.

“Delaware LLC” means any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware LLC Division” means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Delayed Draw” has the meaning assigned to such term in Section 2.01(a).

“Delayed Draw DIP Loans” has the meaning assigned to such term in Section 2.01(a).

“Deposit Account” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“Derivative Transaction” means (a) any interest-rate transaction, including any interest-rate swap, basis swap, forward rate agreement, interest rate option (including a cap, collar or floor), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted), (b) any exchange-rate transaction, including any cross-currency interest-rate swap, any forward foreign-exchange contract, any currency option, and any other instrument linked to exchange rates that gives rise to similar credit risks, (c) any equity derivative transaction, including any equity-linked swap, any equity-linked option, any forward equity-linked contract, and any other instrument linked to equities that gives rise to similar credit risk and (d) any commodity (including precious metal) derivative transaction, including any commodity-linked swap, any commodity-linked option, any forward commodity-linked contract, and any other instrument linked to commodities that gives rise to similar credit risks; provided, that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, members of management, managers or consultants of the Borrower or its subsidiaries shall be a Derivative Transaction.

“DIP Facility” has the meaning assigned to such term in the recitals to this Agreement.

“DIP Loans” has the meaning assigned to such term in the recitals to this Agreement.

“DIP Order” means the Interim Order, and upon its entry, the Final Order, or either or both, as the context may require.

“Direction of the Required Lenders” means a written direction or instruction from Lenders constituting the Required Lenders which may be in the form of an email or other form of written communication and which may come from any Specified Lender Advisor delivered in accordance with Section 9.01. Each Lender and Specified Lender Advisor hereby acknowledges and agrees that any such email or other communication from a Specified Lender Advisor shall be conclusively presumed to have been authorized by a written direction or instruction from the Required Lenders and such Specified Lender Advisor shall be conclusively presumed to have acted on behalf of and at the written direction or instruction from the Required Lenders (and the Administrative Agent and Loan Parties shall be entitled to rely on such presumption). For the avoidance of doubt, with respect to each reference herein to (i) documents, agreements or other matters being “satisfactory”, “acceptable”, “reasonably satisfactory” or “reasonably acceptable” (or any expression of similar import) to the Required Lenders, such determination may be communicated by a Direction of the Required Lenders as contemplated above and/or (ii) any matter requiring the consent or approval of, or a determination by, the Required Lenders, such consent, approval or determination may be communicated by a Direction of the Required Lenders as contemplated above. The Administrative Agent and Loan Parties shall be entitled to rely upon, and shall not incur any liability for relying upon, any purported Direction of the Required Lenders, and the

Administrative Agent and the Loan Parties shall not have any responsibility to independently determine whether such direction has in fact been authorized by the Required Lenders.

“Discretionary Guarantor” has the meaning assigned to such term in Section 5.12(c).

“Disposition” or “Dispose” means the sale, lease, sublease, license, or other disposition of any property of any Person, including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division.

“Disqualified Capital Stock” means any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than for Qualified Capital Stock), in whole or in part, on or prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued (it being understood that if any such redemption is in part, only such part coming into effect prior to 91 days following the Latest Maturity Date shall constitute Disqualified Capital Stock), (b) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Capital Stock that would constitute Disqualified Capital Stock, in each case at any time on or prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued, (c) contains any mandatory repurchase obligation (other than for Qualified Capital Stock), in whole or in part, which may come into effect prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued (it being understood that if any such repurchase obligation is in part, only such part coming into effect prior to 91 days following the Latest Maturity Date shall constitute Disqualified Capital Stock) or (d) provides for the scheduled payments of dividends in Cash on or prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued; provided that any (x) Capital Stock that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Capital Stock is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Capital Stock upon the occurrence of any change of control, IPO or other liquidity event or any Disposition occurring prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued shall not constitute Disqualified Capital Stock if the documentation governing such Capital Stock provides that the issuer thereof will not redeem any such Capital Stock pursuant to such provisions unless either (1) the relevant redemption is permitted under this Agreement or (2) the Termination Date has occurred and (y) for purposes of clause (a) through (d) above, it is understood and agreed that if any such maturity, redemption conversion, exchange, repurchase obligation or scheduled payment is in part, only such part coming into effect prior to the date that is 91 days following the Latest Maturity Date (determined at the time such Capital Stock is issued) shall constitute Disqualified Capital Stock.

Notwithstanding the preceding sentence, (A) if such Capital Stock is issued pursuant to any plan for the benefit of directors, officers, employees, members of management, managers or consultants or by any such plan to such directors, officers, employees, members of management, managers or consultants, in each case in the ordinary course of business of the Borrower or any Subsidiary, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by the issuer thereof in order to satisfy applicable statutory or regulatory obligations and (B) no Capital Stock held by any future, present or former employee, director, officer, manager, member of management or consultant (or their respective Affiliates or Immediate Family Members) of the Borrower (or any Parent Company or any subsidiary) shall be considered Disqualified Capital Stock because such stock is redeemable or subject to repurchase pursuant to any management equity subscription agreement, stock option, stock appreciation right or other stock award agreement, stock ownership plan, put agreement, stockholder agreement or similar agreement that may be in effect from time to time.

“Disqualified Institution” means:

(a) (i) any Person identified in writing to the Administrative Agent on or prior to the Closing Date, (ii) any Person that is identified in writing to the Administrative Agent after the Closing Date; provided that such identification after the Closing Date must be reasonably acceptable to the Administrative Agent (acting at the Direction of the Required Lenders)), (iii) any Affiliate of any Person described in subclause (i) and/or (ii) above that is reasonably identifiable on the basis of their name as an Affiliate of such Person, and (iv) any other Affiliate of any Person described in subclauses (i), (ii) and/or (iii) above that is identified in a written notice to the Administrative Agent after the Closing Date (each such person, a “Disqualified Lending Institution”); and/or

(b) (i) any Person that is a Company Competitor and/or any Affiliate of any Company Competitor (other than a Competitor Debt Fund Affiliate, unless the Borrower has other reasonable grounds on which to, and does in fact, withhold its consent), in each case, that is identified in writing to the Administrative Agent, (ii) any Affiliate of any Person described in subclause (i) above (other than any Competitor Debt Fund Affiliate) that is reasonably identifiable on the basis of their name as an Affiliate of such Person and (iii) any other Affiliate of any Person described in subclauses (i) and/or (ii) above that is identified in a written notice to the Administrative Agent after the Closing Date; it being understood and agreed that no Competitor Debt Fund Affiliate of any Company Competitor may be designated as a Disqualified Institution pursuant to this subclause (iii);

provided that no written notice delivered pursuant to clause (a) or (b) above shall apply retroactively to disqualify any Person that has previously acquired an assignment or participation interest in the Loans under the applicable DIP Facility prior to the delivery of such notice.

“Disqualified Lending Institution” has the meaning assigned to such term in the definition of “Disqualified Institution”.

“Disqualified Person” has the meaning assigned to such term in Section 9.05(f)(ii).

“Dollars” or “\$” refers to lawful money of the US.

“Domestic Subsidiary” means any subsidiary of the Borrower incorporated or organized under the laws of the US, any state thereof or the District of Columbia.

“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.

“Eligible Assignee” means (a) any Lender, (b) any commercial bank, insurance company, or finance company, financial institution, any fund that invests in loans or any other “accredited investor” (as defined in Regulation D of the Securities Act), (c) any Affiliate of any Lender and (d) any Approved Fund of any Lender; provided that in any event, “Eligible Assignee” shall not include (i) any natural person, (ii) any Disqualified Institution or (iii) the Borrower or any of its Affiliates.

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

“Environmental Claim” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to the Environment.

“Environmental Laws” means any and all current or future applicable foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other applicable requirements of Governmental Authorities and the common law relating to (a) environmental matters, including those relating to any Hazardous Materials Activity; or (b) the generation, use, storage, transportation or disposal of or exposure to Hazardous Materials, in any manner applicable to Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries or any Facility.

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

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with Holdings, Intermediate Holdings, the Borrower or any Subsidiary and is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by Holdings, Intermediate Holdings, the Borrower or any Subsidiary or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations at any facility of Holdings, Intermediate Holdings, the Borrower or any Subsidiary or any ERISA Affiliate as described in Section 4062(e) of ERISA, in each case, resulting in liability pursuant to Section 4063 of ERISA; (c) a complete or partial withdrawal by Holdings, Intermediate Holdings, the Borrower or any Subsidiary or any ERISA Affiliate from a Multiemployer Plan resulting in the imposition of Withdrawal Liability on Holdings, Intermediate Holdings, the Borrower or any Subsidiary or any ERISA Affiliate, notification of Holdings, Intermediate Holdings, the Borrower or any Subsidiary or any ERISA Affiliate concerning the imposition of Withdrawal Liability or notification that a Multiemployer Plan is “insolvent” within the meaning of Section 4245 of ERISA; (d) the filing of a notice of intent to terminate a Pension Plan under Section 4041(c) of ERISA, the treatment of a Pension Plan amendment as a termination under Section 4041(c) of ERISA, the commencement of proceedings by the PBGC to terminate a Pension Plan or the receipt by Holdings, Intermediate Holdings, the Borrower or any Subsidiary or any ERISA Affiliate of notice of the treatment of a Multiemployer Plan amendment as a termination under Section 4041A of ERISA or of notice of the commencement of proceedings by the PBGC to terminate a Multiemployer Plan; (e) the occurrence of an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Holdings, Intermediate Holdings, the Borrower or any Subsidiary or any ERISA Affiliate, with respect to the termination of any Pension Plan; or (g) the conditions for imposition of a Lien under Section 303(k) of ERISA have been met with respect to any Pension Plan.

“Erroneous Payment” has the meaning assigned to it in Section 8.14(a).

“Erroneous Payment Return Deficiency” has the meaning assigned to it in Section 8.14(d).

“Escrow” has the meaning assigned to such term in the definition of “Indebtedness”.

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

“Event of Default” has the meaning assigned to such term in Article 7.

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

“Excluded Account” means any Deposit Account (a) which is an escrow, fiduciary, trust or similar account, (b) holding cash collateral for a third party (other than the Borrower or any Subsidiary) subject to a Lien permitted under Section 6.02, (c) used by any Loan Party exclusively for disbursements and/or payments of payroll in the ordinary course of business, (d) which is a zero balance account or (e) which has an average daily balance measured on a monthly basis of less than \$500,000 individually or \$3,000,000 in the aggregate for all such Deposit Accounts that are Excluded Accounts pursuant to this clause (e).

“Excluded Assets” means (a) all licenses and any other property and assets (including any lease, license, permit or agreement) (i) to the extent that the Administrative Agent may not validly possess a security interest therein under, or such security interest is restricted by, (x) applicable laws (including, without limitation, rules and regulations of any Governmental Authority or agency) or (y) by contract, lease, license or other agreement with a counterparty that is not a Debtor or an affiliate thereof and that exists on the Closing Date, (ii) the pledge or creation of a security interest in which would require the consent, approval, license or authorization of (x) a Governmental Authority or (y) a third party that is not a Debtor or an affiliate thereof, which third party right to consent, approve or authorize such a pledge or creation of a security interest exists on the Closing Date and, in each case of clause (i) and (ii), other than to the extent such prohibition or limitation is rendered ineffective under the UCC, the U.S. Bankruptcy Code, other applicable insolvency laws or other applicable law notwithstanding such prohibition or limitation, (b) any intent-to-use (or similar) Trademark application prior to the filing with, and acceptance by, the U.S. Patent and Trademark Office of a “Statement of Use”, “Declaration of Use”, “Amendment to Allege Use” or similar filing with respect thereto, only to the extent, if any, that, and solely during the period if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use (or similar) Trademark application (or any Trademark registration resulting therefrom) under applicable Requirements of Law and (c) any asset with respect to which the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower have reasonably determined that 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 and including the cost of flood insurance (if necessary) or mortgage, stamp, intangible or other taxes or expenses) of obtaining a security interest therein outweighs, or is excessive in light of, the practical benefit of a security interest to the relevant Secured Parties afforded thereby (and the Collateral that may be provided by any Loan Party may be limited by agreement of the Administrative Agent and the Borrower to minimize stamp duty, notarization, registration or other applicable fees, taxes and duties where the Required Lenders and the Borrower have reasonably determined that the benefit to the Secured Parties of increasing the secured amount is disproportionate to the level of such fees, taxes and duties); provided, however, that Excluded Assets shall not include any proceeds, substitutions or replacements



of any Excluded Assets unless such proceeds, substitutions or replacements constitute Excluded Assets in accordance with clause (a) or (b) above.

“Excluded Subsidiary” means:

(a) any Subsidiary with respect to which the burden or cost of providing a Loan Guaranty (including tax consequences) outweighs, or would be excessive in light of, the practical benefits afforded thereby, as reasonably determined by the Administrative Agent (acting at the Direction of the Required Lenders),

(b) any Foreign Subsidiary where the provision by such Foreign Subsidiary of a Loan Guaranty would conflict with the fiduciary duties of such subsidiary’s directors or result in, or could reasonably be expected to result in, a material risk of personal or criminal liability for such Foreign Subsidiary or any of its officers or directors or to the extent it is not within the legal capacity of such Foreign Subsidiary to provide a Loan Guaranty (whether as a result of financial assistance, corporate benefit, thin capitalization, capital maintenance, liquidity maintenance or similar rules or otherwise), and

(c) any Subsidiary listed on Schedule 1.01(e).

“Excluded Taxes” means, with respect to the Administrative Agent or any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Loan Party under any Loan Document, (a) any Taxes imposed on (or measured by) such recipient’s net income (however denominated) or overall gross income, franchise Taxes, and branch profits tax, in each case, (i) imposed as a result of such recipient being organized or having its principal office located in or, in the case of any Lender, having its applicable lending office located in, the taxing jurisdiction or (ii) that are Other Connection Taxes, (b) in the case of a Lender, any U.S. federal withholding Tax that is imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Requirement of Law in effect on the date on which such Lender (i) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires its interest in such Loan or (ii) designates a new lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Tax were payable either to such Lender’s assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it designated a new lending office, (c) any Tax imposed as a result of a failure by any Lender, the Administrative Agent or any other recipient to comply with Section 2.17(f) or (j), and (d) any Tax imposed under FATCA.

“Existing Loans” has the meaning assigned to such term in the recitals to this Agreement.

“Existing Roll-Up Lenders” has the meaning assigned to such term in Section 2.01(b)(iii).

“Extended Maturity Date” has the meaning assigned to such term in Section 2.22.

“Extension Effective Date” has the meaning assigned to such term in Section 2.22(a).

“Facility” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or, except with respect to Articles 5 and 6, previously owned, leased, operated or used by Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries or any of their respective predecessors or Affiliates.

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

“FCPA” has the meaning assigned to such term in Section 3.17(c).

“Federal Funds Effective Rate” means, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Administrative Agent from three major US banks of recognized standing selected by it. If the Federal Funds Effective Rate is less than zero, it shall be deemed to be zero hereunder.

“Fee Letters” means, collectively, the Administrative Agent Fee Letter and the Fronting Fee Letter.

“Final DIP Loans” has the meaning assigned to such term in Section 2.01(a).

“Final Order” means an order (and all exhibit and schedules thereto, including any budget) entered by the Bankruptcy Court approving the DIP Facility on a final basis under the Bankruptcy Code, which order shall be in form and substance substantially consistent with the Interim Order (as modified to reflect the final nature thereof) and otherwise reasonably satisfactory to the Required Lenders (as such order may be amended, modified or extended in a manner reasonably satisfactory to the Required Lenders) (which reasonable satisfaction may be communicated via a Direction of the Required Lenders), which order is not subject to a stay or injunction not approved by the Required Lenders in their sole and absolute discretion (which satisfaction may be communicated via a Direction of the Required Lenders).

“First Testing Period” means the two (2) calendar week period ending on the Friday of the second full calendar week following the Petition Date.

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

“Fiscal Year” means the fiscal year of the Borrower ending December 31 of each calendar year.

“Flood Certificate” means a “Life-of-Loan” “Standard Flood Hazard Determination Form” of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

“Flood Compliance Event” means the occurrence of any of the following: (a) a Flood Redesignation with respect to any Real Estate Asset constituting Collateral or (b) the addition of any Flood Hazard Property as Collateral pursuant to Section 5.12.

“Flood Hazard Property” means any Real Estate Asset constituting Collateral that on the relevant date of determination includes a Building and, as shown on a Flood Certificate, such Building is located in a Flood Zone.

“Flood Insurance” means (a) federally-backed flood insurance available under the Flood Program to owners of real property improvements located in Special Flood Hazard Areas in a community participating in the Flood Program or (b) to the extent permitted by the Flood Program, a private flood insurance policy from a financially sound and reputable insurance company that is not an Affiliate of the Borrower.

“Flood Insurance Requirements” has the meaning assigned to such term in the definition of “Collateral and Guarantee Requirement”.

“Flood Program” means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, in each case as amended from time to time, and any successor statutes.



“Flood Redesignation” means the designation of any Real Estate Asset constituting Collateral as a Flood Hazard Property, where such property was not a Flood Hazard Property previous to such designation.

“Flood Zone” means areas having special flood hazards as described in the National Flood Insurance Act of 1968, as amended from time to time, and any successor statute.

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

“Foreign Subsidiary” means any existing or future direct or indirect subsidiary of the Borrower that is not a Domestic Subsidiary, including a UK Subsidiary.

“Fronting Fee Letter” means that certain Fronting Fee Letter, dated as of the Closing Date, by and among, *inter alia*, the Borrower and the Fronting Lender (as such Fronting Fee Letter may be amended, supplemented or otherwise modified from time to time).

“Fronting Lender” means Jefferies Capital Services, LLC.

“FSHCO” means any direct or indirect Subsidiary that has no material assets other than the Capital Stock and/or Indebtedness (including, for this purpose, any indebtedness or other instrument treated as equity for U.S. federal income tax purposes) of (i) one or more Foreign Subsidiaries and/or (ii) one or more FSHCOs.

“GAAP” means generally accepted accounting principles in the US in effect and applicable to the accounting period in respect of which reference to GAAP is made.

“Governmental Authority” means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with the US, a foreign government or any political subdivision thereof, including any applicable supranational body (such as the European Union or the European Central Bank).

“Governmental Authorization” means any permit, license, authorization, approval, plan, directive, consent order or consent decree of or from any Governmental Authority.

“Granting Lender” has the meaning assigned to such term in Section 9.05(e).

“Guarantee” of or by any Person (the “Guarantor”) means any obligation, contingent or otherwise, of the Guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation of any other Person (the “Primary Obligor”) in any manner and including any obligation of the Guarantor (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other monetary obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the Primary Obligor so as to enable the Primary Obligor to pay such Indebtedness or other monetary obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or monetary obligation, (e) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (f) secured by any Lien on any assets of such Guarantor securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or monetary other obligation is assumed by such Guarantor (or any right, contingent or otherwise, of any holder of such Indebtedness or other monetary obligation to obtain any such Lien); provided that the term “Guarantee” shall not include endorsements for

collection or deposit in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition, Disposition or other transaction permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

“Hazardous Materials” means any chemical, material, substance or waste, or any constituent thereof, which is prohibited, limited or regulated under any Environmental Law or by any Governmental Authority or which poses a hazard to the Environment or to human health and safety, including without limitation, petroleum and petroleum by-products, asbestos and asbestos-containing materials, polychlorinated biphenyls, medical waste and pharmaceutical waste.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Material, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Material, and any corrective action or response action with respect to any of the foregoing.

“Hedge Agreement” means any agreement with respect to any Derivative Transaction (or any master agreement which is intended to govern multiple Derivative Transactions) between any Loan Party or any Subsidiary and any other Person.

“Holdings” has the meaning assigned to such term in the preamble to this Agreement and shall, for the avoidance of doubt, include any Successor Holdings.

“IFRS” means international accounting standards within the meaning of the IAS Regulation 1606/2002, as in effect from time to time (subject to the provisions of Section 1.04), to the extent applicable to the relevant financial statements.

“Immediate Family Member” means, with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, domestic partner, former domestic partner, sibling, mother-in-law, father-in-law, son-in-law and/or daughter-in-law (including any adoptive relationship), any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals, such individual’s estate (or an executor or administrator acting on its behalf), heirs or legatees or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“Indebtedness” as applied to any Person means, without duplication:

- (a) all indebtedness for borrowed money;
- (b) that portion of obligations with respect to Capital Leases to the extent recorded as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;
- (c) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;
- (d) any obligation of such Person owed for all or any part of the deferred purchase price of property or services (excluding (i) any earn-out obligation or purchase price adjustment until such

obligation (A) becomes a liability on the statement of financial position or balance sheet (excluding the footnotes thereto) in accordance with GAAP and (B) has not been paid within 30 days after becoming due and payable, (ii) any such obligations incurred under ERISA, (iii) accrued expenses and trade accounts payable in the ordinary course of business (including on an inter-company basis) and (iv) liabilities associated with customer prepayments and deposits), which purchase price is (A) due more than six months from the date of incurrence of the obligation in respect thereof or (B) evidenced by a note or similar written instrument);

(e) all Indebtedness of others secured by any Lien on any asset owned or held by such Person regardless of whether the Indebtedness secured thereby have been assumed by such Person or is non-recourse to the credit of such Person;

(f) the face amount of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for reimbursement of drawings;

(g) the Guarantee by such Person of the Indebtedness of another;

(h) all obligations of such Person in respect of any Disqualified Capital Stock; and

(i) all net obligations of such Person in respect of any Derivative Transaction, including any Hedge Agreement, whether or not entered into for hedging or speculative purposes;

provided that (i) the amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith and (ii) the term “Indebtedness”, as it applies to the Borrower and its Subsidiaries, shall exclude (A) any Indebtedness owed by any Loan Party to any Subsidiary that is not a Loan Party so long as such Indebtedness is unsecured and subordinated to the Obligations and evidenced by the Intercompany Note and (B) intercompany advances arising from ordinary course cash management, tax and accounting operations.

For all purposes hereof, the Indebtedness of any Person shall (i) include the Indebtedness of any third person (including any partnership in which such Person is a general partner and any unincorporated joint venture in which such Person is a joint venture) to the extent such Person would be liable therefor under applicable Requirements of Law or any agreement or instrument by virtue of such Person’s ownership interest in such Person; provided that notwithstanding anything herein to the contrary, the term “Indebtedness” shall not include, and shall be calculated without giving effect to, (x) the effects of Accounting Standards Codification Topic 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose hereunder as a result of accounting for any embedded derivatives created by the terms of such Indebtedness (it being understood that any such amounts that would have constituted Indebtedness hereunder but for the application of this proviso shall not be deemed an incurrence of Indebtedness hereunder) and (y) the effects of Statement of Financial Accounting Standards No. 133 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivative created by the terms of such Indebtedness (it being understood that any such amounts that would have constituted Indebtedness under this Agreement but for the application of this sentence shall not be deemed to be an incurrence of Indebtedness under this Agreement) and (ii) exclude obligations incurred in advance of, and the proceeds of which are to be applied in connection with, the consummation of any transaction solely to the extent the proceeds thereof are and continue to be held in an escrow, trust, collateral or similar account or arrangement and are required to be applied to satisfy such obligations in the event that the applicable transaction is terminated or is not consummated (collectively, an “Escrow”) and are not otherwise made available to such Person.

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

“Indemnatee” has the meaning assigned to such term in Section 9.03(b).

“Initial DIP Loans” has the meaning assigned to such term in Section 2.01(a).

“Initial Draw” has the meaning assigned to such term in Section 2.01(a).

“Initial Draw Roll-Up Lenders” has the meaning assigned to such term in Section 2.01(b)(i).

“Initial Draw Roll-Up Loans” has the meaning assigned to such term in Section 2.01(b)(i).

“Initial Lenders” means, collectively, each of the Persons that is party to this Agreement as a Lender on the Closing Date.

“Intellectual Property Security Agreement” means any agreement, or a supplement thereto, executed on or after the Closing Date confirming or effecting the grant of any Lien on IP Rights owned by any Loan Party to the Administrative Agent, for the benefit of the Secured Parties, required in accordance with this Agreement and the Security Agreement, including an Intellectual Property Security Agreement.

“Intercompany Note” means a promissory note substantially in the form of Exhibit F hereto.

“Interest Election Request” means a written request by the Borrower in the form of Exhibit H hereto or another form reasonably acceptable to the Administrative Agent (acting at the Direction of the Required Lenders) to convert or continue a Borrowing in accordance with Section 2.08.

“Interest Payment Date” means (a) with respect to any ABR Loan, the date numerically corresponding to each monthly anniversary of the date of the applicable Borrowing and the maturity date applicable to such Loan and (b) with respect to any Term SOFR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part; provided that (i) if any Interest Payment Date would be a day other than a Business Day, such Interest Payment Date shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Payment Date shall be the next preceding Business Day, and (ii) if any Interest Payment Date would be a day for which there is no numerically corresponding day in the applicable calendar month, then the Interest Payment Date shall be the last Business Day of the applicable calendar month. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interest Period” means with respect to any Term SOFR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one month (or, to the extent available to all relevant affected Lenders, a shorter period), thereafter, as the Borrower may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no tenor that has been removed from this definition pursuant to Section 2.14 shall be available for specification in a Borrowing Request or an Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim Order” means Interim Order (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Scheduling a Final Hearing, approving the DIP Facility on an interim basis under the Bankruptcy Code, which order is not, subject to the Final Order, subject to a stay or injunction not approved by the Required Lenders in their sole and absolute discretion (which satisfaction may be communicated via a Direction of the Required Lenders).

“Intermediate Holdings” has the meaning assigned to such term in the preamble to this Agreement and shall, for the avoidance of doubt, include any Successor Holdings.

“Investment” means (a) any purchase or other acquisition for consideration by the Borrower or any of its Subsidiaries of any of the Capital Stock of any other Person (other than any Loan Party), (b) the acquisition for consideration by the Borrower or any of its Subsidiaries by purchase or otherwise (other than any purchase or other acquisition of inventory, materials, supplies and/or equipment in the ordinary course of business) of all or a substantial portion of the business, property or fixed assets of any other Person or any division or line of business or other business unit of any other Person and (c) any loan, advance (other than any advance to any current or former employee, officer, director, member of management, manager, consultant or independent contractor of the Borrower, any Subsidiary, or any Parent Company for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by the Borrower or any of its Subsidiaries to any other Person (in each case, excluding any intercompany loan, advance or Indebtedness owed by any Loan Party to any Subsidiary that is not a Loan Party so long as such loan, advance or Indebtedness is unsecured and subordinated to the Obligations and evidenced by the Intercompany Note). The amount of any Investment shall be the original cost of such Investment, plus the cost of any addition thereto that otherwise constitutes an Investment, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto, but giving effect to any repayments of principal in the case of any Investment in the form of a loan and any return of capital or return on Investment in the case of any equity Investment (whether as a distribution, dividend, redemption or sale but not in excess of the amount of the relevant initial Investment). It is understood and agreed that the term “Investment” shall exclude intercompany advances arising from ordinary course cash management, tax and accounting operations.

“Investors” means (a) the Sponsor, (b) the Management Investors and (c) the Additional Identified Investors, in each case, in their respective capacities as a direct or indirect owner of the Capital Stock of Holdings.

“IP Rights” has the meaning assigned to such term in Section 3.05(c).

“IP Separation Transaction” means (a) any Disposition (other than non-exclusive licenses) by any Loan Party of any Material Intellectual Property to any Affiliate that is not a Loan Party and/or (b) any Investment by any Loan Party in the form of a contribution of Material Intellectual Property to any Affiliate that is not a Loan Party; provided that, in the event that any such Disposition or Investment is made by a Loan Party to a Discretionary Guarantor, upon the release of such Discretionary Guarantor from its Loan Guaranty for any reason other than such Discretionary Guarantor ceasing to be a direct or indirect subsidiary of the Borrower, each such Disposition or Investment (as the case may be) shall be deemed to constitute an “IP Separation Transaction” to the extent the applicable Material Intellectual Property has not been transferred, contributed or otherwise Disposed to a Loan Party.

“IPO” means an initial public offering (or any merger by Holdings or any Parent Company with a publicly traded entity) or any other transaction or series of related transactions that results in any of the common equity interests of Holdings, Intermediate Holdings, the Borrower or any Parent Company (and/or any permitted successor thereto) being publicly traded on any U.S. national securities exchange or over-the-counter market or analogous public exchange in any other jurisdiction.



“IRS” means the United States Internal Revenue Service.

“Joinder Agreement” means a Joinder Agreement substantially in the form of Exhibit K or such other form that is reasonably satisfactory to the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower.

“Junior Lien Debt” means any Indebtedness (other than Indebtedness among Holdings, Intermediate Holdings, the Borrower and/or any of their respective subsidiaries) that is secured by a security interest in the Collateral that is expressly junior or subordinated to the Lien on the Collateral securing the Loans.

“Latest Maturity Date” means, as of any date of determination, the latest maturity or expiration date applicable to any Loan or commitment hereunder at such time, including the latest maturity or expiration date of any Loan.

“Legal Reservations” means the application of the relevant Debtor Relief Laws, general principles of equity and/or principles of good faith and fair dealing.

“Lenders” means the Fronting Lender and any Lender with a Commitment or an outstanding Loan and any other Person that becomes a party hereto pursuant to an Assignment Agreement, other than any such Person that ceases to be a party hereto pursuant to an Assignment Agreement.

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

“Liquidity” mean, as of any date (i) prior to the Delayed Draw, the sum, without duplication of the aggregate Dollar equivalent of all unrestricted cash and Cash Equivalents held by the Debtors at such time, and (ii) after Delayed Draw, the sum, without duplication of the (a) aggregate Dollar equivalent of all unrestricted cash and Cash Equivalents held by the Debtors at such time, and (b) solely for the purposes of compliance with Section 6.13 hereof, proceeds of the DIP deposited into the Loan Proceeds Account but not yet released to the Borrower. As used herein, the term “unrestricted” as it relates to such cash or Cash Equivalents excludes any such amounts representing deposits, escrows, sinking fund payments or other amounts that are otherwise encumbered (other than pursuant to the Loan Documents or the Pre-Petition Loan Documents), held in trust, or dedicated for a particular use and/or which would not be characterized as “unrestricted cash” on the financial statements of such entities in accordance with GAAP.

“Loan Documents” means this Agreement, the DIP Order, any Promissory Note, each Loan Guaranty, the Collateral Documents, the Fee Letters, and any other document or instrument designated by the Borrower and the Required Lenders (in consultation with the Administrative Agent) as a “Loan Document”. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto.

“Loan Guarantor” means Holdings and any Subsidiary Guarantor.

“Loan Guaranty” means the Loan Guaranty, substantially in the form of Exhibit I, executed by each Loan Party thereto and the Administrative Agent for the benefit of the Secured Parties, as supplemented in accordance with the terms of Section 5.12 hereof.

“Loan Parties” means the Borrower and each Loan Guarantor.

“Loan Proceeds Account” means an escrow account with the Administrative Agent into which the proceeds of the DIP Loans funded pursuant to the Delayed Draw shall be deposited and retained subject to withdrawal thereof by the Borrower pursuant to a Withdrawal Notice in accordance with Section 4.03.

“Loans” means the DIP Loans and the Roll-Up Loans.

“Malta Loan Party” means any Loan Party that is a Malta Subsidiary.

“Malta Subsidiary” means any Subsidiary of the Borrower that is organized under the laws of Malta.

“Management Investors” means the officers, directors, managers, employees and members of management of the Borrower, any Parent Company and/or any subsidiary of the Borrower.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, financial condition or results of operations, in each case, of the Borrower and its Subsidiaries, taken as a whole, (b) the rights and remedies (taken as a whole) of the Administrative Agent under the applicable Loan Documents or (c) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the applicable Loan Documents.

“Material Intellectual Property” means any intellectual property owned by any Loan Party that is, in the good faith determination of the Borrower, material to the operation of the business of the Borrower and its Subsidiaries, taken as a whole.

“Material Real Estate Asset” means (a) on the Closing Date, each Real Estate Asset listed on Schedule 1.01(c) and (b) each other “fee-owned” Real Estate Asset located in the United States, any state thereof or the District of Columbia that is acquired by any Loan Party after the Closing Date having a fair market value (as reasonably determined by the Borrower after taking into account any liabilities with respect thereto that impact such fair market value) in excess of \$5,000,000 as of the date of the acquisition thereof.

“Maturity Date” means the earliest of (i) the date that is four (4) months after the Closing Date, as such date may be extended pursuant to Section 2.22, (ii) the date on which all Loans are accelerated and all unfunded Commitments (if any) have been terminated in accordance with this Agreement, by operation of law or otherwise, (iii) the date the Bankruptcy Court orders a conversion of the Chapter 11 Cases to a chapter 7 liquidation or the dismissal of the chapter 11 case of any Debtor, (iv) the closing of any sale of assets pursuant to Section 363 of the U.S. Bankruptcy Code, which when taken together with all other sales of assets since the Closing Date, constitutes a sale of all or substantially all of the assets of the Loan Parties, (v) the Plan Consummation Date and (vi) if the Final Order has not been entered by the Bankruptcy Court on or before the applicable Milestone set forth in Section 5.20 hereof, the date of the applicable Milestone.

“Maximum Rate” has the meaning assigned to such term in Section 9.19.

“Moody’s” means Moody’s Investors Service, Inc.

“Minimum Liquidity Threshold” means \$30,000,000.

“Multiemployer Plan” means any employee benefit plan which is a “multiemployer plan” as defined in Section 3(37) of ERISA that is subject to the provisions of Title IV of ERISA, and in respect of which Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries, or any of their respective ERISA Affiliates, makes or is obligated to make contributions or with respect to which any of them has any ongoing obligation or liability, contingent or otherwise.

“Net Insurance/Condemnation Proceeds” means an amount equal to: (a) any Cash payments or proceeds (including Cash Equivalents) received by the Borrower or any of its Subsidiaries (i) under any casualty insurance



policy in respect of a covered loss thereunder of any assets of the Borrower or any of its Subsidiaries or (ii) as a result of the taking of any assets of the Borrower or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, in each case, other than any amount that is attributable to business interruption proceeds, minus (b)(i) any actual out-of-pocket costs and expenses incurred by the Borrower or any of its Subsidiaries in connection with the adjustment, settlement or collection of any claims of the Borrower or the relevant Subsidiary in respect thereof, (ii) payment of the outstanding principal amount of, premium or penalty, if any, and interest and other amounts on any Indebtedness (other than the Loans and any Indebtedness secured by a Lien on the Collateral that is *pari passu* with or expressly subordinated to the Lien on the Collateral securing any Secured Obligation) that is secured by a Lien on the assets in question and that is required to be repaid or otherwise comes due or would be in default under the terms thereof as a result of such loss, taking or sale, (iii) in the case of a taking, the reasonable out-of-pocket costs of putting any affected property in a safe and secure position, (iv) any selling costs and out-of-pocket expenses (including reasonable broker's fees or commissions, legal fees, accountants' fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith transfer and similar Taxes and the Borrower's good faith estimate of income Taxes paid or payable (including pursuant to Tax sharing arrangements or any intercompany distribution)) in connection with any sale or taking of such assets as described in clause (a) of this definition, (v) any amount provided as a reserve in accordance with GAAP against any liabilities under any indemnification obligation or purchase price adjustments associated with any sale or taking of such assets as referred to in clause (a) of this definition (provided that to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Insurance/Condemnation Proceeds) and (vi) in the case of any covered loss or taking from any non-Wholly-Owned Subsidiary, the pro rata portion thereof (calculated without regard to this subclause (vi)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a Wholly-Owned Subsidiary as a result thereof.

"Net Proceeds" means (a) with respect to any Disposition (including any Prepayment Asset Sale), the Cash proceeds (including Cash Equivalents and Cash proceeds subsequently received (as and when received) in respect of non-cash consideration initially received), net of (i) selling costs and out-of-pocket expenses (including reasonable broker's fees or commissions, legal fees, accountants' fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith and transfer and similar Taxes and the Borrower's good faith estimate of income Taxes paid or payable (including pursuant to any Tax sharing arrangement and/or any intercompany distribution or Tax distribution, as applicable) in connection with such Disposition), (ii) amounts provided as a reserve in accordance with GAAP against any liabilities under any indemnification obligation or purchase price adjustment associated with such Disposition (provided that to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Proceeds), (iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness (other than the Loans and any other Indebtedness secured by a Lien on the Collateral that is *pari passu* with or expressly subordinated to the Lien on the Collateral securing any Secured Obligation, whether pursuant to the DIP Order or otherwise) which is secured by the asset sold in such Disposition and which is required to be repaid or otherwise comes due or would be in default and is repaid (other than any such Indebtedness that is assumed by the purchaser of such asset), (iv) Cash escrows (until released from escrow to the Borrower or any of its Subsidiaries) from the sale price for such Disposition and (v) in the case of any Disposition by any non-Wholly-Owned Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (v)) attributable to any minority interest and not available for distribution to or for the account of the Borrower or a Wholly-Owned Subsidiary as a result thereof; and (b) with respect to any issuance or incurrence of Indebtedness or Capital Stock, the Cash proceeds thereof, net of all Taxes and customary fees, commissions, costs, underwriting discounts and other fees and expenses incurred in connection therewith.

“Non-Debt Fund Affiliate” means, solely to the extent constituting an Affiliate of the Borrower, (a) the Sponsor and any Affiliate thereof and (b) each Additional Identified Investor and any Affiliate of any of them, in each case, other than any Debt Fund Affiliate.

“Non-US Collateral” means any Collateral granted by, or over the share capital of, a Non-US Loan Party.

“Non-US Security Agreement” means (a) each security or pledge agreement executed by any Non-US Loan Party and (b) each other security or pledge agreement executed by any Non-US Loan Party pursuant to Section 5.13 in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, including the UK Security Documents.

“Non-US Loan Party” means any Loan Party other than a US Loan Party.

“Obligations” means all unpaid principal of and accrued and unpaid interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, all accrued and unpaid fees and all expenses (including fees and expenses accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), reimbursements, indemnities and all other advances to, debts, liabilities and obligations of any Loan Party to the Lenders or to any Lender, the Administrative Agent or any indemnified party arising under the Loan Documents in respect of any Loan, whether direct or indirect (including those acquired by assumption), absolute, contingent, due or to become due, now existing or hereafter arising.

“OFAC” has the meaning assigned to such term in Section 3.17(a).

“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation or organization and its by-laws, (b) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (c) with respect to any general partnership, its partnership agreement, (d) with respect to any limited liability company, its articles of organization or certificate of formation, and its operating agreement, and (e) with respect to any other form of entity, such other organizational documents required by local Requirements of Law or customary under such jurisdiction to document the formation and governance principles of such type of entity. In the event that any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official.

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

“Other Taxes” means all present or future stamp, court or documentary Taxes or any intangible, recording, filing or other similar Taxes arising from any payment made under any Loan Document or from the execution, delivery, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, but excluding any such Taxes that are Other Connection Taxes imposed with respect to an assignment or participation.

“Parent Company” means any Person of which the Borrower is a direct or indirect Wholly-Owned Subsidiary.

“Participant” has the meaning assigned to such term in Section 9.05(c)(i).

“Participant/SPC Register” has the meaning assigned to such term in Section 9.05(c).

“Patent” means the following: (a) any and all patents and patent applications; (b) all inventions described and claimed therein; (c) all reissues, divisions, continuations, renewals, extensions and continuations in part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights corresponding to any of the foregoing.

“Payment Notice” has the meaning assigned to it in Section 8.14(a).

“Payment Recipient” has the meaning assigned to it in Section 8.14(a).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any employee pension benefit plan, as defined in Section 3(2) of ERISA (other than a Multiemployer Plan), that is subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, which Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries, or any of their respective ERISA Affiliates, maintains or contributes to or has an obligation to contribute to, or otherwise has any liability, contingent or otherwise.

“Perfection Certificate” means a certificate substantially in the form of Exhibit J.

“Permitted Holders” means (a) the Investors and (b) any Person with which one or more Investors form a “group” (within the meaning of Section 14(d) of the Exchange Act) so long as, in the case of this clause (b), the relevant Investors beneficially own more than 50% of the relevant voting stock beneficially owned by the group.

“Permitted Liens” means Liens permitted pursuant to Section 6.02.

“Permitted Tax Restructuring” means any reorganizations and other activities related to Tax planning and Tax reorganization entered into on or after the date hereof so long as such Permitted Tax Restructuring could not reasonably be expected to impair in any material respect the Guarantee or the security interests in favor of, and is not otherwise adverse to the Lenders in their capacity as such; provided that (i) any such reorganizations or activities shall not involve any Disposition by a Loan Party to, any Investment by a Loan Party in, or any Restricted Payment by a Loan Party to, any Person that is not a Loan Party without the prior written consent of the Required Lenders in their sole discretion and (ii) any such reorganizations or other activities shall not involve any Disposition by a Loan Party to, any Investment by a Loan Party in, or any Restricted Payment by a Loan Party to, any UK Subsidiary without the prior written consent of the Required Lenders in their reasonable discretion.

“Permitted Variance” means (a) in respect of aggregate Actual Disbursement Amounts (excluding, for the avoidance of doubt, Actual Restructuring Related Amounts), (i) 30.0% of Budgeted Disbursement Amounts (excluding, for the avoidance of doubt, Budgeted Restructuring Related Amounts) for each of the First Testing Period and the Second Testing Period and (ii) 20.0% of Budgeted Disbursement Amounts (excluding, for the avoidance of doubt, Budgeted Restructuring Related Amounts) for each Rolling Four Week Variance Testing Period and (b) in respect of aggregate Actual Receipts, (i) 30.0% of Budgeted Receipts for each of the First Testing Period and the Second Testing Period and (ii) 20.0% of Budgeted Receipts for each Rolling Four Week Variance Testing Period.

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

“Petition Date” has the meaning assigned to such term in the recitals to this Agreement.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) maintained by Holdings and/or any Subsidiary or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of its ERISA Affiliates, other than any Multiemployer Plan.

“Plan Consummation Date” means the date of the substantial consummation (as defined in Section 1101 of the U.S. Bankruptcy Code) of a chapter 11 plan of reorganization, which, for purposes of this Agreement, shall be no later than the effective date of a chapter 11 plan of reorganization that is confirmed pursuant to an order of the Bankruptcy Court.

“Platform” has the meaning assigned to such term in Section 5.01.

“Prepayment Asset Sale” means any Disposition by Holdings, Intermediate Holdings, the Borrower or any Subsidiary made pursuant to (a) Section 6.06(h) and/or (x).

“Pre-Petition Administrative Agent” has the meaning assigned to such term in the recitals to this Agreement.

“Pre-Petition Credit Agreement” has the meaning assigned to such term in the recitals to this Agreement.

“Pre-Petition Lenders” has the meaning assigned to such term in the recitals to this Agreement.

“Pre-Petition Loan Documents” means the “Loan Documents” as defined in the Pre-Petition Credit Agreement.

“Pre-Petition Secured Parties” means the “Secured Parties” as defined in the Pre-Petition Credit Agreement.

“Primary Obligor” has the meaning assigned to such term in the definition of “Guarantee”.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the 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 (acting at the Direction of the Required Lenders)) or any similar release by the Board (as determined by the Administrative Agent (acting at the Direction of the Required Lenders)).

“Promissory Note” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit L, evidencing the aggregate outstanding principal amount of Loans of the Borrower to such Lender resulting from the Loans made by such Lender.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning assigned to such term in Section 9.01(d).

“QFC Credit Support” has the meaning assigned to such term in Section 9.25.

“Qualified Capital Stock” of any Person means any Capital Stock of such Person that is not Disqualified Capital Stock. It is understood and agreed that the shares of (a) Common Stock of Thrasio Holdings, Inc., (b) Series Seed Preferred Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock of Thrasio Holdings, Inc. and (c) any preferred equity of Thrasio Holdings, Inc. substantially similar in all material respects to the equity described in the foregoing clause (b), in each case, constitutes Qualified Capital Stock of Thrasio Holdings, Inc.

“Real Estate Asset” means, at any time of determination, all right, title and interest (fee, leasehold or otherwise) of any Person in and to real property (including, but not limited to, land, improvements and fixtures thereon).

“Refunding Capital Stock” has the meaning assigned to such term in Section 6.03(a)(viii).

“Register” has the meaning assigned to such term in Section 9.05(b).

“Regulation D” means Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation H” means Regulation H of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Related Funds” means with respect to any Lender that is an Approved Fund, any other Approved Fund that is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

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

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the Environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

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

“Remaining Existing Loans” has the meaning assigned to such term in Section 2.01(b)(i).

“Reportable Event” means, with respect to any Pension Plan, any of the events described in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period is waived under PBGC Reg. Section 4043.

“Representatives” has the meaning assigned to such term in Section 9.13.

“Required Class Lenders” shall mean, with respect to any Class, Lenders having (a) Loans of such Class outstanding and (b) unused Commitments of such Class that, taken together, represent more than 50% of the sum of (x) Loans of such Class outstanding and (y) all unused Commitments of such Class at such time.

“Required Lenders” shall mean, at any time, Lenders having (a) Loans outstanding and (b) unused Commitments that, taken together, represent more than 50% of the sum of (x) Loans outstanding and (y) all unused Commitments at such time.

“Requirements of Law” means, with respect to any Person, collectively, the common law and all federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

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

“Responsible Officer” means, with respect to any Person, the chief executive officer, the president, the chief financial officer, any company secretary, the treasurer, any assistant treasurer of such Person and any other individual or similar official thereof, any executive vice president, any senior vice president, any vice president or the chief operating officer or other officer responsible for the administration of the obligations of such Person in respect of this Agreement, and, as to any document delivered on the Closing Date, shall include any secretary or assistant secretary or any other individual or similar official thereof with substantially equivalent responsibilities of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer of the applicable Loan Party so designated in writing by the Borrower to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of any 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.

“Responsible Officer Certification” means, with respect to the financial statements for which such certification is required, the certification of a Responsible Officer of the Borrower that such financial statements fairly present, in all material respects, in accordance with GAAP, the consolidated financial position of the Borrower as at the dates indicated and its consolidated income and cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

“Restricted Amount” has the meaning assigned to such term in Section 2.11(b)(iv).

“Restricted Debt” means any Indebtedness for borrowed money (other than Indebtedness among Holdings, Intermediate Holdings, the Borrower or any of their respective subsidiaries) of the Borrower or any of its Subsidiaries that is (x) Junior Lien Debt, (y) subordinated in right of payment to the Obligations or (z) unsecured.

“Restricted Debt Payments” has the meaning assigned to such term in Section 6.03(b).

“Restricted Payment” means (a) any dividend or other distribution on account of any shares of any class of the Capital Stock of the Borrower, any Loan Party or any Subsidiary of any Loan Party, except a dividend payable solely in shares of Qualified Capital Stock to the holders of such class; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of any shares of any class of the Capital Stock of the Borrower, any Loan Party or any Subsidiary of any Loan Party and (c) any payment made to retire,



or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of the Capital Stock of the Borrower or any Subsidiary of any Loan Party now or hereafter outstanding.

“Rolling Four Week Testing Period” means (i) the four (4) calendar week period ending on the Friday of the fourth full calendar week following the Petition Date and (ii) each cumulative period of four (4) weeks ending on the Friday of each calendar week thereafter.

“Rolled-Up Existing Loans” has the meaning assigned to such term in Section 2.01(b)(i).

“Roll-Up Loans” has the meaning assigned to such term in the recitals to this Agreement.

“RSA” means that certain Restructuring Support Agreement, dated as of February 27, 2024 (as may be amended, restated, amended and restated, supplemented and/or otherwise modified from time to time), between the Company Parties (as defined in the RSA) and the Consenting Lenders (as defined in the RSA).

“RTS” has the meaning assigned to such term in the RSA.

“S&P” means S&P Global Ratings, a subsidiary of S&P Global Inc.

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

“Second Draw” has the meaning assigned to such term in Section 2.01(a).

“Second Testing Period” means the three (3) calendar week period ending on the Friday of the third full calendar week following the Petition Date.

“Secured Obligations” means all Obligations, together with all Banking Services Obligations.

“Secured Parties” means (i) the Lenders, (ii) the Administrative Agent, (iii) each provider of Banking Services to any Loan Party the obligations under which constitute Banking Services Obligations and (iv) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document.

“Securities” means any stock, shares, units, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing; provided that the term “Securities” shall not include any earn-out agreement or obligation or any employee bonus or other incentive compensation plan or agreement.

“Securities Act” means the Securities Act of 1933 and the rules and regulations of the SEC promulgated thereunder.

“Security Agreement” means the Pledge and Security Agreement, substantially in the form of Exhibit M, among the Loan Parties, as grantors, and the Administrative Agent for the benefit of the Secured Parties.

“SOFR” means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

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



“SOFR Interpolated Rate” means, for any SOFR Non-Standard Interest Period, the rate per annum determined by the Administrative Agent (acting at the Direction of the Required Lenders) (which determination shall be presumed correct absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the sum of Term SOFR for the longest term for which the Term SOFR is available that is shorter than such SOFR Non-Standard Interest Period plus the applicable Term SOFR Adjustment for such longest term and (b) the Term SOFR for the shortest term for which the Term SOFR is available that exceeds such SOFR Non-Standard Interest Period plus the applicable Term SOFR Adjustment for such shortest term, in each case, at such time; *provided*, that when determining the SOFR Interpolated Rate for a SOFR Non-Standard Interest Period which is less than one (1) month, the SOFR Interpolated Rate shall be Adjusted Term SOFR for SOFR Loans with an Interest Period of one (1) month.

“SOFR Loan” means a Loan that bears interest at a rate based on Adjusted Term SOFR, other than pursuant to clause (b) of the definition of “Alternate Base Rate”.

“SOFR Non-Standard Interest Period” means, with respect to a SOFR Loan, an Interest Period which is for a term other than 1, 3, 6 or 12 months.

“SPC” has the meaning assigned to such term in Section 9.05(e).

“Special Flood Hazard Area” means an area that the Federal Emergency Management Agency has designated as an area subject to special flood or mud slide hazards.

“Specified Lender Advisors” means (x) Gibson, Dunn & Crutcher LLP, as legal counsel for the Required Lenders, (y) Evercore Group L.L.C. as financial advisor to the Lenders and (z) any replacement legal or financial advisor to the Required Lenders designated in writing by the Required Lenders to the Administrative Agent to the Borrower.

“Specified Non-US Loan Party” means each Foreign Subsidiary that is a Loan Party.

“Specified Subsidiary” has the meaning assigned to such term in Section 2.11(b)(iv).

“Sponsor” means, collectively, Advent, its controlled Affiliates and funds managed or advised by any of them or any of their respective controlled Affiliates.

“Stated Maturity Date” has the meaning assigned to such term in Section 2.22.

“Subject Proceeds” has the meaning assigned to such term in Section 2.11(b)(ii).

“subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of such Person or a combination thereof, in each case to the extent the relevant entity’s financial results are required to be included in such Person’s consolidated financial statements under GAAP; *provided* that in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interests in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding. Unless otherwise specified, “subsidiary” shall mean any subsidiary of the Borrower.

“Subsidiary Guarantor” means (x) each Subsidiary of the Borrower that is a Debtor under the Chapter 11 Cases and (y) thereafter, each subsidiary of the Borrower that becomes a guarantor of the Secured Obligations pursuant to the terms of this Agreement, in each case, until such time as the relevant subsidiary is released from

its obligations under the Loan Guaranty in accordance with the terms and provisions hereof; provided, that Subsidiary Guarantor shall exclude any Excluded Subsidiary.

“Successor Borrower” has the meaning assigned to such term in Section 6.06(a).

“Successor Holdings” has the meaning assigned to such term in Section 6.12(c).

“Supported QFC” has the meaning assigned to such term in Section 9.25.

“Syndication” has the meaning assigned to such term in Section 2.05.

“Syndication Procedures” has the meaning assigned to such term in Section 2.05.

“Syndicate Lender” has the meaning assigned to such term in Section 2.01(b)(iii).

“Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f).

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

“Termination Date” has the meaning assigned to such term in the lead-in to Article 5.

“Term SOFR” means:

(a) for any Interest Period for a duration of one-month, three-months, six-months or twelve months (or, to the extent available to all relevant affected Lenders, a shorter period, or as used for reference purposes only in determining the SOFR Interpolated Rate, as applicable) for a SOFR Loan, the greater of (i) the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (the “Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator and (ii) 1.00% per annum and; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day; or

(b) for an Interest Period of any duration other than those specified in clause (a) of this definition of “Term SOFR”, for a SOFR Loan, the SOFR Interpolated Rate.

“Term SOFR Adjustment” means, with respect to (i) Term SOFR, for an Interest Period of a duration of (a) one-month or less 0.11448% (11.448 basis points), (b) three months, 0.26161% (26.161 basis points), (c) six months, 0.42826% (42.826 basis points) and (d) twelve months, 0.71513% (71.513 basis points) and (ii) with respect to a SOFR Interpolated Rate, a percentage adjustment which results from interpolating on a linear basis between (a) the Term SOFR Adjustment for the longest period (for which Term SOFR is available) as determined under this definition which is less than the Interest Period of that Loan and (b) the Term SOFR Adjustment for the shortest period (for which Term SOFR is available) as determined under this definition which is greater than the Interest Period of that Loan.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent (acting at the Direction of the Required Lenders) in its reasonable discretion).

“Term SOFR Determination Day” has the meaning assigned to it under the definition of Term SOFR.

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

“Threshold Amount” means \$1,000,000.

“Trademark” means the following: (a) all trademarks (including service marks), common law marks, trade names, trade dress, and logos, slogans and other indicia of origin under the Requirements of Law of any jurisdiction in the world, and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing; (b) all renewals of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringements thereof; (d) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (e) all rights corresponding to any of the foregoing.

“Transaction Costs” means fees, premiums, expenses and other transaction costs (including original issue discount or upfront fees) payable or otherwise borne by the Borrower, any Parent Company and/or its subsidiaries in connection with the Transactions and the transactions contemplated thereby.

“Transactions” means, collectively, the transactions to occur pursuant to the Loan Documents on the Closing Date, including (a) the Chapter 11 Cases; (b) the execution, delivery and performance of the Loan Documents, the creation of the Liens pursuant to the Loan Documents, and the borrowings hereunder; and (c) the payment of the Transaction Costs.

“Treasury Capital Stock” has the meaning assigned to such term in Section 6.03(a)(viii).

“Treasury Regulations” means the U.S. federal income tax regulations, including temporary regulations and, to the extent taxpayers are permitted to rely on them, proposed regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to Adjusted Term SOFR or the Alternate Base Rate.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the creation or perfection of security interests.

“UK Debenture” means the English law governed debenture dated on or about the date of this Agreement between the UK Subsidiary Guarantors as initial chargors and the Administrative Agent.

“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 Guarantee Limitations” has the meaning specified in the Loan Guaranty, as may be supplemented or modified from time to time in accordance with the terms hereof.

“UK Legal Reservations” means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court and principles of good faith and fair dealing;
- (b) applicable Debtor Relief Laws;
- (c) the existence of timing limitations with respect to the bringing of claims under applicable limitation laws and the defenses of acquiescence, set-off or counterclaim and the possibility that an undertaking to assume liability for, or to indemnify a Person against, non-payment of stamp duty may be void;
- (d) the principle that in certain jurisdictions and under certain circumstances a Lien granted by way of fixed charge may be re-characterized as a floating charge or that security purported to be constituted as an assignment may be re-characterized as a charge;
- (e) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;
- (f) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;
- (g) the principle that the creation or purported creation of collateral over any claim, other right, contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement (or contract or agreement relating to or governing the claim or other right) over which security has purportedly been created;
- (h) the principle that a court may not give effect to any parallel debt provisions, covenants to pay or other similar provisions;
- (i) the principle that certain remedies in relation to regulated entities may require further approval from government or regulatory bodies or pursuant to agreements with such bodies;
- (j) the principles of private and procedural laws which affect the enforcement of a foreign court judgment;
- (k) similar principles, rights and defenses under the laws of any relevant jurisdiction; and
- (l) any other matters which are set out as qualifications or reservations (however described) in any legal opinion delivered pursuant to the Loan Documents.

“UK Loan Party” means a Loan Party incorporated under the laws of England and Wales.

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

“UK Security Documents” means the UK Debenture and the UK Share Charge.

“UK Share Charge” means the English law governed charge over shares dated on or about the date of this Agreement between the Borrower as chargor and the Administrative Agent.

“UK Subsidiary” means a Wholly-Owned Subsidiary incorporated under the laws of England and Wales.

“UK Subsidiary Guarantor” means a Subsidiary Guarantor incorporated under the laws of England and Wales.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

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

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

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

“US Material Intellectual Property” means Material Intellectual Property arising under the laws of the US.

“US Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

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

“U.S. Special Resolution Regimes” has the meaning assigned to such term in Section 9.25.

“Variance Testing Period” means, as applicable, the First Testing Period, the Second Testing Period and each Rolling Four Week Testing Period ending thereafter.

“Wholly-Owned Subsidiary” of any Person means a subsidiary of such Person, 100% of the Capital Stock of which (other than directors’ qualifying shares or shares required by Requirements of Law to be owned by a resident of the relevant jurisdiction) shall be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

“Withdrawal” means a withdrawal from the Loan Proceeds Account in a minimum amount of \$100,000, made in accordance with Section 4.03.

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

“Withdrawal Notice” means a notice substantially in the form attached hereto as Exhibit C to be delivered by the Borrower to the Administrative Agent from time to time to request a Withdrawal from the Loan Proceeds Account.

“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.

“WSFS” has the meaning assigned to such term in the recitals to this Agreement.

**Section 1.02.** Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Term SOFR Loan”). Borrowings also may be classified and referred to by Type (e.g., a “Term SOFR Borrowing”).

**Section 1.03.** Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein or in any Loan Document (including any Loan Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified or extended, replaced or refinanced (subject to any restrictions or qualifications on such amendments, restatements, amendment and restatements, supplements or modifications or extensions, replacements or refinancings set forth herein), (b) any reference to any Requirement of Law in any Loan Document shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Requirement of Law, (c) any reference herein or in any Loan Document to any Person shall be construed to include such Person’s successors and permitted assigns, (d) the words “herein,” “hereof” and “hereunder,” and words of similar import, when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision hereof, (e) all references herein or in any Loan Document to Articles, Sections, clauses, paragraphs, Exhibits and Schedules shall be construed to refer to Articles, Sections, clauses and paragraphs of, and Exhibits and Schedules to, such Loan Document, (f) in the computation of periods of time in any Loan Document from a specified date to a later specified date, the word “from” means “from and including”, the words “to” and “until” mean “to but excluding” and the word “through” means “to and including” and (g) the words “asset” and “property”, when used in any Loan Document, shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including Cash, securities, accounts and contract rights. It is understood and agreed that any Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, burdensome agreement, Investment, Disposition and/or Affiliate transaction need not be permitted solely by reference to one category of permitted Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, burdensome agreement, Investment, Disposition and/or Affiliate transaction under Sections 6.01, 6.02, 6.03, 6.04, 6.05, 6.06 or 6.07, respectively, but may instead be permitted in part under any combination thereof.

**Section 1.04.** Accounting Terms; GAAP.

(a) All financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time; provided that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date of delivery of the financial statements described in Section 3.04(a) in GAAP or in the application thereof (including the conversion to IFRS as described below) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any



provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change becomes effective until such notice have been withdrawn or such provision amended in accordance herewith; provided, further, that if such an amendment is requested by the Borrower or the Required Lenders, then the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders) shall negotiate in good faith to enter into an amendment of the relevant affected provisions to preserve the original intent thereof in light of such change in GAAP or the application thereof; provided, further, that all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to (i) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any subsidiary at “fair value,” as defined therein and (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. If the Borrower notifies the Administrative Agent that the Borrower (or its applicable Parent Company) is required to report under IFRS or has elected to do so through an early adoption policy, “GAAP” shall mean international financial reporting standards pursuant to IFRS (provided that after such conversion, the Borrower cannot elect to report under GAAP).

(b) [Reserved].

(c) Notwithstanding anything to the contrary contained in clause (a) above or in the definition of “Capital Lease”, only those leases (assuming for purposes hereof that such leases were in existence on the date hereof) that would constitute Capital Leases in conformity with GAAP as in effect prior to giving effect to the adoption of ASU No. 2016-02 “Leases (Topic 842)” and ASU No. 2018-11 “Leases (Topic 842)” shall be considered Capital Leases hereunder or under any other Loan Document, and all calculations and deliverables under this Agreement and/or any other Loan Document shall be made or prepared, as applicable, in accordance therewith; provided that all financial statements required to be provided hereunder shall be prepared in accordance with GAAP without giving effect to the foregoing treatment of Capital Leases.

(d) Notwithstanding anything in this Section 1.04 to the contrary, for purposes of calculating any financial ratios pursuant to the Loan Documents, revenue recognition will be applied in a manner consistent with the revenue recognition policies of the Borrower as in effect on the Closing Date.

**Section 1.05.** [Reserved].

**Section 1.06.** Timing of Payment or Performance When payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of “Interest Period”) or performance shall extend to the immediately succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

**Section 1.07.** Times of Day. Unless otherwise specified herein, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

**Section 1.08.** Currency Equivalents Generally.

(a) For purposes of any determination under Article 5, Article 6 or Article 7 with respect to the amount of any Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Investment, Disposition, affiliate transaction or other transaction, event or circumstance, or any determination under any other provision of this Agreement, (any of the foregoing, a “specified transaction”), in a currency other than Dollars, (i) the



Dollar equivalent amount of a specified transaction in a currency other than Dollars shall be calculated based on the rate of exchange quoted by the Bloomberg Foreign Exchange Rates & World Currencies Page (or any successor page thereto, or in the event such rate does not appear on any Bloomberg Page, by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower) for such foreign currency, as in effect at 11:00 a.m. (London time) on the date of such specified transaction (which, in the case of any Restricted Payment, shall be deemed to be the date of the declaration thereof and, in the case of the incurrence of Indebtedness, shall be deemed to be on the date first committed); provided, that if any Indebtedness is incurred (and, if applicable, associated Lien granted) to refinance or replace other Indebtedness denominated in a currency other than Dollars, and the relevant refinancing or replacement would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing or replacement, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing or replacement Indebtedness (and, if applicable, associated Lien granted) does not exceed an amount sufficient to repay the principal amount of such Indebtedness being refinanced or replaced, except by an amount equal to (x) unpaid accrued interest and premiums (including tender premiums) thereon plus other reasonable and customary fees and expenses (including upfront fees and original issue discount) incurred in connection with such refinancing or replacement, (y) any existing commitment unutilized thereunder and (z) additional amounts permitted to be incurred under Section 6.01 and (ii) for the avoidance of doubt, no Default or Event of Default shall be deemed to have occurred solely as a result of a change in the rate of currency exchange occurring after the time of any specified transaction so long as such specified transaction was permitted at the time incurred, made, acquired, committed, entered or declared as set forth in clause (i).

**Section 1.09.** [Reserved].

**Section 1.10.** Certain Calculations and Tests.

(a) [Reserved].

(b) [Reserved].

(c) [Reserved].

(d) The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

(e) The increase in any amount secured by any Lien by virtue of the accrual of interest (other than interest paid in kind), the accretion of accreted value, the payment of interest or a dividend in the form of additional Indebtedness, amortization of original issue discount 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 not be deemed to be the granting of a Lien for purposes of Section 6.02.

(f) With respect to determination of the permissibility of any transaction by Holdings, Intermediate Holdings, the Borrower and its subsidiaries under this agreement, the delivery by the Borrower of a third party valuation report from (x) a nationally recognized accounting, appraisal, investment banking or consulting firm or (y) another firm reasonably acceptable to the Administrative Agent (acting at the Direction of the Required Lenders), in each case, shall be conclusive with respect to the value of the assets covered thereby.

(g) [Reserved].

**Section 1.11.** UK Legal Reservations and UK Guarantee Limitations. The obligations of each UK Loan Party under each Loan Document to which it is a party are subject to the UK Legal Reservations and UK Guarantee Limitations.

**Section 1.12.** Interest Rates; Benchmark Notification. The interest rate on a Loan denominated in Dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.14 provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, the administration of, submission of, calculation of, performance of or any other matter related to any interest rate used in this Agreement (including, without limitation, the Alternate Base Rate, Daily Simple SOFR, Adjusted Daily Simple SOFR, SOFR, 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 with respect to any alternative or successor rate thereto, or replacement rate thereof (including any Benchmark Replacement), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, or have the same value or economic equivalence of as the existing interest rate (or any component thereof) being replaced or have the same volume or liquidity as did any existing interest rate (or any component thereof) prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate (or component thereof) used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/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 (acting at the Direction of the Required Lenders) to ascertain any interest rate used in this Agreement, any component thereof, or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

## ARTICLE 2

### THE CREDITS

**Section 2.01.** Commitments and Loans. Subject to the terms and conditions set forth herein and in the DIP Order:

(a) Each Lender agrees, severally and not jointly, to make DIP Loans in Dollars to the Borrower in three (3) Borrowings in an aggregate principal amount not to exceed its Commitment, and subject in each case to the satisfaction of the conditions precedent set forth in Section 4.01 or Section 4.02, as applicable. The first Borrowing of DIP Loans (the “Initial Draw”) will be in an amount equal to \$35,000,000 (such DIP Loans, the “Initial DIP Loans”) and shall occur, subject to the applicable conditions set forth herein, on the Closing Date. The second Borrowing of DIP Loans (the “Second Draw”) will be in an amount equal to \$35,000,000 (such DIP Loans, the “Final DIP Loans”) and shall occur, subject to the conditions set forth herein, on or after the date the Final Order is entered by the Bankruptcy Court. The third Borrowing of DIP Loans (the “Delayed Draw”) will be in an amount equal to \$20,000,000 (such DIP Loans, the “Delayed Draw DIP Loans”) and shall occur, in each case subject to the conditions set forth herein, on the earlier of (i) the date of entry of the Confirmation Order and (ii) a date determined by the Required DIP Lenders in their sole and absolute discretion up to five (5) Business Days prior to the estimated entry of the Confirmation Order, solely with the consent of the Required Lenders, in their sole and absolute discretion. Upon a Lender’s funding of its pro rata share of a DIP Loan, such Lender’s Commitment with respect to such DIP Loan shall be permanently reduced by the amount of such DIP Loan made by such Lender (it being understood that the Commitments of the Lenders shall be reduced, (x) following the Initial Draw, to the aggregate amount of DIP Loans to be funded under the Second Draw and the

Delayed Draw, (y) following the Second Draw, the amount of DIP Loans to be funding under the Delayed Draw and (z) following the Delayed Draw, zero). The DIP Loans shall be made by the Fronting Lender on the date of each applicable Borrowing on behalf of the Lenders in accordance with the Lenders' respective Commitments.

(b)

(i) On the date of the Initial Draw, concurrently with the making of the Initial DIP Loans pursuant to Section 2.01(a) above, \$35,000,000 in aggregate principal amount of Existing Loans shall be deemed converted into and exchanged for Roll-Up Loans (the Existing Loans rolled-up pursuant to this Section 2.01(b), the "Rolled-Up Existing Loans" and, the Existing Loans that are not Rolled-Up Existing Loans, the "Remaining Existing Loans"), and \$35,000,000 of Roll-Up Loans shall be deemed funded on the date of the Initial Draw (such Roll-Up Loans, the "Initial Draw Roll-Up Loans"), without constituting a novation, and shall satisfy and discharge \$35,000,000 in aggregate principal amount of Rolled-Up Existing Loans. On the date of the Initial Draw, the Initial Draw Roll-Up Loans shall be deemed to be made by each Backstop Party (or an investment advisor, manager, or beneficial owner for the account of a Backstop Party, or an affiliated fund or trade counterparty designated by such Backstop Party) (such initial lender holding Initial Draw Roll-Up Loans, the "Initial Draw Roll-Up Lenders") in an amount equal to the lesser of (x) the aggregate principal amount of the Existing Loans owing to the applicable Initial Draw Roll-Up Lenders on the Closing Date and (y) an amount equal to (I) \$35,000,000 multiplied by (II) the quotient of the amount of Commitments set forth next to each Backstop Party's name on Schedule 1.01(b) divided by the aggregate amount of Commitments on the date of the Initial Draw.

(ii) Subject to the entry, and the terms, of the Final Order, on the date of the Second Draw, concurrently with the making of the Final DIP Loans and commitment of the Delayed Draw DIP Loans pursuant to Section 2.01(a) above, each Lender hereunder (or an investment advisor, manager, or beneficial owner for the account of such Lender, or an affiliated fund or trade counterparty designated by such Lender) (collectively, the "Additional Roll-Up Lenders") shall be deemed to have (x) converted and exchanged its pro rata share of an aggregate principal amount of Remaining Existing Loans equal to \$235,000,000 ("Additional Roll-Up Amount") for Roll-Up Loans and (y) funded an amount of Roll-Up Loans equal to its Roll-Up Amount on the date of entry of the Final Order, without constituting a novation, and satisfied and discharged an aggregate principal amount of Rolled-Up Existing Loans equal to its Roll-Up Amount.

For the avoidance of doubt, the Fronting Lender shall not fund or be deemed to have funded any Roll-Up Loans on behalf of any other Lenders

(c) Amounts repaid or prepaid in respect of the DIP Loans and Roll-Up Loans may not be reborrowed.

## **Section 2.02. Loans and Borrowings.**

(a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Commitments.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Term SOFR Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Term SOFR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that (i) any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement, (ii) such Term SOFR Loan shall be deemed to have been made and held by such Lender, and the obligation of the Borrower to repay such Term SOFR Loan shall nevertheless be to such Lender for the account of such domestic or foreign branch or Affiliate of such Lender and (iii) in exercising such option, such Lender shall use reasonable efforts to minimize increased costs to the Borrower

resulting therefrom (which obligation of such Lender shall not require it to take, or refrain from taking, actions that it determines would result in increased costs for which it will not be compensated hereunder or that it otherwise determines would be disadvantageous to it and in the event of such request for costs for which compensation is provided under this Agreement, the provisions of Section 2.15 shall apply); provided, further, that no such domestic or foreign branch or Affiliate of such Lender shall be entitled to any greater indemnification under Section 2.17 in respect of any US federal withholding tax with respect to such Term SOFR Loan than that to which the applicable Lender was entitled on the date on which such Loan was made (except in connection with any indemnification entitlement arising as a result of any Change in Law after the date on which such Loan was made).

(c) At the commencement of each Interest Period for any Term SOFR Borrowing, such Term SOFR Borrowing shall comprise an aggregate principal amount that is an integral multiple of \$100,000 and not less than \$500,000. Each ABR Borrowing when made shall be in a minimum principal amount of \$100,000 and in an integral multiple of \$500,000. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of ten different Interest Periods in effect for Term SOFR Borrowings at any time outstanding (or such greater number of different Interest Periods as the Administrative Agent (acting at the Direction of the Required Lenders) may agree from time to time).

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not, nor shall it be entitled to, request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date applicable to the relevant Loans.

**Section 2.03.** Requests for Borrowings. Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Term SOFR Loans shall be made upon irrevocable written notice by the Borrower to the Administrative Agent, which shall be given by a Borrowing Request or an Interest Election Request, as applicable. Each such notice must be in the form of a Borrowing Request or an Interest Election Request, as applicable, appropriately completed and signed by a Responsible Officer of the Borrower and must be received by the Administrative Agent (by hand delivery or other electronic transmission (including “.pdf” or “.tif”)) not later than (a) 12:00 p.m. two Business Days (or in the case of the initial Borrowing on the Closing Date, one Business Day) prior to the requested day of any Borrowing of, conversion to or continuation of, Term SOFR Loans and (b) in the case of any Borrowing consisting of ABR Loans, 12:00 p.m. two Business Days prior to the requested day of any such conversion (or, in each case under clauses (a) and (b), such later time as is reasonably acceptable to the Administrative Agent (acting at the Direction of the Required Lenders)); provided, however, that if the Borrower wishes to request Term SOFR Loans having an Interest Period of other than one in duration as provided in the definition of “Interest Period”, the Administrative Agent shall promptly notify the Borrower before the requested date of the relevant Borrowing, conversion or continuation, whether or not the requested Interest Period is available to the relevant Lenders.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Term SOFR Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration. The Administrative Agent shall promptly advise each Lender of the details and amount of any Loan to be made as part of the relevant requested Borrowing.

**Section 2.04.** Roll Up. Interest shall begin to accrue on the Roll-Up Loans from (and including) the date such Roll-Up Loans are deemed made in accordance with Section 2.01(b) (which, in the case of the Interim Draw Roll-Up Loans deemed made pursuant to Section 2.01(b)(i), shall be the Closing Date).

**Section 2.05.** Syndication. Following the Closing Date, the Borrower shall use commercially reasonable efforts to assist the Backstop Parties in connection with a syndication process (the “Syndication”) for the assignment of a proportionate share of Loans in accordance with syndication procedures (the “Syndication Procedures”) acceptable to each of the Administrative Agent (acting at the Direction of the Required Lenders), the Fronting Lender and the Backstop Parties (each in their sole discretion), and reasonably acceptable to the

Borrower. Upon completion of the Syndication, a Schedule 2.05, which shall be prepared by the Specified Lender Advisors and satisfactory to the Required Lenders and the Borrower, shall be delivered to the Administrative Agent and the Borrower, which shall set forth the aggregate principal amount of DIP Loans and Roll-Up Loans held by each Lender upon closing of the Syndication.

**Section 2.06.** [Reserved].

**Section 2.07.** Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder not later than 1:00 p.m., in each case on the Business Day specified in the applicable Borrowing Request by wire transfer of immediately available funds to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's respective Applicable Percentage. Promptly upon receipt of funds from all relevant Lenders (other than Defaulting Lenders), the Administrative Agent will make such Loans available to the Borrower by wire transfer of the amounts so received, in like funds, to the account designated in the relevant Borrowing Request or as otherwise directed by the Borrower; *provided* that, on the date of the Delayed Draw (after giving effect to the funding of DIP Loans on such date), to the extent Liquidity would exceed \$70,000,000 on a pro forma basis, cash proceeds from such Delayed Draw in an amount equal to such excess shall be deposited into the Loan Proceeds Account. Interest shall begin to accrue on the DIP Loans from the date of the Borrowing thereof (including for the avoidance of doubt, any proceeds of DIP Loans deposited into the Loan Proceeds Account).

(b) Unless the Administrative Agent has received notice from any Lender that such Lender will not make available to the Administrative Agent such Lender's share of any Borrowing prior to the proposed date of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with clause (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if any Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate, on an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by the Administrative Agent in the applicable offshore interbank market for such currency and a rate determined by the Administrative Agent (acting at the Direction of the Required Lenders) in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to Loans comprising such Borrowing at such time. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing and the obligation of the Borrower to repay the Administrative Agent such corresponding amount pursuant to this Section 2.07(b) shall cease. If the Borrower pays such amount to the Administrative Agent, the amount so paid shall constitute a repayment of such Borrowing by such amount. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower or any other Loan Party may have against any Lender as a result of any default by such Lender hereunder.

**Section 2.08.** Type; Interest Elections.

(a) Each Borrowing shall initially be of the Type specified in the applicable Borrowing Request and, in the case of any Term SOFR Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert any Borrowing denominated in Dollars to a Borrowing of a different Type or to continue such Borrowing and, in the case of a Term SOFR Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among



the Lenders based upon their Applicable Percentages and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall deliver an Interest Election Request, appropriately completed and signed by a Responsible Officer of the Borrower, to the Administrative Agent in accordance with Section 2.03. If any such Interest Election Request requests a Term SOFR Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(c) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a Term SOFR Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, such Borrowing shall be converted at the end of such Interest Period to an ABR Borrowing. Notwithstanding anything to the contrary herein, if an Event of Default exists and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as such Event of Default exists (i) no outstanding Borrowing may be converted to or continued as a Term SOFR Borrowing and (ii) unless repaid, each Term SOFR Borrowing shall be converted to an ABR Borrowing at the end of the then-current Interest Period applicable thereto.

(e) It is understood and agreed that only a Borrowing denominated in Dollars may be made in the form of, or converted into, an ABR Loan.

**Section 2.09.** Termination and Reduction of Commitments. On the Closing Date (after giving effect to the funding of the DIP Loans to be made on such date), the Commitments of each lender as of the Closing Date will automatically and permanently be reduced by the amount of such DIP Loans funded pursuant to the Initial Draw. On the date on which the Second Draw occurs (after giving effect thereto), the Commitments of each Lender as of such date will automatically and permanently be reduced by the amount of such DIP Loans funded pursuant to the Second Draw. On the date of the Delayed Draw, upon the occurrence of the Delayed Draw, the Commitments of each Lender will automatically and permanently terminate.

**Section 2.10.** Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to repay to the Administrative Agent for the account of each Lender on the Maturity Date, an amount equal to the remainder of the principal amount of outstanding Loans on such date, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment.

(b) Each repayment of Loans shall be applied, first, ratably to the DIP Loans included in the repaid Borrowing, until all DIP Loans are repaid in full, and, second, ratably to the Roll-Up Loans included in the repaid Borrowing, until all Roll-Up Loans are repaid in full.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type and currency thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to clauses (c) or (d) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any manifest error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement; provided, further, that in the event of any inconsistency between the accounts maintained by the Administrative Agent pursuant to clause (d) of this Section and any Lender's records, the accounts of the Administrative Agent shall govern; provided, further, that in the event of any inconsistency between the Register and any other accounts maintained by the Administrative Agent, the Register shall govern absent manifest error.

(f) Any Lender may request that any Loan made by it be evidenced by a Promissory Note. In such event, the Borrower shall prepare, execute and deliver a Promissory Note to such Lender payable to such Lender and its registered permitted assigns; it being understood and agreed that such Lender (and/or its applicable permitted assign) shall be required to return such Promissory Note to the Borrower in accordance with Section 9.05(b)(iii) and upon the occurrence of the Termination Date (or as promptly thereafter as practicable). If any Lender loses the original copy of its Promissory Note, it shall execute an affidavit of loss containing an indemnification provision that is reasonably satisfactory to the Borrower. The obligation of each Lender to execute and deliver an affidavit of loss containing an indemnification provision that is reasonably satisfactory to the Borrower shall survive the Termination Date.

**Section 2.11. Prepayment of Loans.**

**(a) Optional Prepayments.**

(i) Upon prior notice in accordance with clause (a)(iii) of this Section, the Borrower shall have the right at any time and from time to time to prepay any Borrowing of Loans in whole or in part without premium or penalty (but subject to, if applicable, to Section 2.16). Each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages.

(ii) [Reserved].

(iii) The Borrower shall notify the Administrative Agent in writing of any prepayment under this Section 2.11(a) (i) in the case of any prepayment of a Term SOFR Borrowing, not later than 1:00 p.m. three Business Days before the date of prepayment or (ii) in the case of any prepayment of an ABR Borrowing, not later than 11:00 a.m., one Business Day before the date of prepayment (or, in each case, such later time as to which the Administrative Agent (acting at the Direction of the Required Lenders) may reasonably agree). Each such notice shall be irrevocable (except as set forth in the proviso to this sentence) and shall specify the prepayment date and the principal amount of each Borrowing or portion to be prepaid; provided that any notice of prepayment delivered by the Borrower may be conditioned upon the effectiveness of other transactions, in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice relating to any Borrowing, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount at least equal to the amount that would be permitted in the case of a Borrowing of the same Type as provided in Section 2.02(c), or such lesser amount that is then outstanding with respect to such Borrowing being repaid (and in increments of \$100,000 in excess thereof or such lesser incremental amount that is then outstanding with respect to such Borrowing being repaid).



(b) Mandatory Prepayments.

(i) [reserved].

(ii) No later than the fifth Business Day following the receipt of Net Proceeds in respect of any Prepayment Asset Sale or Net Insurance/Condemnation Proceeds, in each case, in excess of \$100,000 per transaction or series of related transactions or \$1,000,000 in the aggregate, the Borrower shall apply 100% of the Net Proceeds or Net Insurance/Condemnation Proceeds received with respect thereto in excess of such threshold (collectively, the “Subject Proceeds”) to prepay the outstanding principal amount of, and accrued interest on, the Loans; provided that (A) if prior to the date any such prepayment is required to be made in respect of Net Proceeds recovered from a Prepayment Asset Sale or Net Insurance/Condemnation Proceeds, the Borrower notifies the Administrative Agent in writing of the Borrower’s intention to reinvest the applicable Subject Proceeds in the business (other than in Cash or Cash Equivalents) of the Borrower or any of its Subsidiaries, in each case, in accordance with the Approved Budget (subject to the Permitted Variance), then the Borrower shall not be required to make a mandatory prepayment under this clause (ii) in respect of the applicable Subject Proceeds to the extent (x) the applicable Subject Proceeds are so reinvested within one month following receipt thereof, or (y) the Borrower or any of its Subsidiaries has committed to so reinvest the applicable Subject Proceeds during such one-month period and the applicable Subject Proceeds are so reinvested within 90 days after the expiration of such one-month period; it being understood that if the applicable Subject Proceeds have not been so reinvested prior to the expiration of the applicable period, the Borrower shall promptly prepay the Loans with the amount of applicable Subject Proceeds not so reinvested as set forth above (without regard to the immediately preceding proviso).

(iii) In the event that the Borrower or any of its Subsidiaries receives Net Proceeds from the issuance or incurrence of Indebtedness by the Borrower or any of its Subsidiaries (other than Indebtedness that is permitted to be incurred under Section 6.01), the Borrower shall, promptly upon (and in any event not later than three (3) Business Days thereafter) the receipt of such Net Proceeds by the Borrower or its applicable Subsidiary, apply an amount equal to 100% of such Net Proceeds to prepay the outstanding principal amount of the Loans.

(iv) Notwithstanding anything in this Section 2.11(b) to the contrary:

(A) the Borrower shall not be required to prepay any amount that would otherwise be required to be paid pursuant to Sections 2.11(b)(ii) above to the extent that the relevant Prepayment Asset Sale is consummated by any Foreign Subsidiary or any Domestic Subsidiary of any Foreign Subsidiary (any such Person, a “Specified Subsidiary”) or the relevant Net Insurance/Condemnation Proceeds are received by any Specified Subsidiary, as the case may be, for so long as the repatriation and/or other transfer to the Borrower of any such amount would be, in the good faith determination of the Borrower, prohibited, restricted or delayed under any Requirement of Law (including for the avoidance of doubt Requirements of Law relating to financial assistance, corporate benefit, thin capitalization, capital maintenance and similar legal principles, restrictions on upstreaming and/or cross-streaming of Cash intra-group and Requirements of Law relating to the fiduciary and/or statutory duties of the directors (or equivalent Persons) of the Borrower and/or any of its Subsidiaries) or would conflict with the fiduciary and/or statutory duties of such Specified Subsidiary’s directors (or equivalent Persons), or result in, or could reasonably be expected to result in, a material risk of personal or criminal liability for any officer, director, employee, manager, member of management or consultant of such Specified Subsidiary (it being agreed that, solely within 365 days following the event giving rise to the relevant Subject Proceeds, the Borrower shall take all commercially reasonable actions required by applicable Requirements of Law to permit such repatriation and/or other transfer) (it being understood that if the repatriation and/or other transfer of the relevant affected Subject Proceeds, as the case may be, is permitted under the applicable

Requirement of Law and, to the extent applicable, would no longer conflict with the fiduciary and/or statutory duties of such director, or result in, or be reasonably expected to result in, a material risk of personal or criminal liability for the Persons described above, in either case, within 365 days following the event giving rise to the relevant Subject Proceeds, the relevant Specified Subsidiary will promptly repatriate and/or transfer the relevant Subject Proceeds, as the case may be, and the repatriated or transferred Subject Proceeds, as the case may be, will be promptly (and in any event not later than two (2) Business Days after such repatriation) applied to the repayment of the Loans pursuant to this Section 2.11(b) to the extent required herein (without regard to this clause (iv)),

(B) the Borrower shall not be required to prepay any amount that would otherwise be required to be paid pursuant to Sections 2.11(b)(ii) to the extent that the relevant Subject Proceeds are received by any joint venture, in each case, for so long as the distribution and/or other transfer to the Borrower of such Subject Proceeds would, in the good faith determination of the Borrower, be prohibited under the Organizational Documents governing such joint venture; it being understood that if the relevant prohibition ceases to exist within the 365-day period following the event giving rise to the relevant Subject Proceeds, the relevant joint venture will promptly distribute the relevant Subject Proceeds, as the case may be, and the distributed or otherwise transferred Subject Proceeds, as the case may be, will be promptly (and in any event not later than two (2) Business Days after such distribution and/or other transfer) applied to the repayment of the Loans pursuant to this Section 2.11(b) to the extent required herein (without regard to this clause (iv)),

(C) the Borrower shall not be required to prepay any amount that would otherwise be required to be paid pursuant to Sections 2.11(b)(ii) to the extent that the relevant Subject Proceeds are received by any Foreign Subsidiary that is not a Loan Party, in each case, for so long as the Borrower determines in good faith that the distribution to the Borrower of such Subject Proceeds would be prohibited under an agreement permitted pursuant to Section 6.04 by which such Foreign Subsidiary is bound governing any Indebtedness; it being understood that if the relevant prohibition ceases to exist within the 365-day period following the end of the event giving rise to the relevant Subject Proceeds, the relevant Foreign Subsidiary will promptly distribute the relevant Subject Proceeds, as the case may be, and the distributed Subject Proceeds, as the case may be, will be promptly (and in any event not later than two (2) Business Days after such distribution) applied to the repayment of the Loans pursuant to this Section 2.11(b) to the extent required herein (without regard to this clause (iv)), and

(D) if the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders) determine in good faith that the repatriation (or other intercompany distribution or transfer) to the Borrower, directly or indirectly, from a Specified Subsidiary as a distribution or dividend (or other intercompany transfer) of any amount required to mandatorily prepay the Loans pursuant to Sections 2.11(b)(ii) above would result in a material and adverse Tax liability (including any withholding Tax) being incurred by Holdings, Intermediate Holdings, the Borrower, any direct or indirect equityholders of the Borrower or any of its Subsidiaries (such amount, a “Restricted Amount”), the amount that the Borrower shall be required to mandatorily prepay pursuant to Sections 2.11(b)(ii) above, as applicable, shall be reduced by the Restricted Amount; provided that to the extent that the repatriation (or other intercompany distribution or transfer) of the relevant Subject Proceeds, directly or indirectly, from the relevant Specified Subsidiary would no longer have a material and adverse Tax consequence within the 365-day period following the event giving rise to the relevant Subject Proceeds, as the case may be, an amount equal to the Subject Proceeds, as applicable and to the extent available, not previously applied pursuant to this clause (D), shall be promptly applied to the repayment of the Loans pursuant to Section 2.11(b) as otherwise required above;

(v) The Borrower shall notify the Administrative Agent in writing of any prepayment under this Section 2.11(b) not later than 1:00 p.m. three Business Days before the relevant date of prepayment (or such later time as of the Administrative Agent (acting at the Direction of the Required Lenders) may reasonably agree).

(vi) [Reserved].

(vii) [Reserved].

(viii) Prepayments made under this Section 2.11(b) shall be (A) accompanied by accrued interest as required by Section 2.13, (B) subject to Section 2.16 and (C) in the case of prepayments of Loans under clause (iii), but shall otherwise be without premium or penalty.

**Section 2.12. Fees.**

(a) [Reserved].

(b) [Reserved].

(c) The Borrower agrees to pay to the Administrative Agent, for the ratable account of each of the Lenders a non-refundable fee (which may be in the form of original issue discount) equal to 2.0% of the aggregate principal amount of the DIP Loans when funded, which fee shall be netted from the Initial Draw, the Second Draw, or the Delayed Draw, as applicable, and which fee shall be payable to each Lender, whether an Initial Lender or a Lender that funds a Loan pursuant to the Syndication Procedures.

(d) The Borrower agrees to pay (i) to the Administrative Agent, for its own account, the annual administration fee described in the Administrative Agent Fee Letter, (ii) to each Backstop Party (as defined in the RSA) a backstop payment in an amount determined as set forth in the RSA; *provided*, that the fees referred in the immediately preceding clause (ii) shall be approved by the Interim Order and fully earned by each such Backstop Party on the date of the Interim Order and shall be payable to each such Lender on the Plan Effective Date (as defined in the RSA), to be paid in the form of cash or New Common Equity (as defined in the RSA) pursuant to the Confirmation Order; *provided* that the backstop payment shall be payable in Cash in the event a Plan is not confirmed (the “Backstop Premium”) and such Cash payment of the Backstop Premium shall be approved by the Interim Order and (iii) to the Fronting Lender for the sole account of the Fronting Lender, the fronting fee set forth in the Fronting Fee Letter.

(e) All fees payable hereunder shall be paid on the dates due, in Dollars and in immediately available funds, to the Administrative Agent. Fees paid shall not be refundable under any circumstances except as otherwise provided in the Fee Letters. Fees payable hereunder shall accrue through and including the last day of the month immediately preceding the applicable fee payment date.

(f) [Reserved].

(g) Unless otherwise indicated herein, all computations of fees shall be made on the basis of a 360-day year and shall be payable for the actual days elapsed (including the first day but excluding the last day). Each determination by the Administrative Agent of the amount of any fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**Section 2.13. Interest.**

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Term SOFR Borrowing shall bear interest at a rate per annum equal to Adjusted Term SOFR for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) [Reserved].

(d) Notwithstanding the foregoing but in all cases subject to Section 9.05(f), if any principal of or interest on any Loan or any fee payable by the Borrower hereunder is not, in each case, paid or reimbursed when due, whether at stated maturity, upon acceleration or otherwise, the relevant overdue amount shall bear interest, to the fullest extent permitted by applicable Requirements of Law, after as well as before judgment, at a rate per annum equal 2.00% plus the rate otherwise applicable to Loans as provided in the preceding paragraphs of this Section or, if no such rate applies, 2.00% plus the rate applicable to ABR Loans; provided that no amount shall accrue pursuant to this Section 2.13(d) on any overdue amount or other amount that is payable to any Defaulting Lender so long as such Lender is a Defaulting Lender.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and on the Maturity Date; provided that (A) interest accrued pursuant to clause (d) of this Section shall be payable on demand, (B) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, (C) in the event of any conversion of any Term SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion, (D) (x) with respect to any Borrowing of DIP Loans, interest shall be paid in cash and (y) with respect to any Borrowing of Roll-Up Loans, interest shall be paid in kind in additional amounts of Roll-Up Loans.

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted Term SOFR shall be determined by the Administrative Agent (acting at the Direction of the Required Lenders), and such determination shall be conclusive absent manifest error. Interest shall accrue on each Loan for the day on which the Loan is made and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall bear interest for one day.

**Section 2.14.** Alternate Rate of Interest.

(a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 2.14, if the Administrative Agent (acting at the Direction of the Required Lenders) determines (which determination shall be conclusive absent manifest error) that for any reason (i) adequate and reasonable means do not exist for determining Adjusted Term SOFR for any requested Interest Period; provided that no Benchmark Transition Event shall have occurred at such time or (ii) the Administrative Agent is advised by the Required Lenders that Adjusted Term SOFR for any requested Interest Period does not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans for such Interest Period, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Term SOFR Loans shall be suspended (to the extent of the affected Term SOFR Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to Adjusted Term SOFR component of the Alternate Base Rate, the utilization of the Adjusted Term SOFR component in determining the Alternate Base Rate shall be suspended, in each case until the Administrative Agent (or in the case of a determination by the Required Lenders, until the Administrative Agent upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term SOFR Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans in the amount specified therein.

(b) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date on which notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Adjusted Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(c) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent (acting at the Direction of the Required Lenders) will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendment implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document other than in consultation with the Borrower in accordance with the definition of “Benchmark Replacement Conforming Changes.”

(d) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.14(d) and (y) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent and/or the Borrower or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14 and/or any component definition used herein.

(e) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent (acting at the Direction of the Required Lenders) in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent and the Borrower may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark setting at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to subclause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative, then the Administrative Agent shall modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.



(f) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Borrowing of, conversion to or continuation of Term SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

**Section 2.15. Increased Costs.**

(a) If any Change in Law:

(i) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in Adjusted Term SOFR);

(ii) subject any Lender to any Taxes (other than (A) Indemnified Taxes and Other Taxes indemnifiable under Section 2.17, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on or with respect to its loans, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) imposes on any Lender any other condition (other than Taxes) affecting this Agreement or Term SOFR Loans made by any Lender;

and the result of any of the foregoing is to increase the cost to the relevant Lender of making or maintaining any Term SOFR Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise) in respect of any Term SOFR Loan in an amount deemed by such Lender to be material, then, within ten (10) days after the Borrower's receipt of the certificate contemplated by clause (c) of this Section, the Borrower will pay to such Lender, as applicable, such additional amount or amounts as will compensate such Lender, as applicable, for such additional costs incurred or reduction suffered; provided that the Borrower shall not be liable for such compensation if (x) the relevant Change in Law occurs on a date prior to the date such Lender becomes a party hereto, (y) such Lender invokes Section 2.20 or (z) in the case of requests for reimbursement under clause (iii) above resulting from a market disruption, (A) the relevant circumstances are not generally affecting the banking market or (B) the applicable request has not been made by Lenders constituting Required Lenders.

(b) If any Lender determines that any Change in Law regarding liquidity or capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law other than due to Taxes (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to liquidity or capital adequacy), then within ten (10) days of receipt by the Borrower of the certificate contemplated by clause (c) of this Section the Borrower will pay to such Lender, as applicable, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Any Lender requesting compensation under this Section 2.15 shall be required to deliver a certificate to the Borrower that (i) sets forth the amount or amounts necessary to compensate such Lender or the holding company thereof, as applicable, as specified in clause (a) or (b) of this Section, (ii) sets forth, in reasonable detail, the manner in which such amount or amounts were determined and (iii) certifies that such



Lender is generally charging such amounts to similarly situated borrowers, which certificate shall be conclusive absent manifest error.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided, however that the Borrower shall not be required to compensate any Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

**Section 2.16. Break Funding Payments.** Subject to Section 9.05(f), in the event of (a) the conversion or prepayment of any principal of any Term SOFR Loan other than on the last day of an Interest Period applicable thereto (whether voluntary, mandatory, automatic, by reason of acceleration or otherwise), or (b) the failure to borrow, convert, continue or prepay any Term SOFR Loan on the date or in the amount specified in any notice delivered pursuant hereto, then, in any such event, the Borrower shall compensate each Lender for the actual amount of any actual out-of-pocket loss, expense and/or liability (including any actual out-of-pocket loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund or maintain Term SOFR Loans, but excluding loss of anticipated profit) that such Lender may incur or sustain as a result of such event. Any Lender requesting compensation under this Section 2.16 shall be required to deliver a certificate to the Borrower that (A) sets forth any amount or amounts that such Lender is entitled to receive pursuant to this Section, the basis therefor and, in reasonable detail, the manner in which such amount or amounts were determined and (B) certifies that such Lender is generally charging the relevant amounts to similarly situated borrowers, which certificate shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

**Section 2.17. Taxes.**

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction for any Taxes, except as required by applicable Requirements of Law. If any applicable Requirements of Law (as determined in the good faith of the applicable withholding agent) requires the deduction or withholding of any Tax from any such payment, then (i) if such Tax is an Indemnified Tax, the amount payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions or withholdings applicable to additional sums payable under this Section 2.17) each Lender (or, in the case of any payment made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable withholding agent shall make such deductions and (iii) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(b) Payment of Other Taxes. Without duplication of Section 2.17(a), in addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law or at the option of the Administrative Agent timely reimburse it for the payment of Other Taxes.

(c) Indemnification by the Borrower. Without duplication of any obligation under Section 2.17(a) or Section 2.17(b), the Borrower shall indemnify the Administrative Agent and each Lender within ten (10) days after receipt of the certificate described in the succeeding sentence, for the full amount of any Indemnified Taxes payable or paid by the Administrative Agent or such Lender, as applicable (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17), and, in each case, any reasonable expenses arising therefrom or with respect thereto, whether or not correctly or legally imposed or asserted. In connection with any request for reimbursement under this Section 2.17(c), the relevant Lender or

the Administrative Agent, as applicable, shall deliver a certificate to the Borrower setting forth, in reasonable detail, the basis and calculation of the amount of the relevant payment or liability. Notwithstanding anything to the contrary contained in this Section 2.17, no Borrower shall be required to indemnify the Administrative Agent or any Lender pursuant to this Section 2.17 for any amount to the extent the Administrative Agent or such Lender fails to notify the Borrower of such possible indemnification claim within 180 days after the Administrative Agent or such Lender receives notice from the applicable taxing authority of the specific tax assessment giving rise to such indemnification claim.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.05(c) relating to the maintenance of a Participant/SPC Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) Evidence of Payments. As soon as practicable after any payment of any Taxes pursuant to this Section 2.17 by any Loan Party to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued, if any, by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment that is reasonably satisfactory to the Administrative Agent (acting at the Direction of the Required Lenders).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of any withholding Tax with respect to any payment made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation as the Borrower or the Administrative Agent may reasonably request to permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Requirements of Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each Lender hereby authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided to the Administrative Agent pursuant to this Section 2.17(f). Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (f)(ii)(A), (ii)(B) and (ii)(D) of this Section) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) each Lender that is a US Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which it becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or

the Administrative Agent), two (2) executed copies of IRS Form W-9 certifying that such Lender is exempt from US federal backup withholding;

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

(1) in the case of any Foreign Lender claiming the benefits of an income tax treaty to which the US is a party, two executed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms), as applicable, establishing any available exemption from, or reduction of, US federal withholding Tax;

(2) two (2) executed copies of IRS Form W-8ECI (or any successor forms);

(3) in the case of any Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (x) two (2) executed copies of a certificate substantially in the form of Exhibit O-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10-percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code, and that no payments payable to such Lender are effectively connected with the conduct of a US trade or business (a “Tax Compliance Certificate”) and (y) two (2) executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable (or any successor forms); or

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

(C) each Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two (2) executed copies of any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in US federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to any Lender under any Loan Document would be subject to US federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b)

or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by applicable Requirements of Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation as is prescribed by applicable Requirements of Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for US federal income tax purposes, references to the foregoing documentation are intended to refer to documentation with respect to such Lender's owner and, as applicable, such Lender.

Each Lender agrees that if any documentation it previously delivered expires or becomes obsolete or inaccurate in any respect (including any specific documentation required above in this Section 2.17(f)), it shall deliver to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so.

(g) Treatment of Certain Refunds. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund (whether received in cash or applied as a credit against any cash taxes payable) of any Indemnified Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.17 with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (g), in no event will the Administrative Agent or any Lender be required to pay any amount to the Borrower pursuant to this clause (g) to the extent that the payment thereof would place the Administrative Agent or such Lender in a less favorable net after-Tax position than the position that the Administrative Agent or such Lender would have been in if the Tax subject to indemnification had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 2.17 shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the relevant Loan Party or any other Person.

(h) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) [Reserved].

(j) Certain Documentation. On or before the date the Administrative Agent becomes a party to this Agreement, the Administrative Agent shall deliver to the Borrower whichever of the following is applicable: (i) if the Administrative Agent is a US Person, two (2) executed copies of IRS Form W-9 certifying that such Administrative Agent is exempt from US federal backup withholding or (ii) if the Administrative Agent is not a US Person, (A) with respect to payments received for its own account, two (2) executed copies of IRS Form W-

8ECI and (ii) with respect to payments received on account of any Lender, two (2) executed copies of IRS Form W-8IMY (together with all required accompanying documentation) certifying that the Administrative Agent is either (x) a “qualified intermediary” and that it assumes primary withholding responsibility under Chapters 3 and 4 of the Code and primary Form 1099 reporting and backup withholding responsibility for payments it receives for the account of others or (y) a “U.S. branch” and may be treated as a United States person for purposes of applicable US federal withholding Tax. At any time thereafter, the Administrative Agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrower. Notwithstanding anything to the contrary in this Section 2.17(j), the Administrative Agent shall not be required to provide any documentation that the Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

**Section 2.18.** Payments Generally; Allocation of Proceeds; Sharing of Payments.

(a) Unless otherwise specified, the Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 3:00 p.m. on the date when due. Each such payment shall be made in immediately available funds (or such other form of consideration as the relevant Lender may agree), without set-off or counterclaim. Any amount received after such time on any date may, in the discretion of the Administrative Agent (acting at the Direction of the Required Lenders), be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated by the Administrative Agent to the Borrower, except that payments pursuant to Sections 2.15, 2.16, 2.17 and/or 9.03 shall be made directly to the Person or Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as provided in Section 2.20, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Lenders in accordance with their respective Applicable Percentages. Each Lender agrees that in computing such Lender’s portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender’s percentage of such Borrowing to the next higher or lower whole Dollar amount. All payments hereunder shall be made in Dollars (or such other form of consideration as the relevant recipient may agree). Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) At all times when Section 2.18(c) does not apply and except as otherwise expressly provided herein, monies to be applied to the Obligations, whether arising from payments by the Loan Parties, realization on Collateral, setoff, or otherwise, shall be allocated as follows (subject in all respects to the Carve-Out):

(i) *First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including attorney costs and fees and expenses of the Administrative Agent payable under Section 9.03 and amounts payable under Section 2.15, 2.16 or 2.17) payable to the Administrative Agent in its capacity as such, until paid in full;

(ii) *Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including attorney costs and fees and expenses of Specified Lender Advisors payable Section 9.03 and amounts payable under Section 2.15, 2.16 or 2.17), ratably among them in proportion to the amounts described in this clause (ii) payable to them, until paid in full;

(iii) *Third*, to pay interest and principal due in respect of all Loans;



(iv) *Fourth*, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, until paid in full;

(v) *Fifth*, ratably to pay any Obligations that are that are due and payable to Defaulting Lenders, until paid in full; and

(vi) *Last*, the balance, if any, to the Borrower or as otherwise required by Requirement of Law.

Amounts shall be applied to each category of Obligations set forth above until paid in full and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category.

(c) After the occurrence and during the continuation of an Event of Default, monies to be applied to the Obligations, whether arising from payments by the Loan Parties, realization on Collateral, setoff or otherwise, shall be allocated as follows (subject, in all respects, to the Carve-Out):

(i) *First*, (i) to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including attorney costs and fees and expenses of the Administrative Agent payable under Section 9.03 and amounts payable under Section 2.15, 2.16 or 2.17) payable to the Administrative Agent in its capacity as such, until paid in full;

(ii) *Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including attorney costs and fees and expenses of Specified Lender Advisors payable under Section 9.03 and amounts payable under Section 2.15, 2.16 or 2.17), ratably among them in proportion to the amounts described in this clause (ii) payable to them, until paid in full;

(iii) *Third*, to pay interest and principal due in respect of all Loans;

(iv) *Fourth*, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, until paid in full;

(v) *Fifth*, ratably to pay any Obligations that are that are due and payable to Defaulting Lenders, until paid in full;

(vi) *Sixth*, to pay any other Obligations until paid in full; and

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

Amounts shall be applied to each category of Obligations set forth above until paid in full and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. The allocations set forth in this Section 2.18(c) are solely to determine the rights and priorities of the Administrative Agent and the Lenders as among themselves, may be changed by agreement among the Administrative Agent and all of the Lenders without the consent of any Loan Party. Appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to



Obligations otherwise set forth above in this Section 2.18(c). This Section 2.18(c) is not for the benefit of or enforceable by any Loan Party.

(d) If any Lender obtains payment (whether voluntary, involuntary, through the exercise of any right of set-off or otherwise) in respect of any principal of or interest on any of its Loans of such Class held by it resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender with Loans of such Class, then the Lender receiving such greater proportion shall purchase (for Cash at face value) participations in the Loans of such Class at such time outstanding to the extent necessary so that the benefit of all such payments shall be shared by the Lenders of such Class in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of such Class; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by any Lender as consideration for the assignment of or sale of a participation in any of its Loans to any permitted assignee or participant, including any payment made or deemed made in connection with Section 9.05. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Requirements of Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise rights of set-off and counterclaim against the Borrower with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.18(d) and will, in each case, notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.18(d) shall from and after the date of such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

(e) Unless the Administrative Agent has received written notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of any Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the applicable Lender the amount due. In such event, if the Borrower has not in fact made such payment, then each Lender severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent (acting at the Direction of the Required Lenders) in accordance with banking industry rules on interbank compensation.

(f) If any Lender fails to make any payment required to be made by it pursuant to Section 2.07(b) or Section 2.18(e), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amount thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

**Section 2.19.** [Reserved].

**Section 2.20.** Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for such Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to Term SOFR, or to determine or charge interest rates based upon Term SOFR, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of Dollars in the applicable interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Term SOFR Loans in the effected

currency or currencies or to convert ABR Loans to Term SOFR Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the Term SOFR component of the Alternate Base Rate, the interest rate on which ABR Loans of such Lender, shall, if necessary to avoid such illegality, be determined by the Administrative Agent (acting at the Direction of the Required Lenders) without reference to the Term SOFR component of the Alternate Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist (which notice such Lender agrees to give promptly). Upon receipt of such notice, (x) the Borrower shall, upon demand from the relevant Lender (with a copy to the Administrative Agent), prepay or convert all of such Lender's Term SOFR Loans to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent (acting at the Direction of the Required Lenders) without reference to the Term SOFR component of the Alternate Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Loans (in which case the Borrower shall not be required to make payments pursuant to Section 2.16 in connection with such payment); (y) [reserved] and (z) if such notice asserts the illegality of such Lender determining or charging interest rates based upon Term SOFR, the Administrative Agent shall during the period of such suspension compute the Alternate Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Term SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the determination of such Lender, otherwise be materially disadvantageous to such Lender.

**Section 2.21. Defaulting Lenders.** Notwithstanding any provision of this Agreement to the contrary, if any Person becomes a Defaulting Lender, then the following provisions shall apply for so long as such Person is a Defaulting Lender:

(a) [Reserved].

(b) The Commitments of such Defaulting Lender shall not be included in determining whether all Lenders, each affected Lender or such other number of Lenders as may be required hereby or under any other Loan Document have taken or may take any action hereunder (including any consent to any waiver, amendment or modification pursuant to Section 9.02); provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which (i) increases the Commitment of such Defaulting Lender hereunder, (ii) reduces the principal amount of any amount owing to such Defaulting Lender or (iii) affects such Defaulting Lender disproportionately and adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(c) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of any Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.11, Section 2.15, Section 2.16, Section 2.17, Section 2.18, Article 7, Section 9.05 or otherwise, and including any amount made available to the Administrative Agent by such Defaulting Lender pursuant to Section 9.09), shall be applied at such time or times as may be determined by the Administrative Agent (acting at the Direction of the Required Lenders) and, where relevant, the Borrower as follows: *first*, to the payment of any amount owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, so long as no Default or Event of Default exists, as the Borrower may request, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement; *third*, as the Administrative Agent (acting at the Direction of the Required Lenders) or the Borrower may elect, to be held in a deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; *fourth*, to the payment of any amount owing to the non-Defaulting Lenders or as a result of any judgment of a court of competent jurisdiction obtained by any non-Defaulting Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, to the payment of any amount owing

to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loan in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loan was made or created, as applicable, at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loan of such Defaulting Lender. Any payment, prepayment or other amount paid or payable to any Defaulting Lender that are applied (or held) to pay amounts owed by any Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

**Section 2.22.** Extension of Maturity Date. The Borrower may, with the consent of the Required Lenders and by notice (which can be delivered by email) to the Administrative Agent not later than the date that is five (5) Business Days (or such shorter period as may be agreed to by the Administrative Agent (acting at the Direction of the Required Lenders)) prior to the then-existing date set forth in clause (i) of the definition of Maturity Date, elect to extend such date to the date that is one (1) month after such then-existing date (the "Extended Maturity Date").

(a) Upon such election (the "Extension Effective Date"), subject to the satisfaction (or waiver by the Required Lenders) of each of the following conditions, the date set forth in clause (i) of the definition of Maturity Date (the "Stated Maturity Date") shall be extended to the Extended Maturity Date:

(i) The Borrower shall pay to the Administrative Agent, for the account of each Lender, a consent fee equal to 1.00% of the aggregate principal amount of the Loans held by such Lender on the date of such extension, with such fee payable in kind in additional amounts of Loans; and

(ii) On and as of the Extension Effective Date, no Default or Event of Default shall have occurred and be continuing.

(b) Notwithstanding anything to the contrary in this Section 2.22, the Borrower may extend the date set forth in clause (i) of the definition of Maturity Date no more than four months beyond the Stated Maturity Date.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES

On the dates and to the extent required pursuant to Section 4.01 or 4.02 or 4.03, as applicable, the Borrower hereby represents and warrants to the Lenders and the Administrative Agent that:

**Section 3.01.** Organization; Powers. Holdings, Intermediate Holdings, the Borrower and each of its Subsidiaries (a) is (i) duly organized or incorporated (as applicable) and validly existing and (ii) in good standing (to the extent such concept exists in the relevant jurisdiction) under the Requirements of Law of its jurisdiction of organization, (b) subject to any restrictions arising on account of the Borrower's or any Subsidiary's status as a "debtor" under the Bankruptcy Code, has all requisite organizational power and authority to own its assets and to carry on its business as now conducted and (c) is qualified to do business in, and is in good standing (to the extent such concept exists in the relevant jurisdiction) in, every jurisdiction where the ownership, lease or operation of its properties or conduct of its business requires such qualification, except, in each case referred to in this Section 3.01 (other than clause (a)(i) and clause (b), in each case, with respect to any Loan Party) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

**Section 3.02.** Authorization; Enforceability. Subject to entry of the DIP Order, the execution, delivery and performance by each Loan Party of each Loan Document to which it is a party are within such Loan Party's corporate or other organizational power and have been duly authorized by all necessary corporate or other organizational action of such Loan Party. Each Loan Document to which any Loan Party is a party has been duly executed and delivered by such Loan Party and is a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to the Legal Reservations.

**Section 3.03.** Governmental Approvals; No Conflicts. Subject to entry of the DIP Order, the execution and delivery of each Loan Document by each Loan Party thereto and the performance by such Loan Party thereof (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) [reserved] and (iii) such consents, approvals, registrations, filings, or other actions the failure to obtain or make which could not be reasonably expected to have a Material Adverse Effect, (b) will not violate any (i) of such Loan Party's Organizational Documents or (ii) Requirement of Law applicable to such Loan Party which violation, in the case of this clause (b)(ii), would reasonably be expected to have a Material Adverse Effect and (c) will not violate or result in a default under any material Contractual Obligation to which such Loan Party is a party which violation, in the case of this clause (c), would reasonably be expected to result in a Material Adverse Effect.

**Section 3.04.** Financial Condition; No Material Adverse Effect.

(a) The financial statements most recently provided pursuant to Section 4.01(c)(i), 5.01(a) or (b), as applicable, present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower on a consolidated basis as of such dates and for such periods in accordance with GAAP, (x) except as otherwise expressly noted herein, and/or (y) subject, in the case of quarterly financial statements, to the absence of footnotes and normal year-end adjustments.

(b) Except for the Chapter 11 Cases or any event or circumstance that is related to the financial conditions that lead to the Chapter 11 Cases being filed, since December 31, 2022, there have been no events, developments or circumstances that have had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**Section 3.05.** Properties.

(a) Schedule 3.05 sets forth the address of each Real Estate Asset (or each set of such assets that collectively comprise one operating property) that is owned in fee simple by any Loan Party.

(b) Holdings, Intermediate Holdings, the Borrower and each of its Subsidiaries have good and valid fee simple title to or rights to purchase, or valid leasehold interests in, or easements or other limited property interests in, all of their respective Real Estate Assets and have good and valid title to their personal property and assets, including the Collateral, in each case, except (i) for defects in title that do not materially interfere with their ability to conduct their business as currently conducted or to utilize such properties and assets for their intended purposes, (ii) for any Lien permitted under Section 6.02 hereof, or (iii) where the failure to have such title would not reasonably be expected to have a Material Adverse Effect.

(c) Holdings, Intermediate Holdings, the Borrower and its Subsidiaries own or otherwise have a license or right to use all rights in Patents, Trademarks, Copyrights and other rights in works of authorship (including all copyrights embodied in software) and all other intellectual property rights ("IP Rights") used to conduct their respective businesses as presently conducted without, to the knowledge of the Borrower, any infringement or misappropriation of the IP Rights of third parties, except to the extent the failure to own or license or have rights to use would not, or where such infringement or misappropriation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**Section 3.06.** Litigation and Environmental Matters.

(a) Except for the Chapter 11 Cases or the actions, suits or proceedings by or before any arbitrator or Governmental Authority that are set forth in Schedule 3.06 attached hereto, taken as a whole, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against or affecting Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except for any matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, (i) neither Holdings, Intermediate Holdings, the Borrower nor any of its Subsidiaries is subject to or has received notice of any Environmental Claim or Environmental Liability or knows of any basis for any Environmental Liability or Environmental Claim of Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries and (ii) neither Holdings, Intermediate Holdings, the Borrower nor any of its Subsidiaries has failed to comply with any Environmental Law or to obtain, maintain or comply with any Governmental Authorization, permit, license or other approval required under any Environmental Law.

(c) Neither Holdings, Intermediate Holdings, the Borrower nor any of its Subsidiaries has treated, stored, transported or Released any Hazardous Materials on, at, under or from any currently or formerly owned, leased or operated real estate or facility in a manner that would reasonably be expected to have a Material Adverse Effect.

**Section 3.07.** Compliance with Laws. Each of Holdings, Intermediate Holdings, the Borrower and each of its Subsidiaries is in compliance with all Requirements of Law applicable to it or its property, except, in each case where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; it being understood and agreed that this Section 3.07 shall not apply to the Requirements of Law covered by Section 3.17 below.

**Section 3.08.** Investment Company Status. No Loan Party is an “investment company” as defined in, or is required to be registered under, the Investment Company Act of 1940.

**Section 3.09.** Taxes. Except to the extent such Taxes are excused or prohibited by the Bankruptcy Code or not otherwise authorized by the Bankruptcy Court with respect to periods prior to the Closing Date, each of Holdings, Intermediate Holdings, the Borrower and each of its Subsidiaries has timely filed or caused to be filed all Tax returns required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it that are due and payable (including in its capacity as a withholding agent), except (a) Taxes that are not required to be paid in accordance with Section 5.03, (b) Taxes (or any requirement to file Tax returns with respect thereto) that are being contested in good faith by appropriate proceedings and for which Holdings, Intermediate Holdings, the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (c) to the extent that the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

**Section 3.10.** ERISA.

(a) Each Plan is in compliance in form and operation with its terms and with ERISA and the Code and all other applicable Requirements of Law, except where any failure to comply would not reasonably be expected to result in a Material Adverse Effect.

(b) In the five-year period prior to the date on which this representation is made or deemed made, no ERISA Event has occurred and is continuing or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect.



**Section 3.11.** Disclosure. With respect to information relating to the Loan Parties and their subsidiaries, all written information (other than the financial estimates, other forward-looking information and/or projected information and information of a general economic or industry-specific nature) concerning Holdings, Intermediate Holdings, the Borrower and its subsidiaries that was prepared by or on behalf of the Borrower or its representatives and made available to any Lender or the Administrative Agent in connection with the Transactions, when taken as a whole, did not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (after giving effect to all supplements and updates thereto from time to time).

**Section 3.12.** [Reserved].

**Section 3.13.** Subsidiaries. Schedule 3.13 sets forth, in each case as of the Closing Date, (a) a correct and complete list of the name of Holdings, Intermediate Holdings, each subsidiary of the Borrower and the ownership interest therein held by Holdings, Intermediate Holdings, the Borrower or its applicable subsidiary, and (b) the type of entity of Holdings, Intermediate Holdings, the Borrower and each of its subsidiaries.

**Section 3.14.** Security Interest in Collateral. Upon execution and delivery thereof by the parties thereto and upon the entry by the Bankruptcy Court of the Interim Order or Final Order, as applicable, the Collateral Documents are effective to create in favor of the Administrative Agent (for the benefit of the Secured Parties) or, if so contemplated by the respective Collateral Document, the Administrative Agent and the other Secured Parties, in each case, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. Upon the entry by the Bankruptcy Court of the Interim Order or the Final Order, as applicable, and in accordance therewith, the security interests and liens granted to the Administrative Agent (for the benefit of the Secured Parties) to secure the Secured Obligations pursuant to the Interim Order or the Final Order, as applicable, and the Collateral Documents shall automatically, and without further action, constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral (subject to the Carve-Out).

**Section 3.15.** Labor Disputes. Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, (a) there are no strikes, lockouts or slowdowns against Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries pending or, to the knowledge of Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries, threatened and (b) the hours worked by and payments made to employees of Holdings, Intermediate Holdings, the Borrower and its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters.

**Section 3.16.** Federal Reserve Regulations. No part of the proceeds of any Loan have been, or will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that results in a violation of the provisions of Regulation U or Regulation X.

**Section 3.17.** OFAC; PATRIOT ACT and FCPA.

(a) (i) None of Holdings, Intermediate Holdings, the Borrower nor any of its Subsidiaries nor, to the knowledge of the Borrower, any director, officer or employee of any of the foregoing is, or is owned 50% or more by, one or more persons who are named on the Specially Designated Nationals List maintained by the US Treasury Department's Office of Foreign Assets Control ("OFAC") or located, organized or resident in a country or territory that is the subject of comprehensive, territory-based US sanctions (as of the date of this Agreement, the Crimea region of Ukraine, Cuba, Iran, North Korea, Syria or Russia); and (ii) the Borrower will not directly or, to its knowledge, indirectly, use the proceeds of the Loans or otherwise make available such proceeds to any Person for the purpose of financing activities of or with any Person, or in or with any country or territory, that is the subject of any US sanctions administered by OFAC or the US State Department, except to the extent permitted, licensed or otherwise approved by OFAC or the US State Department, as applicable.



(b) To the extent applicable, each Loan Party is in compliance, in all material respects, with the USA PATRIOT Act.

(c) (i) Neither Holdings, Intermediate Holdings, the Borrower nor any of its Subsidiaries nor, to the knowledge of the Borrower, any director, officer, agent (solely to the extent acting in its capacity as agents for Holdings, Intermediate Holdings, the Borrower or any of its subsidiaries) or employee of Holdings, Intermediate Holdings, the Borrower or any Subsidiary, has taken any action, directly or indirectly, that would result in a material violation by any such Person of the US Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”), or any applicable anti-corruption Requirement of Law of any applicable Governmental Authority, including, without limitation, making any offer, payment, promise to pay or authorization or approval of the payment of any money, or other property, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in each case in contravention of the FCPA and any applicable anti-corruption Requirement of Law of any Governmental Authority; and (ii) the Borrower has not directly or, to its knowledge, indirectly, used the proceeds of the applicable Loans or otherwise made available such proceeds to any governmental official or employee, political party, official of a political party, candidate for public office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage in violation of the FCPA or any applicable anti-corruption Requirement of Law of any applicable Governmental Authority.

The representations and warranties set forth in Section 3.17 above made by or on behalf of any Foreign Subsidiary are subject to and limited by any Requirement of Law applicable to such Foreign Subsidiary; it being understood and agreed that to the extent that any Foreign Subsidiary is unable to make any representation or warranty set forth in Section 3.17 as a result of the application of this sentence, such Foreign Subsidiary shall be deemed to have represented and warranted that it is in compliance, in all material respects, with any equivalent Requirement of Law relating to anti-terrorism, anti-corruption or anti-money laundering that is applicable to such Foreign Subsidiary in its relevant local jurisdiction of organization.

**Section 3.18.** Insurance. Schedule 3.18 sets forth a true, complete and correct description, in all material respects, of all material insurance (excluding any title insurance) maintained by or on behalf of the Holdings, Intermediate Holdings, the Borrower and its Subsidiaries as of the Closing Date. As of such date, such insurance is in full force and effect.

**Section 3.19.** Use of Proceeds The Borrowers will use the proceeds of the DIP Loans as set forth in Section 5.12. Bankruptcy Matters.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance in all material respects with applicable law and proper notice thereof was given. Proper notice was also provided for (x) the motion seeking approval of the Loan Documents pursuant to the DIP Order and (y) the hearing for the approval of the DIP Order.

(b) The Interim Order (with respect to the period prior to the entry of the Final Order) or the Final Order (with respect to the period on and after the entry of the Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), modified or amended without the Required Lenders’ consent (which consent of the Required Lenders may be communicated via a Direction of the Required Lenders).

ARTICLE 4

CONDITIONS

**Section 4.01. Closing Date DIP Borrowing.** The obligations of each Lender to make DIP Loans on the Closing Date, shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) **Credit Agreement and Loan Documents.** The Administrative Agent and the Specified Lender Advisors shall have received from the Borrower and each other Loan Party, to the extent party thereto, (i) a counterpart signed by the Borrower or such other Loan Party (or written evidence reasonably satisfactory to the Administrative Agent (acting at the Direction of the Required Lenders) (which may include a copy transmitted by facsimile or other electronic method) that such party has signed a counterpart) of (A) this Agreement, (B) each Promissory Note requested by a Lender at least three Business Days prior to the Closing Date and (C) each of the other Loan Documents to be executed and delivered on the Closing Date as set forth on Schedule 4.01(b) and (ii) a Borrowing Request as required by Section 2.03.

(b) **Legal Opinions.** The Administrative Agent shall have received customary legal opinions of (i) Kirkland & Ellis LLP, special New York counsel to the Loan Parties and covering such matters customarily covered in opinions of this type as the Required Lenders shall reasonably request and (ii) customary legal opinions of each counsel set forth on Schedule 4.01(b).

(c) **Financial Statements and Pro Forma Financial Statements.** The Administrative Agent and the Specified Lender Advisors shall have received:

(i) (A) the audited consolidated balance sheet of the Borrower and its subsidiaries as at the end of the fiscal year ended on or about December 31, 2022 and the related audited consolidated statement of cash flows and income statement of the Borrower and its subsidiaries for such fiscal year and (B) the unaudited consolidated balance sheet of the Borrower and its subsidiaries for the fiscal quarter ended on or about September 30, 2023 and the related unaudited consolidated income statement and statement of cash flows of the Borrower and its subsidiaries for the three month period then ended; and

(ii) a pro forma consolidated balance sheet and a related consolidated income statement for the Borrower as of and for, as applicable, the 4 fiscal quarter period ended on or about September 30, 2023, prepared in good faith after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of income); provided that it is understood and agreed that the pro forma financial statements required by this clause (c)(ii) shall not be required to include adjustments for purchase accounting (including adjustments of the type contemplated by Financial Accounting Standards Board Accounting Standard Codification 805, Business Combinations (formerly SFAS 141R)).

(d) **Secretary's, Directors's Certificate and Good Standing Certificates of Loan Parties.** The Administrative Agent shall have received (i) a certificate of each Loan Party on the Closing Date, dated the Closing Date and executed by a Responsible Officer, which shall (A) certify that attached thereto is a true and complete copy of the resolutions, written consents or extracts of minutes of a meeting, as applicable, of its board of directors, board of managers, supervisory board, shareholders, members or other governing body (as the case may be and in each case, to the extent required) authorizing the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect, (B) identify by name and title and bear the signatures of each Responsible Officer or authorized signatory of such Loan Party on the Closing Date that is authorized to sign the Loan Documents to which it is a party on the Closing Date, as applicable and (C) certify (I) that attached thereto is a true and complete copy of the certificate

or articles of incorporation or organization (or memorandum of association, articles of association or other equivalent thereof) of each Loan Party on the Closing Date (certified by the relevant authority of the jurisdiction of organization of such Loan Party) and a true and correct copy of its by-laws or operating, management, partnership or similar agreement (to the extent applicable) and (II) that such documents or agreements have not been amended (except as otherwise attached to such certificate and certified therein as being the only amendments thereto as of such date) and (ii) a good standing certificate, dated as of a recent date for each such Loan Party (other than a UK Loan Party) from its jurisdiction of organization.

(e) Representations and Warranties. The representations and warranties of the Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date; provided that to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such date or for such period; provided, however, that, any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(f) Fees and Expenses. Prior to or substantially concurrently with the funding of the Loans hereunder, the Administrative Agent, the Lenders and the Fronting Lender shall have received (or will receive from the proceeds of the Loans) all fees payable hereunder or under any Loan Documents, including the Fee Letters, on or prior to the Closing Date and, to the extent invoiced at least one Business Day prior to the Closing Date, reimbursement or payment of all reasonable and documented out-of-pocket expenses (including the reasonable and documented fees, charges, disbursements and expenses of the (i) Specified Lender Advisors, (ii) ArentFox Schiff LLP, as counsel to the Administrative Agent and (iii) such other advisors as are necessary and appropriate, subject to the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed)) shall be paid (or will be paid from the proceeds of the Loans), in each case to the extent required to be reimbursed or paid by the Loan Parties hereunder or under any other Loan Document on or prior to the Closing Date.

(g) [Reserved].

(h) [Reserved].

(i) Perfection Certificate. The Administrative Agent (or its counsel) and the Specified Lender Advisors shall have received a completed Perfection Certificate, dated as of the Closing Date and signed by a Responsible Officer of the Borrower, together with all attachments contemplated thereby.

(j) Consents and Approvals. All necessary governmental and third party consents and approvals necessary in connection with the DIP Facility and the Transactions shall have been obtained (without the imposition of any materially adverse conditions that are not acceptable to the Required Lenders (which may be communicated via a Direction of the Required Lenders)) and shall remain in effect and shall not have been vacated, reversed, amended, modified, repealed or stayed in any respect without the Required Lenders’ consent (which consent of the Required Lenders may be communicated via a Direction of the Required Lenders); and the making of the loans under the DIP Facility shall not violate any material applicable requirement of law and shall not be enjoined temporarily, preliminarily or permanently.

(k) No Default. On the Closing Date and immediately after giving effect to the Initial Draw, no Default or Event of Default shall have occurred and be continuing on such date.

(l) USA PATRIOT Act. No later than one (1) Business Day in advance of the Closing Date, the Administrative Agent shall have received all documentation and other information reasonably requested with respect to any Loan Party in writing (which may be by email) by any Lender at least five (5) Business Days in advance of the Closing Date, which documentation or other information is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(m) Beneficial Ownership Certification. To the extent any Loan Party qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, no later than three (3) Business Days in advance of the Closing Date, the Administrative Agent shall have received a Beneficial Ownership Certification in relation to such Loan Party to the extent reasonably requested by it at least five (5) Business Days in advance of the Closing Date.

(n) Officer’s Certificate. The Administrative Agent and the Specified Lender Advisors shall have received a certificate from a Responsible Officer of the Borrower certifying satisfaction of the conditions precedent set forth in Sections 4.01(e) and (k).

(o) No Material Adverse Effect. Except for the Chapter 11 Cases, no event, circumstance or condition shall have occurred since December 31, 2022 that has had, or would reasonably be expected to have, a Material Adverse Effect.

(p) RSA. The RSA shall be in full force and effect and shall not have been amended or modified in a fashion other than in accordance with the RSA and no Consenting Lender Termination Event (as defined in the RSA) shall have occurred and be continuing under the RSA.

(q) Initial Budget. The Administrative Agent and the Lenders shall have received the Approved Budget, and except as reasonably acceptable to the Required Lenders, such Approved Budget shall be substantially consistent with the budget attached as Exhibit B to the Interim Order.

(r) Chapter 11 Cases. The Chapter 11 Cases shall have been commenced by Debtors and the same shall each be a debtor and a debtor in possession. The Chapter 11 Cases of the Debtors shall not have been dismissed or converted to cases under chapter 7 of the Bankruptcy Code. No trustee under chapter 7 or chapter 11 of the Bankruptcy Code shall have been appointed in the Chapter 11 Cases.

(s) Other Restraints. Other than (and subject to the entry of) the Interim Order, there shall not exist any law, regulation, ruling, judgment, order, injunction, or other restraint that prohibits, restricts, or imposes an adverse condition on the DIP Facility or the exercise by the Administrative Agent of its rights as a secured party on a material portion of the Collateral.

(t) Collateral Matters. After giving effect to the Interim Order, the Collateral and Guaranty Requirement shall be satisfied.

(u) First Day Orders. (i) The Bankruptcy Court shall have entered the Interim Order, no later than three (3) Business Days after the Petition Date, and such order shall be in form and substance satisfactory to the Required Lenders (which satisfaction of the Required Lenders may be communicated via a Direction of the Required Lenders) (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent), 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 (which consent of the Required Lenders may be communicated via a Direction of the Required Lenders, as applicable) (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent); and (ii) all “first day” orders shall have been approved and entered by the Bankruptcy Court except as otherwise reasonably agreed by the Required Lenders (which agreement of the Required Lenders may be communicated via a Direction of the Required Lender).

(v) Adequate Protection. The Pre-Petition Administrative Agent and the Pre-Petition Lenders shall have each consented to the use of collateral or received adequate protection (if applicable) in respect of the liens securing their respective obligations pursuant to the Interim Order.

For purposes of determining whether the conditions specified in this Section 4.01 have been satisfied on the Closing Date, by funding the Loans hereunder, each Lender 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 the Administrative Agent (acting at the Direction of the Required Lenders) or such Lender, as the case may be.

**Section 4.02.** Each Credit Extension After the Closing Date. After the Closing Date, the obligation of each Lender to make DIP Loans (including each of the Delayed Draw and, other than clauses (e) and (g) below, the Second Draw) is subject to the satisfaction of the following conditions:

(a) In the case of any Borrowing, the Administrative Agent and the Specified Lender Advisors shall have received a Borrowing Request as required by Section 2.03.

(b) The representations and warranties of Holdings and the Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of any such making of such DIP Loans with the same effect as though such representations and warranties had been made on and as of the date of such making of such DIP Loans; provided that to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such date or for such period; provided, however, that, any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(c) At the time of and immediately after giving effect to the making of such DIP Loans, no Event of Default or Default has occurred and is continuing.

(d) The Bankruptcy Court shall have entered the Final Order, it shall be in full force and effect and it shall not have been vacated, stayed, reversed, modified or amended, in whole or in any part, without the Required Lenders’ written consent (which consent of the Required Lenders may be communicated via a Direction of the Required Lender). All other “second day” orders shall have been entered in form and substance acceptable to the Required Lenders.

(e) Solely with respect to the Delayed Draw, the Confirmation Order shall have been entered by the Bankruptcy Court and shall not have been vacated, reversed, amended, modified, repealed or stayed in any respect without the Required Lenders’ consent (which consent of the Required Lenders may be communicated via a Direction of the Required Lenders).

(f) The RSA shall be in full force and effect and shall not have been amended or modified in a fashion other than in accordance with the RSA and no Consenting Lender Termination Event (as defined in the RSA) shall have occurred and be continuing under the RSA.

(g) Solely with respect to the Delayed Draw, to the extent the proceeds of such draw are to be deposited into the Loan Proceeds Account in accordance with the terms hereof, the Fronting Lender and the Lenders shall have received an executed escrow agreement in form and substance satisfactory to the Fronting Lender and the Required Lenders in their reasonable discretion.

(h) No motion, pleading or application seeking relief affecting the provision of the financing contemplated hereunder in a manner that is adverse to the Lenders, in their capacities as such, shall have been filed in the Bankruptcy Court by any Loan Party without the prior written consent of the Administrative Agent.

(i) The Loan Parties shall be in compliance in all respects with the Milestones.

(j) The Loan Parties shall be in compliance with the Approved Budget in all respects and the proceeds of the DIP Loans shall be used as set forth in the Approved Budget (in each case, subject to the Permitted Variance).



(k) Prior to or substantially concurrently with the funding of the Loans hereunder, the Administrative Agent, the Lenders and the Fronting Lender shall have received (or will receive from the proceeds of the Loans) all fees payable hereunder or under any Loan Documents, including the Fee Letters, on or prior to the Closing Date and, to the extent invoiced at least one Business Day prior to the Closing Date, reimbursement or payment of all reasonable and documented out-of-pocket expenses (including the reasonable and documented fees, charges, disbursements and expenses of the (i) Specified Lender Advisors, (ii) ArentFox Schiff LLP, as counsel to the Administrative Agent and (iii) such other advisors as are necessary and appropriate, subject to the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed)) shall be paid (or will be paid from the proceeds of the Loans), in each case to the extent required to be reimbursed or paid by the Loan Parties hereunder or under any other Loan Document on or prior to the Closing Date.

Each making of DIP Loans after the Closing Date shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in clauses (b) and (c) of this Section.

**Section 4.03.** Conditions Precedent to each Withdrawal. Any Withdrawal after the Delayed Draw is subject to the satisfaction or waiver by the Required Lenders of the following conditions precedent:

(a) The Administrative Agent (for distribution to the Lenders and Specified Lender Advisor) shall have received an executed Withdrawal Notice, executed by the Borrower requesting the proposed Withdrawal thereunder by no later than 2:00 p.m. one (1) Business Day prior to the proposed Withdrawal Date.

(b) The representations and warranties set forth in the Loan Documents shall be true and correct in all material respects as of the Withdrawal Date, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(c) No Event of Default or Default shall have occurred and be continuing on the Withdrawal Date.

(d) The Loan Parties shall be in compliance in all respects with the Milestones.

(e) The Loan Parties shall be in compliance with the Approved Budget in all respects and the proceeds of the DIP Loans shall be used as set forth in the Approved Budget (in each case, subject to the Permitted Variance).

(f) Prior to giving effect to the Withdrawal, Liquidity shall be less than \$70,000,000.

(g) After giving effect to the Withdrawal, Liquidity shall not exceed \$70,000,000.

Upon receipt of the Withdrawal Notice and satisfaction of the conditions set forth in Article 4, the Administrative Agent shall promptly disburse funds by 2:00 p.m. on the applicable Withdrawal Date; *provided* that, if the Required Lenders determine (which determination may be communicated via an email from each of the Specified Lender Advisor) that the Borrower has failed to satisfy the conditions precedent set forth in this Section 4.03 for a Withdrawal Notice and so advise the Administrative Agent in writing (directly or through the Specified Lender Advisor) prior to the Administrative Agent disbursing the Withdrawal, the Administrative Agent shall decline to fund such Withdrawal.

On any date on which the Loans shall have been accelerated, any amounts remaining in the Loan Proceeds Account, as the case may be, may be applied by the Administrative Agent to reduce the Loans then outstanding, in accordance with Section 2.18. None of the Loan Parties shall have (and each Loan Party hereby affirmatively waives) any right to withdraw, claim or assert any property interest in any funds on deposit in the Loan Proceeds Account upon the occurrence and during the continuance of any Default or Event of Default.



The acceptance by the Borrower of the Loans or proceeds of a Withdrawal shall conclusively be deemed to constitute a representation by the Borrower that each of the conditions precedent set forth in Section 4.01 (in the case of acceptance of the Loans made pursuant to the Initial Draw), Section 4.02 (in the case of acceptance of the Loans made pursuant to the Second Draw or the Delayed Draw) and Section 4.03 (in the case of acceptance of a Withdrawal) shall have been satisfied in accordance with its respective terms or shall have been irrevocably waived by the applicable relevant Person; *provided, however*, that the making of any such Loan or Withdrawal (regardless of whether the lack of satisfaction was known or unknown at the time), shall not be deemed a modification or waiver by the Administrative Agent, any Lender or other Secured Party of the provisions of this Article 4 on such occasion or on any future occasion or operate as a waiver of (i) the right of the Administrative Agent and the Lenders to insist upon satisfaction of all conditions precedent with respect to any subsequent funding or issuance, (ii) any Default or Event of Default due to such failure of conditions or otherwise or (iii) any rights of the Administrative Agent or any Lender as a result of any such failure of the Loan Parties to comply.

## ARTICLE 5

### AFFIRMATIVE COVENANTS

From the Closing Date until the date on which all Commitments have expired or terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document (other than (i) contingent indemnification obligations for which no claim or demand has been made and (ii) Banking Services Obligations as to which arrangements reasonably satisfactory to the applicable counterparty have been made) have been paid in full in the manner prescribed by Section 2.18 (such date, the “Termination Date”), Holdings (solely to the extent applicable to it) and the Borrower hereby covenant and agree with the Lenders and the Administrative Agent that:

**Section 5.01. Financial Statements and Other Reports.** The Borrower will deliver to the Administrative Agent for delivery by the Administrative Agent, subject to Section 9.05(f), to each Lender:

(a) Quarterly Financial Statements. Within 60 days after the end of each Fiscal Quarter of each Fiscal Year, commencing with the Fiscal Quarter ending March 31, 2021, the consolidated balance sheet of the Borrower as at the end of such Fiscal Quarter and the related consolidated statements of operations and cash flows of the Borrower for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, and setting forth, in reasonable detail, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Responsible Officer Certification with respect thereto; *provided, however*, that any comparison against the corresponding figures from the corresponding period in any prior Fiscal Year may reflect the financial results of any applicable predecessor entity;

(b) Annual Financial Statements. Within 120 days after the end of each Fiscal Year ending after the Closing Date, (i) the consolidated balance sheet of the Borrower and its subsidiaries as at the end of such Fiscal Year and the related consolidated statements of operations and cash flows of the Borrower for such Fiscal Year and, setting forth, in reasonable detail, in comparative form the corresponding figures for the previous Fiscal Year (to the extent available) and (ii) with respect to such consolidated financial statements, a report thereon of an independent certified public accountant of recognized national standing (which report shall not be subject to (A) a “going concern” qualification (but not a “going concern” explanatory paragraph or like statement or any “emphasis of matter”) (except as resulting from (1) the impending maturity of any Indebtedness prior to the expiry of the four full Fiscal Quarter period following the date of the relevant report and/or (2) the breach or anticipated breach of any financial covenant) or (B) a qualification as to the scope of the relevant audit), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower and its subsidiaries as at the dates indicated and its results of operations and cash flows for the periods indicated in conformity with GAAP;

(c) Narrative Report. Together with each delivery of financial statements pursuant to Section 5.01(a) and (b), a customary narrative report describing the operations of the Borrower and its Subsidiaries for the relevant Fiscal Quarter or Fiscal Year, as applicable;

(d) [Reserved];

(e) Notice of Default. Promptly upon any Responsible Officer of the Borrower obtaining knowledge of (i) any Default or Event of Default or (ii) the occurrence of any event or change that has caused or evidences or would reasonably be expected to cause or evidence, either individually or in the aggregate, a Material Adverse Effect, a reasonably-detailed written notice specifying the nature and period of existence of such condition, event or change and what action the Borrower has taken, is taking and proposes to take with respect thereto;

(f) Notice of Litigation. Promptly upon any Responsible Officer of the Borrower obtaining knowledge of (i) the institution of, or threat of, any Adverse Proceeding not previously disclosed in writing by the Borrower to the Administrative Agent, or (ii) any material development in any Adverse Proceeding that, in the case of either of clauses (i) or (ii), would reasonably be expected to have a Material Adverse Effect, written notice thereof from the Borrower together with such other non-privileged information as may be reasonably available to the Loan Parties to enable the Lenders to evaluate such matters;

(g) ERISA. Promptly upon any Responsible Officer of the Borrower becoming aware of the occurrence of any ERISA Event that would reasonably be expected to have a Material Adverse Effect, a written notice specifying the nature thereof;

(h) Financial Plan. No later than 90 days after the beginning of each Fiscal Year an annual consolidated financial budget prepared by management of the Borrower;

(i) Information Regarding Collateral. The Borrower will furnish to the Administrative Agent prompt (and, in any event, within ten (10) days of the relevant change) written notice of any change in (A) any Loan Party's legal name, (B) any Loan Party's type of organization, (C) any Loan Party's jurisdiction of organization or (D) any Loan Party's organizational identification number, in each case to the extent such information is necessary to enable the Administrative Agent to perfect or maintain the perfection and priority of its security interest in the Collateral of the relevant Loan Party, together with a certified copy of the applicable Organizational Document reflecting the relevant change;

(j) [Reserved].

(k) Certain Reports. Promptly upon their becoming available and without duplication of any obligations with respect to any such information that is otherwise required to be delivered under the provisions of any Loan Document, copies of (i) following an IPO, all financial statements, reports, notices and proxy statements sent or made available generally by Holdings, its applicable Parent Company or the relevant publicly traded entity to all of its security holders acting in such capacity and (ii) all regular and periodic reports and all registration statements (other than on Form S-8 or a similar form) and prospectuses, if any, filed by Holdings, its applicable Parent Company or the relevant publicly traded entity with any securities exchange or with the SEC or any analogous Governmental Authority or private regulatory authority with jurisdiction over matters relating to securities, in each case, other than any prospectus relating to any equity plan; and

(l) Other Information. Such additional information (financial or otherwise) as the Required Lenders may reasonably request from time to time regarding the financial condition or business of the Borrower and its Subsidiaries; provided, however, that neither Holdings nor any Subsidiary shall be required to disclose or provide any information (i) that constitutes non-financial trade secrets or non-financial proprietary information of any Person, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective representatives) is prohibited by 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 the Borrower or any Subsidiary owes confidentiality obligations to any third party (provided such confidentiality obligations were not entered into in contemplation of the requirements of this Section 5.01(l)); provided, however, that the Borrower shall notify the Administrative Agent, to the extent not prohibited by applicable Requirements of Law, resulting in a loss of such privilege or violating such confidentiality obligations, if any information shall have been withheld in reliance on any of the foregoing clauses (i) through (iv).

Documents required to be delivered pursuant to this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower (or a representative thereof) (x) posts such documents or (y) provides a link thereto at the website address listed on Schedule 9.01; provided that, other than with respect to items required to be delivered pursuant to Section 5.01(l) above, the Borrower shall promptly notify (which notice may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents at the website address listed on Schedule 9.01 and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents; (ii) on which such documents are delivered by the Borrower to the Administrative Agent for posting on behalf of the Borrower on IntraLinks/SyndTrak or another relevant website (the “Platform”), 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); or (iii) in respect of the items required to be delivered pursuant to Section 5.01(k) above with respect to information filed by Holdings or its applicable Parent Company with any securities exchange or with the SEC or any analogous governmental or private regulatory authority with jurisdiction over matters relating to securities, on which such items have been made available on the SEC website or the website of the relevant analogous governmental or private regulatory authority or securities exchange (including, for the avoidance of doubt, by way of “EDGAR”).

Notwithstanding the foregoing, the obligations in clauses (a), (b) and (h) of this Section 5.01 may instead be satisfied with respect to any financial statements of the Borrower by furnishing (A) the applicable financial statements of any Parent Company or (B) any Parent Company’s Form 10-K or 10-Q, as applicable, filed with the SEC or any securities exchange, in each case, within the time periods specified in such paragraphs and without any requirement to provide notice of such filing to the Administrative Agent or any Lender; provided that, with respect to each of subclauses (A) and (B), (i) to the extent (1) such financial statements relate to any Parent Company and (2) either (I) such Parent Company (or any other Parent Company that is a subsidiary of such Parent Company) has any material third party Indebtedness and/or material operations (as determined by the Borrower in good faith and other than any operations that are attributable solely to such Parent Company’s ownership of the Borrower and its subsidiaries) or (II) there are material differences between the financial statements of such Parent Company and its consolidated subsidiaries, on the one hand, and Holdings and its consolidated subsidiaries, on the other hand, such financial statements or Form 10-K or Form 10-Q, as applicable, shall be accompanied by unaudited consolidating information that summarizes in reasonable detail the differences between the information relating to such Parent Company and its consolidated subsidiaries, on the one hand, and the information relating to Holdings and its consolidated subsidiaries on a stand-alone basis, on the other hand, which consolidating information shall be certified by a Responsible Officer of the Borrower as having been fairly presented in all material respects and (ii) to the extent such statements are in lieu of statements required to be provided under Section 5.01(b), such statements shall be accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing, which report and opinion shall satisfy the applicable requirements set forth in Section 5.01(b).

**Section 5.02. Existence.** Except as otherwise permitted under Section 6.06 or Section 6.12, Holdings and the Borrower will, and the Borrower will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect (i) its existence and (ii) all rights, franchises, licenses and permits material to its business except, solely in the case of clause (ii), to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect; provided that neither Holdings, Intermediate Holdings, the Borrower nor any of the Borrower’s Subsidiaries shall be required to preserve any such right, franchise, license or permit if a Responsible Officer of such Person or such Person’s board of directors (or similar governing body)

determines that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Lenders.

**Section 5.03. Payment of Taxes.** Except to the extent such Taxes excused or prohibited by the Bankruptcy Code or not otherwise authorized by the Bankruptcy Court with respect to periods prior to the Closing Date, Holdings and the Borrower will, and the Borrower will cause each of its Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income or businesses or franchises before any penalty or fine accrues thereon; provided, however, that no such Tax need be paid if (a) it is being contested in good faith by appropriate proceedings, so long as (i) adequate reserves or other appropriate provisions, as are required in conformity with GAAP, have been made therefor and (ii) in the case of a Tax which has resulted or may result in the creation of a Lien on any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax and/or (b) failure to pay or discharge the same could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

**Section 5.04. Properties.** Holdings and the Borrower will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear and casualty and condemnation excepted, all property reasonably necessary to the normal conduct of business of the Borrower and its Subsidiaries and from time to time will make or cause to be made all needed and appropriate repairs, renewals and replacements thereof except as expressly permitted by this Agreement or where the failure to maintain such properties or make such repairs, renewals or replacements would not reasonably be expected to have a Material Adverse Effect.

**Section 5.05. Insurance.**

(a) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, the Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, such insurance coverage with respect to liability, loss or damage in respect of the assets, properties and businesses of the Borrower and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Each such policy of insurance shall, subject to Section 5.15 hereof, (i) name the Administrative Agent on behalf of the Secured Parties as an additional insured thereunder as its interests may appear and (ii) to the extent available from the relevant insurance carrier, in the case of each casualty insurance policy (excluding any business interruption insurance policy and in respect of any policy of insurance maintained by a Non-US Subsidiary), contain a lender loss payable clause or endorsement that names the Administrative Agent, on behalf of the Secured Parties as the lender loss payee thereunder and, to the extent available from the relevant insurance carrier after submission of a request by the applicable Loan Party to obtain the same, provide for at least 30 days' prior written notice to the Administrative Agent of any modification or cancellation of such policy (or 10 days' prior written notice in the case of the failure to pay any premiums thereunder).

(b) If any Real Estate Asset constituting Collateral is at any time a Flood Hazard Property and the community in which such Real Estate Asset is located participates in the Flood Program, then the Borrower shall, or shall cause each applicable Loan Party to, comply in all material respects with the Flood Insurance Requirements. In connection with any Flood Compliance Event, the Administrative Agent shall provide to the Secured Parties evidence of compliance with the Flood Insurance Requirements, to the extent received from the Borrower. The Borrower and each Loan Party shall, to the extent reasonably requested by the Administrative Agent (acting at the Direction of the Required Lenders), cooperate with the Administrative Agent in connection with compliance with the Flood Insurance Requirements.

(c) If a Flood Redesignation shall occur with respect to any Real Estate Asset constituting Collateral located in the US, the Administrative Agent shall obtain a completed Flood Certificate with respect to the applicable Real Estate Asset, and the Borrower shall comply with the Flood Insurance Requirements with



respect to such Real Estate Asset by not later than the date that is sixty (60) days (or such later date to which the Administrative Agent may reasonably agree) after receipt of such Flood Certificates from the Administrative Agent.

**Section 5.06. Inspections.** Holdings and the Borrower will, and the Borrower will cause each of its Subsidiaries to, permit any authorized representative designated by the Administrative Agent or any of the Lenders to visit and inspect any of the properties of Holdings, Intermediate Holdings, the Borrower and any of its Subsidiaries at which the principal financial records and executive officers of the applicable Person are located, to inspect, copy and take extracts from its and their respective financial and accounting records, and to discuss its and their respective affairs, finances and accounts with its and their Responsible Officers and independent public accountants (provided that the Borrower (or any of its subsidiaries) may, if it so chooses, be present at or participate in any such discussion), all upon reasonable notice and at reasonable times during normal business hours; provided that (a) only the Administrative Agent or any of the Lenders (through the Administrative Agent) may exercise the rights of the Administrative Agent and the Lenders under this Section 5.06, (b) except as expressly set forth in clause (c) below during the continuance of an Event of Default, the Administrative Agent or any Lender shall not exercise such rights more often than one time during any calendar year, (c) when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice and (d) notwithstanding anything to the contrary herein, neither the Borrower nor any Subsidiary shall be required to disclose, permit the inspection, examination or making of copies of or taking abstracts from, or discuss any document, information, or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information of any Person, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective representatives or contractors) is prohibited by 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 the Borrower or any owes confidentiality obligations to any third party (provided that such confidentiality obligations were not entered into in contemplation of the requirements of this Section 5.06).

**Section 5.07. Maintenance of Book and Records.** Holdings and the Borrower will, and the Borrower will cause its Subsidiaries to, maintain proper books of record and account containing entries of all material financial transactions and matters involving the assets and business of Holdings, Intermediate Holdings, the Borrower and its Subsidiaries that are full, true and correct in all material respects and permit the preparation of consolidated financial statements in accordance with GAAP (it being understood and agreed that Foreign Subsidiaries may maintain individual books, accounts and records in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of incorporation or organization).

**Section 5.08. Compliance with Laws.** Holdings and the Borrower will comply, and the Borrower will cause each of its Subsidiaries to comply, with the requirements of all applicable Requirements of Law (including applicable ERISA and all Environmental Laws, any US sanctions administered by OFAC, the USA PATRIOT Act and the FCPA), except to the extent the failure of Holdings, Intermediate Holdings, the Borrower or the relevant Subsidiary to comply would not reasonably be expected to have a Material Adverse Effect; provided that the requirements set forth in this Section 5.08, as they pertain to compliance by any Foreign Subsidiary with any US sanctions administered by OFAC, the USA PATRIOT ACT and the FCPA are subject to and limited by any Requirement of Law applicable to such Foreign Subsidiary in its relevant local jurisdiction and shall not apply to such Foreign Subsidiary to the extent the same conflict with relevant local Requirements of Law applicable to such Foreign Subsidiary.

**Section 5.09. Environmental.** The Borrower will deliver to the Administrative Agent as soon as practicable following the sending or receipt thereof the Borrower or any of its Subsidiaries, a copy of any and all written communications with respect to (A) any Environmental Claim that, individually or in the aggregate, has a reasonable possibility of giving rise to a Material Adverse Effect, (B) any Release required to be reported by Holdings, Intermediate Holdings, the Borrower, or any of its Subsidiaries to any federal, state or local governmental or regulatory agency or other Governmental Authority that reasonably could be expected to have

a Material Adverse Effect, (C) any request made to the Borrower or any of its Subsidiaries for information from any governmental agency that suggests such agency is investigating whether Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity which is reasonably expected to have a Material Adverse Effect and (D) subject to the limitations set forth in the proviso to Section 5.01(l), such other documents and information as from time to time may be reasonably requested by the Administrative Agent (acting at the Direction of the Required Lenders) in relation to any matters disclosed pursuant to this Section 5.09(a);

**Section 5.10.** Hazardous Materials Activities, Etc. Holdings and the Borrower shall promptly take, and the Borrower shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violations of applicable Environmental Laws by Holdings, Intermediate Holdings, the Borrower or its Subsidiaries and address with appropriate corrective or remedial action any Release or threatened Release of Hazardous Materials at or from any Facility, in each case, that would reasonably be expected to have a Material Adverse Effect and (ii) make an appropriate response to any Environmental Claim against Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder, in each case, where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**Section 5.11.** [Reserved].

**Section 5.12.** Use of Proceeds.

(a) Subject to the terms and conditions herein, use the proceeds of the Loans on or after the Closing Date, solely in accordance with the DIP Order and the Approved Budget (subject to the Permitted Variance), including to: (i) to pay related transaction costs, fees and expenses (including attorney's fees required to be paid hereunder and to fund the Carve-Out) with respect to the DIP Facility, (ii) fund interest, fees, and other payments contemplated in respect of the DIP Facility and adequate protection payments contemplated by the DIP Order, (iii) to provide working capital and for other general corporate purposes of the Loan Parties and their Subsidiaries, (iv) to maintain Liquidity greater than or equal to the Minimum Liquidity Threshold and (v) fund the costs of the administration of the Chapter 11 Cases and claims or amounts approved by the Bankruptcy Court for payment, including amounts paid pursuant to "first day" orders.

(b) The Loan Parties shall not be permitted to use the proceeds of the Loans or any cash collateral in contravention of the provisions of the Loan Documents, the Approved Budget (subject to the Permitted Variance), the DIP Order, the Bankruptcy Code or any other applicable insolvency laws governing an ongoing insolvency proceeding with respect to such Loan Party, including any restrictions or limitations on the use of proceeds contained therein.

**Section 5.13.** Covenant to Guarantee Obligations and Provide Security.

(a) Upon the formation or acquisition after the Closing Date of any Subsidiary, on or before the date on which financial statements are required to be delivered pursuant to Section 5.01(a) for the Fiscal Quarter in which the relevant formation, acquisition, designation or cessation occurred (or such longer period as the Administrative Agent (acting at the Direction of the Required Lenders) may reasonably agree), the Borrower shall (A) cause such Subsidiary (other than any Excluded Subsidiary) to comply with the requirements set forth in clause (b) of the definition of "Collateral and Guarantee Requirement" and (B) upon the reasonable request of the Administrative Agent (acting at the Direction of the Required Lenders), cause the relevant Subsidiary (other than any Excluded Subsidiary) to deliver to the Administrative Agent a signed copy of a customary opinion of counsel for such Subsidiary, addressed to the Administrative Agent and the other relevant Secured Parties.

(b) Within ten (10) days (or such longer period as the Administrative Agent (acting at the Direction of the Required Lenders) may reasonably agree) after the acquisition by the Borrower or any Loan Party that is



a Subsidiary of the Borrower of any Material Real Estate Asset other than any Excluded Asset, the Borrower will give the Administrative Agent written notice of the acquisition of such Material Real Estate Asset. Promptly upon receipt of such written notice, the Administrative Agent shall request that each Lender confirm to the Administrative Agent that it has completed any flood insurance diligence that such Lender is required to complete according to its internal policies and procedures. Upon receipt by the Administrative Agent of such confirmation from each Lender, the Administrative Agent shall notify the same in writing to the Borrower and the Borrower shall, or shall cause such Loan Party, to comply with the requirements set forth in clause (d) of the definition of “Collateral and Guarantee Requirement” within 60 days of the receipt of such written notice (or such longer period as the Administrative Agent (acting at the Direction of the Required Lenders) may reasonably agree); provided that the failure to satisfy the requirements set forth in clause (d) of the definition of “Collateral and Guarantee Requirement” with respect to any Material Real Estate Asset due to (x) any Lender not providing such confirmation to the Administrative Agent or (y) the Administrative Agent not providing any written notice contemplated by this clause (b) to the Borrower, in each case, shall not be a Default or give rise to an Event of Default. For purposes of this clause (b), any Material Real Estate Asset owned by any Subsidiary at the time such Subsidiary is required to become a Loan Party under Section 5.12(a) above shall be deemed to have been acquired by such Subsidiary on the first day of the time period within which such Subsidiary is required to become a Loan Party under Section 5.12(a).

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, the Borrower may elect to cause any Subsidiary that is incorporated or organized under the laws of (i) England and Wales, Bermuda, Malta, the US, any state thereof or the District of Columbia or (ii) any other jurisdictions reasonably acceptable to the Administrative Agent and the Required Lenders, which Subsidiary is not otherwise required to be a Subsidiary Guarantor (any such subsidiary, a “Discretionary Guarantor”) to comply with the applicable requirements set forth in clause (c) of the definition of “Collateral and Guarantee Requirement” and, subject to such compliance with such Collateral and Guarantee Requirements and receipt by the Administrative Agent of all documentation and other information in respect of such Subsidiary that is reasonably requested by the Administrative Agent (acting at the Direction of the Required Lenders) or required by regulatory authorities to comply with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, any such Person shall constitute a Loan Party and a Guarantor for all purposes hereunder.

(d) Notwithstanding anything to the contrary herein or in any other Loan Document, it is understood and agreed that:

(i) the Administrative Agent (acting at the Direction of the Required Lenders) may grant extensions of time (including after the expiration of any relevant period, which may 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 Loan Guaranty by any Subsidiary (in connection with assets acquired, or Subsidiaries formed or acquired, after the Closing Date), 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 this Agreement and the Collateral Documents; and

(iii) in no event will the Collateral include any Excluded Asset.

**Section 5.14. Cash Management.** After the Closing Date, each Loan Party shall use commercially reasonable efforts to (a) cause all amounts on deposit and available in any US Deposit Account (other than an Excluded Account) to be swept to one or more concentration deposit accounts maintained by any Loan Party (each, a “Concentration Account”) on a daily or other periodic basis as may be agreed by the Administrative Agent (acting at the Direction of the Required Lenders) and (b) enter into (and maintain at all times) a blocked account agreement (each, a “Blocked Account Agreement”) in respect of each Concentration Account, in form reasonably satisfactory to the Administrative Agent (acting at the Direction of the Required Lenders), with the

applicable Loan Party, the Administrative Agent and the financial institution with which such Loan Party maintains such Concentration Account, pursuant to which Blocked Account Agreement the Administrative Agent (for the benefit of the Secured Parties) is granted control over such Concentration Accounts and the funds on deposit therein; provided that, for the avoidance of doubt, in no event shall any Blocked Account Agreement be required in respect of any Excluded Account.

**Section 5.15.** Further Assurances. Promptly upon request of the Administrative Agent (acting at the Direction of the Required Lenders) and subject to the limitations described in Section 5.12:

(a) The Borrower will, and will cause each other Loan Party to, execute any and all further documents, financing statements, agreements, instruments, certificates, notices and acknowledgments and take all such further actions (including the filing and recordation of financing statements, fixture filings, mortgages and/or amendments thereto and other documents), that may be required under any applicable Requirements of Law and which the Administrative Agent (acting at the Direction of the Required Lenders) may reasonably request to ensure the creation, perfection and priority of the Liens created or intended to be created under the Collateral Documents, all at the expense of the relevant Loan Parties.

(b) The Borrower will, and will cause each other Loan Party to, (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts (including notices to third parties), deeds, certificates, assurances and other instruments as the Administrative Agent (acting at the Direction of the Required Lenders) may reasonably request from time to time in order to ensure the creation, perfection and priority of the Liens created or intended to be created under the Collateral Documents.

**Section 5.16.** Post-Closing Covenants. Subject to the limitations described in Section 5.12, take the actions required by Schedule 5.16 in each case within the time periods specified therein (or, in each case, such longer period to which the Administrative Agent (at the Direction of the Required Lenders) may reasonably agree).

**Section 5.17.** Ratings. Exercise commercially reasonable efforts to obtain within 30 days after the date the Interim Order is entered (or such longer period of time that the Required Lenders may agree in their sole discretion) and maintain (a) public ratings (but not to obtain a specific rating) from Moody's and S&P for the Loans and (b) and public corporate credit ratings and corporate family ratings (but, in each case, not to obtain a specific rating) from Moody's and S&P in respect of the Borrower.

**Section 5.18.** Approved Budget.

(a) The Approved Budget shall set forth, on a weekly basis, among other things, Budgeted Receipt Amounts, Budgeted Disbursement Amounts and Budgeted Restructuring Related Amounts for the 13-week period commencing with the week that includes the Petition Date and such Approved Budget shall be approved in writing by, and be in form and substance satisfactory to, the Required Lenders in their sole discretion (acting in good faith) (it being acknowledged and agreed that the initial Approved Budget attached to this Agreement is approved by and satisfactory to the Required Lenders and is and shall be the Approved Budget unless and until replaced in accordance with terms of this Section) and disclosed in writing to the Administrative Agent. The Approved Budget shall be updated, modified or supplemented by the Borrower every four (4) weeks (or more frequently if determined by the Debtors) commencing with the end of the fourth full week following the Petition Date in writing transmitted to the Administrative Agent and the Lenders, and no such updated, modified or supplemented budget shall be effective if Administrative Agent (acting at the Direction of the Required Lenders in their sole discretion (acting in good faith)) objects in writing (email to be sufficient) within five (5) days of receipt and if no such written objection (email to be sufficient) is received within five (5) days of receipt, the updated, modified or supplemented budget shall be deemed the new Approved Budget; provided that in the event the Required Lenders, on the one hand, and the Borrowers, on the other hand, cannot agree as to an updated,

modified or supplemented budget as a resolution to such an objection, such then current Approved Budget shall remain in effect unless and until a new Approved Budget is not objected to by the Administrative Agent (acting at the Direction of the Required Lenders in their sole discretion (acting in good faith)). Each Approved Budget shall be prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time of preparation.

(b) For each Variance Testing Period, the Borrower shall not permit (i) aggregate Actual Disbursement Amounts (excluding, for the avoidance of doubt, Actual Restructuring Related Amounts) to exceed the aggregate Budgeted Disbursement Amounts (excluding, for the avoidance of doubt, Budgeted Restructuring Related Amounts) or (ii) aggregate Actual Receipts to exceed the aggregate Budgeted Receipts (each calculated on an aggregate basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than the Permitted Variance for such Variance Testing Period. Notwithstanding anything to the contrary set forth herein or otherwise (including in the DIP Order), (i) the requirement to use the proceeds of the Loans in accordance with the Approved Budget (subject to the Permitted Variance) shall not require compliance with the Approved Budget on a line-by-line basis but only on an aggregate disbursement basis as set forth in the first sentence of this Section 5.17(b) and (ii) the Budgeted Restructuring Related Amounts shall not restrict the ability of Holdings, Intermediate Holdings, the Borrowers and their Subsidiaries to incur such expenses or make disbursements in respect thereof.

(c) The Borrowers shall deliver to the Administrative Agent and the Lenders on or before 5:00 p.m. (New York City time) on Thursday following the end of each Variance Testing Period an Approved DIP Budget Variance Report.

The Administrative Agent and the Lenders (i) may assume that the Loan Parties will comply with the Approved Budget (subject to the Permitted Variance) and (ii) shall have no duty to monitor such compliance. The line items in the Approved Budget are estimates only (except as set forth in Section 5.17(b)), and the Loan Parties remain obligated to pay any and all amounts incurred regardless of whether such amounts exceed such estimates. Nothing in any Approved Budget shall constitute an amendment or other modification of any Loan Document.

**Section 5.19.** Additional Reporting Covenants.

(a) Commencing at the end of the month following the Closing Date and continuing every month thereafter, the Borrower shall deliver to the Specified Lender Advisors and counsel to the Administrative Agent and the Pre-Petition Administrative Agent a monthly financial report, including, without limitation, flash financials and key performance indicators, as well as an update on current inventory.

(b) Commencing with the first week following the Closing Date, the Borrower and its advisors (i) shall organize and hold weekly status calls with the Debtors' management team, the Specified Lender Advisors and counsel to the Administrative Agent and the Pre-Petition Administrative Agent, and (ii) shall organize and hold a call every two weeks, as reasonably necessary, with the Debtors' independent directors and Holly Etlin of AlixPartners, with the Specified Lender Advisors and the Lenders.

**Section 5.20.** Milestones.

(a) No later than February 28, 2024, the Debtors shall have commenced the Chapter 11 Cases.

(b) No later than three (3) Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order.

(c) No later than seven (7) days after the Petition Date, the Debtors shall have Filed the Bar Date Motion (as defined in the RTS) and the Solicitation Materials (as defined in the RTS).

(d) No later than thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Bar Date Order (as defined in the RTS).

(e) No later than thirty-five (35) days after the Petition Date, the Bankruptcy Court shall have entered the Final DIP Order.

(f) No later than forty (40) days after the Petition Date, the Bankruptcy Court shall have entered the Disclosure Statement Order (as defined in the RTS).

(g) No later than eighty-five (85) days after the Petition Date, the Bankruptcy Court shall have held a hearing to consider entry of the Confirmation Order.

(h) No later than ninety (90) days after the Petition Date, the Bankruptcy Court shall have entered the Confirmation Order.

(i) No later than one-hundred (100) days after the Petition Date, the Plan Effective Date (as defined in the RSA) shall have occurred.

**Section 5.21. Debtor-in-Possession Obligations.** Comply in a timely manner with their obligations and responsibilities as debtors-in-possession under the Bankruptcy Code, the Bankruptcy Rules, the DIP Order, and any other order of the Bankruptcy Court.

## ARTICLE 6

### NEGATIVE COVENANTS

From the Closing Date and until the Termination Date, the Borrower (and, solely in the case of Section 6.12, Holdings and Intermediate Holdings) covenants and agrees with the Lenders and the Administrative Agent that:

**Section 6.01. Indebtedness.** The Borrower shall not, nor shall it permit any of its Subsidiaries to create, incur, assume or otherwise become or remain liable with respect to any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness of (i) the Borrower to Holdings and/or any Subsidiary, (ii) Holdings to the Borrower and/or any Subsidiary and/or (iii) any Subsidiary to Holdings, Intermediate Holdings, the Borrower and/or any other Subsidiary; provided that in the case of any Indebtedness of any Subsidiary that is not a Loan Party owing to any Loan Party, such Indebtedness shall be (x) (A) approved in a prior writing (email to be sufficient) by the Required Lenders and (B) incurred to fund ordinary course expenses, liabilities and other amounts in accordance with the Approved Budget, subject to the Permitted Variance and (y) be permitted as an Investment under Section 6.05; provided, further, that any Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party incurred in reliance on this clause (b) must be unsecured and expressly subordinated to the Obligations of such Loan Party on terms that are reasonably acceptable to the Administrative Agent (acting at the Direction of the Required Lenders) (including pursuant to an Intercompany Note);

(c) [reserved];

(d) [reserved];

(e) Indebtedness of the Borrower and/or any Subsidiary (i) as a result of or pursuant to tenders, statutory obligations, bids, leases, governmental contracts, trade contracts, surety, stay, customs, appeal, performance and/or return of money bonds or other similar obligations and (ii) in respect of letters of credit,

bank guaranties, surety bonds, performance bonds or similar instruments to support any of the foregoing items, in each case, in the ordinary course of business and consistent with past practices;

(f) Indebtedness of the Borrower and/or any Subsidiary in respect of Banking Services and/or otherwise in connection with Cash management and Deposit Accounts, including Banking Services Obligations and incentive, supplier finance or similar programs, in each case, in the ordinary course of business and consistent with past practices;

(g) (i) guaranties by the Borrower and/or any Subsidiary of the obligations of suppliers, customers and licensees in the ordinary course of business and consistent with past practices, (ii) Indebtedness incurred in the ordinary course of business and consistent with past practices in respect of obligations of the Borrower and/or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services and (iii) Indebtedness in respect of letters of credit, bankers' acceptances, bank guaranties or similar instruments supporting trade payables, warehouse receipts or similar facilities entered into in the ordinary course of business and consistent with past practices;

(h) Guarantees by the Borrower and/or any Subsidiary of Indebtedness or other obligations of the Borrower, any Subsidiary and/or any joint venture with respect to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.01; provided further that this clause (h) shall not permit Guarantees by any Loan Party of Indebtedness or other obligations of any joint venture or Subsidiary that is not a Loan Party;

(i) Indebtedness (other than as described under Section 6.01(a)) of the Borrower and/or any Subsidiary existing, or pursuant to commitments existing, on the Closing Date (including the Existing Loans); provided that any such Indebtedness or commitment having an outstanding principal amount in excess of \$1,000,000 shall be either (i) reflected on the unaudited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal quarter ended on or about September 30, 2023 delivered pursuant to Section 4.01(c)(i) or (ii) described on Schedule 6.01; provided that any Indebtedness outstanding pursuant to this clause (i) which is owed by a Loan Party to any Subsidiary that is not a Loan Party shall be junior and subordinated in right of payment to the same extent required pursuant to Section 6.01(b);

(j) [reserved];

(k) Indebtedness of the Borrower and/or any Subsidiary consisting of obligations owing under incentive, supply, license or similar agreements entered into in the ordinary course of business and consistent with past practices;

(l) Indebtedness of the Borrower and/or any Subsidiary consisting of (i) the financing of insurance premiums in the ordinary course of business and consistent with past practices, (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business and consistent with past practices and/or (iii) obligations to reacquire assets or inventory in connection with customer financing arrangements in the ordinary course of business and consistent with past practices;

(m) so long as no Event of Default then exists, Indebtedness of the Borrower and/or any Subsidiary with respect to Capital Leases and purchase money Indebtedness in an aggregate outstanding principal amount not to exceed \$1,000,000 at any time outstanding;

(n) [reserved]

(o) [reserved];

(p) [reserved];

(q) [reserved];

- (r) [reserved];
- (s) Indebtedness of the Borrower and/or any Subsidiary under any Derivative Transaction not entered into for speculative purposes and in the ordinary course of business and consistent with past practices;
- (t) [reserved];
- (u) so long as no Event of Default then exists, Indebtedness of the Borrower and/or any Subsidiary in an aggregate outstanding principal amount not to exceed \$1,000,000 at any time outstanding;
- (v) [reserved];
- (w) [reserved];
- (x) [reserved];
- (y) [reserved];
- (z) [reserved];
- (aa) Indebtedness (including obligations in respect of letters of credit, bank guarantees, bankers' acceptances, surety bonds, performance bonds or similar instruments with respect to such Indebtedness) incurred by the Borrower and/or any Subsidiary in respect of workers compensation claims, unemployment, property, casualty or liability insurance (including premiums related thereto) or self-insurance, other reimbursement-type obligations regarding workers' compensation claims, other types of social security, pension obligations, vacation pay or health, disability or other employee benefits, in each case, in the ordinary course of business and consistent with past practices;
- (bb) [reserved];
- (cc) [reserved];
- (dd) Indebtedness of the Borrower or any Subsidiary supported by any other letter of credit, bank guarantee or similar instrument permitted by this Section 6.01;
- (ee) unfunded pension fund and other employee benefit plan obligations and liabilities incurred by the Borrower and/or any Subsidiary in the ordinary course of business and consistent with past practices to the extent that the unfunded amounts would not otherwise cause an Event of Default under Section 7.01(i);
- (ff) 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 and consistent with past practices;
- (gg) [reserved];
- (hh) without duplication of any other Indebtedness, all premiums (if any), interest (including post-petition interest and payment in kind interest), accretion or amortization of original issue discount, fees, expenses and charges with respect to Indebtedness of the Borrower and/or any Subsidiary hereunder; and
- (ii) Adequate Protection Obligations.



**Section 6.02.** Liens. The Borrower shall not, nor shall it permit any of its Subsidiaries to, create, incur, assume or permit or suffer to exist any Lien securing Indebtedness on or with respect to any property of any kind owned by it, whether now owned or hereafter acquired, or any income or profits therefrom, except:

- (a) Liens securing the Secured Obligations;
- (b) Liens for Taxes which (i) are not then due, (ii) if due, are not at such time required to be paid pursuant to Section 5.03 or (iii) are being contested in accordance with Section 5.03;
- (c) statutory Liens (and rights of set-off) of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by applicable Requirements of Law, in each case incurred in the ordinary course of business and consistent with past practices (i) for amounts not yet overdue by more than 30 days or (ii) for amounts that are overdue by more than 30 days and that are being contested in good faith by appropriate proceedings, so long as any reserves or other appropriate provisions required by GAAP have been made for any such contested amounts;
- (d) Liens incurred (i) in the ordinary course of business and consistent with past practices in connection with workers' compensation, unemployment insurance and other types of social security laws and regulations, (ii) in the ordinary course of business and consistent with past practices to secure the performance of tenders, statutory obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), (iii) pursuant to pledges and deposits of Cash or Cash Equivalents in the ordinary course of business and consistent with past practices securing (x) any liability for reimbursement or indemnification obligations of insurance carriers providing property, casualty, liability or other insurance to the Borrower and its Subsidiaries or (y) leases or licenses of property otherwise permitted by this Agreement and (iv) to secure obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments posted with respect to the items described in clauses (i) through (iii) above;
- (e) Liens consisting of survey exceptions, easements, rights-of-way, restrictions, covenants, conditions, declarations, encroachments, zoning restrictions and other defects or irregularities in title or environmental deed restrictions, in each case, which do not, in the aggregate, materially interfere with the ordinary conduct of the business of the Borrower and/or its Subsidiaries, taken as a whole;
- (f) Liens consisting of any (i) interest or title of a lessor or sub-lessor under any lease of real estate permitted hereunder, (ii) landlord lien permitted by the terms of any lease, (iii) restriction or encumbrance to which the interest or title of such lessor or sub-lessor may be subject or (iv) subordination of the interest of the lessee or sub-lessee under such lease to any restriction or encumbrance referred to in the preceding clause (iii);
- (g) Liens (i) solely on any Cash earnest money deposits (including as part of any escrow arrangement) made by the Borrower and/or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to any Investment permitted hereunder and (ii) consisting of (A) an agreement to Dispose of any property in a Disposition permitted under Section 6.06 and/or (B) the pledge of Cash as part of an escrow arrangement required in any Disposition permitted under Section 6.06;
- (h) purported Liens evidenced by the filing of UCC financing statements relating solely to operating leases or consignment or bailee arrangements entered into in the ordinary course of business and consistent with past practices, and Liens arising from precautionary UCC financing statements or similar filings;
- (i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;
- (j) Liens in connection with any zoning, building, environmental or similar Requirements of Law or right reserved to or vested in any Governmental Authority to control or regulate the use or dimensions of any

real property or the structures thereon, including Liens in connection with any condemnation or eminent domain proceeding or compulsory purchase order;

(k) [reserved];

(l) Liens in existence on the Closing Date; provided that any such Lien securing Indebtedness having an aggregate principal amount outstanding on the Closing Date in excess of \$1,000,000 (other than the Existing Loans) shall be described on Schedule 6.02; provided, further that (i) no such Lien extends to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 6.01 and (B) proceeds and products thereof, replacements, accessions or additions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 6.01(m) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates) and (ii) any such modification, replacement, refinancing, renewal or extension of the obligations secured or benefited by such Liens, if constituting Indebtedness, is permitted by Section 6.01;

(m) [reserved];

(n) Liens securing Indebtedness permitted pursuant to Section 6.01(m); provided that any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness and proceeds and products thereof, replacements, accessions or additions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 6.01(m) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates);

(o) [reserved];

(p) (i) Liens that are contractual rights of setoff or netting relating to (A) the establishment of depositary relations with banks not granted in connection with the issuance of Indebtedness, (B) pooled deposit or sweep accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business and consistent with the past practices of the Borrower or any Subsidiary, (C) purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business and consistent with past practices and (D) commodity trading or other brokerage accounts incurred in the ordinary course of business and consistent with past practices, (ii) Liens encumbering reasonable customary initial deposits and margin deposits made in the ordinary course of business and consistent with past practices, (iii) bankers Liens and rights and remedies as to Deposit Accounts, (iv) Liens of a collection bank arising under Section 4-208 of the UCC on items in the ordinary course of business and consistent to past practices, (v) Liens in favor of banking or other financial institutions arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions, (vi) Liens on the proceeds of any Indebtedness incurred in connection with any transaction permitted hereunder, which proceeds have been deposited into an escrow account on customary terms to secure such Indebtedness pending the application of such proceeds to finance such transaction and (vii) any general banking Lien over any bank account arising in the ordinary course of business and consistent with past practices;

(q) [reserved];

(r) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business and consistent with the past practices of the Borrower and/or its Subsidiaries;

(s) [reserved];

- (t) [reserved];
- (u) so long as no Event of Default then exists, Liens on assets securing Indebtedness or other obligations incurred in an aggregate outstanding principal amount at any time outstanding not to exceed \$1,000,000;
- (v) (i) Liens on assets securing judgments, awards, attachments and/or decrees and notices of lis pendens and associated rights relating to litigation being contested in good faith not constituting an Event of Default under Section 7.01(h) and (ii) any pledge and/or deposit securing any settlement of litigation;
- (w) leases, licenses, subleases or sublicenses in the ordinary course of business and consistent with past practices which do not secure any Indebtedness;
- (x) Liens on Securities that are the subject of repurchase agreements constituting Investments permitted under Section 6.05 arising out of such repurchase transaction;
- (y) Liens securing obligations in respect letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments permitted under Sections 6.01(d), (e), (g) and (aa);
- (z) Liens arising (i) out of conditional sale, title retention, consignment or similar arrangements for the sale of any asset in the ordinary course of business and permitted by this Agreement or (ii) by operation of law under Article 2 of the UCC (or similar Requirement of Law under any jurisdiction);
- (aa) Liens (i) in favor of any Loan Party and/or (ii) granted by any non-Loan Party in favor of any Subsidiary that is not a Loan Party, in the case of clauses (i) and (ii), securing intercompany Indebtedness permitted under Section 6.01 or Section 6.07;
- (bb) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto in the ordinary course of business and consistent with past practices;
- (cc) (i) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof and (ii) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;
- (dd) Liens securing (i) obligations of the type described in Section 6.01(f) and/or (ii) obligations of the type described in Section 6.01(s);
- (ee) (i) Liens on Capital Stock of joint ventures securing capital contributions to, or obligations of, such Persons and (ii) customary rights of first refusal and tag, drag and similar rights in joint venture agreements and agreements with respect to non-Wholly-Owned Subsidiaries;
- (ff) Liens on cash or Cash Equivalents arising in connection with the defeasance, discharge or redemption of Indebtedness;
- (gg) Liens consisting of the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business and consistent with past practices;
- (hh) [reserved];
- (ii) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located; and

(jj) Adequate Protection Claims.

**Section 6.03.** Restricted Payments; Restricted Debt Payments.

(a) The Borrower shall not, nor shall it permit any of its Subsidiaries to, pay or make any Restricted Payment, except that:

(i) The Borrower may make Restricted Payments, in each case, in accordance with the Approved Budget (and expressly identified as a Restricted Payment therein), and to the extent necessary, to permit any Parent Company:

(A) (1) to pay general administrative costs and expenses (including corporate overhead, legal or similar expenses and customary salary, bonus and other benefits payable to directors, officers, employees, members of management, managers and/or consultants of any Parent Company) and franchise Taxes, and similar fees and expenses, required to maintain the organizational existence or qualification to do business of such Parent Company, in each case, which are reasonable and customary and incurred in the ordinary course of business and consistent with past practices, plus any reasonable and customary indemnification claims made by directors, officers, members of management, managers, employees or consultants of any Parent Company, in each case, to the extent attributable to the ownership or operations of any Parent Company (but excluding, for the avoidance of doubt, the portion of any such amount, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its subsidiaries), and/or its Subsidiaries or (2) to reimburse any Parent Company for fees, expenses or obligations that are otherwise in the ordinary course of business and consistent with past practices and directly incurred on behalf of the Borrower or its Subsidiaries;

(B) any distribution by the Borrower to fund (or to make any distribution to any direct or indirect owners of the Borrower, including distributions to Holdings, to fund), directly or indirectly, the payment of the aggregate amount of consolidated, combined, unitary or similar group Tax liabilities attributable to the income of the Borrower and its Subsidiaries to the extent such tax liabilities do not exceed the Tax that would have been payable by the Borrower and its Subsidiaries as a stand-alone consolidated, combined, unitary or similar group;;

(C) to pay audit and other accounting and reporting expenses of any Parent Company to the extent such expenses are attributable to such Parent Company (but excluding, for the avoidance of doubt, the portion of any such expenses, if any, attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its subsidiaries), the Borrower and its Subsidiaries;

(D) for the payment of any insurance premiums that are payable by or attributable to any Parent Company (but excluding, for the avoidance of doubt, the portion of any such premiums, if any, attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its Subsidiaries), the Borrower and its Subsidiaries;

(E) [reserved];

(F) [reserved]; and

(G) to pay customary salary, bonus, severance and other benefits payable to current or former directors, officers, members of management, managers, employees or consultants of any Parent Company (or any Immediate Family Member of any of the foregoing)

to the extent such salary, bonuses and other benefits are attributable and reasonably allocated to the operations of the Borrower and/or its Subsidiaries, in each case, so long as such Parent Company applies the amount of any such Restricted Payment for such purpose;

(ii) [reserved]

(iii) [reserved];

(iv) the Borrower may make Restricted Payments in accordance with the Approved Budget (and expressly identified as a Restricted Payment therein) (i) to any Parent Company to enable such Parent Company to make Cash payments in lieu of the issuance of fractional shares in connection with any dividend, split or combination thereof in connection with any Investment permitted hereunder or the exercise or vesting of warrants, options, restricted stock units or similar incentive interests or other securities convertible into or exchangeable for Capital Stock of such Parent Company or otherwise to honor a conversion requested by a holder thereof or (ii) consisting of (A) payments made or expected to be made in respect of withholding or similar Taxes payable by any future, present or former officers, directors, employees, members of management, managers or consultants of the Borrower, any subsidiary of the Borrower or Parent Company or any of their respective Immediate Family Members, (B) payments or other adjustments to outstanding Capital Stock in accordance with any management equity plan, stock option plan or any other similar employee benefit or incentive plan, agreement or arrangement in connection with any Restricted Payment and/or (C) repurchases of Capital Stock in consideration of the payments described in clauses (A) and/or (B) above, including demand repurchases, in connection with the exercise or vesting of stock options, restricted stock units or similar incentive interests;

(v) [reserved];

(vi) [reserved];

(vii) [reserved];

(viii) the Borrower may make Restricted Payments in accordance with the Approved Budget (and expressly identified as a Restricted Payment therein) to (i) redeem, repurchase, retire or otherwise acquire any (A) Capital Stock ("Treasury Capital Stock") of the Borrower and/or any Subsidiary or (B) Capital Stock of any Parent Company, in the case of each of subclauses (A) and (B), in exchange for, or out of the proceeds of the substantially concurrent sale (other than to the Borrower and/or any Subsidiary) of, Qualified Capital Stock of the Borrower or any Parent Company to the extent any such proceeds are contributed to the capital of the Borrower and/or any Subsidiary in respect of Qualified Capital Stock ("Refunding Capital Stock") and (ii) declare and pay dividends on any Treasury Capital Stock out of the proceeds of the substantially concurrent sale (other than to the Borrower or a Subsidiary) of any Refunding Capital Stock;

(ix) to the extent constituting a Restricted Payment, the Borrower may consummate any transaction permitted by Section 6.05 (other than Sections 6.05(j), (t) and (ee)), Section 6.06 (other than Section 6.06(g)) and Section 6.07 (other than Sections 6.07(b), (d), (k) and (n));

(x) [reserved];

(xi) [reserved]; and

(xii) the Borrower may declare and make dividend payments or other Restricted Payments payable solely in the Capital Stock of the Borrower or of any Parent Company, in each case in accordance with the Approved Budget (and expressly identified as a Restricted Payment therein);

(xiii) any Person may make Restricted Payments to Holdings or any Wholly-Owned Subsidiary of Holdings that is a Loan Party.

For purposes of this Section 6.03(a) (and subject to Section 1.10(f)), any determination as to the value of any asset (other than Cash) distributed pursuant to a Restricted Payment shall be made in the good faith determination of the Borrower.

(b) the Borrower shall not, nor shall it permit any Subsidiary to, make any prepayment, redemption or repurchase in Cash in respect of principal outstanding under any Restricted Debt (collectively, "Restricted Debt Payments"), except:

(i) so long as no Event of Default then exists, with respect to any purchase, defeasance, redemption, repurchase, repayment or other acquisition or retirement thereof made by exchange for, or out of the proceeds of, Indebtedness permitted by Section 6.01 that has the same or lower priority in terms of payment and security as the Restricted Debt subject to such purchase, defeasance, redemption, repurchase, repayment or other acquisition or retirement, in each case, in accordance with the Approved Budget (and expressly identified as a Restricted Debt Payment therein) ;

(ii) as part of an applicable high yield discount obligation catch-up payment, in each case, in accordance with the Approved Budget (and expressly identified as a Restricted Debt Payment therein); and

(iii) payments of regularly scheduled principal or regularly scheduled interest (including any penalty interest, if applicable) and payments of fees, expenses and indemnification obligations as and when due (other than payments that are prohibited by the subordination provisions thereof), in each case in accordance with the Approved Budget (and expressly identified as a Restricted Debt Payment therein).

**Section 6.04. Burdensome Agreements.** Except as provided herein or in any other Loan Document and/or in any agreements with respect to any refinancings, renewals or replacement of such Indebtedness that is permitted by Section 6.01, the Borrower shall not, nor shall it permit any of its Subsidiaries to, enter into or cause to exist any agreement restricting the ability of (x) any Subsidiary of the Borrower that is not a Loan Party to pay dividends or other distributions to the Borrower or any Loan Party or (y) any Loan Party to create, permit or grant a Lien on any of its properties or assets to secure the Secured Obligations, except restrictions:

(a) set forth in any agreement evidencing (i) Indebtedness of a Subsidiary that is not a Loan Party permitted by Section 6.01, (ii) Indebtedness permitted by Section 6.01 that is secured by a Permitted Lien if the relevant restriction applies only to the Person obligated under such Indebtedness and its Subsidiaries or the assets intended to secure such Indebtedness and (iii) Indebtedness permitted pursuant to clauses (m) and/or (u) of Section 6.01;

(b) arising under customary provisions restricting assignments, subletting or other transfers (including the granting of any Lien) contained in leases, subleases, licenses, sublicenses, joint venture agreements and other agreements entered into in the ordinary course of business and consistent with past practices;

(c) that are or were created by virtue of any Lien granted upon, transfer of, agreement to transfer or grant of, any option or right with respect to any assets or Capital Stock not otherwise prohibited under this Agreement;

(d) [reserved];



(e) set forth in any agreement for any Disposition of any Subsidiary (or all or substantially all of the assets thereof) that restricts the payment of dividends or other distributions or the making of cash loans or advances by such Subsidiary pending such Disposition;

(f) set forth in provisions in agreements or instruments which prohibit the payment of dividends or the making of other distributions with respect to any class of Capital Stock of a Person other than on a pro rata basis;

(g) imposed by customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements;

(h) on Cash, other deposits or net worth or similar restrictions imposed by any Person under any contract entered into in the ordinary course of business and consistent with past practices or for whose benefit such Cash, other deposits or net worth or similar restrictions exist;

(i) set forth in documents which exist on the Closing Date;

(j) [reserved];

(k) arising under or as a result of applicable Requirements of Law or the terms of any license, authorization, concession or permit;

(l) arising in any Hedge Agreement and/or any agreement or arrangement relating to any Banking Services entered into in the ordinary course of business and consistent with past practices;

(m) relating to any asset (or all of the assets) of and/or the Capital Stock of the Borrower and/or any Subsidiary which is imposed pursuant to an agreement entered into in connection with any Disposition of such asset (or assets) and/or all or a portion of the Capital Stock of the relevant Person that is permitted or not restricted by this Agreement;

(n) [reserved];

(o) customary subordination and/or subrogation provisions set forth in guaranty or similar documentation (not relating to Indebtedness for borrowed money) that are entered into in the ordinary course of business and consistent with past practices;

(p) [reserved]; and/or

(q) imposed by any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of any contract, instrument or obligation referred to in clauses (a) through (p) above; provided that no such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith judgment of the Borrower, more restrictive with respect to such restrictions, taken as a whole, than those in existence prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

**Section 6.05. Investments.** The Borrower shall not, nor shall it permit any of its Subsidiaries to, make or own any Investment in any other Person except:

(a) Cash or Investments that were Cash Equivalents at the time made;

(b) (i) Investments existing on the Closing Date in the Borrower or in any subsidiary;  
(ii) Investments made after the Closing Date among the Borrower and/or one or more Subsidiaries; and (iii) Investments made by any Loan Party and/or any Subsidiary that is not a Loan Party in the Borrower or any other

Subsidiary in the form of any contribution or Disposition of the Capital Stock of any Person that is not a Loan Party; provided that, in the case of clauses (ii) or (iii), any Investment by a Loan Party in any Person that is not a Loan Party shall be made solely in accordance with the Approved Budget (and expressly identified as such an Investment therein), subject to the Permitted Variance;

(c) Investments (i) constituting deposits, prepayments, trade credit and/or other credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts and/or (iii) in the form of advances made to distributors, suppliers, licensors and licensees, in each case, in the ordinary course of business and consistent with past practices or, in the case of clause (iii), to the extent necessary to maintain the ordinary course of supplies to the Borrower or any Subsidiary;

(d) [reserved];

(e) [reserved];

(f) Investments (i) existing on, or contractually committed to as of, the Closing Date; provided that, to the extent (x) the contractually committed amount of any such Investment on the Closing Date either exceeds \$1,000,000 or (y) such Investment consists of an Investment by a Loan Party in a Person that is not a Loan Party, such Investment is described on Schedule 6.05; and (ii) any modification, replacement, renewal or extension of any Investment described in clause (i) above so long as no such modification, renewal or extension increases the amount of such Investment or changes the parties thereto except by the terms thereof or as otherwise permitted by this Section 6.05;

(g) Investments received in lieu of Cash in connection with any Disposition permitted by Section 6.06 or any other disposition of assets not constituting a Disposition;

(h) [reserved];

(i) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business and consistent with past practices;

(j) Investments consisting of (or resulting from) Indebtedness permitted under Section 6.01 (other than Indebtedness permitted under Sections 6.01(b) and (h)), Permitted Liens, Permitted Tax Restructuring, Restricted Payments permitted under Section 6.03 (other than Section 6.03(a)(ix) and the final proviso to Section 6.03(a)(i)(B)), Restricted Debt Payments permitted by Section 6.03 and mergers, consolidations, amalgamations, liquidations, windings up, dissolutions or Dispositions permitted by Section 6.06 (other than Section 6.06(a) (if made in reliance on subclause (ii)(y) of the proviso thereto), Section 6.06(b) (if made in reliance on clause (ii) therein), Section 6.06(c)(ii) (if made in reliance on clause (B) therein) and Section 6.06(g));

(k) Investments in the ordinary course of business and consistent with past practices consisting of endorsements for collection or deposit and customary trade arrangements with customers;

(l) Investments (including debt obligations and Capital Stock) received (i) in connection with the bankruptcy or reorganization of any Person, (ii) in settlement of delinquent obligations of, or other disputes with, customers, suppliers and other account debtors arising in the ordinary course of business, (iii) upon foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment and/or (iv) as a result of the settlement, compromise, resolution of litigation, arbitration or other disputes;

(m) loans and advances of payroll payments or other compensation (including deferred compensation) to present or former employees, directors, members of management, officers, managers or consultants of any Parent Company (to the extent such payments or other compensation relate to services

provided to such Parent Company (but excluding, for the avoidance of doubt, the portion of any such amount, if any, attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its subsidiaries)), the Borrower and/or any subsidiary in the ordinary course of business and consistent with past practices;

(n) [reserved];

(o) (i) Investments of any Subsidiary acquired after the Closing Date, or of any Person acquired by, or merged into or consolidated or amalgamated with, the Borrower or any Subsidiary after the Closing Date, in each case as part of an Investment otherwise permitted by this Section 6.05 to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of the relevant acquisition, merger, amalgamation or consolidation and (ii) any modification, replacement, renewal or extension of any Investment permitted under clause (i) of this Section 6.05(o) so long as no such modification, replacement, renewal or extension thereof increases the original amount of such Investment except as otherwise permitted by this Section 6.05;

(p) [reserved];

(q) so long as no Event of Default then exists, Investments made after the Closing Date by the Borrower and/or any of its Subsidiaries in an aggregate amount at any time outstanding not to exceed \$5,000,000.

(r) [reserved];

(s) (i) Guarantees of leases (other than Capital Leases) or of other obligations not constituting Indebtedness and (ii) Guarantees of the lease obligations of suppliers, customers, franchisees and licensees of the Borrower and/or its Subsidiaries, in each case, in the ordinary course of business and consistent with past practices;

(t) [reserved];

(u) [reserved];

(v) [reserved];

(w) Investments under any Derivative Transaction of the type permitted under Section 6.01(s);

(x) [reserved];

(y) Investments made in joint ventures as required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture agreements and similar binding arrangements entered into in the ordinary course of business;

(z) Investments made in connection with any nonqualified deferred compensation plan or arrangement for any present or former employee, director, member of management, officer, manager or consultant or independent contractor (or any Immediate Family Member thereof) of any Parent Company, the Borrower, its subsidiaries and/or any joint venture;

(aa) Investments in the Borrower, any Subsidiary and/or joint venture in connection with intercompany cash management arrangements and related activities in the ordinary course of business and consistent with past practices;

(bb) [reserved];

(cc) [reserved];

(dd) Investments consisting of the non-exclusive licensing, sublicensing or contribution of IP Rights, including pursuant to joint marketing or joint development arrangements with other Persons, in the ordinary course of business and consistent with past practices;

(ee) loans and advances in accordance with the Approved Budget (and expressly identified as a Investment under this Section 6.05(ee) therein), to any Parent Company not in excess of the amount of (after giving effect to any other loan, advance or Restricted Payment in respect thereof) Restricted Payments that are permitted to be made to such Parent Company in accordance with Section 6.03(a)(i), such Investment being treated for purposes of the applicable provision of Section 6.03(a), including any limitation, as a Restricted Payment made pursuant to such clause;

(ff) [reserved]; and

(gg) any Investment (i) made with the Direction of the Required Lenders so long as the consent of all Lenders would not otherwise be required to permit such transaction hereunder, (ii) contemplated by the Approved Budget (and expressly identified as an Investment under this Section 6.05(gg) therein), or (iii) approved by an order of the Bankruptcy Court in form and substance acceptable to the Required Lenders in their sole discretion so long as the consent of all Lenders would not otherwise be required to permit such transaction hereunder.

Notwithstanding the foregoing, (A) in no event shall any Investment of US Material Intellectual Property be made in any Specified Non-US Loan Party or any Person that is not a Loan Party and (B) in no event shall this Section 6.05 permit an IP Separation Transaction.

**Section 6.06.** Fundamental Changes; Disposition of Assets. Other than the Transactions, the Borrower shall not, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger, consolidation or amalgamation, or liquidate, wind up or dissolve themselves (or suffer any liquidation or dissolution), or make any Disposition of any assets in a single transaction or a series of related transactions (including, in each case, pursuant to a Delaware LLC Division), except:

(a) the Borrower or any Subsidiary may be merged, consolidated or amalgamated with or into the Borrower or any Subsidiary or, if applicable, effect a Delaware LLC Division, or in the case of any Subsidiary that is not a Loan Party, liquidated wound up or dissolved; provided that (i) in the case of any such merger, consolidation or amalgamation with or into the Borrower or Delaware LLC Division relating to the Borrower, the Borrower shall be the continuing or surviving Person, and (ii) in the case of any such merger, consolidation, amalgamation or Delaware LLC Division with or into any Subsidiary Guarantor, either (A) the Subsidiary Guarantor shall be the continuing or surviving Person or the continuing or surviving Person (or, in the case of an amalgamation, the Person formed as a result thereof) shall expressly assume the obligations of the Borrower or such Subsidiary Guarantor in a manner reasonably satisfactory to the Administrative Agent (acting at the Direction of the Required Lenders) or (B) the relevant transaction shall be treated as an Investment and shall comply with Section 6.05;

(b) Dispositions (including of Capital Stock) among the Loan Parties (upon voluntary liquidation or otherwise);

(c) (i) the liquidation, dissolution or Delaware LLC Division of any Subsidiary if the Borrower determines in good faith that such liquidation, dissolution or Delaware LLC Division is in the best interests of the Borrower, is not materially disadvantageous to the Lenders (taken as a whole) and the Borrower or any Subsidiary receives the assets (if any) of the relevant liquidated, dissolved or divided Subsidiary; provided that in the case of any liquidation, dissolution or Delaware LLC Division of any Loan Party that results in a distribution of assets to any Subsidiary that is not a Loan Party, such distribution shall be treated as an Investment

and shall comply with Section 6.05 (other than in reliance on clause (j) thereof); (ii) any merger, amalgamation, dissolution, liquidation, consolidation or Delaware LLC Division, the purpose of which is to effect (A) any Disposition otherwise permitted under this Section 6.06 (other than clause (a), clause (b) or this clause (c)) or (B) any Investment permitted under Section 6.05 (other than Section 6.05(j)); and (iii) the conversion of the Borrower or any Subsidiary into another form of entity, so long as such conversion does not adversely affect the value of the Loan Guaranty or Collateral, if any;

(d) (i) Dispositions of inventory or equipment or immaterial assets in the ordinary course of business (including on an intercompany basis) and consistent with past practices and (ii) the leasing or subleasing of real property in the ordinary course of business; provided that, for the avoidance of the doubt, Dispositions of inventory not in the ordinary course of business, including without limitation, liquidations of inventory shall not be permitted pursuant to clause (d) unless as agreed in the Approved Budget;

(e) Dispositions of surplus, obsolete, used or worn out property or other property that, in the reasonable judgment of the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders), is (A) no longer useful in its business (or in the business of any Subsidiary of the Borrower) or (B) otherwise economically impracticable to maintain;

(f) Dispositions of Cash and/or Cash Equivalents and/or other assets that were Cash Equivalents when the relevant original Investment was made;

(g) Dispositions, mergers, amalgamations, consolidations or conveyances that constitute (x) Investments permitted pursuant to Section 6.05 (other than Section 6.05(j)), (y) Permitted Liens and (z) Restricted Payments permitted by Section 6.03(a) (other than Section 6.03(a)(ix));

(h) Dispositions for fair market value in accordance with the Approved Budget; provided that, with respect to any such Disposition, 100% of the consideration for such Disposition shall consist of Cash or Cash Equivalents; provided, further, that (A) immediately prior to and after giving effect to such Disposition, as determined on the date on which the agreement governing such Disposition is executed, no Event of Default then exists and (B) the Net Proceeds of such Disposition shall be applied and/or reinvested as (and to the extent) required by Section 2.11(b)(ii);

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

(j) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to, buy/sell arrangements between joint venture or similar parties set forth in the relevant joint venture arrangements and/or similar binding arrangements, in each case, in the ordinary course of business and consistent with past practices;

(k) Dispositions, discounting or forgiveness of notes receivable or accounts receivable in the ordinary course of business (including to insurers which have provided insurance as to the collection thereof) or in connection with the collection or compromise thereof (including sales to factors);

(l) Dispositions and/or terminations of leases, subleases, licenses or sublicenses (including the provision of software under any open source license), (i) the Disposition or termination of which will not materially interfere with the business of the Borrower and its Subsidiaries (taken as a whole) or (ii) which relate to closed facilities or the discontinuation of any product line, in each case in the ordinary course of business and consistent with past practices;

(m) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or

the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the ordinary course of business;

(n) Dispositions of property subject to foreclosure, casualty, eminent domain or condemnation proceedings (including in lieu thereof or any similar proceeding);

(o) Dispositions or consignments of equipment, inventory or other assets (including leasehold interests in real property) with respect to facilities that are temporarily not in use, held for sale or closed, in each case in the ordinary course of business and consistent with past practices provided that, for the avoidance of the doubt, Dispositions of inventory not in the ordinary course of business, including without limitation, liquidations of inventory shall not be permitted pursuant to this clause (o) unless as agreed in the Approved Budget;

(p) [reserved];

(q) [reserved];

(r) [reserved];

(s) [reserved];

(t) (i) Dispositions, licensing, sublicensing and cross-licensing arrangements involving any technology, intellectual property or IP Rights of the Borrower or any Subsidiary in the ordinary course of business and consistent with past practices, and (ii) Dispositions, abandonments, cancellations or lapses of IP Rights, or any issuances or registrations, or applications for issuances or registrations, of any IP Rights, which, in the reasonable good faith determination of the Borrower are not material to the conduct of the business of the Borrower and/or its Subsidiaries, or are no longer economical to maintain in light of their use;

(u) Dispositions in connection with the termination or unwind of Derivative Transactions or Banking Services Obligations;

(v) [reserved];

(w) Dispositions of Real Estate Assets and related assets in the ordinary course of business in connection with relocation activities for directors, officers, employees, members of management, managers or consultants of any Parent Company, the Borrower and/or any Subsidiary;

(x) Dispositions made to comply with any order of any Governmental Authority or any applicable Requirement of Law;

(y) any merger, consolidation, Disposition or conveyance the purpose of which is to reincorporate or reorganize (i) any Subsidiary in another jurisdiction in the US and/or (ii) any Foreign Subsidiary in the US or any other jurisdiction;

(z) any sale of motor vehicles and information technology equipment purchased at the end of an operating lease and resold thereafter;

(aa) [reserved];

(bb) Dispositions in connection with reorganizations and/or restructurings and/or activities related to tax planning; provided that, after giving effect to any such reorganization, restructuring or activity, neither the Loan Guaranty, taken as a whole, nor the security interest of the Administrative Agent (for the benefit of the Secured Parties) in the Collateral, taken as a whole, is materially impaired;



(cc) any Permitted Tax Restructuring; and

(dd) any transaction of merger, consolidation or amalgamation, liquidation, wind up, dissolution or Disposition (i) made with the Direction of the Required Lenders so long as the consent of all Lenders would not otherwise be required to permit such transaction hereunder, (ii) contemplated by the Approved Budget (and expressly identified as transaction under this Section 6.06(dd) therein), or (iii) approved by an order of the Bankruptcy Court in form and substance acceptable to the Required Lenders in their sole discretion so long as the consent of all Lenders would not otherwise be required to permit such transaction hereunder.

It being understood and agreed (a) to the extent that any Collateral is Disposed of as expressly permitted by this Section 6.06, such Collateral shall be Disposed of free and clear of the Liens created by the Loan Documents, which Liens shall be automatically released upon the consummation of such Disposition; it being understood and agreed that the Administrative Agent (acting at the Direction of the Required Lenders) shall be authorized to take, and shall take any actions reasonably requested by the Borrower in order to effect the foregoing; provided that, in the case of a Disposition by a Loan Party to another Loan Party, the transferee Loan Party shall, substantially concurrently with such release, cause the relevant assets Disposed to it to become part of its Collateral (other than to the extent such assets constitute Excluded Assets) and (b) subject to Section 1.10(f), any determination of fair market value of any asset other than Cash for purposes of this Section 6.06 shall be made by the Borrower in good faith at its election either (1) at the time of the execution of the definitive agreement governing such Disposition or (2) the date on which such Disposition is consummated.

Notwithstanding the foregoing, (A) in no event shall any Disposition of US Material Intellectual Property be made to any Specified Non-US Loan Party or any Person that is not a Loan Party, (B) in no event shall this Section 6.06 permit an IP Separation Transaction, (C) in no event shall this Section 6.06 or any other provision of this Agreement permit Dispositions of inventory not in the ordinary course of business (it being understood, for the avoidance of doubt, that the liquidation and any other expedited sell down of inventory shall not be considered to be in the ordinary course of business) without the prior written consent of the Required Lenders.

**Section 6.07. Transactions with Affiliates.** The Borrower shall not, nor shall it permit any of its Subsidiaries to, (x) pay any management, monitoring, consulting, transaction, oversight, advisory's or similar fees to any Investor or (y) enter into any other transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any of their respective Affiliates on terms that are less favorable to the Borrower or such Subsidiary, as the case may be (as reasonably determined by the Borrower), than those that might be obtained at the time in a comparable arm's-length transaction from a Person who is not an Affiliate; provided that the foregoing restriction shall not apply to:

(a) any transaction between or among Holdings, Intermediate Holdings, the Borrower and/or one or more Subsidiaries (or any entity that becomes a Subsidiary as a result of such transaction) to the extent permitted or not restricted by this Agreement; provided that transactions between any Loan Party, on the one hand, and any Subsidiary that is not a Loan Party, on the other hand, shall be permitted under this clause (a) only if in the ordinary course of business and consistent with past practices.

(b) any issuance, sale or grant of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of employment arrangements, stock options and stock ownership plans approved by the board of directors (or equivalent governing body) of any Parent Company or of the Borrower or any Subsidiary;

(c) (i) any collective bargaining, employment or severance agreement or compensatory (including profit sharing) arrangement (including salary or guaranteed payment and bonuses) entered into by the Borrower or any of its Subsidiaries with their respective current or former officers, directors, members of management, managers, employees, consultants or independent contractors or those of any Parent Company, (ii) any subscription agreement or similar agreement pertaining to the repurchase of Capital Stock pursuant to put/call

rights or similar rights with current or former officers, directors, members of management, managers, employees, consultants or independent contractors and (iii) transactions pursuant to any employee compensation, benefit plan, stock option plan or arrangement, any health, disability or similar insurance plan which covers current or former officers, directors, members of management, managers, employees, consultants or independent contractors or any employment contract or arrangement;

(d) (i) transactions permitted by Sections 6.01(b), (d), (h), (i) and (ee), 6.03 and 6.05(b), (m), (o), (t), (y), (z) and (aa) and (ii) issuances of Capital Stock and issuances and incurrences of Indebtedness not restricted by this Agreement;

(e) [reserved];

(f) [reserved];

(g) the Transactions and the payment of Transaction Costs;

(h) [reserved];

(i) Guarantees permitted by Section 6.01 or Section 6.05;

(j) [reserved];

(k) the payment of customary fees and reasonable out-of-pocket costs and expenses to, and indemnities provided on behalf of, members of the board of directors (or similar governing body), officers, employees, members of management, managers, members, shareholders, consultants and independent contractors of the Borrower and/or any of its Subsidiaries in the ordinary course of business and, in the case of payments to such Person in such capacity on behalf of any Parent Company, to the extent attributable to the operations of the Borrower or its subsidiaries;

(l) transactions with customers, clients, suppliers, joint ventures, purchasers or sellers of goods or services or providers of employees or other labor entered into in the ordinary course of business, which are (i) fair to the Borrower and/or its applicable Subsidiary in the good faith determination of the Borrower (or its board of directors (or similar governing body) or senior management) or (ii) on terms at least as favorable as might reasonably be obtained from a Person other than an Affiliate;

(m) the payment of reasonable out-of-pocket costs and expenses related to registration rights and customary indemnities provided to shareholders under any shareholder agreement;

(n) (i) any purchase by Holdings of the Capital Stock of (or contribution to the equity capital of) the Borrower and (ii) any intercompany loans permitted by Section 6.01 and made by the Borrower to Holdings or any Subsidiary;

(o) [reserved];

(p) any issuance, sale or grant of securities or other payments, awards or grants in Cash, securities or otherwise pursuant to, or the funding of employment arrangements, stock options and stock ownership or incentive plans approved by a majority of the members of the board of directors (or similar governing body) or a majority of the disinterested members of the board of directors (or similar governing body) of the Borrower in good faith; and

(q) any Permitted Tax Restructuring.

**Section 6.08.** Conduct of Business. From and after the Closing Date, the Borrower shall not, nor shall it permit any of its Subsidiaries to, engage in any material line of business other than (a) the businesses engaged in by the Borrower or any Subsidiary on the Closing Date and similar, incidental, complementary, ancillary or related businesses and (b) such other lines of business to which the Administrative Agent (acting at the Direction of the Required Lenders) may consent.

**Section 6.09.** Amendments or Waivers of Organizational Documents. The Borrower shall not, nor shall it permit any Subsidiary to, amend or modify their respective Organizational Documents, in each case in a manner that is adverse to the Lenders (in their capacities as such), taken as a whole, without obtaining the prior written consent of the Administrative Agent (acting at the Direction of the Required Lenders); provided that, for purposes of clarity, it is understood and agreed that the Borrower and/or any Subsidiary may effect a change to its respective organizational form and/or consummate any other transaction that is permitted under Section 6.06.

**Section 6.10.** Amendments of or Waivers with Respect to Restricted Debt. The Borrower shall not, nor shall it permit any of its Subsidiaries to, amend or otherwise modify (a) the subordination terms applicable to any Restricted Debt or (b) any other terms applicable to any Restricted Debt, in each case, if the effect of such amendment or modification, together with all other amendments or modifications made, is materially adverse to the interests of the Lenders (in their capacities as such).

**Section 6.11.** Fiscal Year. The Borrower shall not change its Fiscal Year-end to a date other than as described in the definition of Fiscal Year.

**Section 6.12.** Holdings. Each of Holdings and Intermediate Holdings shall not:

(a) incur or suffer to exist any third party Indebtedness for borrowed money other than (i) the Indebtedness permitted to be incurred by Holdings and Intermediate Holdings under the Loan Documents or otherwise in connection with the Transactions, (ii) Guarantees of Indebtedness or other obligations of the Borrower and/or any Loan Party that are otherwise permitted hereunder, and (iii) any Indebtedness owing to the Borrower or any Loan Party to the extent resulting from an Investment permitted by Section 6.05;

(b) create or suffer to exist any Lien on any asset now owned or hereafter acquired by it other than (i) the Liens created under the Collateral Documents to which it is a party, and (ii) any other Lien created in connection with the Transactions;

(c) make any Investment in any Person that is not a Loan Party unless such Investment is made solely in accordance with the Approved Budget (and expressly identified as an Investment under this Section 6.12(c) therein);

(d) pay or make any Restricted Payment, except (i) any Restricted Payment made solely by Intermediate Holdings to Holdings and (ii) any Restricted Payment made entirely in accordance with Approved Budget (and expressly identified as a Restricted Payment under this Section 6.12(d) therein);

(e) consolidate or amalgamate with, or merge with or into, or convey, sell or otherwise Dispose of all or substantially all of its assets to, any Person.

**Section 6.13.** Minimum Liquidity. Commencing with the first full calendar week after the Petition Date, the Debtors shall maintain Liquidity of not less than the Minimum Liquidity Threshold as of the last business day of every second calendar week.

**Section 6.14.** Material Intellectual Property. Make any Investment, Restricted Payment, Disposition, or any other asset sale or other disposition of, or otherwise assign or transfer, any Material Intellectual Property to a Subsidiary, joint venture or other Person that is not a Loan Party, other than non-

exclusive licenses for bona fide operating business purposes (as reasonably determined by the Borrower in good faith).

**Section 6.15.** Transfers to Non-Loan Parties. Notwithstanding anything herein or the other Loan Documents to the contrary, no Loan Party shall make any Investment, Restricted Payment, Disposition, or any other asset sale or disposition of, or otherwise assign or transfer, any asset, in each case, to a Subsidiary, joint venture or other Person that is not a Loan Party, other than (i) cash as permitted under Section 6.01(a) or Section 6.05(b) and (ii) assets that are disposed of, or otherwise assigned or transferred, in the ordinary course of business and consistent with past practice.

**Section 6.16.** Sponsor Fees. Notwithstanding anything herein or the other Loan Documents to the contrary, none of the Borrower or any Subsidiary shall make any payment to or on behalf of the Sponsor consisting of any management, monitoring, consulting, transaction or advisory fees or related indemnities and expenses, or payments for financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, or payments by any Loan Party to outside directors of any Parent Company, including for the avoidance of doubt, any payments of professional fees, charges and disbursements (including fees, charges and disbursements of any counsel).

**Section 6.17.** Orders. Notwithstanding anything to the contrary herein, use any portion or proceeds of the Loans or the Collateral, or disbursements set forth in the Approved Budget, for payments or purposes that would violate the terms of the DIP Order.

**Section 6.18.** Insolvency Proceeding Claims. Incur, create, assume, suffer to exist or permit any other super priority administrative claim which is *pari passu* with or senior to the claim of the Administrative Agent or the Lenders against the Debtors, except as set forth in the DIP Order or the Cash Management Order.

**Section 6.19.** Bankruptcy Actions. Absent Direction of the Required Lenders, file a motion seeking, or consent to the entry of, any order of the Bankruptcy Court granting authority to (x) take any action that is prohibited by the terms of this Agreement, the DIP Order or the other Loan Documents or (y) refrain from taking any action that is required to be taken by the terms of the DIP Order or any of the other Loan Documents.

## ARTICLE 7

### EVENTS OF DEFAULT

**Section 7.01.** Events of Default. If any of the following events (each, an “Event of Default”) shall occur:

(a) Failure To Make Payments When Due. Failure by the Borrower to pay (i) any installment of principal of any Loan when due, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (ii) any interest on any Loan or any fee or any other amount due hereunder within three (3) Business Days after the date due; or

(b) Default in Other Agreements. (i) Failure by Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of third-party Indebtedness for borrowed money (other than (x) Indebtedness referred to in clause (a) above and (y) intercompany Indebtedness permitted under this Agreement) with an individual outstanding principal amount exceeding the Threshold Amount, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries with respect to any other term of (A) one or more items of third-party Indebtedness for borrowed money (other than (x) Indebtedness referred to in clause (a) above and (y) intercompany Indebtedness permitted under this Agreement) with an individual outstanding principal amount exceeding the Threshold Amount or (B) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each

case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, such Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; provided that (I) subclause (ii) of this clause (b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property securing such Indebtedness if such sale or transfer is permitted hereunder and (II) any failure described under clauses (i) or (ii) above is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Article 7; or

(c) Breach of Certain Covenants. Failure of any Loan Party, as required by the relevant provision, to perform or comply with any term or condition contained in (a) Section 5.01(e)(i), Section 5.02 (as it relates to the Borrower), Section 5.12, Section 5.16, Section 5.18, Section 5.20 or Article 6; or

(d) Breach of Representations, Etc. Any representation, warranty or certification made or deemed made by any Loan Party in any Loan Document or in any certificate required to be delivered in connection herewith or therewith being untrue in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Loan Documents. Other than as a result of filing the Chapter 11 Cases, Default by any Loan Party in the performance of or compliance with any term contained herein or any of the other Loan Documents, other than any such term referred to in any other Section of this Article 7, which default has not been remedied or waived within fifteen (15) days after receipt by the Borrower of written notice thereof from the Administrative Agent (on behalf of the Lenders); or

(f) [Reserved].

(g) [Reserved].

(h) Judgments and Attachments. The entry or filing of one or more final money judgments, writs or warrants of attachment or similar process against Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries or any of their respective assets involving in an individual amount at any time in excess of the Threshold Amount (in either case to the extent not adequately covered by indemnity from a third party, by self-insurance (if applicable) or by insurance as to which the relevant third party insurance company has been notified and not denied coverage), which judgment, writ, warrant or similar process remains unpaid, undischarged, unvacated, unbonded or unstayed pending appeal for a period of twenty-five (25) consecutive days; or

(i) Employee Benefit Plans. The occurrence of one or more ERISA Events, which individually or in the aggregate result in liability of Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect; or

(j) Change of Control. The occurrence of a Change of Control; or

(k) Guaranties, Collateral Documents and Other Loan Documents. At any time after the execution and delivery thereof, (i) any material Loan Guaranty for any reason, other than the occurrence of the Termination Date, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared, by a court of competent jurisdiction, to be null and void or any Loan Guarantor shall repudiate in writing its obligations thereunder (in each case, other than as a result of the discharge of such Loan Guarantor in accordance with the terms thereof and other than as a result of any act or omission by the Administrative Agent or any Lender), (ii) this Agreement or any material Collateral Document ceases to be in full force and effect or shall be declared, by a court of competent jurisdiction, to be null and void or any Lien on Collateral created under any Collateral Document ceases to be perfected with respect to a material portion of the Collateral (other than (A) Collateral consisting of Material Real Estate Assets to the extent that the relevant losses are covered by a lender's title insurance policy and such insurer has not denied coverage or (B) solely by reason of (w) such



perfection not being required pursuant to the Collateral and Guarantee Requirement, the Collateral Documents, this Agreement or otherwise, (x) [reserved], (y) a release of Collateral in accordance with the terms hereof or thereof or (z) the occurrence of the Termination Date or any other termination of such Collateral Document in accordance with the terms thereof) or (iii) other than in any bona fide, good faith dispute as to the scope of Collateral or whether any Lien has been, or is required to be released, any Loan Party shall contest in writing, the validity or enforceability of any material provision of any Loan Document (or any Lien purported to be created by the Collateral Documents on any material portion of the Collateral or any Loan Guaranty) or deny in writing that it has any further liability (other than by reason of the occurrence of the Termination Date or any other termination of any other Loan Document in accordance with the terms thereof), including with respect to future advances by the Lenders, under any Loan Document to which it is a party;

(l) Subordination. The Obligations ceasing or the assertion in writing by any Loan Party that the Obligations cease to constitute senior indebtedness under the subordination provisions of any document or instrument evidencing any Restricted Debt or any such subordination provision being invalidated by a court of competent jurisdiction in a final non-appealable order, or otherwise ceasing, for any reason, to be valid, binding and enforceable obligations of the parties thereto; or

(m) Chapter 11 Cases. The occurrence of any of the following in any of the Chapter 11 Cases, except to the extent consented to by the Required Lenders (which may be evidenced by a Direction of the Required Lenders) or if Required Lenders (or Related Funds thereof) seek or support any such action:

(i) other than a motion in support of the DIP Order or actions in accordance with the RSA, the bringing of any motion, or the filing of any plan of reorganization or disclosure statement attendant thereto, by any of the Loan Parties or any Subsidiary in the Chapter 11 Cases (or the entry of an order of the Bankruptcy Court granting a motion) seeking: (A) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (B) to grant any Lien other than Permitted Liens; (C) except as provided in the DIP Order, to use cash collateral of the Administrative Agent and the other Secured Parties or the Pre-Petition Lenders or the Pre-Petition Administrative Agent under Section 363(c) of the Bankruptcy Code; (D) to approve any other action or actions adverse to the Administrative Agent and the Lenders' rights and remedies under the Loan Documents or the validity or perfection of their Liens on the Collateral; or (E) authority to use any cash proceeds of any of the Collateral other than in accordance with this Agreement;

(ii) other than in accordance with the RSA, (A) the filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by a Loan Party that does not propose to indefeasibly repay in full in cash the Obligations under this Agreement on or before the effective date of such plan or plans, (B) if any of the Loan Parties or their Subsidiaries shall seek, support or fail to contest in good faith the filing or confirmation of any such plan or entry of any such order that does not propose to indefeasibly repay in full in cash the Obligations under this Agreement on or before the effective date of such plan or plans, (C) the entry of any order terminating any Loan Party's exclusive right to file a plan of reorganization, or (D) the expiration of any Loan Party's exclusive right to file a plan of reorganization;

(iii) the entry of an order in any of the Chapter 11 Cases confirming a plan of reorganization that is not either (A) in accordance with the RSA or (B) otherwise acceptable to the Required Lenders in their reasonable discretion, other than to the extent that such plan of reorganization provides for the termination of the Commitments and indefeasible repayment in full in cash of all of the Obligations under this Agreement on or before the effective date of such plan or plans;

(iv) (A) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents, the DIP Order or the Cash Management Order (including any order in respect of the required milestones specified herein), (B) the filing by a Loan Party of a motion for reconsideration with respect to the DIP Order or (C) any Loan Party or any Subsidiary shall fail to



comply with Section 5.20, the DIP Order or the Cash Management Order and such default shall continue unremedied for a period of three (3) Business Days after notice thereof from the Administrative Agent to the Borrower;

(v) the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Loan Parties;

(vi) (A) the dismissal or conversion of any Chapter 11 Case or (B) any Loan Party shall file a motion or other pleading seeking the dismissal of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code or otherwise;

(vii) any Loan Party shall file a motion (without consent of the Required Lenders) seeking, or the Bankruptcy Court shall enter an order granting, relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any creditor (other than the Administrative Agent) to execute upon or enforce a Lien on any Collateral of a value in excess of \$1,000,000;

(viii) the entry of an order in the Chapter 11 Cases avoiding or requiring the disgorgement of any portion of the payments made on account of the Obligations owing under this Agreement, the other Loan Documents or the RSA;

(ix) other than in respect of this Agreement and the other Loan Documents, or as otherwise permitted under the applicable Loan Documents, the DIP Order or the Cash Management Order, (A) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing any claims or charges entitled to super-priority administrative expense claim status in any Chapter 11 Case pursuant to Section 364(c)(1), clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code *pari passu* with or senior to the claims of the Administrative Agent and the Secured Parties under this Agreement and the other Loan Documents or (B) there shall arise or be granted by the Bankruptcy Court any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted by the Loan Documents;

(x) the DIP Order shall cease to be in full force and effect or shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal (other than through the entry of the Final Order), in each case so as to cause the DIP Order to cease to create a valid and perfected Lien on the Collateral (without further action other than the entry and terms of the DIP Order) to the extent it does so on the Closing Date;

(xi) (i) an order in the Chapter 11 Cases shall be entered charging any of, or authorizing the recovery of any amount from, or a claim or claims shall be allowed against, the Collateral under Section 506(c) of the Bankruptcy Code or otherwise, or (ii) an order in the Chapter 11 Cases shall be entered prohibiting or limiting the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Administrative Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date;

(xii) any order having been entered or granted (or requested, unless actively opposed by the Loan Parties) by either the Bankruptcy Court or any other court of competent jurisdiction materially adversely impacting the rights of the Administrative Agent and the Lenders under the Loan Documents;

(xiii) an order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Loan Parties authorized by the DIP Order;

(xiv) if the Final Order does not (i) include a waiver, in form and substance reasonably satisfactory to the Required Lenders, of the right to surcharge, or recover any amount from, the

Collateral under Section 506(c) of the Bankruptcy Code and (ii) prohibit the imposition of any exception to the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Administrative Agent on the Collateral or any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date;

(xv) (A) any Loan Party shall challenge (or support or encourage a challenge of) the validity, enforceability, perfection or priority (as applicable) of (1) the Pre-Petition Loan Documents, (2) the Liens created pursuant to the foregoing, (3) the obligations thereunder, or (4) any payments made (I) to the Administrative Agent or any Lender with respect to the Obligations or (II) to the Pre-Petition Administrative Agent with respect to the obligations under the Pre-Petition Loan Documents or (B) the filing of any motion by the Loan Parties seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any pre-petition creditor in respect of Liens on the Collateral that is inconsistent with the DIP Order;

(xvi) if, unless otherwise approved by the Administrative Agent and the Required Lenders, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to the Chapter 11 Cases and such order shall not be reversed, vacated or stayed within fifteen (15) days;

(xvii) any Loan Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking to modify or affect any of the rights of the Administrative Agent or the Lenders under the DIP Order or the Loan Documents;

(xviii) (A) any Loan Party or any Subsidiary thereof shall take any action in support of any matter prohibited by this Section 7.01(m) or (B) any other Person file a motion before the Bankruptcy Court seeking the entry of order in violations of this Section 7.01(m) and such motion is not contested in good faith by the Loan Parties and the relief requested is granted in an order that is not stayed pending appeal;

(xix) the filing of a motion or the taking of any action in the Chapter 11 Cases by any Loan Party seeking the entry of an order by the Bankruptcy Court, or the entry by the Bankruptcy Court of an order in the Chapter 11 Cases, precluding the Administrative Agent or the Pre-Petition Administrative Agent from having the right to, or being permitted to, or precluding any holder of Existing Loans from directing or instructing any of the foregoing parties to exercise the right to, "credit bid" in respect of applicable collateral;

(xx) a Consenting Lender Termination Event (as defined in the RSA) shall have occurred and be continuing;

(xxi) the valid commencement of a suit or an action (but not including a motion for standing to commence a suit or an action) against the Administrative Agent or any Lender or the Pre-Petition Administrative Agent or any Pre-Petition Lender and, as to any suit or action brought by any Person other than a Loan Party or a Subsidiary, officer or employee of a Loan Party, and the continuation thereof without dismissal for forty-five (45) days after service thereof on either the Administrative Agent or such Lender or the Pre-Petition Administrative Agent or any Pre-Petition Lender, that asserts or seeks by or on behalf of a Loan Party, any official committee in any Chapter 11 Case or any other party in interest in any of the Chapter 11 Cases, a claim or any legal or equitable remedy that would, other than as contemplated by the DIP Order or the Cash Management Order, (x) have the effect of invalidating, subordinating or challenging (I) any or all of the Obligations or Liens of the Administrative Agent or any Lender under the Loan Documents or (II) any material portion of the obligations under the Pre-Petition Loan Documents or Liens of the Pre-Petition Administrative Agent or the Pre-Petition Lenders under the Pre-Petition Loan Documents to any other claim, or (y) have a material adverse effect on the rights and remedies of the Administrative Agent or any Lender under any Loan Document or the Pre-Petition Administrative Agent or the Pre-Petition Lenders under the Pre-Petition Loan Documents

or the collectability of all or any portion of the Obligations under the Loan Documents or the obligations under the Pre-Petition Loan Documents;

(xxii) any Debtor shall deny in writing that such Debtor has liability or obligation under this Agreement for the Obligations or seek to recover any monetary damages from the Administrative Agent, any Lender or any of the Pre-Petition Secured Parties in their capacity as such;

(xxiii) the Bankruptcy Court shall grant relief under any motion or other pleading filed by any Debtor that results in the occurrence of an Event of Default; provided that the Loan Parties hereby agree that the Administrative Agent shall be entitled to request an expedited hearing on any such motion and hereby consent to such expedited hearing (and the Administrative Agent is authorized to represent to the Bankruptcy Court that the Loan Parties have consented to such expedited hearing on the motion);

(xxiv) other than the Carve-Out, the filing of a motion by any Debtor requesting, or the entry of any order by the Bankruptcy Court granting, any superpriority claim which is senior or pari passu with the Lenders' claims or with the claims of the Pre-Prepetition Lenders under the Pre-Petition Credit Agreement; or

(xxv) any Debtor shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any of its pre-petition Indebtedness or payables other than payments authorized or required by one or more customary "first day" orders or related "second day" orders or the DIP Order (or other orders with the consent of Required Lenders) and consistent with the then Approved Budget;

then, and in every such event, and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any of the following actions, at the same or different times declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC. The Administrative Agent (at the direction of the Required Lenders) shall provide notice of an Event of Default and acceleration of the Obligations pursuant to and as required by the DIP Order.

## ARTICLE 8

### THE ADMINISTRATIVE AGENT

**Section 8.01.** Appointment and Authorization of Administrative Agent. Each of the Lenders, on behalf of itself and its applicable Affiliates in their respective capacities as such, hereby irrevocably appoint WSFS (or any successor appointed pursuant hereto) as Administrative Agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

**Section 8.02.** Rights as a Lender. Any Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, unless the context otherwise requires or unless such Person is in fact not a Lender, include each Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept

deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any subsidiary of any Loan Party or other Affiliate thereof as if it were not the Administrative Agent hereunder. The Lenders acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that the Administrative Agent shall not be under any obligation to provide such information to them.

**Section 8.03. Exculpatory Provisions.** The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing:

(a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default exists, and the use of the term “agent” herein and in the other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Requirements of Law; it being understood that such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary power, except discretionary rights and powers that are expressly contemplated by the Loan Documents and which the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the relevant circumstances as provided in Section 9.02); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Requirements of Law;

(c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable to the Lenders or any other Secured Party and shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it has the consent of the Required Lenders or at the request of the Required Lenders (or such other number or percentage of the Lenders as is necessary, or in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment; provided, that, any action or inaction taken at the direction 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 to be necessary, under the circumstances as provided in Article VII and Section 9.02) shall not be deemed gross negligence or willful misconduct; and

(d) the Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or any Lender and such written notice is clearly identified as a “notice of default”, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any covenant, agreement or other term or condition set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of any Lien on the Collateral or the existence, value or sufficiency of the Collateral or to assure that the Liens granted to the Administrative Agent pursuant to any Loan Document have been or will continue to be properly or sufficiently or lawfully created, perfected or enforced or are entitled to any particular priority, (vi) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required

to be delivered to the Administrative Agent or (vii) any property, book or record of any Loan Party or any Affiliate thereof. The Administrative Agent shall not be responsible for (i) perfecting, maintaining, monitoring, preserving or protecting the security interest or Lien granted under this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, (ii) the filing, re-filing, recording, re-recording or continuing or any document, financing statement, mortgage, assignment, notice, instrument of further assurance or other instrument in any public office at any time or times or (iii) providing, maintaining, monitoring or preserving insurance on (including any flood insurance policies or for determining whether any flood insurance policies are or should be obtained in respect of the Collateral, which each Lender shall be solely responsible for), or the payment of taxes with respect to, any of the Collateral. The Administrative Agent shall not be required to qualify in any jurisdiction in which it is not presently qualified to perform its obligations as the Administrative Agent.

(e) The Administrative Agent shall not be liable for any action omitted to be taken by it by reason of the lack of direction or instruction for such action (including, without limitation, for refusing to exercise discretion or for withholding its consent in the absence of receipt of, or resulting from a failure, delay or refusal on the part of any Lender to provide, written instructions to exercise such direction or grant such consent from any such Lender, as applicable). The Administrative Agent shall have no liability for any failure, inability, unwillingness on the part of any Lender or Loan Party to provide accurate and complete information on a timely basis to the Administrative Agent, or otherwise on the part of any such party to comply with the terms of this Agreement, and shall not have any liability for any inaccuracy or error in the performance or observance on such Agent's part of any of its duties hereunder that is caused by or results from any such inaccurate, incomplete or untimely information received by it, or other failure on the part of any such other party to comply with the terms hereof.

(f) The Administrative Agent shall not be liable for interest on any money received by it. Money held by the Administrative Agent hereunder need not be segregated from other funds except to the extent required by law. The Administrative Agent shall not have any liability for interest on any money received by it hereunder except as otherwise agreed in writing.

(g) For purposes of clarity, and without limiting any rights, protections, immunities or indemnities afforded to either Agent hereunder (including without limitation this Article VIII), phrases such as "satisfactory to the Administrative Agent," "approved by the Administrative Agent," "acceptable to the Administrative Agent," "as determined by the Administrative Agent," "in the Administrative Agent's discretion," "selected by the Administrative Agent," "elected by the Administrative Agent," "requested by the Administrative Agent," and phrases of similar import that authorize and permit the Administrative Agent to approve, disapprove, determine, act or decline to act in its discretion shall be subject to the Administrative Agent receiving written direction from the Required Lenders (or such other number or percentage of the Lenders as expressly required hereunder or under the other Loan Documents) to take such action or to exercise such rights.

**Section 8.04.** Exclusive Right to Enforce Rights and Remedies. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, the Borrower, the Administrative Agent and each Secured Party agree that:

(a) (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Loan Guaranty; it being understood that any right to realize upon the Collateral or enforce any Loan Guaranty against any Loan Party pursuant hereto or pursuant to any other Loan Document may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms hereof or thereof and (ii) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or in the event of any other Disposition (including pursuant to Section 363 of the Bankruptcy Code), (A) the Administrative Agent, as agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale, to use and apply all or any portion of the Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent at such sale or other Disposition



and (B) the Administrative Agent or any Lender may be the purchaser or licensor of all or any portion of such Collateral at any such Disposition;

(b) Each Secured Party agrees that the Administrative Agent may in its sole discretion, but is under no obligation to credit bid any part of the Secured Obligations or to purchase or retain or acquire any portion of the Collateral.

**Section 8.05. Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) that it believes 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 has 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.

**Section 8.06. Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it. The Administrative Agent and any such sub-agent may perform any and all of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

**Section 8.07. Successor Administrative Agent.** The Administrative Agent may resign at any time by giving thirty (30) days' prior written notice to the Lenders and the Borrower; provided that if no successor agent is appointed in accordance with the terms set forth below within such thirty (30)-day period, the Administrative Agent's resignation shall not be effective until the earlier to occur of (x) the date of the appointment of the successor agent or (y) the date that is specified in such notice (which shall be no earlier than thirty (30) days after the date thereof) (or such later date as the resigning Administrative Agent may agree). If the Administrative Agent is a Defaulting Lender or an Affiliate of a Defaulting Lender, either the Required Lenders or the Borrower may, upon ten (10) days' notice, remove the Administrative Agent; provided that if no successor agent is appointed in accordance with the terms set forth below within such thirty (30)-day period, the Administrative Agent's removal shall, at the option of the Borrower, not be effective until the earlier to occur of (x) the date of the appointment of the successor agent or (y) the date that is thirty (30) days after the last day of such thirty (30)-day period (or such later date as the Borrower may agree). Upon receipt of any such notice of resignation or delivery of any such notice of removal, the Required Lenders shall have the right, with the consent of the Borrower (not to be unreasonably withheld or delayed), to appoint a successor Administrative Agent which shall be a commercial bank, trust company or other Person acceptable to the Borrower, in each case, with offices in the US having combined capital and surplus in excess of \$1,000,000,000; provided that during the existence and continuation of an Event of Default under Section 7.01(a), no consent of the Borrower shall be required. If no successor has been appointed as provided above and accepted such appointment within thirty (30) days after the resigning Administrative Agent gives notice of its resignation or the Administrative Agent receives notice of removal, then (a) in the case of a retirement, the resigning Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above (including, for the avoidance of doubt, the consent of the Borrower) or (b) in the case of a removal, the Borrower may, after consulting with the Required Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that (x) in the case of a retirement, if the Administrative Agent notifies the Borrower, the Lenders that no qualifying Person has accepted such



appointment or (y) in the case of a removal, the Borrower notifies the Required Lenders that no qualifying Person has accepted such appointment, then, in each case, such resignation or removal shall nonetheless become effective in accordance with the provisos to the first two sentences in this Section 8.07 (unless the retiring Administrative Agent shall have agreed in its sole discretion to extend the effectiveness of its resignation) and (i) the resigning or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent in its capacity as collateral agent for the Secured Parties for purposes of maintaining the perfection of the Lien on the Collateral securing the Secured Obligations, the resigning Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) all payments, communications and determinations required to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly (and each Lender will cooperate with the Borrower to enable the Borrower to take such actions), until such time as the Required Lenders or the Borrower, as applicable, appoint a successor Administrative Agent, as provided above in this Article 8. Upon the acceptance of its appointment as Administrative Agent hereunder as a successor Administrative Agent, the successor Administrative Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning or removed Administrative Agent (other than any rights to indemnity payments owed to the resigning Administrative Agent), and the resigning or removed Administrative Agent shall be discharged from its duties and obligations hereunder (if not already discharged therefrom as expressly provided above in this Section 8.07) (other than its obligations under Section 9.13 hereof). The fees payable by the Borrower to any successor Administrative Agent shall not be greater than those payable to its predecessor unless otherwise expressly agreed in writing between the Borrower and such successor Administrative Agent. After the Administrative Agent's resignation or removal hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such resigning or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any action taken or omitted to be taken by any of them while the relevant Person was acting as Administrative Agent (including for this purpose holding any collateral security following the resignation or removal of the Administrative Agent). Notwithstanding anything to the contrary herein, no Disqualified Institution (nor any Affiliate thereof) may be appointed as a successor Administrative Agent.

**Section 8.08.** Non-Reliance on Administrative Agent. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their respective Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of the Administrative Agent or any of its Related Parties.

**Section 8.09.** Collateral and Guarantee Matters. Each Lender and each other Secured Party irrevocably authorizes and instructs the Administrative Agent to, and the Administrative Agent shall:

(a) release any Lien on any property granted to or held by Administrative Agent under any Loan Document (i) upon the occurrence of the Termination Date, (ii) that is sold or otherwise Disposed of (or to be sold or otherwise Disposed of) as part of or in connection with any Disposition permitted under (or not restricted by) the Loan Documents (subject to the proviso to the last paragraph of Section 6.06), (iii) that does not constitute (or ceases to constitute) Collateral (and/or otherwise becomes an Excluded Asset), (iv) if the property subject to such Lien is owned by a Subsidiary Guarantor, upon the release of such Subsidiary Guarantor from its Loan Guaranty otherwise in accordance with the Loan Documents, (v) as required under clause (d) below,

(vi) pursuant to the provisions of any applicable Loan Document or (vii) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 9.02; and

(b) subject to Section 9.22, release (or evidence the release of) any Subsidiary Guarantor from its obligations under the Loan Guaranty if (A) such Person ceases to be a Subsidiary and/or (B) in the case of any Discretionary Guarantor, at the election of the Borrower at any time so long as (x) the Borrower shall have delivered written notice of such election to the Administrative Agent and (y) after giving pro forma effect to such release and the consummation of the relevant transaction (if applicable), (1) no Event of Default shall exist, (2) the Borrower is deemed to have made a new Investment in such Person ((X) with respect to any Specified Non-US Loan Party, in an amount equal to the fair market value (as determined by the Borrower in good faith) of property contributed to such Specified Non-US Loan Party in the form of an Investment while such Specified Non-US Loan Party was a Subsidiary Guarantor and (Y) otherwise, as if such Person was then newly acquired) on the date of such release and such Investment is permitted under Section 6.05 and (3) no IP Separation Transaction shall be deemed to have occurred; provided that if any Subsidiary Guarantor ceases to be wholly-owned, directly or indirectly, by the Borrower, such subsidiary shall not be released from its Loan Guaranty unless either (x) it is no longer a direct or indirect subsidiary of the Borrower or (y) after giving pro forma effect to such release and the consummation of the relevant transaction, the Borrower is deemed to have made a new Investment in such Person (as if such Person was then newly acquired) and such Investment is permitted under Section 6.05.

Upon the request of the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under the Loan Guaranty or its Lien on any Collateral pursuant to this Article 8. In each case as specified in this Article 8, the Administrative Agent will (and each Lender hereby authorizes the Administrative Agent to), at the Borrower's expense, execute and deliver to the Borrower or the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents, to subordinate its interest therein, or to release such Loan Party from its obligations under the Loan Guaranty, in each case in accordance with the terms of the Loan Documents and this Article 8; provided, that upon the request of the Administrative Agent (acting at the Direction of the Required Lenders), the Borrower shall deliver a certificate of a Responsible Officer certifying that the relevant transaction has been consummated in compliance with the terms of this Agreement.

**Section 8.10.** [Reserved].

**Section 8.11.** Indemnification of Administrative Agent. Whether or not the transactions contemplated hereby are consummated, to the extent that the Administrative Agent (or any Affiliate thereof) is not reimbursed and indemnified by the Borrower in accordance with and to the extent required by Section 9.03(b) hereof, the Lenders will reimburse and indemnify the Administrative Agent (and any Affiliate thereof) in proportion to their respective Applicable Percentages (determined as if there were no Defaulting Lenders) for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent (or any Affiliate thereof) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's (or such affiliate's) gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including the fees, disbursements and other charges of counsel) incurred by such Agent in connection with preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights and responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that such Agent

is not reimbursed for such costs or expenses by or on behalf of the Borrowers. The agreements in this Section 8.11 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Loans and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

**Section 8.12. Withholding Taxes.** To the extent required by any applicable Requirements of Law (as determined in good faith by the Administrative Agent), the Administrative Agent may withhold from any payment to any Lender under any Loan Document an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 2.17, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within ten days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this paragraph. The agreements in this paragraph shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

**Section 8.13. Administrative Agent May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loans shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Secured Parties and the Administrative Agent and their respective agents and counsel and all other amounts due the Secured Parties and the Administrative Agent under Sections 2.12 and 9.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Secured Party 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 Secured Parties, 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 9.03.

**Section 8.14. Erroneous Payments.**

(a) If the Administrative Agent notifies a Lender or other Secured Party, or any other Person who has received funds on behalf of a Lender or other Secured Party (any such Lender, Secured Party or other

recipient, a “Payment Recipient”) that the Administrative Agent has determined in its sole reasonable discretion that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “Erroneous Payment”) and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Payment Recipient shall promptly, but in no event later than one (1) Business Day thereafter, return to the Administrative Agent, in same day funds (in the currency so received), the amount of any such Erroneous Payment (or portion thereof), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent (acting at the Direction of the Required Lenders) in accordance with prevailing banking industry rules on interbank compensation from time to time in effect. To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Payment Recipient hereby further agrees that if it receives an Erroneous Payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Erroneous Payment (the “Payment Notice”), or (y) that was not preceded or accompanied by a Payment Notice sent by the Administrative Agent (or any of its Affiliates), then, said Payment Recipient shall be on notice, in each case, that an error has been made with respect to such Erroneous Payment. Each Payment Recipient agrees that, in each such case, or if it otherwise becomes aware an Erroneous Payment (or portion thereof) may have been sent in error, such Payment Recipient shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one (1) Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent (acting at the Direction of the Required Lenders) in accordance with prevailing banking industry rules on interbank compensation from time to time in effect.

(c) Each Payment Recipient hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Payment Recipient from any source, against any amount due to the Administrative Agent under any of the immediately preceding clauses (a) or (b) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent (such unrecovered amount, an “Erroneous Payment Return Deficiency”), the Borrower and each other Loan Party hereby agrees that (x) the Administrative Agent shall be subrogated to all the rights of such Payment Recipient with respect to such amount (including, without limitation, the right to sell and assign the Loans (or any portion thereof), which were subject to the Erroneous Payment Return Deficiency) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Secured Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any

other Loan Party for the purpose of making such Erroneous Payment. For the avoidance of doubt, no assignment of an Erroneous Payment Return Deficiency will reduce the Commitments of any Payment Recipient and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to the assignment of an Erroneous Payment Return Deficiency, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Payment Recipient under the Loan Documents with respect to each Erroneous Payment Return Deficiency (for the avoidance of doubt, without increasing the Obligations owed by the Borrower or any other Loan Party with respect to the Erroneous Payment Return Deficiency).

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

(f) Each party’s obligations, agreements and waivers under this Section 8.14 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Secured Obligations (or any portion thereof) under any Loan Document.

## ARTICLE 9

### MISCELLANEOUS

#### **Section 9.01.** Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by email, as follows:

(i) if to any Loan Party, to such Loan Party in the care of the Borrower at:

THRASIO, LLC  
85 West St, Ste 34  
Walpole, MA 02052  
Attn: Josh Burke  
Email: [josh.burke@thras.io](mailto:josh.burke@thras.io)  
Attn: Michael Fahey  
Email: [mike@thrasio.com](mailto:mike@thrasio.com)

with copies to (which shall not constitute notice to any Loan Party):

Kirkland & Ellis LLP  
609 Main Street  
Houston, TX 77002  
Attention: Mary Kogut, P.C.  
Email: [mary.kogut@kirkland.com](mailto:mary.kogut@kirkland.com)

(ii) if to the Administrative Agent, at:

Wilmington Savings Fund Society, FSB



500 Delaware Avenue, 11th Floor  
Wilmington, DE 19801  
Attention: Patrick Healy, Senior VP Global Capital Markets  
Tel: (302) 888-7580  
Email: phealy@wsfsbank.com

with copies to (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
Attention: Scott Greenberg  
Fax: (212) 492-0458  
Email: [SGreenberg@gibsondunn.com](mailto:SGreenberg@gibsondunn.com)

and

ArentFox Schiff LLP  
1301 Avenue of the Americas, 42nd Floor  
New York, NY 10019  
Attention: Jeffrey R. Gleit  
Fax: (212) 492-0458  
Email: jeffrey.gleit@afslaw.com

(iii) if to any Lender, to it at its physical address or email address set forth in its Administrative Questionnaire.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof or three (3) Business Days after dispatch if sent by certified or registered mail, in each case, delivered, sent or mailed (properly addressed) to the relevant party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01 or (B) sent by facsimile shall be deemed to have been given when sent and when receipt has been confirmed by telephone; provided that notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, such notices or other communications shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in clause (b) below shall be effective as provided in such clause (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including email and Internet or intranet websites) pursuant to procedures set forth herein or otherwise approved by the Administrative Agent. The Administrative Agent or the Borrower (on behalf of any Loan Party) may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures set forth herein or otherwise approved by it; provided that approval of such procedures may be limited to particular notices or communications. All such notices and other communications (i) sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement); provided that any such notice or communication not given during the normal business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day for the recipient or (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (b)(i) of notification that such notice or communication is available and identifying the website address therefor.



(c) Any party hereto may change its address or facsimile number or other notice information hereunder by notice to the other parties hereto; it being understood and agreed that the Borrower may provide any such notice to the Administrative Agent as recipient on behalf of itself and each Lender.

(d) The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by, or on behalf of, Holdings or the Borrower hereunder (collectively, the “Borrower Materials”) by posting the Borrower Materials on the Platform and (b) certain of the Lenders may be “public-side” Lenders (*i.e.*, Lenders that do not wish to receive material nonpublic information within the meaning of the United States federal securities laws with respect to Holdings, Intermediate Holdings, the Borrower or their respective securities) (each, a “Public Lender”). At the reasonable request of the Administrative Agent, the Borrower hereby agrees that (i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC”, (ii) by marking Borrower Materials “PUBLIC”, the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as information of a type that would (A) customarily be made publicly available (or could be derived from publicly available information), as determined by the Borrower, if the Borrower were to become public reporting companies or (B) would not be material with respect to Holdings, Intermediate Holdings, the Borrower, their respective subsidiaries, any of their respective securities or the Transactions as determined in good faith by the Borrower for purposes of the United States federal securities laws and (iii) the Administrative Agent shall be required to treat Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not marked as “Public Investor.” Notwithstanding the foregoing, the Loan Documents shall be deemed to be marked “PUBLIC,” unless the Borrower notifies the Administrative Agent promptly that any such document contains material nonpublic information (it being understood that the Borrower shall have a reasonable opportunity to review the same prior to distribution and comply with SEC or other applicable disclosure obligations).

Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to communications that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE”. NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS ON, OR THE ADEQUACY OF, THE PLATFORM, AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN ANY SUCH COMMUNICATION. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL ANY PARTY HERETO OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY OTHER PARTY HERETO OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR MATERIAL BREACH OF THIS AGREEMENT.

**Section 9.02. Waivers; Amendments.**

(a) No failure or delay by the Administrative Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof except as provided herein or in any Loan Document, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any party hereto therefrom shall in any event be effective unless the same is permitted by this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. Without limiting the generality of the foregoing, to the extent permitted by applicable Requirements of Law, the making of any Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default or Event of Default at the time.

(b) Except as expressly provided in this Section 9.02 (or otherwise in this Agreement or the applicable Loan Document), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified, except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders (or the Administrative Agent with the consent of the Required Lenders) or (ii) in the case of any other Loan Document (other than any waiver, amendment or modification to effectuate any modification thereto expressly contemplated by the terms of such other Loan Document), pursuant to an agreement or agreements in writing entered into by the Administrative Agent and each Loan Party that is party thereto, with the consent of the Required Lenders; provided that, notwithstanding the foregoing:

(A) the consent of each Lender directly and adversely affected thereby (but not the consent of the Required Lenders) shall be required for any waiver, amendment or modification that:

(1) increases the Commitment of such Lender; it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall constitute an increase of any Commitment of such Lender;

(2) reduces the principal amount of any Loan owed to such Lender;

(3) (x) extends the scheduled final maturity of any Loan, (y) postpones any Interest Payment Date with respect to any Loan held by such Lender or the date of any scheduled payment of any fee or premium payable to such Lender hereunder or (z) waives or amends Section 2.22 to permit the extension of the Maturity Date beyond the 8-month anniversary of the Closing Date; provided, that any extension of the Maturity Date pursuant to Section 2.22 as in effect on the Closing Date shall not constitute an extension of the final maturity of any Loan, any Interest Payment Date, in each case, under this clause (3);

(4) reduces the rate of interest (other than to waive any Default or Event of Default or obligation of the Borrower to pay interest to such Lender at the default rate of interest under Section 2.13(d), which shall only require the consent of the Required Lenders) or the amount of any fee or premium owed to such Lender;

(5) extends the expiry date of such Lender's Commitment; it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of any Commitment shall constitute an extension of any Commitment of any Lender;

(6) waives, amends or modifies the provisions of Section 2.18(a), (b), (c) or (d) in a manner that would by its terms alter the priority or pro rata sharing of payments, as applicable, required thereby (except in connection with any transaction provided in this Section 9.02);

(7) (x) subordinates the Liens on a material portion of the Collateral, taken as a whole (determined by the Borrower in good faith) securing the Obligations to liens on such Collateral securing any other Indebtedness for borrowed money or (y) contractually subordinates the Obligations in right of payment to any other Indebtedness for borrowed money;

(8) waives, amends or modifies the definition of "Material Intellectual Property";

(9) waives, amends or modifies Section 9.22; and

(10) authorizes additional Indebtedness that would be issued under the Loan Documents for the primary purpose of influencing voting thresholds;

(B) no such agreement shall:

(1) change any of the provisions of Section 9.02(a) or Section 9.02(b) or the definition of "Required Lenders" or "Required Class Lenders" to reduce any voting percentage required to waive, amend or modify any right thereunder or make any determination or grant any consent thereunder, without the prior written consent of each Lender;

(2) release all or substantially all of the Collateral from the Lien granted pursuant to the Collateral Documents, without the prior written consent of each Lender;

(3) release all or substantially all of the value of the Guarantees under the Loan Guaranty, without the prior written consent of each Lender; or

(4) provide for the satisfaction of the Obligations other than in cash pursuant to Section 2.10 or in the manner set forth in the exit financing term sheet attached to the RSA on the Closing Date.

(C) no such agreement shall amend or waive any provision that disproportionately affects a particular Class of Lenders without the prior consent of the Required Class Lenders;

(D) no such agreement shall change the application of prepayments as among or between Classes under Section 2.11(b); and

(E) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent, as the case may be.

(c) [Reserved].

(d) Notwithstanding anything to the contrary contained in this Section 9.02 or any other provision of this Agreement or any provision of any other Loan Document:

(i) the Borrower and the Administrative Agent may, without the input or consent of any Lender, (A) amend, supplement and/or waive any Loan Document executed in connection with this Agreement upon the advice of counsel to comply with any Requirement of Law or the advice of counsel or (B) cause any Loan Document to be consistent with this Agreement,

(ii) the Borrower and the Administrative Agent may, without the input or consent of any other Lender (other than the relevant Lenders providing Loans under such Sections), effect amendments to this Agreement and the other Loan Documents as may be necessary or advisable in the reasonable opinion of the Borrower and the Administrative Agent to effect the provisions of Sections 5.12, Section 6.08 and/or Section 6.11,

(iii) (A) if the Administrative Agent and the Borrower have jointly identified any ambiguity, mistake, defect, inconsistency, obvious error or any error or omission of a technical nature or any necessary or desirable technical change, in each case, in any provision of any Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend such provision solely to address such matter as reasonably determined by them and (B) the Administrative Agent and the Borrower may, without the consent of any Lender, enter into amendments or modifications to this Agreement or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent deems appropriate in order to implement any Benchmark Replacement or any Benchmark Replacement Conforming Change or otherwise effectuate the terms of Section 2.14 in accordance with the terms thereof,

(iv) [reserved],

(v) the Administrative Agent may amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.05 and/or Commitment reductions or terminations pursuant to Section 2.09,

(vi) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except as permitted pursuant to Section 2.21(b),

(vii) [reserved],

(viii) [reserved],

(ix) the definition of “Term SOFR” may be amended in the manner prescribed in clause (b) thereof, and

(x) no Lender shall be entitled to any fee or other consideration to obtain its consent to an amendment, modification and/or waiver of this Agreement or any other Loan Document unless such fee or other consideration is also offered to all Lenders.

(e) Any waiver, amendment or other modification to this Agreement or the other Loan Documents shall be provided to the Administrative Agent prior to, or substantially concurrently with, the effectiveness thereof.

**Section 9.03. Expenses; Indemnity.**

(a) Subject to Section 9.05(f), the Borrower hereby agrees to pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its respective Affiliates and the Lenders (in each case, subject to any applicable limitations set forth in the DIP Order) in connection with the syndication and distribution (including, without limitation, via the internet or through a service such as Intralinks) of the credit facilities provided for herein, including any and all recording and filing fees, cost and expenses incurred pursuant to any Collateral Document to secure the Secured Obligations, the reasonable and documented fees, charges and disbursements of ArentFox Schiff LLP, as lead counsel to the Administrative Agent, the preparation 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), the Chapter 11 Cases, including the reasonable fees, charges and disbursements of counsel for each of the Administrative Agent and the Lenders (taken as a whole), subject to the limitations set forth in the DIP Order and (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender in connection with the enforcement of their rights in connection with this Agreement and any other Loan Document, in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans and including the fees, charges and disbursements of (A) Gibson, Dunn & Crutcher LLP (or other primary counsel selected by the Required Lenders) for the Administrative Agent and the Lenders, taken as a whole, and, if necessary, a single local counsel in each appropriate jurisdiction and (if appropriate) a single regulatory counsel for the Administrative Agent and the Lenders, taken as a whole (and, in the case of an actual or perceived conflict of interest where the Administrative Agent or a Lender affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of such for the Administrative Agent or such Lender).

(b) The Borrower shall indemnify the Administrative Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages and liabilities (but limited, in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, one local counsel in any relevant jurisdiction to all Indemnitees, taken as a whole and solely in the case of an actual or perceived conflict of interest, (x) one additional counsel to all affected Indemnitees, taken as a whole, and (y) one additional local counsel to all affected Indemnitees, taken as a whole), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby and/or the enforcement of the Loan Documents, (ii) the use of the proceeds of the Loans, (iii) any actual or alleged Release or presence of Hazardous Materials on, at, under or from any property currently or formerly owned, leased or operated by the Borrower, any of its Subsidiaries or any other Loan Party or any Environmental Liability related to the Borrower, any of its Subsidiaries or any other Loan Party and/or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto (and regardless of whether such matter is initiated by a third party or by the Borrower, any other Loan Party or any of their respective Affiliates); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that any such loss, claim, damage, or liability (i) is determined by a final and non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or, to the extent such judgment finds that any such loss, claim, damage, or liability has resulted from such Person’s material breach of the Loan Documents or (ii) arises out of any claim, litigation, investigation or proceeding brought by such Indemnitee against another Indemnitee (other than any claim, litigation, investigation or proceeding that is brought by or against the Administrative Agent, acting in its capacity as the Administrative Agent) that does not involve any act or omission of Holdings, Intermediate Holdings, the Borrower or any of its subsidiaries. Each Indemnitee shall be obligated to refund or return any and all amounts paid by the Borrower pursuant to this Section 9.03(b) to such Indemnitee for any fees, expenses, or damages to the extent such Indemnitee is not entitled to payment thereof in accordance with the terms hereof. All amounts due under this clause (b) shall be



payable by the Borrower within ten (10) days (x) after receipt by the Borrower of a written demand therefor, in the case of any indemnification obligations and (y) in the case of reimbursement of costs and expenses, after receipt by the Borrower of an invoice setting forth such costs and expenses in reasonable detail, together with backup documentation supporting the relevant reimbursement request. This Section 9.03(b) shall not apply to Taxes other than any Taxes that represent losses, claims, damages or liabilities in respect of a non-Tax claim.

(c) The Borrower shall not be liable for any settlement of any proceeding effected without the written consent of the Borrower (which consent shall not be unreasonably withheld, delayed or conditioned) or any other losses, claims, damages, liabilities and/or expenses incurred in connection therewith, but if any proceeding is settled with the written consent of the Borrower, or if there is a final judgment against any Indemnitee in any such proceeding, the Borrower agrees to indemnify and hold harmless each Indemnitee to the extent and in the manner set forth above. The Borrower shall not, without the prior written consent of the affected Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending or threatened proceeding in respect of which indemnity could have been sought hereunder by such Indemnitee unless (i) such settlement includes an unconditional release of such Indemnitee from all liability or claims that are the subject matter of such proceeding and (ii) such settlement does not include any statement as to any admission of fault or culpability.

**Section 9.04.** Waiver of Claim. To the extent permitted by applicable Requirements of Law, no party to this Agreement nor any Secured Party shall assert, and each hereby waives on behalf of itself and its Related Parties, any claim against any other party hereto, any Loan Party and/or any Related Party of any thereof, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or the use of the proceeds thereof, except, in the case of any claim by any Indemnitee against the Borrower, to the extent such damages would otherwise be subject to indemnification pursuant to, and in accordance with, the terms of Section 9.03.

**Section 9.05.** Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; provided that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with the terms of this Section (any attempted assignment or transfer not complying with the terms of this Section shall be null and void and, with respect to attempted assignments or transfers to Disqualified Institutions, subject to Section 9.05(f)). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and permitted assigns, to the extent provided in clause (e) of this Section, Participants and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in clause (b)(ii) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement with the prior written consent of:

(A) the Borrower (such consent not to be unreasonably withheld, conditioned or delayed); provided that (x) the Borrower shall be deemed to have consented to any assignment of Loans (other than any assignment to any Disqualified Institution or any natural Person) unless it has objected thereto by written notice to the Administrative Agent within five (5) Business Days after receipt of written notice thereof and (y) the consent of the Borrower shall not be required for any assignment of Loans or Commitments (1) to any Lender or any Affiliate



of any Lender or an Approved Fund or (2) at any time to any person when an Event of Default has occurred and is continuing;

(B) the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed); provided that no consent of the Administrative Agent shall be required for (x) any assignment to another Lender, any Affiliate of a Lender or any Approved Fund or (y) any assignment at any time to any person when an Event of Default has occurred and is continuing; and

(C) [reserved].

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of any assignment to another Lender, any Affiliate of any Lender or any Approved Fund or any assignment of the entire remaining amount of the relevant assigning Lender's Loans or Commitments, the principal amount of Loans or Commitments of the assigning Lender subject to the relevant assignment (determined as of the date on which the Assignment Agreement with respect to such assignment is delivered to the Administrative Agent and determined on an aggregate basis in the event of concurrent assignments to Related Funds or Affiliates or by Related Funds or Affiliates) shall not be less than \$1,000,000, in each case unless the Borrower and the Administrative Agent otherwise consent;

(B) any partial assignment shall be made as an assignment of a proportionate part of all the relevant assigning Lender's rights and obligations under this Agreement; provided that notwithstanding anything herein to the contrary, any assignment by the Fronting Lender of Loans 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;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment Agreement via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (provided that (i) such fee shall not be payable in the case of an assignment to an Approved Fund of a Lender and (ii) such fee may be waived or reduced in the sole discretion of the Administrative Agent, and which fee shall be waived in connection with any assignment by the Fronting Lender of Loans); and

(D) the relevant Eligible Assignee, if it is not a Lender, shall deliver on or prior to the effective date of such assignment, to the Administrative Agent (1) an Administrative Questionnaire and (2) any IRS form required under Section 2.17 and all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(iii) Subject to the acceptance and recording thereof pursuant to clause (b)(iv) of this Section, from and after the effective date specified in any Assignment Agreement, the Eligible Assignee thereunder shall be a party hereto and, to the extent of the interest assigned pursuant to such Assignment Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be (A) entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03 with respect to facts and circumstances occurring on or prior to the effective date of such assignment and (B) subject to its obligations thereunder and under Section 9.13). If any assignment by any Lender holding

any Promissory Note is made after the issuance of such Promissory Note, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender such Promissory Note to the Administrative Agent for cancellation, and, following such cancellation, if requested by either the assignee or the assigning Lender, the Borrower shall issue and deliver a new Promissory Note to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders and their respective successors and assigns, and the commitment of, and principal amount of and interest on the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). Failure to make any such recordation, or any error in such recordation, shall not affect the Borrower’s obligations in respect of such Loans. The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and each Lender (but only as to its own holdings), at any reasonable time and from time to time upon reasonable prior written notice. The parties hereto agree that the Obligations are intended to be treated as being in “registered form” for the purposes of Sections 163(f), 165(j), 871(h)(2), and 881(c)(2), and 4701 of the Code.

(v) Upon its receipt of a duly completed Assignment Agreement executed by an assigning Lender and an Eligible Assignee, the Eligible Assignee’s completed Administrative Questionnaire, any tax certification required by Section 9.05(b)(ii)(D)(2) (unless the assignee is already a Lender hereunder), all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, the processing and recordation fee referred to in clause (b) of this Section, if applicable, and any written consent to the relevant assignment required by clause (b) of this Section, the Administrative Agent shall promptly accept such Assignment Agreement and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) By executing and delivering an Assignment Agreement, the assigning Lender and the Eligible Assignee thereunder shall be deemed to confirm and agree with each other and the other parties hereto as follows: (A) the assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that the amount of its commitments, and the outstanding balances of its Loans, in each case without giving effect to any assignment thereof which has not become effective, are as set forth in such Assignment Agreement, (B) except as set forth in clause (A) above, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statement, warranty or representation made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (C) the assignee represents and warrants that it is an Eligible Assignee, that it is not a Disqualified Institution, and that it is legally authorized to enter into such Assignment Agreement; (D) the assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements referred to in Section 4.01(c) or the most recent financial statements delivered pursuant to Section 5.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment Agreement; (E) the assignee will independently and without reliance upon the Administrative Agent, the assigning Lender or any other Lender and based on such

documents and information as it deems appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (F) the assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent, by the terms hereof, together with such powers as are reasonably incidental thereto; and (G) the assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(c) (i) Any Lender may, without the consent of the Borrower (except to the extent required pursuant to the immediately succeeding proviso), the Administrative Agent or any other Lender, sell participations to any bank or other entity (other than to any Disqualified Institution, any natural Person or, other than with respect to any participation to any Debt Fund Affiliate, the Borrower or any of its Affiliates) (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its commitments and the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the relevant Participant, agree to any amendment, modification or waiver described in (x) clause (A) of the first proviso to Section 9.02(b) that directly and adversely affects the Loans or commitments in which such Participant has an interest and (y) clauses (B)(1), (2) or (3) of the first proviso to Section 9.02(b). Subject to clause (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the limitations and requirements of such Sections) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section and it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender, and if additional amounts are required to be paid pursuant to Section 2.17(a) or Section 2.17(c), to the Borrower and the Administrative Agent). To the extent permitted by applicable Requirements of Law, each Participant also shall be entitled to the benefits of Section 9.09 as though it were a Lender; provided that such Participant shall be subject to Section 2.18(c) as though it were a Lender.

(ii) No Participant shall be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the participating Lender would have been entitled to receive with respect to the participation sold to such Participant.

Each Lender that sells a participation or makes a grant to an SPC (as defined in Section 9.05(e)) shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and each SPC and their respective successors and registered assigns, and the principal and interest amounts of each Participant’s and each SPC’s interest in the Loans or other obligations under the Loan Documents (a “Participant/SPC Register”); provided that no Lender shall have any obligation to disclose all or any portion of any Participant/SPC Register (including the identity of any Participant or SPC or any information relating to any Participant’s or SPC’s interest in any Commitment, Loan or any other obligation under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) of the Treasury Regulations (or any amended or successor version). The entries in the Participant/SPC Register shall be conclusive absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant/SPC Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant/SPC Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (other than to any Disqualified Institution or any natural person) to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to any Federal Reserve Bank or other central bank having jurisdiction over such Lender, and this Section 9.05 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release any Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Notwithstanding anything to the contrary contained herein, any Lender (a “Granting Lender”) may grant to a special purpose funding vehicle (an “SPC”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of any Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 2.15, 2.16 or 2.17) and no SPC shall be entitled to any greater amount under Section 2.15, 2.16 or 2.17 or any other provision of this Agreement or any other Loan Document that the Granting Lender would have been entitled to receive, unless the grant to such SPC is made with the prior written consent of the Borrower (in its sole discretion), expressly acknowledging that such SPC’s entitlement to benefits under Sections 2.15, 2.16 and 2.17 is not limited to what the Granting Lender would have been entitled to receive absent the grant to the SPC, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender) and (iii) the Granting Lender shall for all purposes including approval of any amendment, waiver or other modification of any provision of the Loan Documents, remain the Lender of record hereunder. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the Requirements of Law of the US or any State thereof; provided that (i) such SPC’s Granting Lender is in compliance in all material respects with its obligations to the Borrower hereunder and (ii) each Lender designating any SPC hereby agrees to indemnify, save and hold harmless each other party hereto for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such SPC during such period of forbearance. In addition, notwithstanding anything to the contrary contained in this Section 9.05, any SPC may (i) with notice to, but without the prior written consent of, the Borrower or the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guaranty or credit or liquidity enhancement to such SPC.

(f) (i) Any assignment or participation by a Lender (A) to or with any Disqualified Institution or (B) in the case of any assignment and/or participation, without the Borrower’s consent to the extent the Borrower’s consent is required under this Section 9.05 (and, if applicable, not deemed to have been given pursuant to Section 9.05(b)(i)(A)), in each case, to any Person shall be null and void, and Holdings and the Borrower shall each be entitled to seek specific performance to unwind any such assignment or participation and/or specifically enforce this Section 9.05(f) in addition to injunctive relief (without posting a bond or presenting evidence of irreparable harm) or any other remedy available to the Borrower at law or in equity; it being understood and agreed that the Borrower, Holdings and its subsidiaries will suffer irreparable harm if any Lender breaches any obligation under this Section 9.05 as it relates to any assignment or participation to a Disqualified Person, the pledge or assignment of any security interest in any Loan or Commitment to a Disqualified Person and/or any assignment or participation of, or pledge or assignment of a security interest in,



any Loan or Commitment to any Person to whom the Borrower's consent is required but not obtained. Nothing in this Section 9.05(f) shall be deemed to prejudice any right or remedy that Holdings or the Borrower may otherwise have at law or equity. The Administrative Agent may make the list of Disqualified Institutions available on a confidential basis in accordance with Section 9.13 to any Lender who specifically requests a copy thereof, and such Lender may provide such list of Disqualified Institutions to any potential assignee or participant who agrees to keep such list confidential in accordance with Section 9.13 solely for the purpose of permitting such Person to verify whether such Person (or any Affiliate thereof) constitutes a Disqualified Institution.

(ii) If any assignment or participation under this Section 9.05 is made to any Disqualified Institution and/or any Affiliate of any Disqualified Institution (other than any Competitor Debt Fund Affiliate) and/or any other Person to whom the Borrower's consent is required but not obtained, in each case, without the Borrower's prior written consent (any such person, a "Disqualified Person"), then the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Person and the Administrative Agent, (A) terminate any Commitment of such Disqualified Person and repay all obligations of the Borrower owing to such Disqualified Person, (B) in the case of any outstanding Loans, held by such Disqualified Person, purchase such Loans by paying the lesser of (x) par and (y) the amount that such Disqualified Person paid to acquire such Loans, plus accrued interest thereon, accrued fees and all other amounts payable to it hereunder and/or (C) require such Disqualified Person to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.05), all of its interests, rights and obligations under this Agreement to one or more Eligible Assignees; provided that (I) in the case of clause (B), the applicable Disqualified Person has received payment of an amount equal to the lesser of (1) par and (2) the amount that such Disqualified Person paid for the applicable Loans, plus accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the Borrower, (II) in the case of clauses (A) and (B), the Borrower shall not be liable to the relevant Disqualified Person under Section 2.16 if any Term SOFR Loan owing to such Disqualified Person is repaid or purchased other than on the last day of the Interest Period relating thereto, (III) in the case of clause (C), the relevant assignment shall otherwise comply with this Section 9.05 (except that no registration and processing fee required under this Section 9.05 shall be required with any assignment pursuant to this paragraph; provided that, to the extent the aggregate principal amount of Loans held by Affiliated Lenders exceeds 25.0% of the then outstanding Loans on the 91st day following such transfer, then such excess amount shall either be (x) contributed to the Borrower or any of its subsidiaries and retired and cancelled immediately upon such contribution or (y) automatically cancelled)) and (IV) in no event shall such Disqualified Person be entitled to receive amounts set forth in Section 2.13(d). Further, any Disqualified Person identified by the Borrower to the Administrative Agent (A) shall not be permitted to (x) receive information or reporting provided by any Loan Party, the Administrative Agent or any Lender and/or (y) attend and/or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, (B) (x) shall not for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, have a right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action; it being understood that all Loans held by any Disqualified Person shall be deemed to be not outstanding for all purposes of calculating whether the Required Lenders have taken any action, and (y) shall be deemed to vote in the same proportion as Lenders that are not Disqualified Persons (1) in any proceeding under any Debtor Relief Law commenced by or against the Borrower or any other Loan Party and/or (2) for purposes of any matter requiring the consent of each Lender or each affected Lender and (C) shall not be entitled to receive the benefits of Section 9.03. For the sake of clarity, the provisions in this Section 9.05(f) shall not apply to any Person that is an assignee of any Disqualified Person, if such assignee is not a Disqualified Person.

(iii) Notwithstanding anything to the contrary herein, each of Holdings, Intermediate Holdings, the Borrower and each Lender acknowledges and agrees that the Administrative Agent shall not have any liability for any assignment or participation made to any Disqualified Institution or Affiliated Lender (regardless of whether the consent of the Administrative Agent is required thereto), and none of the Borrower, any Lender or any of their respective Affiliates will bring any claim to that effect.

**Section 9.06. Survival.** All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loan regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until the Termination Date. The provisions of Sections 2.15, 2.16, 2.17, 9.03 and 9.13 and Article 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the occurrence of the Termination Date or the termination of this Agreement or any provision hereof but in each case, subject to the limitations set forth in this Agreement.

**Section 9.07. Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and the Fee Letters constitute the entire agreement among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it has been executed by Holdings, Intermediate Holdings, the Borrower and the Administrative Agent and when the Administrative Agent has received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or by email as a “.pdf” or “.tif” attachment shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**Section 9.08. Severability.** To the extent permitted by applicable Requirements of Law, any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**Section 9.09. Right of Setoff.** At any time when an Event of Default exists, the Administrative Agent and, upon the written consent of the Administrative Agent and each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations (in any currency) at any time owing by the Administrative Agent or such Lender, respectively, to or for the credit or the account of any Loan Party against any of and all the Secured Obligations held by the Administrative Agent or such Lender, irrespective of whether or not the Administrative Agent or such Lender shall have made any



demand under the Loan Documents and although such obligations may be contingent or unmatured or are owed to a branch or office of such Lender different than the branch or office holding such deposit or obligation on such Indebtedness. The Administrative Agent shall promptly notify the Borrower and any applicable Lender shall promptly notify the Borrower and the Administrative Agent of such set-off or application, as applicable; provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender and the Administrative Agent under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender or the Administrative Agent may have.

**Section 9.10.** Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN ANY OTHER LOAN DOCUMENT) AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN ANY OTHER LOAN DOCUMENT), SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY US FEDERAL OR NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK (OR ANY APPELLATE COURT THEREFROM) OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING SHALL (EXCEPT AS PERMITTED BELOW) BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, FEDERAL COURT. EACH PARTY HERETO AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY REGISTERED MAIL ADDRESSED TO SUCH PERSON SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PERSON FOR ANY SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. EACH PARTY HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE REQUIREMENTS OF LAW. EACH PARTY HERETO AGREES THAT THE ADMINISTRATIVE AGENT RETAINS THE RIGHT TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION SOLELY IN CONNECTION WITH THE EXERCISE OF ITS RIGHTS UNDER ANY COLLATERAL DOCUMENT.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN CLAUSE (b) OF THIS SECTION. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY CLAIM OR DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION, SUIT OR PROCEEDING IN ANY SUCH COURT.

(d) TO THE EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 9.01. EACH PARTY HERETO HEREBY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING

COMMENCED HEREUNDER OR UNDER ANY LOAN DOCUMENT THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW.

**Section 9.11. Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY SUIT, ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 9.12. Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

**Section 9.13. Confidentiality.** Each of the Administrative Agent and each Lender (and each Lender agrees to cause its SPC, if any) to maintain the confidentiality of the Confidential Information (as defined below), except that Confidential Information may be disclosed (a) to its and its Affiliates' members, partners, directors, officers, managers, employees, independent auditors, or other experts and advisors, including accountants, legal counsel and other advisors (collectively, the "Representatives") on a "need to know" basis solely in connection with the transactions contemplated hereby and who are informed of the confidential nature of the Confidential Information and are or have been advised of their obligation to keep the Confidential Information of this type confidential; provided that such Person shall be responsible for its Affiliates' and their Representatives' compliance with this paragraph; provided, further, that unless the Borrower otherwise consents, no such disclosure shall be made by the Administrative Agent any Lender or any Affiliate or Representative thereof to any Affiliate or Representative of the Administrative Agent or any Lender that is a Disqualified Institution, (b) to the extent compelled by legal process in, or reasonably necessary to, the defense of such legal, judicial or administrative proceeding, in any legal, judicial or administrative proceeding or otherwise as required by applicable Requirements of Law (in which case such Person shall, except with respect to any audit or examination conducted by bank accountants or any Governmental Authority or regulatory or self-regulatory authority exercising examination or regulatory authority over such Person, (i) to the extent practicable and permitted by applicable Requirements of Law, inform the Borrower promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment), (c) upon the demand or request of any regulatory or governmental authority (including any self-regulatory body) purporting to have jurisdiction over such Person or its Affiliates (in which case such Person shall, except with respect to any audit or examination conducted by bank accountants or any Governmental Authority or regulatory or self-regulatory authority exercising examination or regulatory authority over such Person, to the extent permitted by applicable Requirements of Law, (i) inform the Borrower promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any information so disclosed is accorded confidential treatment), (d) to the extent provided by or on behalf of the Borrower to the Administrative Agent for distribution to the Lenders, by the Administrative Agent to any Lender party to this Agreement, as applicable, (e) subject to an acknowledgment and agreement by the relevant recipient that the Confidential Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as otherwise reasonably acceptable to the Borrower and the Administrative Agent) in accordance with market standards for dissemination of the relevant type of information, which shall in any event require "click through" or other affirmative action on the part of the recipient to access the Confidential Information and acknowledge its

confidentiality obligations in respect thereof, to (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or prospective Participant in, any of its rights or obligations under this Agreement, including any SPC (in each case other than a Disqualified Institution and/or any Person to whom the Borrower has, at the time of disclosure, affirmatively declined to consent to any assignment or participation), (ii) any pledgee referred to in Section 9.05 and (iii) any actual or prospective, direct or indirect contractual counterparty (or its advisors) to any Derivative Transaction (including any credit default swap) or similar derivative product to which any Loan Party is a party, (f) with the prior written consent of the Borrower and (g) to the extent the Confidential Information becomes publicly available other than as a result of a breach of this Section by such Person, its Affiliates or their respective Representatives. For purposes of this Section, “Confidential Information” means all information relating to Holdings, Intermediate Holdings, the Borrower and/or any of its subsidiaries and their respective businesses or the Transactions (including any information obtained by the Administrative Agent or any Lender, or any of their respective Affiliates or Representatives, based on a review of any books and records relating to Holdings, Intermediate Holdings, the Borrower and/or any of its subsidiaries and their respective Affiliates from time to time, including prior to the date hereof) other than any such information that is publicly available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by Holdings or any of its subsidiaries. For the avoidance of doubt, in no event shall any disclosure of any Confidential Information be made to any Person that is a Disqualified Institution at the time of disclosure.

**Section 9.14. No Fiduciary Duty.** Each of the Administrative Agent, each Lender and their respective Affiliates (collectively, solely for purposes of this paragraph, the “Lenders”), may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their respective affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Loan Party, its respective stockholders or its respective affiliates, on the other. Each Loan Party acknowledges and agrees that: (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lenders, on the one hand, and the Loan Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender, in its capacity as such, has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its respective stockholders or its respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its respective stockholders or its respective Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents and (y) each Lender, in its capacity as such, is acting solely as principal and not as the agent or fiduciary of such Loan Party, its respective management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that such Loan Party has consulted its own legal, tax and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party hereby agrees that it will not claim and, to the fullest extent it may legally and effectively do so, hereby waives any such claim, that any of the Administrative Agent, the Lenders or their respective Affiliates has rendered advisory services of any nature or respect or owes a fiduciary duty or similar duty to it in connection with any aspect of any transaction contemplated hereby.

**Section 9.15. Several Obligations.** The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder.

**Section 9.16. USA PATRIOT Act.** Each Lender that is subject to the requirements of the USA PATRIOT Act and the requirements of the Beneficial Ownership Regulation hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan

Party in accordance with the USA PATRIOT Act and the Borrower in accordance with the Beneficial Ownership Regulation.

**Section 9.17.** Disclosure of Agent Conflicts. Each Loan Party and each Lender hereby acknowledge and agree that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

**Section 9.18.** Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens in favor of the Administrative Agent (for the benefit of the Secured Parties) and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other applicable Requirement of Law can be perfected only by possession. If any Lender (other than the Administrative Agent) obtains possession of any Collateral, such Lender shall notify the Administrative Agent thereof and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

**Section 9.19.** Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable Requirements of Law (collectively the "Charged Amounts"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable Requirements of Law, the rate of interest payable in respect of such Loan hereunder, together with all Charged Amounts payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charged Amounts that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charged Amounts payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, have been received by such Lender.

**Section 9.20.** Certain Bankruptcy Matters. In the event of a conflict between, or inconsistency among, the DIP Order, on the one hand, and any other Loan Document, on the other hand, the DIP Order shall control.¶

**Section 9.21.** Conflicts.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event of any conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall govern and control.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event of any conflict or inconsistency between any term or provision of this Agreement (excluding the Exhibits hereto) and any term or provision of any Exhibit to this Agreement, the term or provision of this Agreement shall govern and control, and the Borrower shall be entitled to make such revisions to the relevant term or provision of the applicable Exhibit to ensure that such term or provision is consistent with the corresponding term or provision of this Agreement.

**Section 9.22.** Release of Guarantors. Notwithstanding anything in Section 9.02(b) to the contrary, any Subsidiary Guarantor shall automatically be released from its obligations hereunder (and its Loan Guaranty and any Lien granted by such Subsidiary Guarantor pursuant to any Collateral Document) shall be automatically released) upon the consummation of any transaction or series of related transactions expressly permitted by this Agreement if as a result thereof such Subsidiary Guarantor ceases to be Subsidiary. In connection with any such release, the Administrative Agent shall promptly execute and deliver to the relevant Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence termination or release. Notwithstanding anything contained in this Agreement to the contrary, in no event shall any Agent be required to authorize or execute and deliver any instrument or document evidencing any release or subordination unless

the Borrower or applicable Loan Party shall have provided such Agent with a certificate of a Responsible Officer certifying that the authorization, execution and delivery of such release or subordination, as applicable, are authorized by the terms of this Agreement and the other Loan Documents. Each Agent may conclusively rely, without independent investigation, on such certificate and shall incur no liability for acting in reliance thereon. Any execution and delivery of any document pursuant to the preceding sentence of this Section 9.22 shall be without recourse to or warranty by the Administrative Agent (other than as to the Administrative Agent's authority to execute and deliver such documents).

**Section 9.23.** Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Solely to the extent any Lender that is an Affected Financial Institution is a party to this Agreement, 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 the applicable Resolution Authority.

**Section 9.24.** Certain ERISA Matters. Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, that at least one of the following is and will be true:

(a) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(b) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(c) (i) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (ii) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the



Commitments and this Agreement, (iii) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (iv) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(d) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

In addition, unless either (1) subclause (i) in the immediately preceding paragraph is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with subclause (iv) in the immediately preceding paragraph, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the US or any other state of the US):

(e) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(f) As used in this Section 9.25, the following terms have the following meanings:

(i) "BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 USC § 841(k)) of such party.



(ii) “Covered Entity” means any of the following:

(A) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(B) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(C) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

(iii) “Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

(iv) “QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 USC § 5390(c)(8)(D).

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

**HOLDINGS:**

THRASIO HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

**INTERMEDIATE HOLDINGS:**

THRASIO INTERMEDIATE SUB, LLC

By: \_\_\_\_\_  
Name:  
Title:

**BORROWER:**

THRASIO, LLC

By: \_\_\_\_\_  
Name:  
Title:

**ADMINISTRATIVE AGENT:**

WILMINGTON SAVINGS FUND SOCIETY, FSB

By: \_\_\_\_\_

Name:

Title:

**LENDERS:**

[•]

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT B**

**Budget**

Thrasio Holdings, Inc.  
Approved Budget  
\$ in 000s

Forecast / Actual Week # Week Ending	Fcst Week 1 <sup>(1)</sup> 2-Mar	Fcst Week 2 9-Mar	Fcst Week 3 16-Mar	Fcst Week 4 23-Mar	Fcst Week 5 30-Mar	Fcst Week 6 6-Apr	Fcst Week 7 13-Apr	Fcst Week 8 20-Apr	Fcst Week 9 27-Apr	Fcst Week 10 4-May	Fcst Week 11 11-May	Fcst Week 12 18-May	Fcst Week 13 25-May	Fcst 13 Week Total
<b>TOTAL COLLECTIONS</b>	\$ 5,402	\$ 6,121	\$ 6,284	\$ 6,691	\$ 7,014	\$ 7,623	\$ 7,795	\$ 7,855	\$ 7,620	\$ 7,716	\$ 7,276	\$ 7,452	\$ 12,447	\$ 97,298
<b><u>OPERATING DISBURSEMENTS</u></b>														
Merchandise	-	(5,325)	(2,662)	(2,960)	(2,692)	(2,086)	(2,086)	(2,086)	(2,086)	(2,086)	(2,086)	(2,086)	(2,086)	(30,329)
Supply Chain	-	(4,964)	(2,487)	(3,287)	(2,487)	(2,428)	(2,428)	(3,528)	(2,528)	(2,478)	(2,478)	(3,478)	(2,578)	(35,148)
SG&A	-	(4,792)	(4,398)	(2,658)	(6,927)	(2,790)	(4,674)	(3,217)	(4,675)	(5,533)	(2,479)	(4,375)	(3,079)	(49,597)
Sales & Other Taxes	-	(1,310)	(307)	(217)	(149)	-	(12)	-	(444)	(23)	(3)	(136)	(46)	(2,646)
<b>Total Operating Disbursements</b>	\$ -	\$ (16,391)	\$ (9,854)	\$ (9,122)	\$ (12,255)	\$ (7,304)	\$ (9,200)	\$ (8,831)	\$ (9,733)	\$ (10,121)	\$ (7,046)	\$ (10,075)	\$ (7,790)	\$ (117,720)
Net Cash Flow - Adjacent Businesses	-	(373)	(292)	(284)	(117)	(245)	(130)	(142)	82	(119)	131	(243)	166	(1,566)
<b><u>NON-OPERATING CASH FLOWS</u></b>														
Interest & Fees	-	(828)	-	-	(25)	(401)	(803)	-	-	(375)	(388)	-	-	(2,820)
Restructuring Professionals Fees	-	(70)	(228)	-	-	(70)	(1,668)	-	(5,484)	(70)	(1,418)	-	-	(9,008)
Divestitures/Asset Dispositions	-	-	-	-	-	-	-	-	-	200	-	-	-	200
Other Non-Operating	-	(475)	(464)	(200)	(354)	(200)	(200)	-	-	-	-	-	-	(1,893)
<b>Total Non-Operating Cash Flows</b>	\$ -	\$ (1,373)	\$ (692)	\$ (200)	\$ (379)	\$ (671)	\$ (2,671)	\$ -	\$ (5,484)	\$ (245)	\$ (1,806)	\$ -	\$ -	\$ (13,521)
<b>Net Cash Flow Before Financing</b>	\$ 5,402	\$ (12,015)	\$ (4,553)	\$ (2,915)	\$ (5,736)	\$ (596)	\$ (4,206)	\$ (1,118)	\$ (7,515)	\$ (2,769)	\$ (1,446)	\$ (2,866)	\$ 4,823	\$ (35,510)
DIP Draw / (Repayment)	-	35,000	-	-	-	-	35,000	-	-	-	-	-	-	70,000
<b>NET CASH FLOW</b>	\$ 5,402	\$ 22,985	\$ (4,553)	\$ (2,915)	\$ (5,736)	\$ (596)	\$ 30,794	\$ (1,118)	\$ (7,515)	\$ (2,769)	\$ (1,446)	\$ (2,866)	\$ 4,823	\$ 34,490
<b>Beginning Operating Cash</b>	\$ 25,692	\$ 31,094	\$ 54,079	\$ 49,526	\$ 46,611	\$ 40,875	\$ 40,279	\$ 71,073	\$ 69,955	\$ 62,440	\$ 59,671	\$ 58,226	\$ 55,359	\$ 25,692
Add: Net Cash Flows	5,402	22,985	(4,553)	(2,915)	(5,736)	(596)	30,794	(1,118)	(7,515)	(2,769)	(1,446)	(2,866)	4,823	34,490
<b>Ending Operating Cash</b>	\$ 31,094	\$ 54,079	\$ 49,526	\$ 46,611	\$ 40,875	\$ 40,279	\$ 71,073	\$ 69,955	\$ 62,440	\$ 59,671	\$ 58,226	\$ 55,359	\$ 60,182	\$ 60,182

(1) Week 1 covers the period from February 27, 2024 to March 2, 2024