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

FORM 8-K

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

Date of Report (Date of earliest event reported): **January 9, 2023**

LIFECORE BIOMEDICAL, INC.
(Exact name of registrant as specified in its charter)

Delaware	**000-27446**	**94-3025618**
(State or other jurisdiction of incorporation)	(Commission file number)	(IRS Employer Identification No.)

3515 Lyman Boulevard **Chaska, Minnesota**	**55318**
(Address of principal executive offices)	(Zip Code)

(952) 368-4300
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

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

☐ Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	**Trading Symbol**	**Name of each exchange on which registered**
Common Stock	LFCR	The NASDAQ Global Select Market

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

Emerging growth company ☐

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

Item 1.01. Entry into a Material Definitive Agreement

Securities Purchase Agreement

On January 9, 2023, Lifecore Biomedical, Inc. (the "Company") entered into a Securities Purchase Agreement (the "Purchase Agreement") with the investors named therein (each a "Purchaser" and collectively the "Purchasers"). Pursuant to the Purchase Agreement, the Company issued and sold an aggregate of 38,750 shares (the "Preferred Shares") of the Series A Convertible Preferred Stock, par value $0.001 per share (the "Convertible Preferred Stock"), to the Purchasers for an aggregate purchase price of $38.75 million. The closing of the purchase and sale occurred simultaneously with signing the Purchase Agreement on January 9, 2023 (the "Closing Date").

The Company will use the proceeds from the sale of the Preferred Shares for working capital, capital expenditures, repayment of the Company's indebtedness and general corporate purposes.

The Purchase Agreement contains customary representations, warranties and covenants of the Company and the Purchasers.

Purchaser Directors

For so long as 30% of the Preferred Shares remain outstanding, the holders of the Preferred Shares, voting separately as a class, will have the right to nominate two members to the Board of Directors (the "Board") of the Company (the "Series A Director Right").

Purchase Rights

If, after the date of the Purchase Agreement and until the date that the Purchasers hold, in the aggregate, less than 30% of the Preferred Shares, the Company intends to issue new equity or equity equivalent securities, including without limitation any debt, preferred stock or other instrument or security that is, at any time during its life and under any circumstances, convertible into or exchangeable or exercisable for shares of the Company's common stock, par value $0.001 per share (the "Common Stock"), then the Company shall notify the Purchasers and the Purchasers shall have certain rights to participate in such offering, subject to certain exceptions.

Designation of Preferred Stock

Each share of Convertible Preferred Stock has the powers, designations, preferences and other rights as are set forth in the Certificate of Designations of the Series A Preferred Stock filed by the Company with the Delaware Secretary of State on January 9, 2023 (the "Certificate of Designations").

The Convertible Preferred Stock ranks senior to the Company's Common Stock with respect to dividends, distributions and payments on liquidation, winding-up and dissolution.

Upon a liquidation, dissolution, winding up or change of control of the Company, each share of Convertible Preferred Stock will be entitled to receive an amount per share of Convertible Preferred Stock equal to the greater of (i) the purchase price paid by the Purchaser, plus all accrued and unpaid dividends (the "Liquidation Preference") and (ii) the amount that the holder of Convertible Preferred Stock (each, a "Holder" and collectively, the "Holders") would have been entitled to receive at such time if the Convertible Preferred Stock had been converted into Common Stock immediately prior to such liquidation event.

The Holders will be entitled to dividends on the Liquidation Preference at the rate of 7.5% per annum, payable in-kind ("PIK"). The Company may, at its option, pay such dividends in cash from and after the earlier of June 29, 2026, or the termination or waiver of the restriction on cash dividends and/or redemptions that is set forth in the Credit Agreements (as defined in the Certificate of Designations) (such earlier date, the "Applicable Date"). The Holders are also entitled to participate in dividends declared or paid on the Common Stock on an as-converted basis.

Upon certain bankruptcy events, the Company is required to pay to each Holder an amount in cash equal to the Liquidation Preference being redeemed. From and after the Applicable Date, each Holder shall have the right to require the Company to redeem all or any part of the Holder's Convertible Preferred Stock for an amount equal to the Liquidation Preference.

Each Holder will have the right, at its option, to convert its Convertible Preferred Stock, in whole or in part, into fully paid and non-assessable shares of Common Stock at a conversion price equal to $7.00 per share. The conversion price is subject to customary anti-dilution adjustments, including in the event of any stock split, stock dividend, recapitalization or similar events, and is also subject to adjustment in the event of subsequent offerings of Common Stock or convertible securities by the Company for less than the Conversion Price. Pursuant to the terms of the Certificate of Designations, unless and until approval of the Company's stockholders is obtained as contemplated by Nasdaq listing rules (the "Stockholder Approval"), no Holder may convert shares of Convertible Preferred Stock through either an optional or a mandatory conversion into shares of Common Stock if and solely to the extent that the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock that is equal to 19.99% of the amount of Common Stock of the Company outstanding as of the Closing Date (the "Exchange Limit"). Additionally, subject to certain exceptions and waiver by each Holder, the Company will not issue any shares of Common Stock to any respective Holder to the extent that such issuance of Common Stock would result in such Holder beneficially owning in excess of 9.99% of the then-outstanding Common Stock (together with the Exchange Limit, the "Conversion Limits").

Subject to certain conditions, the Company may from time to time, at its option, require conversion of all or any portion of the outstanding shares of Convertible Preferred Stock to Common Stock if, for at least 20 consecutive trading days during the respective measuring period the closing price of the Common Stock was at least 150% of the conversion price. The Company may not exercise

its right to mandatorily convert outstanding shares of Convertible Preferred Stock unless certain liquidity conditions with regard to the shares of Common Stock to be issued upon such conversion are satisfied.

The Holders are entitled to vote with the holders of the shares of Common Stock on all matters submitted for a vote of holders of shares of Common Stock (voting together with the holders of shares of Common Stock as one class) on an as-converted basis, subject to the Conversion Limits.

Additionally, for so long as 30% of the Preferred Shares remain outstanding, certain matters will require the approval of the majority of the outstanding Convertible Preferred Stock, voting as a separate class, including (i) amending, altering or repealing any provision of the Certificate of Designations; (ii) amending, altering or repealing any provision of the Company's Certificate of Incorporation or Bylaws, in each case, in a manner that adversely affects the powers, preferences or rights of the Series A Preferred Stock; (iii) increasing or decreasing the authorized number of shares of Series A Preferred Stock (except to provide for the issuance of PIK dividends); (iv) creating (including by reclassification), issuing shares of or increasing the authorized number of shares of any additional class or series of capital stock of the Company unless such class or series rank junior to the Series A Preferred Stock and are issued at fair market value; (v) purchasing or redeeming or paying, declaring or setting aside any fund for, any dividend or distribution on, any Common Stock or other Junior Stock (as defined in the Certificate of Designations"), other than purchases of equity securities of the Company upon the termination of an employee of the Company or any of its subsidiaries in accordance with the terms of such employee's employment agreement or any equity incentive or similar plan approved by the Board; or (vi) creating, incurring, granting, entering into, permitting, assuming or allowing, directly or indirectly, (a) any indebtedness by the Company (or any of its subsidiaries), excluding equity securities and non-convertible preferred stock (but including convertible debt), at any time when, or as a result of which, the principal amount of the Company's total outstanding and available indebtedness exceeds $175,000,000, or (b) any lien, charge or other encumbrance on all or substantially all of the Company's (or any of its subsidiaries') properties or assets.

Registration Rights Agreement

On January 9, 2023, in connection with the Purchase Agreement, the Company and the Purchasers also entered into a Registration Rights Agreement (the "Registration Rights Agreement") pursuant to which, among other things, the Company granted the Purchasers certain registration rights with respect to the shares of Common Stock issuable upon conversion of the Convertible Preferred Stock.

The foregoing descriptions of the Purchase Agreement, Certificate of Designations and Registration Rights Agreement, including the transactions contemplated thereby and the terms of the Convertible Preferred Stock, do not purport to be complete and are subject to, and qualified in their entirety by, the full text of the Purchase Agreement, Certificate of Designations and Registration Rights Agreement, which are attached hereto as Exhibits 10.1, 3.1 and 10.2, respectively, and incorporated herein by reference.

Amendment to Credit Agreements

On January 9, 2023, the Company, Curation Foods, Inc. ("Curation") and Lifecore Biomedical Operating Company, Inc. (f/k/a Lifecore Biomedical, Inc.) ("Lifecore OpCo" and, together with the Company and Curation, the "Borrowers") and certain of the Company's other subsidiaries, as guarantors, entered into (i) a Limited Waiver and Fourth Amendment (the "Term Loan Amendment") to that certain Credit and Guaranty Agreement, dated December 31, 2020 (the "Term Loan Credit Agreement"), with Goldman Sachs Specialty Lending Group, L.P. ("Goldman Sachs"), as lender, administrative agent and collateral agent, and certain affiliates of Guggenheim Credit Services, LLC ("Guggenheim"), as lenders, and (ii) a Limited Waiver and Fourth Amendment (the "Revolving Loan Amendment" and, together with the Term Loan Amendment, the "Amendments") to that certain Credit Agreement, dated December 31, 2020 (the "Revolving Credit Agreement" and, together with the Term Loan Credit Agreement, the "Credit Agreements" and each, a "Credit Agreement"), with BMO Harris Bank N.A. ("BMO") as lender and administrative agent.

Limited Waiver

Each Amendment provides for the waiver of certain past financial covenant defaults and matters related to the potential restatement of certain historical financial statements under the Credit Agreements.

Reduction in Commitments under Revolving Credit Agreement

The Revolving Loan Amendment reduces the maximum amount available under the Revolving Credit Agreement to up to the lesser of (i) $60.0 million (subject to further reduction upon the sale of certain assets and 100% of the Equity Interests of each of Procesdora Tanok, S. de R. L. de C. V. and Tanokatan, S. de R. L. de C. V.), less a reserve for certain secured credit products, if any, and (ii) a borrowing base as calculated under the Revolving Credit Agreement (which, pursuant to the Revolving Loan Amendment, was modified to (i) limit the inclusion of inventory located outside of the United States or Canada in the calculation of eligible inventory and (ii) include a further temporary reduction of the borrowing base by an additional $1.0 million until January 31, 2023).

Interest Rates and Amortization

The Term Loan Amendment increased the applicable margin payable in respect of borrowings under the Term Loan Credit Agreement by 2.0% per annum. Such increased applicable margin is "payable-in-kind" in lieu of in cash, by capitalizing such interest and adding it to the outstanding principal amount of the applicable term loans on the applicable interest payment date. Furthermore, the Term Loan Amendment provides that the first amortization payment in respect of term loans outstanding under the Term Loan Credit Agreement will not be required until the fiscal quarter ending on or about February 28, 2025, at which time amortization payments will be due and payable in the same amount and at the same times as provided in the Term Loan Credit Agreement, prior to giving effect to the Term Loan Amendment.

The Revolving Loan Amendment provides that interest under the Revolving Credit Agreement will accrue, at the option of the Company, at an interest rate of (x) adjusted Term SOFR (subject to a floor of 0 basis points) *plus* between 200 and 250 basis points or (y) base rate (subject to a floor of 100 basis points) *plus* between 100 and 150 basis points, in each case, based upon average availability under the Revolver Credit Agreement.

Financial Covenants

The Term Loan Amendment modified (i) the minimum fixed charge coverage ratio financial covenant under the Term Loan Credit Agreement to (x) provide that such covenant not be tested until the fiscal quarter ending on or about May 30, 2023 and (y) require a minimum fixed charge coverage ratio of at least 0.75 to 1.00 for the fiscal quarter ending on or about May 30, 2023, increasing incrementally thereafter to at least 1.20 to 1.00 on and after November 30, 2024, (ii) the maximum leverage ratio financial covenant under the Term Loan Credit Agreement to (x) provide that such covenant not be tested until the fiscal quarter ending on or about May 30, 2023 and (y) require a maximum leverage ratio of no greater than 8.00 to 1.00 for the fiscal quarter ending on or about May 30, 2023, decreasing incrementally thereafter to 5.25 to 1.00 on and after May 30, 2025 and (iii) the minimum liquidity financial covenant under the Term Loan Credit Agreement to require minimum liquidity of at least $1.0 million at all times until May 30, 2023, increasing to $7.5 million at all times from and after June 1, 2023.

Other Modifications

Each Amendment provides for certain additional covenants, including, (i) limitations on the Company's use of proceeds received in connection with the Purchase Agreement, (ii) a requirement that the Company (x) deliver certain reports and additional reporting information including 13-week budgets and cash flow forecasts and (y) retain a professional advisor to analyze and assist with certain matters, in each case, until certain conditions are met, (iii) a requirement that the Company host certain lender calls and (iv) limitations on the Company's and its subsidiaries' ability to make investments in, and restricted payments and dispositions to, Curation and its subsidiaries.

The foregoing descriptions of the Term Loan Amendment and Revolving Loan Amendment, including the transactions contemplated thereby, do not purport to be complete and are subject to, and qualified in their entirety by, the full text of the Term Loan Amendment and Revolving Loan Amendment, which are attached hereto as Exhibits 10.3 and 10.4, respectively, and incorporated herein by reference.

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

The information contained in Item 1.01 of this Current Report on Form 8-K (this "Current Report") under the heading "Amendment to Credit Agreements" is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities

The information contained in Item 1.01 of this Current Report is incorporated by reference into this Item 3.02.

The offer and sale of the Preferred Shares was made in reliance on an exemption from registration under the Securities Act of 1933, as amended (the "Securities Act") pursuant to Section 4(a)(2) thereof.

Item 3.03. Material Modification to Rights of Security Holders

The information contained in Item 1.01 of this Current Report is incorporated by reference into this Item 3.03.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Pursuant to the Series A Director Right and effective as of the Closing Date, the Board appointed Nat Calloway, 40, to the Board as a new Class 2 director, and Christopher Kiper, 52, as a Class 1 Director. Dr. Calloway's term as director will expire at the 2023 annual meeting of stockholders or until his successor is elected and qualified or his earlier resignation, disqualification, retirement, removal or death. Mr. Kiper's term as director will expire at the 2024 annual meeting of stockholders or until his successor is elected and qualified or his earlier resignation, disqualification, retirement, removal or death.

Dr. Calloway is an analyst and partner at 22NW, LP, a Seattle-based value fund specializing in small and microcap investments with a multi-year investment horizon, where he has been employed since June 2021. Since October 2022, Dr. Calloway has served on the board of directors of Anebulo Pharmaceuticals, Inc., a publicly traded clinical-stage biotechnology company developing solutions for people suffering from acute cannabinoid intoxication and substance addiction. Prior to joining 22NW, LP, Dr. Calloway served in a variety of roles in healthcare research at Edison Group from December 2015 to June 2021, including as Associate Director of Healthcare Research from June 2018 to June 2021. Dr. Calloway has a Ph.D. in Chemistry and Chemical Biology from Cornell University, a Masters of Science in Chemistry from Columbia, and completed a post-doctoral study in neuroscience at Weill Cornell Medical School. He has 10 scientific publications in the areas of physical chemistry, biochemistry and neuroscience.

Mr. Kiper has served as a Co-Founder, Managing Director and the Chief Investment Officer of Legion Partners Asset Management, LLC ("Legion"), an investment fund focused on accumulating large ownership stakes in undervalued U.S. small-cap companies, since April 2012 and at Legion's predecessor entities from January 2010 to April 2012. Prior to co-founding Legion, Mr. Kiper served as Vice President at Shamrock Capital Advisors, the alternative investment vehicle of the Disney family, where he served as Portfolio

Manager of the Shamrock Activist Value Fund, a concentrated, long-only, activist fund, from April 2007 until January 2010. Before that, Mr. Kiper founded and operated the Ridgestone Small Cap Value Fund, a small-cap targeted activist fund in association with the Ridgestone Corporation, an investment firm, from June 2000 to April 2007. From 1998 to 2000, Mr. Kiper served as the Director of Financial Planning at Global Crossing Ltd., a telecommunications company that provided computer networking services. Mr. Kiper began his career as an Auditor at Ernst & Young Global Limited, an international tax, consulting and advisory service, from 1994 to 1997. Mr. Kiper received a B.S.B.A in Accounting from the University of Nebraska in 1993.

As a non-employee director, Dr. Calloway and Mr. Kiper will receive compensation similar to the Company's other non-employee directors. Upon the effective date of his appointment to the Board, Dr. Calloway and Mr. Kiper each received a pro-rated annual equity grant in the form of restricted stock units with a value equal to the pro-rated portion of the $90,000 annual equity award value, with the number of restricted stock units calculated based on the fair market value on the date of grant. The restricted stock units will vest on the first anniversary of the grant date, subject to Dr. Calloway and Mr. Kiper's continued service, respectively. In addition, Dr. Calloway and Mr. Kiper will receive the standard fees paid by the Company to all of its non-employee directors for service on the Board and on any Board committees, including an annual cash retainer in the amount of $50,000 for service on the Board.

In addition, the Company will enter into an indemnification agreements with Dr. Calloway and Mr. Kiper on the form previously approved by the Board and entered into with the Company's other directors.

Other than pursuant to the Series A Director Right, there is no arrangement or understanding between Dr. Calloway or Mr. Kiper and any other person pursuant to which such individuals were appointed as directors of the Company, and there are no family relationships between Dr. Calloway or Mr. Kiper and any of the Company's directors or executive officers. There are no transactions to which the Company is a party and in which Dr. Calloway or Mr. Kiper has a direct or indirect material interest that would be required to be disclosed under Item 404(a) of Regulation S-K.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

The information in Item 1.01 under the heading "Designation of Preferred Stock" in item 1.01 above is incorporated into this Item 5.03 by reference.

Item 7.01. Regulation FD Disclosure

A copy of the press release announcing the Company's execution of the Purchase Agreement and other matters is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

The information contained in this Item 7.01 as well as in Exhibit 99.1 is furnished and shall not be deemed to be "filed" for purposes of Section 18 of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, and such information shall not be deemed to be incorporated by reference into any of the Company's filings under the Securities Act or the Exchange Act.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
3.1	Certificate of Designations of Lifecore Biomedical, Inc., dated January 9, 2023.
10.1	Securities Purchase Agreement, dated January 9, 2023, by and between Lifecore Biomedical, Inc. and the purchasers named therein.
10.2	Registration Rights Agreement, dated January 9, 2023, by and between Lifecore Biomedical, Inc. and the other parties thereto.
10.3	Term Loan Amendment, dated January 9, 2023.
10.4	Revolving Loan Amendment, dated January 9, 2023.
99.1	Press Release, dated January 9, 2023.
104	Cover Page Interactive Data File (embedded within the inline XBRL document)

SIGNATURE

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

Date: January 9, 2023

LIFECORE BIOMEDICAL, INC.

By: /s/ John D. Morberg
John D. Morberg
Chief Financial Officer

CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF SERIES A CONVERTIBLE PREFERRED STOCK OF LIFECORE BIOMEDICAL, INC.

Lifecore Biomedical, Inc. (the "**Company**"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "**DGCL**"), does hereby certify that, pursuant to authority conferred upon the Board of Directors of the Company (the "**Board**") by the Certificate of Incorporation, as amended, of the Company, and pursuant to the provisions of the DGCL, the Board adopted resolutions (i) designating a series of the Company's previously authorized preferred stock, par value $0.001 per share, and (ii) providing for the designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof, of one-hundred and twenty thousand (120,000) shares of Series A Convertible Preferred Stock of the Company, as follows:

RESOLVED, that the Company is authorized to issue one-hundred and twenty thousand (120,000) shares of Series A Convertible Preferred Stock, par value $0.001 per share (the "**Series A Preferred Shares**" or "**Series A Preferred Stock**"), which shall have the following powers, designations, preferences and other special rights:

(1) Ranking. The Series A Preferred Shares shall rank prior and senior to all of the Common Stock and any other capital stock of the Company with respect to the preferences as to dividends, distributions and payments upon a Liquidation Event. The rights of the shares of Common Stock and other capital stock of the Company shall be of junior rank to and subject to the preferences and relative rights of the Series A Preferred Shares. Subject to the terms of the Series A Preferred Shares, the Company shall be permitted to issue capital stock, including preferred stock, that is junior in rank to the Series A Preferred Shares in respect of the preferences as to dividends and other distributions, redemption payments and payments upon a Liquidation Event (such stock being referred to hereinafter collectively as "**Junior Stock**").

(2) Prepayment. Other than as specifically permitted by this Certificate of Designations, Preferences and Rights of Series A Preferred Shares of the Company (this "**Certificate of Designations**"), the Company may not prepay any portion of any outstanding Conversion Amount.

(3) Liquidation. In the event of a Liquidation Event, holders of Series A Preferred Shares (each, a "**Holder**" and collectively, the "**Holders**") shall be entitled to receive in cash out of the assets of the Company legally available therefor, whether from capital or from earnings available for distribution to its stockholders (the "**Liquidation Funds**") upon such Liquidation Event, but before any amount shall be paid to the holders of Junior Stock, an amount per Series A Preferred Share equal to the greater of (i) the Conversion Amount and (ii) the amount that would have been received had such Series A Preferred Shares been converted into Common Stock immediately prior to such Liquidation Event at the then effective Conversion Price (without regard to any limitations on conversion); provided that, if the Liquidation Funds are insufficient to pay the full amount due to the Holders and holders of shares of other classes or series of preferred stock of the Company, if any, that are of equal rank with the Series A Preferred Shares as to payments of Liquidation Funds (such stock being referred to hereinafter collectively as "**Pari**

Passu Stock"), if any, then each Holder and each holder of any such Pari Passu Stock shall receive a percentage of the Liquidation Funds equal to the full amount of Liquidation Funds that would be payable to such Holder as a liquidation preference, in accordance with their respective Certificate of Designations, Preferences and Rights, as a percentage of the full amount of Liquidation Funds payable to all Holders and holders of Pari Passu Stock.

(4) Dividends.

(a) From and after the first date of issuance of any Series A Preferred Shares (the "**Issuance Date**"), the Holders of record as they appear on the stock books of the Company on the fifteenth (15th) day (even if such day is not a Business Day) (a "**Preferential Dividend Record Date**") of the calendar month immediately preceding the first (1st) Business Day of each succeeding Calendar Quarter (each such date, a "**Preferential Dividend Date**"), shall be entitled to receive, to the fullest extent permitted by law, before any dividends shall be declared, set apart for or paid upon the Common Stock or any other Junior Stock, dividends per Series A Preferred Share on the applicable Preferential Dividend Date in arrears for the previous Calendar Quarter in an amount equal to the Preferential Dividend Rate on the Stated Value of each such Series A Preferred Share computed on the basis of a 360-day year and twelve 30-day months (the "**Preferential Dividends**"). The Preferential Dividends shall be payable in kind in a number of additional fully paid and non-assessable shares of Series A Preferred Stock equal to the quotient of the Preferential Dividends, divided by the Stated Value per share of Series A Preferred Stock (the "**PIK Dividend**"); provided that the Company may, at its option, pay the Preferential Dividend in cash from and after the earlier of June 29, 2026, or the termination or waiver of the restriction on cash dividends and/or redemptions that is set forth in the Credit Agreements (such earlier date, the "**Applicable Date**") if the Company has funds legally available for such payment. If the Company is permitted to and does so elect to pay Preferential Dividends in cash, then the Company shall send written notice to each Holder of the Company's election at least thirty (30) days prior to any Preferential Dividend Date and otherwise comply with Section 16(d). Notwithstanding the foregoing, the Company shall not be permitted to pay PIK Dividends on a Preferential Dividend Date occurring after the Applicable Date if an Equity Conditions Failure has occurred during the period beginning on the first day of the applicable Calendar Quarter through the applicable Preferential Dividend Date.

(b) Subject to Sections 5(e) and 16(e), the Holders on the record date fixed for holders of Common Stock for dividends and distributions (or, in the event no such date is fixed, on the Preferential Dividend Record Date) shall be entitled to receive, concurrently with the dividends and distributions to the holders of Common Stock (or, in the event no such dividends or distributions are made, on the Preferential Dividend Date), such dividends paid and distributions made to the holders of Common Stock to the same extent as if such Holders had converted the Series A Preferred Shares into Common Stock (without regard to any limitations on conversion) and had held such shares of Common Stock on such record date (the "**Participating Dividends**" and together with the Preferential Dividends, the "**Dividends**"); provided, however, to the extent that the Holder's Participating Dividends includes the right to receive any such shares of Common Stock that would result in the Holder and its other Attribution Parties exceeding the

Maximum Percentage, then the Holder shall not be entitled to receive such shares to such extent (and shall not be entitled to beneficial ownership or any other rights (except as set forth in this proviso) of such shares of Common Stock to such extent) and the portion of such Participating Dividends shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Participating Dividends (and any Participating Dividends declared or made on such initial Participating Dividends held similarly in abeyance) to the same extent as if there had been no such limitation.

(c) Dividends on the Series A Preferred Shares shall commence accruing on the Issuance Date, shall be cumulative and shall continue to accrue whether or not declared and whether or not in any fiscal year there shall be net profits or surplus available for the payment of Dividends in such fiscal year, so that if in any fiscal year or years, Dividends in whole or in part are not paid upon the Series A Preferred Shares for any reason, unpaid Dividends shall accumulate thereon. If the Company fails to declare and pay in full Preferential Dividends on the Series A Preferred Shares on any Preferential Dividend Date as provided in this Section 4, then any Preferential Dividends payable on such Preferential Dividend Date on the Series A Preferred Shares but not paid shall accrue and bear interest at a rate equal to the Preferential Dividend Rate, computed on the basis of a 360-day year and twelve 30-day months, from and including the applicable Preferential Dividend Date to but excluding the day on which the Company shall have paid all Dividends on which the Series A Preferred Shares that are then in arrears or until the conversion or redemption of the applicable shares of Series A Preferred Shares.

(5) Conversion of Series A Preferred Shares. At any time or times after the Issuance Date, the Series A Preferred Shares shall be convertible into shares of Common Stock, on the terms and conditions set forth in this Section 5.

(a) Holder's Conversion Right. Subject to the provisions of Section 5(e), at any time or times on or after the Issuance Date, any Holder shall be entitled to convert all or any portion of the Conversion Amount of any Series A Preferred Shares, into fully paid and nonassessable shares of Common Stock in accordance with this Section 5 at the Conversion Rate (as defined below).

(b) Conversion. The number of shares of Common Stock issuable upon conversion of each Series A Preferred Share pursuant to Section 5(a) shall be determined according to the following formula (the "**Conversion Rate**"):

$$\frac{\text{Conversion Amount}}{\text{Conversion Price}}$$

No fractional shares of Common Stock are to be issued upon the conversion of any Series A Preferred Share, but rather the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number. The applicable Conversion Rate and Conversion Price from time to time in effect is subject to adjustment as hereinafter provided.

(c) Mechanics of Conversion. The conversion of Series A Preferred Shares shall be conducted in the following manner:

(i) Holder's Delivery Requirements. To convert Series A Preferred Shares into shares of Common Stock on any date on or after the Issuance Date (a "**Conversion Date**"), a Holder shall (A) deliver to the Company on or prior to 11:59 p.m., New York time, on such date, a copy of a properly completed notice of conversion executed by the Holder of the Series A Preferred Shares subject to such conversion in the form attached hereto as Exhibit A (a "**Conversion Notice**") and (B) if required by Section 5(c)(vi), but without delaying the Company's requirement to deliver shares of Common Stock on the applicable Share Delivery Date (as defined below), surrender to a common carrier for delivery to the Company as soon as practicable following such date the original certificates representing the Series A Preferred Shares being converted (or comply with the procedures set forth in Section 22) (the "**Series A Preferred Stock Certificates**"). No ink-original Conversion Notice shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Conversion Notice be required by the Company or the Holder.

(ii) Company's Response. Upon delivery to the Company of a Conversion Notice, the Company shall (A) as soon as practicable, but in any event within two (2) Trading Days, send a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (B) on or before the earlier of (1) the number of Trading Days comprising the Standard Settlement Period and (2) the third (3rd) Trading Day following the date on which the Holder has delivered the applicable Conversion Notice to the Company (a "**DTC Share Delivery Date**"), provided that (x) the shares of Common Stock issuable upon such conversion are subject to an effective resale registration statement in favor of such Holder or (y) if converted at a time when Rule 144 would be available for immediate resale of the shares of Common Stock issuable upon such conversion by such Holder, the Company shall cause the Transfer Agent to credit such aggregate number of shares of Common Stock to which such Holder shall be entitled to such Holder's or its designee's balance account with the Depository Trust Company ("**DTC**") through its Deposit/Withdrawal at Custodian ("**DWAC**") system. On or before the fifth (5th) Trading Day following the date on which the Holder has delivered the applicable Conversion Notice to the Company (a "**Book-Entry Delivery Date**" and together with the DTC Share Delivery Date, a "**Share Delivery Date**"), the shares of Common Stock issuable upon conversion are not subject to an effective resale registration statement in favor of such Holder and, if converted at a time when Rule 144 would not be available for immediate resale of the shares of Common Stock issuable upon conversion by such Holder, the Company shall (i) issue the number of shares of Common Stock to which the Holder shall be entitled with such restrictive legends as shall be required pursuant to Section 4(l) of the Securities Purchase Agreement, registered in the name of the Holder or its designee in book-entry form at the Transfer Agent and (ii) deliver to the address as specified in the

applicable Conversion Notice a copy from the Company's books and records evidencing such issuance. If a Series A Preferred Stock Certificate is physically submitted in connection with any conversion and if the number of Series A Preferred Shares represented by the Series A Preferred Stock Certificate(s) submitted for conversion is greater than the number of Series A Preferred Shares being converted, then the Company shall, as soon as practicable and in no event later than five (5) Business Days after delivery of the Series A Preferred Stock Certificate(s) and at its own expense, issue and deliver to such Holder a new Series A Preferred Stock Certificate representing the number of Series A Preferred Shares not converted. The Company's obligations to issue and deliver shares of Common Stock in accordance with the terms and subject to the conditions hereof are absolute and unconditional, irrespective of any action or inaction by such Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination. While any Series A Preferred Shares are outstanding, the Company shall use a transfer agent that participates in DTC Fast Automated Securities Transfer ("**FAST**") Program.

(iii) Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series A Preferred Shares shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the applicable Conversion Date, irrespective of the date such shares of Common Stock are credited to such Holder's account with DTC or the date of delivery of the certificates evidencing such shares of Common Stock, as the case may be.

(iv) Company's Failure to Timely Convert.

(A) [Reserved].

(B) Void Conversion Notice. If for any reason a Holder has not received all of the shares of Common Stock to which such Holder is entitled on the applicable Share Delivery Date with respect to a conversion of Series A Preferred Shares for any reason other than such Holder's failure to comply with the conditions set forth herein, then such Holder, upon written notice to the Company, with a copy of the Transfer Agent, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, any Series A Preferred Shares that have not been converted pursuant to such Holder's Conversion Notice.

(v) Pro Rata Conversion; Disputes. In the event the Company receives a Conversion Notice from more than one Holder for the same Conversion Date and the Company can convert some, but not all, of such Series A Preferred Shares, the Company, subject to Section 5(e), shall convert from each holder electing to have Series A Preferred Shares converted at such time a pro rata amount of such holder's portion of Series A Preferred Shares submitted for conversion based on Stated Value of Series A Preferred Shares submitted for conversion on such date by such

holder relative to the aggregate Stated Value of Series A Preferred Shares submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to a Holder in connection with a conversion of Series A Preferred Shares, the Company shall issue to such Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 15.

(vi) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series A Preferred Shares in accordance with the terms hereof, a Holder thereof shall not be required to physically surrender the certificate representing the Series A Preferred Shares to the Company unless (A) the full or remaining number of Series A Preferred Shares represented by the certificate are being converted, in which case such Holder shall deliver such stock certificate to the Company as soon as reasonably practicable following such conversion or (B) a Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series A Preferred Shares upon physical surrender of any Series A Preferred Shares. Each Holder and the Company shall maintain records showing the number of Series A Preferred Shares so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holders and the Company, so as not to require physical surrender of the certificate representing the Series A Preferred Shares upon each such conversion. In the event of any dispute or discrepancy, such records of the Company establishing the number of Series A Preferred Shares to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. If the Company does not update its records to record such Stated Value and Dividends converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Company's records shall be automatically deemed updated to reflect such occurrence. Notwithstanding the foregoing, if Series A Preferred Shares represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series A Preferred Shares unless such Holder first physically surrenders the certificate representing the Series A Preferred Shares to the Company, whereupon the Company will within five (5) Business Days of receipt of such surrender, issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of Series A Preferred Shares represented by such certificate within five (5) Business Days. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series A Preferred Shares, the number of Series A Preferred Shares represented by such certificate may be less than the number of Series A Preferred Shares stated on the face thereof. Each certificate for Series A Preferred Shares shall bear the following legend:

ANY TRANSFEREE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE COMPANY'S CERTIFICATE OF DESIGNATIONS RELATING TO THE

SERIES A PREFERRED SHARES REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION 5(c)(vi) THEREOF. THE NUMBER OF SERIES A PREFERRED SHARES REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF SERIES A PREFERRED SHARES STATED ON THE FACE HEREOF PURSUANT TO SECTION 5(c)(vi) OF THE CERTIFICATE OF DESIGNATIONS RELATING TO THE SERIES A PREFERRED SHARES REPRESENTED BY THIS CERTIFICATE.

(d) Mandatory Conversion at the Company's Election. If at any time, or from time to time, from and after the Issuance Date (the "**Mandatory Conversion Start Date**") (i) the Closing Bid Price of the Common Stock has equaled or exceeded 150% of the initial Conversion Price (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction relating to the Common Stock occurring after the Closing Date, but, for the avoidance of doubt not giving effect to any adjustment to the Conversion Price pursuant to Section 5(g)) (a "**Mandatory Conversion Price Condition**") for at least twenty (20) consecutive Trading Days following the Mandatory Conversion Start Date (a "**Mandatory Conversion Measuring Period**") and (ii) no Equity Conditions Failure has occurred during the period beginning on the first day of the applicable Mandatory Conversion Measuring Period relating to the applicable Mandatory Conversion (as defined below) through the applicable Mandatory Conversion Date (as defined below), the Company shall from time to time have the right to require the Holders to convert all, or any portion, of the outstanding Series A Preferred Shares, as designated in the Mandatory Conversion Notice (as defined below) relating to the applicable Mandatory Conversion on the applicable Mandatory Conversion Date into fully paid, validly issued and nonassessable shares of Common Stock at the Conversion Rate as of the applicable Mandatory Conversion Date (a "**Mandatory Conversion**"). The Company may exercise its right to require conversion under this Section 5(d) by delivering within not more than thirty (30) days following the end of any such Mandatory Conversion Measuring Period a written notice thereof by electronic mail to all Holders and the Transfer Agent (a "**Mandatory Conversion Notice**" and the date the Company delivers to the Transfer Agent and all Holders such notice is referred to as a "**Mandatory Conversion Notice Date**"). Each Mandatory Conversion Notice shall be irrevocable. Each Mandatory Conversion Notice shall (i) (a) state the Trading Day on which the applicable Mandatory Conversion shall occur, which Trading Day shall be the thirtieth (30th) Trading Day following the applicable Mandatory Conversion Notice Date (a "**Mandatory Conversion Date**"), (b) state the aggregate Conversion Amount of the Series A Preferred Shares which the Company has elected to be subject to such Mandatory Conversion from such Holder and all other Holders pursuant to this Section 5(d), (c) state the number of shares of Common Stock to be issued to such Holder on the applicable Mandatory Conversion Date, (d) in the event such Mandatory Conversion cannot be consummated in full due to the limitations set forth in Section 5(e)(i), state the number of Series A Preferred Shares that the Company has elected to be subject to a Mandatory Conversion but which cannot be so converted due to the limitations set forth in Section 5(e)(i) and (e) state whether the conversion of all or any portion of the Series A Preferred Shares that the Company has elected to be subject to a Mandatory Conversion will result in the issuance of a greater

number of shares of Common Stock than permitted under Section 5(e)(ii) and (ii) certify that the Mandatory Conversion Price Condition relating to the applicable Mandatory Conversion has been satisfied and that there has been no other Equity Conditions Failure on any day during the period beginning on the first day of the applicable Mandatory Conversion Measuring Period prior to the related Mandatory Conversion Notice Date through the applicable Mandatory Conversion Notice Date. If the Company confirmed that there was no such Equity Conditions Failure relating to the applicable Mandatory Conversion as of the applicable Mandatory Conversion Notice Date, but an Equity Conditions Failure occurs at any time between the applicable Mandatory Conversion Notice Date and the applicable Mandatory Conversion Date (a "**Mandatory Conversion Interim Period**"), the Company shall provide each Holder a subsequent written notice to that effect. If there is an Equity Conditions Failure during the applicable Mandatory Conversion Interim Period, then such Mandatory Conversion shall be null and void with respect to all or any part designated by such Holder of the unconverted Series A Preferred Shares subject to the applicable Mandatory Conversion and such Holder shall be entitled to all the rights of a holder of Series A Preferred Shares with respect to such Series A Preferred Shares; provided, however, that if a Holder waives in writing an Equity Conditions Failure during the applicable Mandatory Conversion Interim Period, then the Company shall be required to proceed with the applicable Mandatory Conversion with respect to such Holder (but not with respect any Holder who has not so waived such Equity Conditions Failure). Notwithstanding anything to the contrary in this Section 5(d), until the applicable Mandatory Conversion has occurred, the Series A Preferred Shares subject to the applicable Mandatory Conversion may be converted, in whole or in part, by a Holder into shares of Common Stock pursuant to Section 5. All Series A Preferred Shares converted by a Holder after a Mandatory Conversion Notice Date pursuant to Section 5(d) shall reduce the Series A Preferred Shares required to be converted on the related Mandatory Conversion Date. If a Mandatory Conversion cannot be consummated in full due to the limitations set forth in Section 5(e)(i), then (i) on the applicable Mandatory Conversation Date, only that portion of the applicable Mandatory Conversion that complies with the limitations set forth in Section 5(e)(i) shall occur and (ii) such Holder must promptly deliver one or more Conversion Notice(s) to the Company upon disposition of any securities of the Company that would permit the conversion of any portion of the applicable Mandatory Conversion not yet consummated. If a Mandatory Conversion consummated in full would violate the limitations set forth in (i) Section 5(e)(i), such Holder shall continue to be a holder of Series A Preferred Shares entitled to all the rights of a holder of Series A Preferred Shares except with respect to the payment of Preferential Dividends, or (ii) Section 5(e)(ii), such Holder shall continue to be a holder of Series A Preferred Shares entitled to all the rights of a holder of Series A Preferred Shares with respect to such Series A Preferred Shares. If the Company elects to cause a Mandatory Conversion pursuant to this Section 5(d), then it must simultaneously take the same action in the same proportion with respect to all Series A Preferred Shares, to the extent practicable or, if the pro rata basis is not practicable for any reason, by lot or such other equitable method as the Company determines in good faith. At each Mandatory Conversion Date, each Series A Preferred Share to be converted pursuant to such Mandatory Conversion shall automatically be converted into fully paid, validly issued, nonassessable shares of Common Stock at the Conversion Rate as of the applicable Mandatory

Conversion Date without any further act or deed on the part of the Company, any Holder or any other Person.

(e) Limitation on Conversions.

(i) Beneficial Ownership. Notwithstanding anything to the contrary contained herein, the Company shall not issue any shares of Common Stock pursuant to the terms of this Certificate of Designations, and no Holder shall have the right to any shares of Common Stock otherwise issuable pursuant to the terms and conditions of this Certificate of Designations and any such issuance shall be null and void and treated as if never made, to the extent that after giving effect to such issuance, such Holder together with the other Attribution Parties collectively would beneficially own in excess of the Maximum Percentage of the shares of Common Stock outstanding immediately after giving effect to such issuance. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by a Holder and its other Attribution Parties shall include the number of shares of Common Stock beneficially owned by such Holder and all of its other Attribution Parties plus the number of shares of Common Stock issuable to such Holder pursuant to the terms of this Certificate of Designations with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted Series A Preferred Shares beneficially owned by such Holder or any of its other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by such Holder or any of its other Attribution Parties subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 5(e)(i). For purposes of this Section 5(e)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of determining the number of outstanding shares of Common Stock a Holder may acquire pursuant to the terms of this Certificate of Designations without exceeding the Maximum Percentage, such Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a Conversion Notice from a Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall within one (1) Trading Day thereafter notify such Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause such Holder's beneficial ownership, as determined pursuant to this Section 5(e)(i), to exceed the Maximum Percentage, such Holder shall notify the Company of a reduced number of shares of Common Stock to be acquired pursuant to such Conversion Notice and until such notice is given by the Holder, the Company shall

not be required to take any further action in connection with such Conversion Notice. For any reason at any time, upon the written request of any Holder, the Company shall within two (2) Trading Days confirm in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including the Series A Preferred Shares, by such Holder and any of its other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to a Holder upon conversion of such Holder's Series A Preferred Shares would result in such Holder and its other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which such Holder's and its other Attribution Parties' aggregate beneficial ownership would exceed the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio and any portion of the Conversion Amount so converted shall be reinstated, and such Holder shall not have the power to vote or to transfer the Excess Shares. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Certificate of Designations in excess of the Maximum Percentage shall not be deemed to be beneficially owned by a Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act and the Holder shall not have any rights of any kind (including dividend rights, conversion rights or any other rights) with respect to such Excess Shares (but the foregoing shall not apply with respect to the associated Series A Preferred Shares) prior to the issuance of such Excess Shares, if ever, at a time when such issuance is no longer restricted pursuant to this Section 5(e)(i). The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 5(e)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 5(e)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The Maximum Percentage limitation contained in this paragraph may be waived by each Holder, with respect to such Holder, in writing to the Company, which notice shall be effective sixty-one (61) calendar days after the date of such notice, and shall apply to a successor holder of Series A Preferred Shares.

(ii) Principal Market Regulation. The Company shall not be permitted to issue any shares of Common Stock pursuant to the terms of this Certificate of Designations, and the Holders shall not have the right to receive any shares of Common Stock pursuant to the terms of this Certificate of Designations, to the extent the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock that is equal to 19.99% of the amount of Common Stock of the Company outstanding as of the Issuance Date, which is the maximum amount of shares that the Company may issue pursuant to the terms of this Certificate of Designations without breaching the Company's obligations under the rules or regulations of the Principal Market (the "**Exchange Cap**"), except that

such limitation shall not apply in the event that the Company obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of Common Stock in excess of such amount (the "**Stockholder Approval**"). Until such Stockholder Approval is obtained, no Holder shall be issued in the aggregate, pursuant to the terms of this Certificate of Designations, shares of Common Stock in an amount greater than the product of the Exchange Cap multiplied by a fraction, the numerator of which is the number of shares of Common Stock underlying the Series A Preferred Shares issued to such Holder pursuant to the Securities Purchase Agreement on the Issuance Date, and the denominator of which is the aggregate number of shares of Common Stock underlying all Series A Preferred Shares issued to the Buyers pursuant to the Securities Purchase Agreement on the Issuance Date (with respect to each such Holder, the "**Exchange Cap Allocation**"). In the event that any Holder shall sell or otherwise transfer any of such Holder's Series A Preferred Shares, the transferee shall be allocated a pro rata portion of such Holder's Exchange Cap Allocation with respect to such portion of the Series A Preferred Shares sold or otherwise transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation allocated to such transferee. In the event that any Holder shall convert all of such Holder's Series A Preferred Shares into a number of shares of Common Stock which, in the aggregate, is less than such Holder's Exchange Cap Allocation, then the difference between such Holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such Holder shall be allocated to the respective Exchange Cap Allocations of the remaining Holders on a pro rata basis in proportion to the shares of Common Stock underlying the Series A Preferred Shares then held by each such Holder.

(f) Transfer Taxes. The Company shall pay any and all transfer, stamp and similar taxes owed by it that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

(g) Adjustments to Conversion Price. The Conversion Price will be subject to adjustment from time to time as provided in this Section 5(g).

(i) Adjustment of Conversion Price upon Issuance of Common Stock. If and whenever on or after the Closing Date, the Company issues or sells, or in accordance with this Section 5(g)(i) is deemed to have issued or sold, any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding shares of Common Stock issued by the Company as a dividend or other distribution in respect of the Common Stock for which an adjustment is made pursuant to Section 5(g)(iii) or deemed to have been issued or sold by the Company in connection with any Excluded Securities) for a consideration per share less than a price (the "**Applicable Price**") equal to the Conversion Price in effect immediately prior to such issuance or sale or deemed issuance or sale (the foregoing, a "**Dilutive Issuance**"), then immediately after such Dilutive Issuance, the Conversion Price then in effect shall be reduced to an amount equal to the product of (A) the Conversion Price in effect

immediately prior to such Dilutive Issuance and (B) the quotient determined by dividing (1) the sum of (I) the product derived by multiplying the Conversion Price in effect immediately prior to such Dilutive Issuance and the number of shares of Common Stock Deemed Outstanding immediately prior to such Dilutive Issuance plus (II) the consideration, if any, received by the Company upon such Dilutive Issuance, by (2) the product derived by multiplying (I) the Conversion Price in effect immediately prior to such Dilutive Issuance by (II) the number of shares of Common Stock Deemed Outstanding immediately after such Dilutive Issuance. For purposes of determining the adjusted Conversion Price under this Section 5(g)(i), the following shall be applicable:

(ii) [Reserved].

(iii) Issuance of Convertible Securities. If the Company in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is issuable upon the conversion, exercise or exchange thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this Section 5(g)(i)(B), the "lowest price per share for which one share of Common Stock is issuable upon the conversion, exercise or exchange thereof" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the issuance or sale of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security less any consideration paid or payable by the Company with respect to such one share of Common Stock upon the issuance or sale of such Convertible Security and upon conversion, exercise or exchange of such Convertible Security. No further adjustment of the Conversion Price shall be made upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price has been or is to be made pursuant to other provisions of this Section 5(g)(i), no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(iv) Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time, the Conversion Price in effect at the time of such increase or decrease shall be adjusted to the Conversion Price, which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 5(g)(i)(C), if the terms of any Option or Convertible

Security that was outstanding as of the Closing Date are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 5(g)(i) shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(v) Calculation of Consideration Received. In case any Option is issued in connection with the issue or sale of other securities of the Company, together comprising one integrated transaction, (x) the Options will be deemed to have been issued for the Option Value of such Options and (y) the other securities issued or sold in such integrated transaction shall be deemed to have been issued or sold for the difference of (I) the aggregate consideration received by the Company less any consideration paid or payable by the Company pursuant to the terms of such other securities of the Company, less (II) the Option Value of such Options. If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount received by the Company. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company will be the fair value of such consideration determined by the Board in good faith, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company will be the Closing Sale Price of such publicly traded securities on the date of receipt of such publicly traded securities. If any shares of Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities, as the case may be, in each case determined by the Board in good faith. The fair value of any consideration other than cash or publicly traded securities will be determined by the Board in good faith. If the Required Holders object in writing to any determination of fair value by the Board pursuant to this subsection within five (5) Business Days of notice of such determination (the "**Valuation Event**"), the fair value of such consideration will be determined within five (5) Business Days after the tenth (10th) Business Day following the Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Required Holders. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company. Notwithstanding anything to the contrary contained herein, if any calculation pursuant to this Section 5(g)(i)(D) would result in a Conversion Price that is lower than the par value of the Common Stock, then the Conversion Price shall be deemed to equal the par value of the Common Stock.

(vi) Record Date. If the Company takes a record of the holders of shares of Common Stock for the purpose of entitling them (I) to receive a dividend or other

distribution payable in shares of Common Stock, Options or in Convertible Securities or (II) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(vii) Voluntary Adjustment By Company. The Company may at any time, with the prior written consent of the Required Holders, reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board.

(viii) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. If the Company at any time on or after the Closing Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company at any time on or after the Closing Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment under this Section 5(g)(iii) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(ix) Other Events. If any event occurs of the type contemplated by the provisions of this Section 5(g) but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Board will make an appropriate adjustment in the Conversion Price, as mutually determined by the Board and the Required Holders, so as to protect the rights of the Holders; provided that no such adjustment pursuant to this Section 5(g)(iv) will increase the Conversion Price as otherwise determined pursuant to this Section 5(g).

(h) [Reserved].

(i) Notices. The Company shall provide each Holder with prompt written notice of all actions taken pursuant to this Certificate of Designations, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing:

(i) Promptly upon any adjustment of the Conversion Price pursuant to Section 5(g), the Company shall give written notice thereof to each Holder, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 15.

(ii) The Company shall give written notice to each Holder at least ten (10) Business Days prior to the date on which the Company closes its books or takes a record (I) with respect to any dividend or distribution upon the Common Stock, (II) with respect to any pro rata subscription offer to holders of Common Stock or (III) for determining rights to vote with respect to any Fundamental Transaction or Liquidation Event.

(iii) The Company shall also give written notice to each Holder at least ten (10) Business Days prior to the date on which any Fundamental Transaction or Liquidation Event will take place, provided that such information shall be made known to the public prior to or in conjunction with such notice being provided to such Holder.

(6) Redemption at Option of Holders.

(a) Triggering Event. A "**Triggering Event**" shall be deemed to have occurred at such time as any of the following events:

(i) the Company or any of its Subsidiaries, pursuant to or within the meaning of Title 11, U.S. Code, or any similar federal, foreign or state law for the relief of debtors (collectively, "**Bankruptcy Law**"), (A) commences a voluntary case, (B) consents to the entry of an order for relief against it in an involuntary case, (C) consents to the appointment of a receiver, trustee, assignee, liquidator or similar official (a "**Custodian**"), (D) makes a general assignment for the benefit of its creditors or (E) admits in writing that it is generally unable to pay its debts as they become due; or

(ii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (A) is for relief against the Company or any of its Subsidiaries in an involuntary case, (B) appoints a Custodian of the Company or any of its Subsidiaries or (C) orders the liquidation of the Company or any of its Subsidiaries.

(b) Mandatory Redemption upon Triggering Event. Upon any Triggering Event, the Company shall immediately pay to the Holder an amount in cash equal to the Conversion Amount being redeemed (the "**Triggering Event Redemption Price**"), without the requirement for any notice or demand or other action by any Holder or any other Person; provided that a Holder may, in its sole and absolute discretion, waive such right to receive payment upon a Triggering Event, in whole or in part, and any such waiver shall not affect any other rights of such Holder hereunder, including any other rights in respect of such Triggering Event, any right to conversion, and any right to payment of the Triggering Event Redemption Price or any other Redemption Price, as applicable.

(c) Payment of Triggering Event Redemption Price. Upon a Triggering Event, the Company shall deliver the applicable Triggering Event Redemption Price in accordance with Section 6(b) (a "**Triggering Event Redemption Date**"). To the extent redemptions required by this Section 6 are deemed or determined by a court of competent jurisdiction to be prepayments of the Series A Preferred Shares by the Company, such redemptions

shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 6, but subject to Section 5(e), until the Triggering Event Redemption Price (together with any interest thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 6 (together with any interest thereon) may be converted, in whole or in part, by a Holder into shares of Common Stock pursuant to Section 5. All Series A Preferred Shares converted by a Holder pursuant to Section 5(b) shall reduce the Series A Preferred Shares required to be redeemed on the related Triggering Event Redemption Date. The Holders and Company agree that in the event of the Company's redemption of any Series A Preferred Shares under this Section 6, the Holders' damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holders. Accordingly, any redemption premium due under this Section 6 is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holders' actual loss of its investment opportunity and not as a penalty.

(d) Disputes; Miscellaneous. In the event of a dispute as to the determination of the arithmetic calculation of any Triggering Event Redemption Price, such dispute shall be resolved pursuant to Section 15 with the term "Redemption Price" being substituted for the term "Conversion Rate". A Holder's delivery of a Void Optional Redemption Notice (as defined in Section 9(d)) and exercise of its rights following such notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice. In the event of a redemption pursuant to this Certificate of Designations of less than all of the Series A Preferred Shares represented by a particular Series A Preferred Stock Certificate, the Company shall promptly cause to be issued and delivered to the Holder of such Series A Preferred Shares a Series A Preferred Stock Certificate representing the remaining Series A Preferred Shares which have not been redeemed, if necessary.

(7) Other Rights of Holders and the Company.

(a) Assumption and Corporate Events. Subject to Section 3, upon the occurrence or consummation of any Fundamental Transaction, and it shall be a required condition to the occurrence or consummation of any Fundamental Transaction that the Company and the Successor Entity or Successor Entities, jointly and severally, shall succeed to the Company, and the Company shall cause any Successor Entity or Successor Entities to jointly and severally succeed to the Company, and be added to the term "Company" under this Certificate of Designations (so that from and after the occurrence or consummation of such Fundamental Transaction, each and every provision of this Certificate of Designations referring to the "Company" shall refer instead to each of the Company and the Successor Entity or Successor Entities, jointly and severally), and the Successor Entity or Successor Entities, jointly and severally with the Company, may exercise every right and power of the Company prior thereto and the Successor Entity or Successor Entities shall assume all of the obligations of the Company prior thereto under this Certificate of Designations with the same effect as if the Company and such Successor Entity or Successor Entities, jointly and severally, had been named as the Company in this Certificate of Designations. In addition to and not in substitution for any other rights hereunder, prior to the occurrence or consummation of any Fundamental Transaction

pursuant to which holders of shares of Common Stock become entitled to receive securities, cash, assets or other property with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to ensure that, and any applicable Successor Entity or Successor Entities shall ensure that, and it shall be a required condition to the occurrence or consummation of such Corporate Event that, such Holder will have the right to receive upon conversion of such Holder's Series A Preferred Shares at any time after the occurrence or consummation of such Corporate Event at its option upon surrender of such Holder's Series A Preferred Shares upon the occurrence or consummation of the Corporate Event, shares of common stock or capital stock of the Successor Entity or Successor Entities, or if so elected by the Holder in lieu of the shares of Common Stock (or other securities, cash, assets or other property) such Holder is entitled to receive upon the conversion of such Holder's Series A Preferred Shares prior to such Corporate Event (but not in lieu of such items still issuable under Sections 4 and 7(b), which shall continue to be receivable on the Common Stock or on such shares of stock, securities, cash, assets or any other property otherwise receivable with respect to or in exchange for shares of Common Stock), such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights and any shares of Common Stock) which the Holders would have been entitled to receive upon the occurrence or consummation of such Corporate Event or the record, eligibility or other determination date for the event resulting in such Corporate Event, had such Holder's Series A Preferred Shares been converted immediately prior to such Corporate Event or the record, eligibility or other determination date for the event resulting in such Corporate Event (without regard to any limitations on conversion, including without limitation, the Maximum Percentage) (provided, however, to the extent that a Holder's right to receive any such shares of publicly traded common stock (or their equivalent) of the Successor Entity would result in such Holder and its other Attribution Parties exceeding the Maximum Percentage, then such Holder shall not be entitled to receive such shares to such extent (and shall not be entitled to beneficial ownership or any other rights (except as set forth in this proviso) of such shares of publicly traded common stock (or their equivalent) of the Successor Entity as a result of such consideration to such extent) and the portion of such shares shall be held in abeyance for such Holder until such time or times, as its right thereto would not result in such Holder and its other Attribution Parties exceeding the Maximum Percentage, at which time or times such Holder shall be delivered such shares to the extent as if there had been no such limitation). Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Required Holders. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied without regard to any limitations on the conversion of the Series A Preferred Shares.

(b) Purchase Rights. If at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "**Purchase Rights**"), then the Holders will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Series A Preferred Shares (without regard to any limitations or restrictions on conversions of the Series A Preferred Shares, including, without

limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that to the extent that a Holder's right to participate in any such Purchase Right would result in such Holder and its other Attribution Parties exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Purchase Right to such extent (and shall not be entitled to beneficial ownership or any other rights (except as set forth in this proviso) of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to such extent) and such Purchase Right to such extent shall be held in abeyance for the benefit of such Holder until such time or times as its right thereto would not result in such Holder and its other Attribution Parties exceeding the Maximum Percentage, at which time or times such Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right to be held similarly in abeyance) to the same extent as if there had been no such limitation).

(8) Optional Redemption at the Holder's Election. From and after the Applicable Date, each Holder shall have the right, in its sole and absolute discretion, to require that the Company redeem (a "**Holder Optional Redemption**"), to the fullest extent permitted by law and out of funds lawfully available therefor, all or any portion of the Conversion Amount of such Holder's Series A Preferred Shares then outstanding by delivering written notice thereof (a "**Holder Optional Redemption Notice**" and the date such Holder delivers such notice to the Company, a "**Holder Optional Redemption Notice Date**") to the Company which notice shall state (i) the number of Series A Preferred Shares that is being redeemed by such Holder, (ii) the date on which such Holder Optional Redemption shall occur, which date shall be the one hundred eightieth (180th) day from the applicable Holder Optional Redemption Notice Date (or, if such date falls on a day other than a Business Day, the next day that is a Business Day) (a "**Holder Optional Redemption Date**") and (iii) the wire instructions for the payment of the applicable Holder Optional Redemption Price (as defined below) to such Holder. The portion of such Holder's Series A Preferred Shares subject to redemption pursuant to this Section 8 shall be redeemed by the Company in cash at a price equal to the Conversion Amount being redeemed, including, without limitation, any accrued and unpaid Dividends on such Conversion Amount and any accrued and unpaid Dividends, if any, through the applicable Holder Optional Redemption Date (a "**Holder Optional Redemption Price**"). On the applicable Holder Optional Redemption Date, the Company shall deliver or shall cause to be delivered to each Holder the applicable Holder Optional Redemption Price in cash by wire transfer of immediately available funds pursuant to wire instructions provided by such Holder in writing to the Company. Notwithstanding anything to the contrary in this Section 8, until the applicable Holder Optional Redemption Price is paid, in full, the Redemption Amount that is subject to the applicable Holder Optional Redemption may be converted, in whole or in part, by the Holders into shares of Common Stock pursuant to Section 5. All Series A Preferred Shares converted by a Holder after the delivery of a Holder Optional Redemption Notice pursuant to Section 5(c) shall reduce the Series A Preferred Shares required to be redeemed on the Holder Optional Redemption Date. Holder Optional Redemptions made pursuant to this Section 8 shall be made in accordance with Section 9. To the extent redemptions required by this Section 8 are deemed or determined by a court of competent jurisdiction to be prepayments of the Series A Preferred Shares by the Company, such redemptions shall be deemed to be voluntary prepayments. The parties hereto agree that in the event of the Company's

redemption of any portion of a Holder's Series A Preferred Shares under this Section 8, such Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for such Holder.

(9) Redemptions.

(a) General. The Company shall pay the applicable Redemption Price on the applicable Redemption Date to each Holder in cash by wire transfer of immediately available funds pursuant to wire instructions provided by such Holder in writing to the Company on the applicable due date. In the event of a redemption of less than all of the Conversion Amount of a Holder's Series A Preferred Shares, the Company shall promptly cause to be issued and delivered to the Holder a new Series A Preferred Stock Certificate representing the outstanding Stated Value which has not been redeemed and any accrued Dividend on such Stated Value and any accrued and unpaid Dividends, if any, which shall be calculated as if no Redemption Notice has been delivered. If the Company is unable to redeem all of the Series A Preferred Shares submitted for redemption, the Company shall in addition to any remedy such Holder may have under this Certificate of Designations, pay to each Holder interest at the rate of one percent (1.0%) per month (prorated for partial months) in respect of each unredeemed Series A Preferred Share until paid in full.

(b) Redemption by Other Holders. Upon the Company's receipt of notice from any Holder for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 8 (each, an "**Other Redemption Notice**"), the Company shall promptly, but no later than one (1) Business Day of its receipt thereof, forward to each Holder a copy of such notice. If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is three (3) Business Days prior to the Company's receipt of such Holder's Redemption Notice and ending on and including the date which is three (3) Business Days after the Company's receipt of a Holder's Redemption Notice and the Company is unable to redeem the entire Redemption Prices and such other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each Holder based on the Stated Value of the Series A Preferred Shares submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

(c) Insufficient Assets. If upon a Redemption Date, the assets of the Company are insufficient to pay the applicable Redemption Price, the Company shall redeem on such date, pro rata among the Holders to be redeemed in proportion to the aggregate number of Series A Preferred Shares then held by each such holder on the applicable Redemption Date. Dividends on the Stated Value of the Series A Preferred Shares that have not been redeemed shall continue to accrue until such time as the Company redeems such Series A Preferred Shares.

(d) Void Redemption. In the event that the Company does not pay a Redemption Price within the applicable time period, at any time thereafter and until the Company pays such unpaid applicable Redemption Price in full, a Holder shall have the option to, in lieu of redemption, require the Company to promptly return to such Holder any or all of the Series A Preferred Shares that were submitted for redemption by such Holder and for which the applicable Redemption Price has not been paid, by sending written notice thereof to the Company (the "**Void Optional Redemption Notice**"). Upon the Company's receipt of such Void Optional Redemption Notice, (i) the Redemption Notice of Holder shall be null and void with respect to those Series A Preferred Shares subject to the Void Optional Redemption Notice and (ii) the Company shall immediately return any Series A Preferred Shares subject to the Void Optional Redemption Notice. A Holder's delivery of a Void Optional Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of any amounts, which have accrued prior to the date of such notice with respect to the Conversion Amount subject to such notice.

(10) Reservation of Shares.

(a) Reservation. The Company shall at all times reserve out of its authorized and unissued shares of Common Stock a number of shares of Common Stock for the Series A Preferred Shares equal to 150% of the maximum number of shares of Common Stock issuable with respect to the Series A Preferred Shares, including the payment of PIK Dividends (assuming for purposes hereof, that (x) the Series A Preferred Shares are convertible at the Conversion Rate and (y) dividends on the Series A Preferred Shares are paid in the form of PIK Dividends for a period of five years after the Issuance Date, and without taking into account any limitations on the conversion of the Series A Preferred Shares set forth herein). So long as any of Series A Preferred Shares are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series A Preferred Shares, at least the number of shares of Common Stock specified above in this Section 10(a) as shall from time to time be necessary to effect the conversion of all of the Series A Preferred Shares then outstanding, assuming the Conversion Rate (the "**Required Reserve Amount**"). The initial number of shares of Common Stock reserved for conversions of the Series A Preferred Shares and each increase in the number of shares so reserved shall be allocated among the Holders pro rata based on the total number of shares of Common Stock issuable upon conversion of the Series A Preferred Shares then outstanding (without regard to any limitations on conversion or exercise set forth in Section 5(e)) (the "**Authorized Share Allocation**"). In the event that a Holder shall sell or otherwise transfer such Holder's Series A Preferred Shares, each transferee shall be allocated a pro rata portion of such Holder's Authorized Share Allocation with respect to such portion of Series A Preferred Shares sold or otherwise transferred. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Series A Preferred Shares shall be allocated to the Holders pro rata based on the total number of shares of Common Stock issuable upon conversion of the Series A Preferred Shares then outstanding (without regard to any limitations on conversion or exercise set forth in Section 5(e)).

(b) Insufficient Authorized Shares. If at any time while any of the Series A Preferred Shares remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Series A Preferred Shares at least a number of shares of Common Stock equal to the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall use its reasonable best efforts to promptly take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Series A Preferred Shares then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than ninety (90) days after the occurrence of such Authorized Share Failure, the Company shall either (x) obtain the written consent of its stockholders for the approval of an increase in the number of authorized shares of Common Stock and provide each stockholder with an information statement with respect thereto or (y) hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its reasonable best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause the Board to recommend to the stockholders that they approve such proposal. Notwithstanding the foregoing, if during any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C.

(11) Voting Rights. Each Holder shall be entitled to the whole number of votes equal to the number of shares of Common Stock into which such Holder's Series A Preferred Shares would be convertible on the record date for the vote or consent of stockholders (subject to the limitations on conversion set forth in Section 5(e)), and shall otherwise have voting rights and powers equal to the voting rights and powers of the Common Stock. Each Holder shall be entitled to receive the same prior notice of any stockholders' meeting as is provided to the holders of Common Stock in accordance with the bylaws of the Company, as well as prior notice of all stockholder actions to be taken by legally available means in lieu of a meeting, and shall vote as a class with the holders of Common Stock as if they were a single class of securities upon any matter submitted to a vote of stockholders, except those matters required by law or by the terms hereof to be submitted to a class vote of the Holders, in which case the Holders only shall vote as a separate class.

(12) Equal Treatment of Holders. No consideration shall be offered or paid to any of the Holders to amend or waive or modify any provision of the Series A Preferred Shares, unless the same consideration (other than the reimbursement of legal fees) is also offered to all of the Holders. This provision constitutes a separate right granted to each of the Holders by the Company and shall not in any way be construed as the Holders acting in concert or as a group with respect to the purchase, disposition or voting of securities or otherwise.

(13) Series A Preferred Directors.

(a) Each Person appointed or elected to the Board by the Holders is referred to herein as a "**Series A Preferred Director**." The initial Series A Preferred Directors shall be Nathaniel Calloway and Christopher Kiper, who shall be appointed to the Board immediately following the Closing. Nathaniel Calloway shall be appointed to serve as a Class 2 director with a term expiring at the 2023 annual meeting of the Company's stockholders or such individual's earlier resignation, death or removal. Christopher Kiper shall be appointed to serve as a Class 1 director with a term expiring at the 2024 annual meeting of the Company's stockholders or such individual's earlier resignation, death or removal.

(b) Immediately following the Closing Date, the Holders shall be entitled to elect two Series A Preferred Directors. Thereafter, for so long as 30% of the of the aggregate amount of Series A Preferred Stock issued on the Issuance Date remains outstanding (the "**Preferred Stock Director Designation Right Condition**"), the Holders, voting separately as a class, shall have the right to nominate one or more persons for election to the Board of Directors to fill any vacancy created in any year in which a Series A Preferred Director's term expires or any Series A Preferred Director resigns, dies or is removed. Each Series A Preferred Director nominated for election to the Board, if elected, shall hold office for the applicable term of their class of directors or until his or her successor is elected and qualified in accordance with this Section 13(b) and the Bylaws of the Company. Notwithstanding anything set forth herein to the contrary, for so long as the Preferred Stock Director Designation Right Condition is satisfied, a majority of the outstanding shares of the Series A Preferred Stock, voting as a single class, at a meeting called for such purpose (or by written consent signed by the holders of a majority of the then-outstanding shares of Series A Preferred Stock in lieu of such a meeting) shall have the right to remove a Series A Preferred Director. For so long as the Preferred Stock Director Designation Right Condition is satisfied, any vacancy created by the removal, resignation or death of a Series A Preferred Director shall solely be filled by a majority of the outstanding shares of the Series A Preferred Stock, voting as a single class, at a meeting called for such purpose (or by written consent signed by the holders of a majority of the then-outstanding shares of Series A Preferred Stock in lieu of such a meeting).

(c) In accordance with the provisions of this Section 13, at each meeting of the Company's stockholders at which the election of a Series A Preferred Director is to be considered, the Board shall nominate the Series A Preferred Director designated in writing by the Holders who, together with each of their respective Attribution Parties, are the top two largest holders of shares of Series A Preferred Stock for election to the Board.

(d) At all times when the Preferred Stock Director Designation Right Condition is satisfied, the Holders representing at least ten percent (10%) of the voting power of the Series A Preferred Stock will have the right to call a special meeting of stockholders for the election of a Series A Preferred Director (including an election to fill any vacancy in the office of a Series A Preferred Director). Such right may be exercised by written notice, executed by such Holders delivered to the Company at its principal executive offices.

(e) If the outstanding shares of Series A Preferred stock are subject to Mandatory Conversion (x) while any Series A Preferred Director is seated on the Board,

but (y) before the end of the fourth anniversary of the date hereof, such individual shall be permitted to continue to serve on the Board for the duration of his or her then-current term, and, unless otherwise determined by the holders of a majority-in-interest of the outstanding shares of Series A Preferred Stock as of immediately prior to the Mandatory Conversion, at the next meeting of the Company's stockholders at which the election of such director is to be considered, the Board or applicable committee thereof shall include such individual in the slate of nominees up for election as a director, subject to election by the Company's stockholders.

(f) After the date hereof, and subject to applicable law and the listing standards of the Nasdaq Global Select Market (or, if the Common Stock is not traded on Nasdaq Global Select Market, the principal national securities exchange or market on which the Common Stock is listed or admitted to trading (including any over-the-counter market)), each Series A Preferred Director shall be offered the opportunity to sit on each regular committee of the Board or attend (but not vote) at the meetings of such committee as an observer.

(g) Each Series A Preferred Director shall be entitled to receive similar compensation, benefits, reimbursement (including of reasonable travel expenses), indemnification and insurance coverage for their service as a director as the other outside directors of the Company. For so long as the Company maintains directors and officers liability insurance, the Company shall include each Series A Preferred Director as an "insured" for all purposes under such insurance policy for so long as such Series A Preferred Director is a director of the Company and for the same period as for other former directors of the Company when such Series A Preferred Director ceases to be a director of the Company.

(h) In the event that the Preferred Stock Director Designation Right Condition is no longer satisfied, if requested by the Board, the Holders shall use reasonable best efforts to have each Series A Preferred Director resign as a director.

(14) Protective Provisions. For so long as at least 30% of the aggregate amount of Series A Preferred Stock issued on the Issuance Date remains outstanding, the Company shall not, and shall not permit any of its Subsidiaries to, and neither the Company nor any Subsidiary shall enter into any agreement to, either directly or indirectly, by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Certificate of Designations) the written consent or affirmative vote of the Required Holders given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect (other than, for the avoidance of doubt, any such acts or transactions taken upon or immediately prior to a Change of Control):

(a) amend, alter or repeal any provision of this Certificate of Designations;

(b) amend, alter or repeal any provision of the Company's Certificate of Incorporation or Bylaws, in each case, in a manner that adversely affects the powers, preferences or rights of the Series A Preferred Stock, it being understood that the

authorization, issuance, conversion, reclassification, exchange or amendment of a new or existing class or series of capital stock that is, or that is convertible into, capital stock that is *pari passu* or senior to the powers, privileges, preferences, rights or otherwise, of the Series A Preferred Stock shall be deemed to adversely affect the powers, preferences or rights of the Series A Preferred Stock;

(c) increase or decrease the authorized number of shares of Series A Preferred Stock (except to provide for the issuance of PIK Dividends);

(d) (A) create (including by reclassification), or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock of the Company unless the same (x) ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Company or upon a Liquidation Event, the payment of dividends and rights of redemption and (y) is issued at fair market value as reasonably and in good faith determined by the Board, or (B) increase the authorized number of shares of any additional class or series of capital stock of the Company, unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Company or upon a Liquidation Event, the payment of dividends and rights of redemption;

(e) purchase or redeem (or permit any Subsidiary to purchase or redeem) or pay, declare or set aside any fund for, any dividend or distribution on, any Common Stock or other Junior Stock, other than purchases of equity securities of the Company upon the termination of an employee of the Company or any of its Subsidiaries in accordance with the terms of such employee's employment agreement or any equity incentive or similar plan approved by the Board;

(f) create, incur, grant, enter into, permit, assume or suffer to exist, directly or indirectly, (i) any indebtedness by the Company (or any of its Subsidiaries), excluding equity securities and non-convertible preferred stock (but including convertible debt), at any time when, or as a result of which, the principal amount of the Company's total outstanding and available indebtedness exceeds $175,000,000, or (ii) any lien, charge or other encumbrance on all or substantially all of the Company's (or any of its Subsidiaries') properties or assets (other than, for the avoidance of doubt, any security interests that existed as of the Issuance Date); or

(g) agree to, commit to, resolve to, or otherwise enter into any agreement to do any of the foregoing.

For the avoidance of doubt, the foregoing consent rights shall not apply with respect to any such actions taken upon (or immediately prior to) a Change of Control, provided that the effectiveness of any such action shall be conditioned upon the consummation of such Change of Control and compliance with the other provisions of this Certificate of Designations applicable in the event of a Change of Control. Any amendment or waiver to this Certificate of Designations made in conformity with the provisions of this Section 14 shall be binding on all Holders. No such amendment or waiver shall be effective to the extent that it applies to less than all of the Holders. No vote of any class of stock other than the Series A Preferred Stock shall be required to change,

amend or waive any provision of the Certificate of Designations with respect to the Series A Preferred Stock except as required by law or by another provision of the Company's Certificate of Incorporation.

(15) Dispute Resolution. In the case of a dispute as to the determination of the Closing Bid Price or the Closing Sale Price or the arithmetic calculation of the Conversion Rate, the Conversion Price or any Redemption Price, the Company shall pay the applicable Redemption Price that is not disputed or shall instruct the Transfer Agent to issue to such Holder the number of shares of Common Stock that is not disputed, and the Company shall submit the disputed determinations or arithmetic calculations within two (2) Business Days of the delivery of the Conversion Notice or Redemption Notice or other event giving rise to such dispute, as the case may be, to the applicable Holder. If such Holder and the Company are unable to agree upon such determination or calculation within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to such Holder, then the Company shall, within two (2) Business Days submit (a) the disputed determination of the Closing Bid Price or the Closing Sale Price to an independent, reputable investment bank selected by such Holder and approved by the Company, such approval not to be unreasonably withheld, conditioned or delayed, or (b) the disputed arithmetic calculation of the Conversion Rate, Conversion Price or any Redemption Price to an independent, outside accountant, selected by such Holder and approved by the Company, such approval not to be unreasonably withheld, conditioned or delayed. The Company, at its expense, shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the applicable Holder of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

(16) General Provisions.

(a) In addition to the above provisions with respect to Series A Preferred Shares, such Series A Preferred Shares shall be subject to and be entitled to the benefit of the provisions set forth in the Certificate of Incorporation of the Company with respect to preferred stock of the Company generally; provided, however, that in the event of any conflict between such provisions, the provisions set forth in this Certificate of Designations shall control.

(b) Any Series A Preferred Shares which are converted, repurchased or redeemed in full shall be automatically be deemed cancelled and shall not be reissued, sold or transferred.

(c) Whenever notice is required to be given under this Certificate of Designations, unless otherwise provided herein, such notice shall be given in accordance with Section 8(f) of the Securities Purchase Agreement.

(d) Whenever any payment of cash is to be made by the Company to any Person pursuant to this Certificate of Designations, such payment shall be made in lawful money of the United States of America via wire transfer of immediately available funds to an account designated by such Holder; provided, that a Holder, upon written notice to the

Company, may elect to receive a payment of cash in lawful money of the United States of America by a check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement). Whenever any amount expressed to be due by the terms of this Certificate of Designations is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day without interest or penalty.

(e) To the extent permitted by law, the Company hereby waives demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Certificate of Designations.

(17) Governing Law; Jurisdiction; Jury Trial. This Certificate of Designations shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Certificate of Designations shall be governed by, the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. The Company hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to the Company at the address set forth in Section 8(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holders from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holders, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holders. THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS CERTIFICATE OF DESIGNATIONS OR ANY TRANSACTION CONTEMPLATED HEREBY.

(18) Lost or Stolen Certificates. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of any Series A Preferred Stock Certificates representing the Series A Preferred Shares, and, in the case of loss, theft or destruction, of an indemnification undertaking by such Holder to the Company in customary form (but without any obligation to post a surety or other bond) and, in the case of mutilation, upon surrender and cancellation of the Series A Preferred Stock Certificate(s), the Company shall

execute and deliver new preferred stock certificate(s) of like tenor and date within five (5) Business Days of receipt of such evidence.

(19) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations and any of the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Certificate of Designations, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a Holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Certificate of Designations. The Company covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion, redemption and the like (and the computation thereof) shall be the amounts to be received by such Holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holders shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

(20) Construction; Headings. This Certificate of Designations shall be deemed to be jointly drafted by the Company and all Buyers and shall not be construed against any Person as the drafter hereof. The headings of this Certificate of Designations are for convenience of reference and shall not form part of, or affect the interpretation of, this Certificate of Designations.

(21) Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

(22) Transfer of Series A Preferred Shares. Each Holder may offer, sell, assign or transfer all or any portion of such Holder's Series A Preferred Shares, the accompanying rights thereunder and shares of Common Stock issued pursuant to the terms hereof without the consent of the Company, subject only to the provisions of Section 4(g) of the Securities Purchase Agreement. Holders shall have such right to transfer and to exercise rights with respect to fractional Series A Preferred Shares and any redemptions of Series A Preferred Shares by the Company shall be made calculating the number of applicable Series A Preferred Shares to one-ten thousandth of a Series A Preferred Share.

(23) Series A Preferred Share Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to the Holders), a register for the Series A Preferred Shares, in which the Company shall record the name and address of the persons in whose name the Series A Preferred Shares have been issued, as well as the name and address of each transferee. The Company may treat the person in whose name any Series A Preferred Share is registered on the register as the owner and holder thereof for

all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

(24) Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Company pursuant to the rules and regulations of the Principal Market, the DGCL, this Certificate of Designations or otherwise with respect to the issuance of the Series A Preferred Shares or the Common Stock issuable upon conversion thereof may be effected by written consent of the Company's stockholders or at a duly called meeting of the Company's stockholders, all in accordance with the applicable rules and regulations of the Principal Market and the DGCL. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

(25) Disclosure. Subject to the non-disclosure agreements entered into between each Investor and the Company in connection with the transactions contemplated by the Transaction Documents, in the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company shall not deliver such notice to a Holder without receiving prior written consent from such Holder.

(26) Independent Nature of Holders' Obligations and Rights. The rights and obligations of each Holder under any Transaction Document are several and not joint with the obligations of any other Holder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute such Holder as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holders are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Holder shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Certificate of Designations or out of any other Transaction Documents, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose.

(27) Payment of Collection, Enforcement and Other Costs. If (a) any Series A Preferred Shares of a Holder is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or a Holder otherwise takes action to collect amounts due under such Holder's Series A Preferred Shares or to enforce the provisions of such Series A Preferred Shares or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under a Holder's Series A Preferred Shares, then the Company shall pay the costs incurred by such Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, but not limited to, attorneys' fees and disbursements.

(28) Certain Definitions. For purposes of this Certificate of Designations the following terms shall have the following meanings:

(a) "**Affiliate**" shall have the meaning ascribed to such term in Rule 405 of the Securities Act.

(b) "**Approved Stock Plan**" means any employee benefit plan which has been approved by the Board, pursuant to which the Company's securities may be issued to any employee, officer or director for services provided to the Company.

(c) "**Attribution Parties**" means, collectively, the following Persons: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by such Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of such Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with such Holder or any of the foregoing and (iv) any other Person whose beneficial ownership of the Common Stock would or could be aggregated with such Holder's and its other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively such Holder and all of its other Attribution Parties to the Maximum Percentage.

(d) "**Bloomberg**" means Bloomberg Financial Markets.

(e) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are generally are open for use by customers on such day.

(f) "**Buyer**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(g) "**Calendar Quarter**" means each of: the period beginning on and including January 1 and ending on and including March 31; the period beginning on and including April 1 and ending on and including June 30; the period beginning on and including July 1 and ending on and including September 30; and the period beginning on and including October 1 and ending on and including December 31.

(h) "**Capital Stock**" means:

(i) in the case of a corporation, corporate stock;

(ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(iii) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

(i) "**Change of Control**" means any Fundamental Transaction other than any (i) reorganization, recapitalization or reclassification of the Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification or (ii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company.

(j) "**Closing Bid Price**" and "**Closing Sale Price**" means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the Pink Open Market (f/k/a OTC Pink) published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the applicable Holder. If the Company and such Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 15. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction relating to the Common Stock occurring during the applicable calculation period.

(k) "**Closing Date**" means January 9, 2023.

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

(m) "**Common Stock**" means (i) the Company's shares of common stock, par value $0.001 per share and (ii) any capital stock into which such Common Stock shall be

changed or any capital stock resulting from a reorganization, recapitalization or reclassification of such Common Stock.

(n) "**Common Stock Deemed Outstanding**" means, at any given time, the number of shares of Common Stock outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to Sections 5(g)(i)(A) and 5(g)(i)(B) hereof regardless of whether the Options or Convertible Securities are actually exercisable at such time, but excluding any shares of Common Stock owned or held by or for the account of the Company or issuable pursuant to the terms of the Certificate of Designations.

(o) "**Conversion Amount**" means, for each Series A Preferred Share, the sum of (A) the Stated Value to be converted, redeemed or otherwise with respect to which this determination is being made, and (B) accrued and unpaid Dividends, if any, with respect to such Stated Value, with respect to such Stated Value and Dividends, if any.

(p) "**Conversion Price**" means, as of any Conversion Date or other date of determination, $7.00, as adjusted as provided herein.

(q) "**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(r) "**Credit Agreements**" means that certain (i) Credit and Guaranty Agreement, dated December 31, 2020, by and among the Company, Curation Foods, Inc. and Lifecore Biomedical, Inc., as borrowers, certain other subsidiary parties thereto, as guarantors, Goldman Sachs Specialty Lending Group, L.P., as lender, administrative agent and collateral agent, and certain affiliates of Guggenheim Credit Services, LLC, as lenders, and (ii) Credit Agreement, dated December 31, 2020, by and among the Company, Curation Foods, Inc. and Lifecore Biomedical, Inc., as borrowers, certain other subsidiary parties thereto, as guarantors, and BMO Harris Bank., N.A., as lender and administrative agent.

(s) "**Eligible Market**" means the Principal Market, The New York Stock Exchange, The Nasdaq Capital Market, The Nasdaq Global Market or the NYSE American.

(t) "**Equity Conditions**" means each of the following conditions: (i) on each day during the Equity Conditions Measuring Period, either (x) one or more Registration Statements filed and required to be filed pursuant to the Registration Rights Agreement shall be effective and available for the resale of all remaining Registrable Securities including the shares of Common Stock issuable upon conversion of the Conversion Amount that is subject to the applicable Mandatory Conversion requiring the satisfaction of the Equity Conditions, in accordance with the terms of the Registration Rights Agreement and there shall not have been any Grace Periods (as defined in the Registration Rights Agreement) or (y) all shares of Common Stock issuable pursuant to the terms of the Certificate of Designations, including the shares of Common Stock issuable upon conversion of the Conversion Amount that is subject to the applicable Mandatory

Conversion requiring the satisfaction of the Equity Conditions, shall be eligible for sale without restriction or limitation pursuant to Rule 144 and without the need for registration under any applicable federal or state securities laws; (ii) on each day during the Equity Conditions Measuring Period the Company shall have no knowledge of any fact that would reasonably be expected to cause (x) the Registration Statements required pursuant to the Registration Rights Agreement not to be effective and available for the resale of all remaining Registrable Securities, including the shares of Common Stock issuable upon conversion of the Conversion Amount that is subject to the applicable Mandatory Conversion requiring the satisfaction of the Equity Conditions, in accordance with the terms of the Registration Rights Agreement or (y) any shares of Common Stock issuable pursuant to the terms of the Certificate of Designations, including the shares of Common Stock issuable upon conversion of the Conversion Amount that is subject to the applicable Mandatory Conversion requiring the satisfaction of the Equity Conditions, not to be eligible for sale without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1) (or any successor thereto) promulgated under the Securities Act and any applicable state securities laws; (iii) the shares of Common Stock issuable upon conversion of the Conversion Amount that is subject to the applicable Mandatory Conversion requiring the satisfaction of the Equity Conditions may be issued in full without violating Section 5(e) hereof and the rules or regulations of the Principal Market or any other applicable Eligible Market (for the avoidance of doubt, failure of this clause (iii) shall not be deemed an Equity Conditions Failure provided that the Company complies with the applicable provisions of Section 5(d)); (iv) on each day during the Equity Conditions Measuring Period, the Common Stock is designated for quotation on the Principal Market or any other Eligible Market and shall not have been suspended from trading on such exchange or market nor shall delisting or suspension by such exchange or market been commenced or pending with delisting or suspension reasonably expected to occur within thirty (30) days of each applicable date of determination either (A) in writing by such exchange or market or (B) by falling below the then effective minimum listing maintenance requirements of such exchange or market; (v) the shares of Common Stock issuable upon conversion of the Conversion Amount that is subject to the applicable Mandatory Conversion requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market; (vi) if the event requiring the satisfaction of the Equity Conditions is a Mandatory Conversion, the Mandatory Conversion Price Condition is satisfied; and (vii) during the Equity Conditions Measuring Period, Holder shall not be in possession of any material, nonpublic information received from the Company, any Subsidiary or its respective agent or Affiliates.

(u) "**Equity Conditions Failure**" means that on the applicable date of determination through the applicable date of determination, the Equity Conditions have not each been satisfied (or waived in writing by such Holder, provided that the Equity Condition set forth in clause (iii) of such definition shall not be waivable by any Holder).

(v) "**Equity Conditions Measuring Period**" means each day during the period beginning thirty (30) Trading Days immediately prior to the applicable date of determination and ending on and including the applicable date of determination; provided, however, if the event requiring the satisfaction of the Equity Conditions is a Mandatory

Conversion, the Equity Conditions Measuring Period shall mean the applicable date of determination.

(w) "**Equity Interests**" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

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

(y) "**Excluded Securities**" means any shares of Common Stock issued or issuable: (A) under any Approved Stock Plan; (B) pursuant to the terms of this Certificate of Designations; provided that the terms of the Certificate of Designations are not amended, modified or changed on or after the Closing Date to increase the number of shares issued or issuable pursuant to such securities (other than in connection with stock splits or combinations) or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities; and (C) upon conversion, exercise or exchange of any Options or Convertible Securities which are outstanding on the day immediately preceding the Closing Date, provided that the terms of such Options or Convertible Securities, as applicable, are not amended, modified or changed on or after the Closing Date to increase the number of shares issued or issuable pursuant to such securities (other than in connection with stock splits or combinations) or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities.

(z) "**Fundamental Transaction**" means that the Company shall, directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions:

(i) (a) Consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (b) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (c) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of more than either (1) 50% of the outstanding shares of Common Stock, (2) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (3) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the outstanding shares of Common Stock, or (d) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-

off or scheme of arrangement) with one or more Subject Entities whereby such Subject Entities, individually or in the aggregate, acquire, either (1) more than 50% of the outstanding shares of Common Stock, (2) more than 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (3) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the outstanding shares of Common Stock, or (e) reorganize, recapitalize or reclassify its Common Stock;

(ii) Allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (a) more than 50% of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock, (b) more than 50% of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock not held by all such Subject Entities as of the Closing Date calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (c) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Company to surrender their shares of Common Stock without approval of the stockholders of the Company; or

(iii) Issue or enter into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(aa) "**Group**" means a "**group**" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-5 thereunder.

(bb) "**Liquidation Event**" means the voluntary or involuntary liquidation, dissolution or winding up of the Company or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Company and its Subsidiaries taken as a whole, in a single transaction or series of transactions, or adoption of any plan for the same. For the avoidance of doubt, a Change of Control shall be deemed to be a Liquidation Event.

(cc) "**Material Adverse Effect**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(dd) "**Maximum Percentage**" means the lowest of (i) 9.99%, and (ii) such percentage that in the reasonable discretion of the Holder does not trigger any adverse consequences to the Holder.

(ee) "**Option Value**" means the value of an Option calculated using the Black-Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of (A) the Trading Day prior to the public announcement of the issuance of the applicable Option if the issuance of such Option is publicly announced or (B) the Trading Day immediately following the issuance of the applicable Option if the issuance of such Option is not publicly announced, for pricing purposes and reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of the applicable Option as of the applicable date of determination, (ii) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg as of (A) the Trading Day immediately following the public announcement of the applicable Option if the issuance of such Option is publicly announced or (B) the Trading Day immediately following the issuance of the applicable Option if the issuance of such Option is not publicly announced, (iii) the underlying price per share used in such calculation shall be the highest Weighted Average Price of the Common Stock during the period beginning on the Trading Day prior to the execution of definitive documentation relating to the issuance of the applicable Option and ending on (A) the Trading Day immediately following the public announcement of such issuance, if the issuance of such Option is publicly announced or (B) the Trading Day immediately following the issuance of the applicable Option if the issuance of such Option is not publicly announced, (iv) a zero cost of borrow and (v) a 360 day annualization factor.

(ff) "**Options**" means any rights, warrants or options to subscribe for or purchase (i) shares of Common Stock or (ii) Convertible Securities.

(gg) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person, including such entity whose common capital stock or equivalent equity security is quoted or listed on an Eligible Market (or, if so elected by the Required Holders, any other market, exchange or quotation system), or, if there is more than one such Person or such entity, the Person or such entity designated by the Required Holders or in the absence of such designation, such Person or entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(hh) "**Permitted Securities**" means (i) Excluded Securities and (ii) securities issued by the Company in a primary offering pursuant to a registration statement that is declared effective under the Securities Act.

(ii) "**Person**" means an individual, a limited liability company, a partnership (limited or general), a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(jj) "**Principal Market**" means The Nasdaq Global Select Market.

(kk) "**Preferential Dividend Rate**" means, initially, 7.5% per annum.

(ll) "**Redemption Dates**" means, collectively, each Triggering Event Redemption Date and each Holder Optional Redemption Date, each of the foregoing, individually, a "**Redemption Date**".

(mm) "**Redemption Notices**" means, collectively, each Holder Optional Redemption Notice and any other redemption notices set forth herein, each of the foregoing, individually, a "**Redemption Notice**".

(nn) "**Redemption Prices**" means, collectively, each Triggering Event Redemption Price, each Holder Optional Redemption Price, and any other redemption price set forth herein (including, in each case, any interest and damages thereon), each of the foregoing, individually, a "**Redemption Price**".

(oo) "**Registrable Securities**" shall have the meaning ascribed to such term in the Registration Rights Agreement.

(pp) "**Registration Rights Agreement**" means that certain registration rights agreement dated as of the Closing Date by and among the Company and the Buyers, as may be amended, amended and restated, supplemented or otherwise modified from time to time.

(qq) "**Registration Statement**" shall have the meaning ascribed to such term in the Registration Rights Agreement.

(rr) "**Required Holders**" means the Holders representing at least a majority of the aggregate Series A Preferred Shares then outstanding.

(ss) "**SEC**" means the United States Securities and Exchange Commission.

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

(uu) "**Securities Purchase Agreement**" means that certain securities purchase agreement, dated as of the Closing Date, by and among the Company and the Buyers pursuant to which the Company issued the Series A Preferred Shares, as may be amended, amended and restated, supplemented or otherwise modified from time to time.

(vv) "**Standard Settlement Period**" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Eligible Market with respect to the Common Stock as in effect on the date of delivery of the applicable Conversion Notice.

(ww) "**Stated Value**" means, per Series A Preferred Share, $1,000, subject to adjustment to preserve such value for stock splits, stock dividends, recapitalizations,

reorganizations, reclassifications, combinations, reverse stock splits or other similar events relating to the Series A Preferred Shares after the Closing Date.

(xx) "**Stockholder Approval**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(yy) "**Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(zz) "**Subsidiary**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(aaa) "**Successor Entity**" means one or more Person or Persons (or, if so elected by the Required Holders, the Company or Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or one or more Person or Persons (or, if so elected by the Required Holders, the Company or the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(bbb) "**Trading Day**" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock on such day, then on the principal securities exchange or securities market on which the Common Stock is then traded; provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time).

(ccc) "**Transaction Documents**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(ddd) "**Transfer Agent**" means Broadridge Corporate Issuer Solutions, Inc., or such other agent or agents of the Company as may be designated by the Board as the transfer agent for the Preferred Stock and/or the Common Stock, as applicable.

(eee) "**Treasury Regulations**" means the final and temporary (but not proposed) tax regulations promulgated under the Code, as such regulations may be amended from time to time.

(fff) "**Weighted Average Price**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market during the period beginning at 9:30:01 a.m., New York time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), as reported by Bloomberg through its "Volume at Price" function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time (or such other time as such market

publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as such market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the Pink Open Market (f/k/a OTC Pink) published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Company and the applicable Holder. If the Company and such Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 16. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction relating to the Common Stock occurring during the applicable calculation period.

* * * * *

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be signed as of the 9th day of January, 2023.

LIFECORE BIOMEDICAL, INC.

By: /s/ James. G. Hall
Name: James. G. Hall
Title: Chief Executive Officer

Exhibit A

Conversion Notice

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (this "**Agreement**"), dated as of January 9, 2023, is by and among Lifecore Biomedical, Inc. (f/k/a Landec Corporation), a Delaware corporation with its principal executive offices located at 3515 Lyman Boulevard, Chaska, Minnesota 55318 (the "**Company**"), and the investors (individually, a "**Buyer**" and collectively, the "**Buyers**") listed on Annex A attached hereto (the "**Schedule of Buyers**").

WHEREAS:

A. The Company and each Buyer is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "**1933 Act**"), and Rule 506(b) of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the 1933 Act.

B. The Company has authorized the filing of a certificate of designation (as may be amended from time to time, the "**Certificate of Designation**") in the form attached hereto as Exhibit A, creating a new series of convertible preferred stock of the Company designated as Series A Convertible Preferred Stock, the terms of which are set forth in the Certificate of Designation (the "**Series A Preferred Shares**"), which Series A Preferred Shares shall be entitled to receive additional Series A Preferred Shares as dividends (the "**PIK Shares**"), and such Series A Preferred Shares shall be convertible into the Company's common stock, par value $0.001 per share (the "**Common Stock**" and, as converted, collectively, the "**Conversion Shares**"), in accordance with the terms of the Certificate of Designation.

C. Each Buyer wishes to purchase, and the Company wishes to sell at the Closing (as defined below), upon the terms and conditions stated in this Agreement, that aggregate number of Series A Preferred Shares set forth opposite such Buyer's name in column (3) of the Schedule of Buyers (which aggregate number for all Buyers shall be 38,750 shares of Series A Preferred Shares).

D. As a condition precedent to the Closing, the parties hereto will execute and deliver a Registration Rights Agreement, substantially in the form attached hereto as Exhibit B (the "**Registration Rights Agreement**"), pursuant to which the Company will agree to provide certain registration rights with respect to the Registrable Securities (as defined in the Registration Rights Agreement) under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

E. The Series A Preferred Shares, including the PIK Shares, and the Conversion Shares collectively are referred to herein as the "**Securities**."

NOW, THEREFORE, the Company and each Buyer hereby agree as follows:

1. PURCHASE AND SALE OF SERIES A PREFERRED SHARES.

(a) Purchase of Series A Preferred Shares. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, shall purchase from the Company on the Closing Date (as defined below), the number of Series A Preferred Shares set forth opposite each such Buyer's name in column (3) of the Schedule of Buyers (the "**Closing**").

(b) Closing Date. The date and time of the Closing (the "**Closing Date**") shall be on the date hereof (or such other date and time as is mutually agreed to by the Company and each Buyer), and

shall be undertaken remotely by electronic transfer of the documentation that is required to be delivered pursuant to Sections 6 and 7 below.

(c) Purchase Price. Each Buyer shall pay $1,000 (the "**Purchase Price**") for each Series A Preferred Share to be purchased by such Buyer at the Closing (the "**Purchased Shares**"). The aggregate purchase price for the Series A Preferred Shares shall be the product of (i) $1,000 and (ii) the aggregate number of Series A Preferred Shares purchased by the Buyers at the Closing.

(d) Form of Payment. On the Closing Date, (i) each Buyer shall pay its applicable Purchase Price to the Company for the applicable Purchased Shares, by wire transfer of immediately available funds in accordance with the Company's written wire instructions and (ii) upon receipt by the Company of such payment, the Company shall issue to such Buyer in certificated form such number of applicable Series A Preferred Shares.

2. BUYER'S REPRESENTATIONS AND WARRANTIES. Each Buyer, severally and not jointly, represents and warrants with respect to only itself that, as of the date hereof and as of the Closing Date:

(a) Organization and Qualification. Such Buyer is duly organized and validly existing and in good standing under the laws of the jurisdiction in which it is formed, and has the requisite power and authorization to own its properties and to carry on its business as now being conducted and as presently proposed to be conducted. Such Buyer is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect. As used in this Agreement, "**Buyer Material Adverse Effect**" means any effect, change, event or occurrence that would prevent or materially delay, interfere with, hinder or impair (i) the consummation by such Buyer of any of the transactions contemplated hereby on a timely basis or (ii) the material compliance by such Buyer with its obligations under the Transaction Documents (as defined in Section 3(b)).

(b) Consents. Such Buyer is not required to obtain any consent, authorization or order of, or make any filing or registration with any court, governmental agency or any regulatory or self-regulatory agency or any other Person (as defined below) in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, in each case in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which such Buyer is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the Closing Date, and such Buyer is unaware of any facts or circumstances that might prevent such Buyer from obtaining or effecting any of the consent, registration, application or filings pursuant to the preceding sentence.

(c) Sufficient Funds. At the Closing, such Buyer will have available funds necessary to consummate the purchase of the applicable Purchased Shares and pay to the Company the applicable Purchase Price for such Series A Preferred Shares, as contemplated by Section 1(c).

(d) No Public Sale or Distribution. Such Buyer is acquiring the applicable Purchased Shares for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act; provided, however, that except as otherwise set forth in the Transaction Documents, by making the representations herein, such Buyer does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or

an exemption under the 1933 Act. Such Buyer is acquiring the Securities hereunder in the ordinary course of its business. Such Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person (as defined below) to distribute any of the Securities. For purposes of this Agreement, "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any governmental entity or any department or agency thereof.

(e) Accredited Investor Status. Such Buyer is a qualified institutional buyer (within the meaning of Rule 144A and an "accredited investor" as that term is defined in Rule 501(a) of Regulation D. Such Buyer (i) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment with respect to the Series A Preferred Shares and (ii) can bear the economic risk of (A) an investment in the Securities indefinitely and (B) a total loss in respect of such investment.

(f) Reliance on Exemptions. Such Buyer understands that the Securities have not been registered under the 1933 Act and are being offered and sold to it on the basis of the statutory exemption provided by Section 4(a)(2) under the 1933 Act or Regulation D promulgated thereunder, or both, and that the Company is relying in part upon the truth and accuracy of, and such Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein and in the Registration Rights Agreement in order to determine the availability of such exemptions and the eligibility of such Buyer to acquire the Securities.

(g) Information. Such Buyer and its advisors, if any, have been furnished with or have had full access to all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities that have been requested by such Buyer. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company or its representatives, it being understood that neither such inquiries nor any other due diligence investigations conducted by such Buyer or its advisors, if any, or its representatives shall modify, amend or affect such Buyer's right to rely on the Company's representations and warranties contained herein. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

(h) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(i) General Solicitation. To such Buyer's knowledge, neither the Company nor any other Person offered to sell the Securities to it by means of any form of general solicitation or advertising, including but not limited to: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio or (ii) any seminar or meeting whose attendees were invited by any general solicitation or general advertising.

(j) Brokers; Finders. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisors or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the transactions contemplated by the Transaction Documents based upon arrangements made by or on behalf of such Buyer.

(k) Authorization; Validity; Enforcement. Such Buyer has the requisite power and authority to enter into and perform its obligations under the Transaction Documents to which such Buyer

is a party. The execution and delivery of this Agreement and the other applicable Transaction Documents to which such Buyer is a party by such Buyer and the consummation by such Buyer of the transactions contemplated hereby and thereby have been duly authorized by such Buyer. This Agreement and the other Transaction Documents to which such Buyer is a party have been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(l) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement and the other Transaction Documents to which such Buyer is a party and the consummation by such Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Buyer or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including foreign, federal and state securities laws and regulations and applicable laws of any foreign, federal, and other state laws) applicable to such Buyer or by which any property or asset of such Buyer is bound or affected, in each case other than such other consents, approvals, filings, licenses, permits or authorizations, declarations or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

(m) No Other Company Representations or Warranties. Such Buyer acknowledges and agrees that neither the Company nor any of its Subsidiaries makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3. In connection with the due diligence investigation of the Company by such Buyer and its representatives, such Buyer and its representatives have received and may continue to receive from the Company and its representatives certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information containing such information, regarding the Company and its Subsidiaries and their respective businesses and operations. Such Buyer hereby acknowledges that there are uncertainties inherent in attempting to make such estimates, projections, forecasts and other forward-looking statements, as well as in such business plans, with which such Buyer is familiar, that such Buyer is making its own evaluation of the adequacy and accuracy of all estimates, projections, forecasts and other forward-looking information, as well as such business plans, so furnished to such Buyer (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, forward-looking information or business plans), and that except for the representations and warranties made by the Company in Section 3 and in any certificate or other Transaction Document delivered by the Company in connection with this Agreement, such Buyer will have no claim against the Company or any of its Subsidiaries, or any of their respective representatives, with respect thereto.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each of the Buyers that, as of the date hereof and as of the Closing Date, except as (A) disclosed in all reports, schedules, forms, statements and other documents (including all exhibits included therein and amendments, financial statements, notes and schedules thereto) filed by it with, or furnished by it to, the SEC (all of the foregoing filed or furnished prior to such Closing Date, and all exhibits included therein and amendments, financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**") other than any risk factor disclosures in any such SEC Document contained in the "Risk Factors" section or any forward-looking statements within the meaning of the 1933 Act or the Securities Exchange Act of

1934, as amended (the "**1934 Act**"), and (B) set forth in the confidential disclosure letter delivered by the Company to the Buyers prior to the execution of this Agreement (the "**Company Disclosure Letter**"):

(a) Organization and Qualification. Each of the Company and each of its subsidiaries listed in Exhibit 21.1 to the Company's Form 10-K for the fiscal year ended May 29, 2022 (such entities, the "**Subsidiaries**") are duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authorization to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (as defined below). Each of the Company and its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. As used in this Agreement, "**Material Adverse Effect**" means any event, change, development, circumstance, condition, state of facts or occurrence that individually or in the aggregate is, or would reasonably be expected to be, materially adverse to (i) the business, properties, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole, or (ii) the Company's ability to consummate any of the transactions contemplated hereby, or (iii) the authority or ability of the Company to perform its obligations under the Transaction Documents.

(b) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and, subject to the receipt of the Required Approvals (as defined below), perform its obligations under this Agreement, the Certificate of Designation, the Registration Rights Agreement and the Irrevocable Transfer Agent Instructions, in the form of Exhibit C attached hereto (the "**Transfer Agent Instructions**", and collectively, the "**Transaction Documents**") and to issue the Securities in accordance with the terms hereof and thereof. The execution and delivery of this Agreement and the other Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Series A Preferred Shares, including the PIK Shares, the reservation for issuance and the issuance of the Conversion Shares issuable upon conversion of the Series A Preferred Shares, including the PIK Shares, have been duly authorized by the Board of Directors of the Company (the "**Board**") and, other than the Required Approvals (as defined below), no further filing, consent, or further authorization is required by the Company, the Board or its stockholders. This Agreement and the other Transaction Documents have been (or will be, upon execution) duly executed and delivered by the Company, and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies. The Certificate of Designation shall be filed on the date hereof with the Secretary of State of the State of Delaware pursuant to Section 7(h) and, as of such filing, shall be in full force and effect, enforceable against the Company in accordance with its terms.

(c) Issuance of Securities. When the Series A Preferred Shares are issued in accordance with the terms of the Transaction Documents, such Series A Preferred Shares will be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes, liens, charges and other encumbrances with respect to the issue thereof, with the holders being entitled to the rights and preferences set forth in the Certificate of Designation. As of the date hereof, the Company has duly authorized and reserved for issuance a number of shares of Common Stock that equals or exceeds 150% of the initial number of Conversion Shares issuable upon conversion of the Series A Preferred Shares, including the PIK Shares (assuming for purposes hereof, that (x) the Series A Preferred Shares are convertible at the Conversion Rate (as defined in the Certificate of Designations) and (y) dividends on the Series A Preferred Shares are paid in the form of PIK Shares for a period of five years after the Closing,

and without taking into account any limitations on the conversion of the Series A Preferred Shares set forth in the Certificate of Designations) (the "**Required Reserve Amount**"). Upon conversion of the Series A Preferred Shares in accordance with the Certificate of Designation, the applicable Conversion Shares will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights, taxes, liens, charges and other encumbrances with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Assuming in part the accuracy of each of the representations and warranties of the Buyers set forth in Section 2 of this Agreement, the offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company, and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Series A Preferred Shares, including the PIK Shares, reservation of the Required Reserved Amount and issuance of the Conversion Shares), will not (i) result in a violation of the Company's Certificate of Incorporation, as amended and as in effect on the Closing Date (the "**Certificate of Incorporation**"), or the Company's Bylaws, as amended and as in effect on the Closing Date (the "**Bylaws**"), or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company is a party, or (iii) subject to the Required Approvals, result in a violation of any law, rule, regulation, order, judgment or decree (including foreign, federal and state securities laws and regulations and the rules and regulations of The NASDAQ Global Select Market (the "**Principal Market**") and applicable laws of the State of Delaware and any foreign, federal, and other state laws) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, in each case other than such other violations, conflicts, defaults or rights that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(e) Consents. The Company is not required to obtain any consent, authorization or order of, or make any filing or registration with (other than (i) the filing with the SEC of a Form D (if applicable), (ii) the filing with the SEC of a Current Report on Form 8-K disclosing the material terms of the transactions contemplated hereby, (iii) the notice and/or application to the Principal Market for the issuance and sale of the Securities and the listing of the Conversion Shares, (iv) the Stockholder Approval (as defined below), (v) one or more Registration Statements in accordance with the requirements of the Registration Rights Agreement, (vi) such other filings as may be required by state securities agencies and (vii) the filing of the Certificate of Designation with the Secretary of State for the State of Delaware (collectively, the "**Required Approvals**")), any court, governmental agency or any regulatory or self-regulatory agency in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, in each case in accordance with the terms hereof or thereof and other than such other consents, approvals, filings, licenses, permits or authorizations, declarations or registrations (x) that have been obtained or effected on or prior to the Closing Date (or in the case of the filings detailed above, will be made timely after such Closing Date) or (y) that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company is in compliance in all material respects with the listing and listing maintenance requirements of the Principal Market applicable to it for the continued trading of its Common Stock on the Principal Market and has no knowledge of any facts or circumstances that are reasonable likely to occur that would reasonably be expected to lead to delisting or suspension of the Common Stock from the Principal Market.

(f) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is

merely incidental to such Buyer's purchase of the Securities. The Company further represents to each Buyer that the Company's decision to enter into the Transaction Documents has been based solely on the independent evaluation by the Company and its representatives, including, without limitation, any placement agent or investment bank retained by the Company in connection with the sale of the Securities.

(g) No General Solicitation; Placement Agent's Fees. Neither the Company, nor any of its Subsidiaries, nor, to the knowledge of the Company, any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Buyer or its investment advisor) relating to or arising out of the transactions contemplated hereby.

(h) Brokers; Finders. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisors or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the transactions contemplated by the Transaction Documents based upon arrangements made by or on behalf of such the Company.

(i) No Integrated Offering. Neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the offering or the issuance of Series A Preferred Stock under this Agreement to be integrated with prior offerings by the Company, for purposes of the 1933 Act, in a manner that would cause neither Regulation D nor any other applicable exemption from registration under the 1933 Act to be available, or that would cause this offering of the Securities to require the approval of the stockholders of the Company for purposes of the 1933 Act or any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of the Principal Market, other than the Stockholder Approval.

(j) Dilutive Effect. The Company understands and acknowledges that the number of Conversion Shares issuable pursuant to terms of the Certificate of Designations will increase in certain circumstances. The Company further acknowledges that its obligation to issue Conversion Shares pursuant to the terms of the Certificate of Designations in accordance with this Agreement, the Certificate of Designations is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

(k) Application of Takeover Protections. The Company and the Board have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested stockholder, business combination, poison pill (including, without limitation, any distribution under a rights agreement) or other similar anti-takeover provision under the Certificate of Incorporation, Bylaws or other organizational documents or the laws of the State of Delaware which is or could reasonably be expected to become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Buyer's ownership of the Securities.

(l) SEC Documents; Financial Statements; No Undisclosed Liabilities. During the two (2) years prior to the date hereof, the Company has timely filed all the SEC Documents required to be filed by it with the SEC pursuant to the 1934 Act. As of their respective filing dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the Sarbanes-Oxley Act of 2002, as amended (and in both cases, the rules and regulations of the SEC promulgated thereunder), in each case, applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC (or, if amended prior to the date hereof, the date of the filing of such amendment, with respect to the disclosures that are amended), contained any untrue statement of a material fact or omitted to state a

material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of their respective filing dates, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles, consistently applied, during the periods involved ("**GAAP**") (except (i) as may be otherwise indicated in such financial statements or the notes thereto, (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements or (iii) as otherwise permitted by Regulation S-X and the other rules and regulations of the SEC) and fairly present in all material respects the financial position of the Company and its Subsidiaries as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its Subsidiaries has any liabilities of any nature (whether accrued, absolute, contingent or otherwise) that would be required under GAAP, as in effect on the date hereof, to be reflected on a consolidated balance sheet of the Company (including the notes thereto) except liabilities (i) reflected or reserved against in the balance sheet (or the notes thereto) of the Company and its Subsidiaries as of August 28, 2022 (the "**Balance Sheet Date**") included in the SEC Documents, (ii) incurred after the Balance Sheet Date in the ordinary course of business, (iii) as expressly contemplated by the Transaction Documents or otherwise incurred in connection with the transactions contemplated hereby and thereby, or (iv) that have been discharged or paid prior to the date of this Agreement.

(m) Absence of Certain Changes. Since May 29, 2022, except for the execution and performance of this Agreement and the discussions, negotiations and transactions related thereto, the business of the Company and its Subsidiaries has been carried on and conducted in all material respects in the ordinary course of business and there has not been any Material Adverse Effect or any event, change or occurrence that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy insolvency, reorganization, receivership, liquidation or winding up nor does the Company or any Subsidiary have any knowledge or reason to believe that any of its respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact that would reasonably lead a creditor to do so. The Company and its Subsidiaries, individually and on a consolidated basis, are not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent (as defined below). For purposes of this Section 3(m), "**Insolvent**" means, with respect to any Person, (i) the present fair saleable value of such Person's assets is less than the amount required to pay such Person's total indebtedness, (ii) such Person is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, (iii) such Person intends to incur or believes that it will incur debts that would be beyond its ability to pay as such debts mature or (iv) such Person has unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

(n) [Reserved].

(o) Compliance; Permits. The Company and its Subsidiaries are in compliance with all applicable laws, common law, statutes, ordinances, codes, rules or regulations or other similar requirement enacted, adopted, promulgated, or applied by any governmental authority, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company and its Subsidiaries possess all permits, franchises, certificates, approvals, authorizations and licenses of governmental authorities that are required to conduct their business, except as has not had, and would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(p) Transactions With Affiliates. Except as set forth on Schedule 3(p) of the Company Disclosure Letter, none of the officers, directors or employees of the Company or any of its Subsidiaries is presently a party to any transaction with the Company or any of its Subsidiaries (other than for ordinary course services as employees, officers or directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director or employee or, to the knowledge of the Company, any corporation, partnership, trust or other entity in which any such officer, director, or employee has a substantial interest or is an officer, director, employee, trustee or partner, in each case that would require disclosure in an SEC filing made by the Company (if such filing were being made on the date hereof) pursuant to Item 404 of Regulation S-K under the 1934 Act.

(q) Equity Capitalization. As of the date hereof, the authorized capital stock of the Company consists of (i) 50,000,000 shares of Common Stock, of which as of the date hereof, 29,668,839 shares are issued and outstanding, 4,204,352 shares are reserved for issuance pursuant to the Company's equity incentive plans, of which 2,900,085 shares are reserved for issuance upon the exercise of stock options and vesting of restricted stock units outstanding, and (ii) 2,000,000 shares of preferred stock, par value $0.001 per share, none of which are issued and outstanding. All of such outstanding shares have been, or upon issuance will be, validly issued and are fully paid and nonassessable. As of the Closing Date, (i) the Series A Preferred Shares shall rank senior to all capital stock of the Company and (ii) there will be no Pari Passu Stock or stock that is senior in rank to the Series A Preferred Shares in respect of the preferences as to dividends and other distributions, redemption payments and payments upon a Liquidation Event (each as defined in the Certificate of Designation) as of such Closing Date. Except as disclosed in the SEC Documents or Schedule 3(q) of the Company Disclosure Letter: (A) none of the Company's capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company; (B) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares of capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares of capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares of capital stock of the Company or any of its Subsidiaries; (iii) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act (except pursuant to the Registration Rights Agreement); (iv) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (v) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (vi) neither the Company nor any Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement.

(r) Indebtedness and Other Contracts. Except for (i) that certain Credit and Guaranty Agreement, dated December 31, 2020, by and among the Company, Curation Foods, Inc. and Lifecore Biomedical, Inc., as borrowers, certain other subsidiary parties thereto, as guarantors, Goldman Sachs Specialty Lending Group, L.P., as lender, administrative agent and collateral agent, and certain affiliates of Guggenheim Credit Services, LLC, as lenders, and (ii) that certain Credit Agreement, dated December 31, 2020, by and among the Company, Curation Foods, Inc. and Lifecore Biomedical, Inc., as borrowers, certain other subsidiary parties thereto, as guarantors, and BMO Harris Bank., N.A., as lender and administrative agent (collectively, the "**Credit Agreements**"), the Company is not party to any material loan or credit agreement, indenture, debenture, note, bond, mortgage, deed of trust, lease, sublease, license, contract or other agreement. The Company is not subject to any provision in the Credit Agreements,

Certificate of Incorporation or Bylaws that prohibits or prevents the Company from paying dividends in form and the amounts contemplated by the Certificate of Designation. The Company and its Subsidiaries are not in material breach of, or default or violation under, the Credit Agreements.

(s) Absence of Litigation. The Company has received no written notice of any action, suit, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Stock or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(t) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. Neither the Company nor any such Subsidiary has been refused any material insurance coverage sought or applied for and neither the Company nor any such Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business, in each case, at a cost that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(u) Employee Benefits. The Company and each Subsidiary is in compliance in all material respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("**ERISA**"); no "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which the Company and each Subsidiary would have any material liability; the Company and each Subsidiary has not incurred and does not expect to incur material liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Sections 412 or 4971 of the Code; and each "pension plan" for which the Company or any Subsidiary would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(v) Employee Relations. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or directly employs any member of a union. Since May 29, 2022, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, as of the date hereof, there has been no strike, lockout, slowdown, or work stoppage against the Company or any of its Subsidiaries pending or, to the knowledge of the Company, threatened. As of the date hereof, no executive officer (as defined in Rule 501(f) of the 1933 Act) of the Company or any of its Subsidiaries has notified the Company or any such Subsidiary that such officer will terminate such officer's employment with the Company or any such Subsidiary. No executive officer or other key employee of the Company or any of its Subsidiaries, to the knowledge of the Company or any of its Subsidiaries, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(w) Title. The Company and its Subsidiaries have good and marketable title to all real property owned by them, and good and marketable title to all personal property owned by them which is material to the business of the Company and its Subsidiaries, in each case free and clear of all liens, encumbrances and defects except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Any real property and facilities held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and enforceable leases except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(x) Intellectual Property. The Company and its Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, original works of authorship, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights described in the SEC Documents as being owned or licensed by them or which is necessary to conduct their respective businesses as now conducted ("**Intellectual Property**"), except where failure to own or possess such rights would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company's best knowledge, (i) there is no existing infringement by third parties of any Intellectual Property; (ii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's rights in or to any Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company infringes or otherwise violates, or would, upon the commercialization of any product or service described in the SEC Documents as under development, infringe or violate, any patent, trademark, tradename, service name, copyright, trade secret or other proprietary rights of others; (v) the Company has materially complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company, and all such agreements are in full force and effect; (vi) there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity, enforceability or scope of any of the Intellectual Property; and (vii) there is no prior art that may render any patent application within the Intellectual Property unpatentable that has not been disclosed to the U.S. Patent and Trademark Office or of which the Company is otherwise aware. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their Intellectual Property, except where failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(y) Environmental Laws. The Company and its Subsidiaries (i) are in compliance with any and all Environmental Laws (as hereinafter defined), (ii) have obtained all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply or the failure to obtain such permit, license or approval would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The term "**Environmental Laws**" means all federal, state, local or foreign laws relating to human health (to the extent related to exposure to Hazardous Materials (as hereinafter defined)), pollution or protection of the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all codes, decrees, injunctions, judgments, orders, or regulations issued, entered, promulgated or approved thereunder.

(z) Investment Company Status. The Company is neither an "investment company" nor, to the Company's knowledge, a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(aa) Tax Status. The Company and each of its Subsidiaries (i) has timely and properly made or filed all U.S. federal, state and foreign tax returns, reports and declarations (including, without limitation, any information returns and any required schedules or attachments thereto) required to be filed by any jurisdiction to which it is subject and (ii) has timely paid all taxes and other governmental assessments and charges, except those being contested in good faith by appropriate proceedings and for which adequate reserves have been established, except where the failure to so file or pay would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company has no knowledge of any unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction.

(bb) Internal Accounting and Disclosure Controls. The Company has established and maintains disclosure controls and procedures and a system of internal controls over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the 1934 Act) in accordance with Rule 13a-15 under the 1934 Act in all material respects. Except as disclosed in the SEC Documents, during the twelve (12) months prior to the date hereof, neither the Company nor any of its Subsidiaries has identified or been made aware of "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Company's internal controls over and procedures relating to financial reporting which would reasonably be expected to adversely affect in any material respect the Company's ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated.

(cc) Shell Company Status. The Company is not, and has never been, an issuer identified in, or subject to, Rule 144(i)(1) of the 1933 Act.

(dd) Compliance with Anti-Money Laundering Laws. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with all applicable U.S. and non-U.S. anti-money laundering laws, rules and regulations, including, but not limited to, the Currency and Foreign Transactions Reporting Act of 1970, as amended, the United States Bank Secrecy Act, as amended by the USA PATRIOT Act of 2001, and the United States Money Laundering Control Act of 1986 (18 U.S.C. §§1956 and 1957), and the implementing rules and regulations promulgated thereunder (collectively, the "**Anti-Money Laundering Laws**"), except where failure to be in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ee) No Conflicts with Sanctions Laws. Neither the Company nor any of its Subsidiaries, nor to the Company's knowledge, any director, officer, employee, agent or affiliate thereof is, or is directly or indirectly owned 50% or more by, a Person that is currently the subject or the target of any economic sanctions administered or enforced by the U.S. government (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**") or the U.S. Departments of State or Commerce and including, without limitation, the designation as a "Specially Designated National"), or by the United Nations Security Council, the European Union, Her Majesty's Treasury or any other applicable sanctions authority (collectively, "**Sanctions Laws**"); neither the Company, any of its Subsidiaries, nor, to the Company's knowledge, any director, officer, employee, agent, or affiliate thereof, is organized or resident in a country or territory that is the subject or target of comprehensive country-wide Sanctions Laws prohibiting trade with the country or territory (as of the Closing Date, Crimea, Donetsk, Luhansk, Cuba, Iran, North Korea, Russia and Syria); the Company maintains in effect and enforces policies and procedures designed to ensure compliance by the Company

and its Subsidiaries with applicable Sanctions Laws; neither the Company nor any of its Subsidiaries will use the proceeds of the convertible securities or lend, contribute or otherwise make available such proceeds to finance or facilitate any activity in material violation of any applicable Sanctions Law.

(ff) Anti-Bribery. Neither the Company nor any of its Subsidiaries, nor any director, officer, employee, or agent thereof, in each case acting in their capacity as such, has, within the last five (5) years, either directly or indirectly through any third party, (i) made, promised, offered or authorized any unlawful payment or gift to or for the benefit of any foreign or domestic government official or employee, political party or candidate for political office; (ii) violated or is in violation of the U.S. Foreign Corrupt Practices Act of 1977, as amended ("**FCPA**"), the U.K. Bribery Act 2010, or any other anti-bribery or anti-corruption law of any other jurisdiction in which the Company operates its business, including, in each case, the rules and regulations thereunder (the "**Anti-Bribery Laws**"), or (iii) otherwise made any unlawful bribe, payoff, influence payment, or kickback in violation of Anti-Bribery Laws; the Company and each of its respective Subsidiaries has instituted and has maintained, and will continue to maintain, policies and procedures reasonably designed to promote and achieve material compliance with the Anti-Bribery Laws; neither the Company nor any of its Subsidiaries will, directly or indirectly, use the proceeds of the Securities or lend, contribute or otherwise make available such proceeds to finance or facilitate any activity that would violate any Anti-Bribery Law.

(gg) Investigations and Proceedings. No action, suit, investigation, or proceeding by or before any court or governmental agency, authority or body or involving the Company or any of its Subsidiaries, or any of their respective directors, officers, employees or agents, in each case acting in their capacity as such, with respect to the Anti-Money Laundering Laws, the Sanctions Laws, or the Anti-Bribery Laws is pending or, to the knowledge of the Company, threatened.

(hh) No Additional Agreements; Disclosure. Neither the Company nor any of its Subsidiaries has any agreement or understanding with any Buyer with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents. All written disclosure provided to the Buyers regarding the Company, or any of its Subsidiaries, their businesses and the transactions contemplated hereby, including the disclosure schedules to this Agreement, furnished by or on behalf of the Company or any of its Subsidiaries is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(ii) No Other Buyer Representations and Warranties. The Company acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

4. COVENANTS.

(a) Reasonable Best Efforts. Each party shall use its reasonable best efforts to timely satisfy each of the covenants and the conditions to be satisfied by it as provided in Sections 6 and 7 of this Agreement.

(b) Form D and Blue Sky. The Company agrees to file a Form D with respect to the Securities if required under Regulation D and shall provide a copy thereof to any Buyer promptly upon such Buyer's request. Following the Closing Date, the Company shall make all filings and reports relating to the offer and sale of the Securities required under applicable securities or "Blue Sky" laws of the states of the United States.

(c) Reporting Status. For so long as the Series A Preferred Shares are outstanding (the "**Reporting Period**"), the Company shall use reasonable best efforts to timely file all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall use commercially reasonable efforts to maintain its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination, and the Company shall use commercially reasonable efforts to maintain its eligibility to register the Series A Preferred Shares and the Conversion Shares for resale by the Investors (as defined in the Registration Rights Agreement) on a registration statement in a suitable form under the 1933 Act.

(d) Use of Proceeds. The Company shall use the proceeds from the sale of the Securities solely for working capital, capital expenditures, repayment of the Company's indebtedness and general corporate purposes.

(e) Financial Information. The Company agrees to send the following to each Investor during the Reporting Period (i) within three (3) Business Days after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K, any Quarterly Reports on Form 10-Q, any Current Reports on Form 8-K (or any analogous reports under the 1934 Act) and any registration statements (other than on Form S-8) or amendments filed pursuant to the 1933 Act, (ii) within one (1) Business Day after the release thereof, facsimile or e-mailed copies of all press releases issued by the Company or any of its Subsidiaries (except to the extent the same are (x) filed or furnished to the SEC and available as described below; or (y) otherwise widely disseminated via a national news wire or similar service), and (iii) copies of any notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to the stockholders. Notwithstanding the foregoing, the Company shall not be obligated to send or deliver any of the foregoing to the Investors to the extent any of them are filed, furnished or otherwise made publicly available on the Company's website or the SEC's EDGAR (or any similar) electronic filing system. As used herein, "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are generally are open for use by customers on such day.

(f) Fees. At Closing, the Company shall reimburse the Buyers for all documented fees and out-of-pocket expenses actually incurred in connection with the transactions contemplated hereby, up to an aggregate amount of $250,000, which payment, for the avoidance of doubt, will be made by the Company at the Closing, it being understood that each of Legion Partners, L.P. I and Legion Partners, L.P. II (collectively, the "**Lead Investor**") and 22NW Fund, L.P. shall be entitled to full reimbursement of its respective expenses before payment of any other Buyer's expenses. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Series A Preferred Shares to the Buyers.

(g) Transfer or Resale; Pledge of Securities. Such Buyer understands that except as provided in the Registration Rights Agreement: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) such Buyer shall have delivered to the Company an opinion of counsel selected by such Buyer, in a form reasonably satisfactory to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) such Buyer provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under

the 1933 Act, as amended, (or a successor rule thereto) ("**Rule 144**" and "**Rule 144A**", respectively); (ii) any sale of the Securities made in reliance on Rule 144 or Rule 144A may be made only in accordance with the terms of Rule 144 or Rule 144A and further, if Rule 144 or Rule 144A is not applicable, any resale of the Securities under circumstances in which the seller (or the Person) through whom the sale is made may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. The Company acknowledges and agrees that the Securities may be pledged by an Investor in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document; provided that an Investor and its pledgee shall be required to comply with the provisions of this Section 4(g) hereof in order to effect a sale, transfer or assignment of Securities to such pledgee. The Company hereby agrees to execute and deliver such documentation, at Buyer's sole expense, as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by a Buyer.

(h) Disclosure of Transactions. Except as may be mutually agreed between the Lead Investor and the Company, the Company shall (i) no later than 9:00 a.m., New York City time, on the first Business Day after the Closing Date, issue a press release, in the form attached hereto as Exhibit D, describing the terms of the transactions contemplated by the Transaction Documents and (ii) on or before 4:30 p.m., New York City time, on the fourth Business Day following the Closing Date, file a Current Report on Form 8-K reasonably acceptable to the Lead Investor describing the terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching this Agreement, the form of the Certificate of Designation and the Registration Rights Agreement as exhibits to such filing (which shall not include schedules or exhibits not customarily filed with the SEC). Subject to non-disclosure agreements that are in effect as of the date hereof, entered into by each of the Buyers in connection with the transactions contemplated in the Transaction Documents, (i) the Company shall use its commercially reasonably efforts to not, and to cause each of its Subsidiaries and its and each of their respective officers, directors, affiliates, employees and agents, not to, provide any Buyer that at the applicable time of determination does not have an affiliate who serves on the Board, with any material, nonpublic information regarding the Company or any of its Subsidiaries from and after the Closing Date without the express prior written consent of such Buyer or as otherwise contemplated by the Transaction Documents, and (ii) to the extent that the Company delivers any material, nonpublic information to a Buyer without such Buyer's consent at a time when such Buyer does not have an affiliate who serves on the Board, the Company hereby covenants and agrees that, unless otherwise expressly agreed between such Buyer and the Company, such Buyer shall not have any duty of confidentiality to the Company, any of its Subsidiaries, or any of their respective, officers, directors, affiliates, employees or agents with respect to, or a duty to the Company, any of its Subsidiaries, or any of their respective, officers, directors, affiliates, employees or agents not to trade on the basis of, such material, nonpublic information. The Company understands and confirms that each of such Buyers will rely (in their own discretion) on the foregoing in effecting transactions in securities of the Company.

(i) Additional Series A Preferred Shares; Variable Securities. Except as contemplated by the Transaction Documents, so long as any Buyer beneficially owns any Series A Preferred Shares, the Company will not issue any Series A Preferred Shares other than to the Buyers as contemplated hereby.

(j) Additional Issuances of Securities.

(i) For purposes of this Section 4(j), the following definitions shall apply.

(1) "**Approved Stock Plan**" means any employee stock option plan, management incentive plan, restricted stock plan, stock purchase plan or stock ownership plan, retirement plan or any similar compensation or benefit plan, program or agreement which has been approved by the Board or the Compensation Committee of the Board, pursuant to which the Company's securities may be issued to any employee, officer, director or other agents for services provided to the Company.

(2) "**Common Stock Equivalents**" means, collectively, Options and Convertible Securities.

(3) "**Convertible Securities**" means any stock or securities (other than Options) convertible into or exercisable or exchangeable for shares of Common Stock.

(4) "**Excluded Securities**" means any: (i) shares of Common Stock issued or issuable (including upon the exercise of Options) (A) under any Approved Stock Plan; (B) pursuant to the terms of the Certificate of Designation; (C) upon conversion or exercise of any Options or Convertible Securities which are outstanding on the day immediately preceding the date hereof, provided that the terms of such Options or Convertible Securities are not amended, modified or changed on or after the date hereof; or (D) pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company; (ii) securities of a Subsidiary of the Company issued to the Company or a Subsidiary of the Company, (iii) securities of a joint venture (provided that no affiliate (other than any Subsidiary) of the Company acquires any interest in such securities in connection with such issuance); or (iv) securities issued in connection with any "business combination" (as defined in the rules and regulations promulgated by the SEC) or otherwise in connection with bona fide acquisitions of securities or substantially all of the assets of another Person, business unit, division or business; provided, that the foregoing clauses (i)(D), (iii) and (iv) shall not include a transaction in which the Company or applicable joint venture, as applicable, is issuing securities for the purpose of raising capital or to an entity whose primary business is investing in securities.

(5) "**Options**" means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

(6) "**Right of Participation Percentage**" means the percentage yielded from dividing (i) the number of shares of Common Stock issuable upon conversion of the aggregate number of Purchased Shares that were purchased by the Buyers on or prior to the applicable date requiring determination (without regard to the limitations on conversion set forth in the Certificate of Designation) (the "**Underlying Conversion Shares**"), by (ii) the sum of (x) the total number of shares of Common Stock issued and outstanding at the Closing, and (y) the Underlying Conversion Shares.

(7) "**Subsequent Placement**" means the issuance, sale, grant of any option to purchase, exchange or other disposition of any of the Company's or its Subsidiaries' equity or equity equivalent securities, including without limitation any debt, preferred stock or other instrument or security that is, at any time during its life and under any circumstances, convertible into or exchangeable or exercisable for Common Stock or Common Stock Equivalents.

(ii) From the Closing Date until the date that the Buyers hold, in the aggregate, less than 30% of the Purchased Shares, the Company will not, directly or indirectly, effect any Subsequent Placement unless the Company shall have first complied with this Section 4(j)(ii). Each Buyer may assign all or any portion of its right of participation set forth in this Section 4(j) to one or more of its affiliates in accordance with Section 8(g).

(1) The Company shall deliver to each Buyer a written notice (the "**Offer Notice**") of any proposed or intended Subsequent Placement (the "**Offer**"), which Offer Notice shall (A) identify and describe the terms and provisions of the securities being offered (the "**Offered Securities**"), (B) describe the price and other terms upon which they are to be issued, sold or exchanged, and the number or amount of the Offered Securities proposed to be issued, sold or exchanged (for the avoidance of doubt, such price and/or number or amount of the Offered Securities may be a formula or a reasonable range), and (C) offer to issue and sell to or exchange with such Buyers (or at such Buyer's discretion, any of such Buyer's affiliates) a portion of the Offered Securities equal to the Right of Participation Percentage of the Offered Securities multiplied by a fraction, the numerator of which is the Conversion Amount (as defined in the Certificate of Designation) of the Series A Preferred Shares held by the Buyers and any of their affiliates on the date that the Company delivers the applicable Offer Notice and the denominator of which is the aggregate Conversion Amount of all Purchased Shares acquired by the Buyers on or prior the applicable date requiring determination, allocated among such Buyers (or their affiliates) at such Buyers' discretion (the "**Basic Amount**").

(2) To accept an Offer, in whole or in part, such Buyer (or its affiliates) must deliver a written notice to the Company prior to the end of the fifth (5th) Business Day after such Buyer's receipt of the Offer Notice (or such shorter period if the Offer Notice was sent in less than five (5) Business Days prior to the proposed issuance date, but in no event less than two (2) Business Days) (the "**Offer Period**"), setting forth the portion of such Buyer's portion of the Basic Amount that such Buyer elects to purchase (the "**Notice of Acceptance**"). If the Company offers two (2) or more securities in units to the other participants in the Subsequent Placement, the participating Buyers must purchase such units as a whole and will not be given the opportunity to purchase only one of the securities making up such unit. Notwithstanding anything to the contrary contained herein, if the Company desires to modify or amend the terms and conditions of the Offer prior to the expiration of the Offer Period, the Company may deliver to the Buyers a new Offer Notice and the Offer Period shall expire on the fifth (5th) Business Day after such Buyer's receipt of such new Offer Notice.

(3) Simultaneously with the closing of the Subsequent Placement giving rise to the Buyers' participation right, the Buyers shall acquire from the Company, and the Company shall issue to the Buyers, the number or amount of Offered Securities specified in the Notices of Acceptance upon the terms and conditions specified in the Offer Notice; provided, however, that the closing of any purchase by any participating Buyer may be extended beyond the closing of the sale of the Offered Securities giving rise to such preemptive right to the extent reasonably necessary to (i) obtain required approvals from any governmental authority or (ii) permit the participating Buyer to receive proceeds from calling capital pursuant to commitments made by its (or its affiliated investment funds') limited partners, in which case such closing shall occur on the second (2nd) Business Day after receipt of such required approvals or expiration of mandatory capital call notice periods under the applicable fund organizational documents.

(4) The Company shall have thirty (30) calendar days from the expiration of the Offer Period above (A) to offer, issue, sell or exchange all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by the Buyers pursuant to a definitive agreement (the "**Subsequent Placement Agreement**") but only upon terms and conditions (including, without limitation, unit prices and interest rates) that are not more favorable to the acquiring Person or Persons or less favorable to the Company than those set forth in the Offer Notice and (B) to publicly announce (I) the execution of such Subsequent Placement Agreement, and (II) either (x) the consummation of the transactions contemplated by such Subsequent Placement Agreement or (y) the termination of such Subsequent Placement Agreement, in each case, which shall be filed with the SEC on a Current Report on Form 8-K with such Subsequent Placement Agreement and any documents contemplated therein filed as exhibits thereto.

(5) Any Offered Securities not acquired by the Buyers or other persons in accordance with Section 4(j)(ii)(3) and (4) above may not be issued, sold or exchanged after the expiration of the thirty (30) calendar day period described in Section 4(j)(ii)(4) above until they are again offered to the Buyers under the procedures specified in this Section 4(j)(ii).

(iii) Notwithstanding anything in this Agreement to the contrary, the restrictions contained in this Section 4(j) shall not apply in connection with the issuance of any Excluded Securities. Notwithstanding anything in this Section 4(j) to the contrary, the Company will not be deemed to have breached this Section 4(j) if, not later than thirty (30) Business Days following the consummation of any Subsequent Placement in contravention of this Section 4(j), the Company or the transferee(s) in connection with such Subsequent Placement offers to sell a portion of such equity securities or additional equity securities of the type(s) in question to each Buyer so that, taking into account such previously-issued securities pursuant to the Subsequent Placement, each Buyer will have had the right to purchase or subscribe for such securities in a manner consistent with the allocation and other terms and upon same economic and other terms provided for in Section 4(j)(ii).

(k) [Reserved.]

(l) Legends. The certificates representing the Series A Preferred Shares and the book-entry accounts maintained by the Company's transfer agent representing the Conversion Shares, except as set forth below, shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such Securities bearing such legend):

> [NEITHER THE ISSUANCE AND SALE OF THESE SECURITIES NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN][THESE SECURITIES HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL SELECTED BY THE HOLDER AND REASONABLY ACCEPTABLE TO THE COMPANY, IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT AND THE SELLER PROVIDES REASONABLE ASSURANCE THAT THE SECURITIES CAN BE SOLD PURSUANT TO SUCH RULE. NOTWITHSTANDING THE FOREGOING, BUT SUBJECT TO SECTION 4(G) OF THE SECURITIES PURCHASE AGREEMENT, DATED JANUARY 9, 2023, BY AND AMONG THE COMPANY AND THE INVESTORS LISTED ON THE SCHEDULE OF BUYERS ATTACHED THERETO, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

The legend set forth above shall be removed and the Company shall issue to the holder of such Securities by electronic delivery at (x) if eligible and requested by the holder, the applicable balance account at The Depository Trust Company, and (y) on the books of the Company or its transfer agent, if in the case of each of (x) and (y) the applicable requirements set forth on the above legend have been satisfied.

(m) Transfer Taxes. The Company shall pay any and all documentary, stamp and similar issue or transfer tax due or owed by it on (x) the issue of the Series A Preferred Shares and (y) the

issue of Conversion Shares upon conversion of the Series A Preferred Shares. However, in the case of conversion of Series A Preferred Shares, the Company shall not be required to pay any tax or duty that may be payable in respect of any transfer involved in the issue and delivery of Conversion Shares or Series A Preferred Shares to a beneficial owner other than the beneficial owner of the Series A Preferred Shares immediately prior to such conversion, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

(n) Investment Company. So long as any Buyer holds any Series A Preferred Shares, the Company will not take any actions that would be reasonably likely to cause it to be an "investment company," or a company controlled by an "investment company" other than any Buyer, as such terms are defined in the Investment Company Act of 1940, as amended.

(o) Stockholder Approval. By no later than sixty (60) calendar days after the Closing Date, the Company shall file with the SEC a definitive proxy statement, in the form which has been previously reviewed by the Buyers and their representatives, at the expense of the Company, for a meeting (special or otherwise) of holders of Common Stock (the "**Stockholder Meeting**"), soliciting each such stockholder's affirmative vote at the Stockholder Meeting for approval of resolutions providing for the Company's issuance of Common Stock in excess of the Exchange Cap (as defined in the Certificate of Designation) in accordance with applicable law and the rules and regulations of the Principal Market without giving effect to any limitation on conversions of the Series A Preferred Shares, including the PIK Shares (such affirmative approval being referred to herein collectively as the "**Stockholder Approval**"), and the Company shall use its reasonable best efforts to solicit its stockholders' approval of such resolutions in connection with the Stockholder Approval, including, without limitation, by (x) causing the Board to unanimously recommend to the stockholders of the Company that they approve such resolutions, (y) using reasonable best efforts to cause its officers and directors who hold shares of Common Stock to be present at the Stockholder Meeting for quorum purposes (including by proxy) and (z) using reasonable best efforts to cause such officers and directors to vote their respective shares of Common Stock in accordance with the Board's recommendation. The Stockholder Meeting shall be promptly called and held not later than ninety (90) calendar days after the Closing Date (the "**Stockholder Meeting Deadline**"). If the Stockholder Approval is not obtained by the Stockholder Meeting Deadline, the Company shall use its best efforts to obtain the Stockholder Approval until such approval is received at a subsequent stockholder meeting called for such purposes or at any subsequent annual meeting of its stockholders.

(p) No Integrated Offering. None of the Company, its Subsidiaries or any Person acting on their behalf will take any action or steps that would cause the offering of any of the Securities to be integrated with other offerings by the Company for purposes of the 1933 Act.

(q) No Adverse Amendments to Credit Agreements. So long as any Buyer holds any Series A Preferred Shares, the Company agrees not to extend, supplement or amend the Credit Agreements or enter into any other agreement or instrument restricting the declaration or payment of cash dividends on the Series A Preferred Shares or the right of Buyers to require the Company to redeem the Series A Preferred Shares, in each case, on or after the Applicable Date (as defined in the Certificate of Designation).

(r) Nasdaq Listing. To the extent it has not already done so, promptly following the Closing, the Company shall apply to cause the Conversion Shares to be approved for listing on the Nasdaq Stock Market, subject to official notice of issuance.

(s) Stock Certificates. The Company shall issue to each Buyer in certificated form such number of applicable Series A Preferred Shares that was purchased by such Buyer at the Closing as soon as reasonably feasible, but in no event later than ten (10) Business Days after the Closing Date;

provided that electronic copies of such certificates or book entry records shall be delivered to each Buyer prior to the date that is five (5) Business Days after the Closing Date.

5. REGISTER; TRANSFER AGENT INSTRUCTIONS

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company or its transfer agent as the Company may designate by notice to each holder of Securities), a register for the Series A Preferred Shares in which the Company shall record the name and address of the Person in whose name the Series A Preferred Shares have been issued (including the name and address of each transferee), the Stated Value (as defined in the Certificate of Designation) of the Series A Preferred Shares held by such Person and the number of Conversion Shares issuable upon conversion of the Series A Preferred Shares. The Company shall keep the register open and available during business hours for inspection by any Buyer or its legal representatives upon five (5) Business Days' prior written request by such Buyer or its legal representatives.

(b) Transfer Agent Instructions. The Company shall deliver the Transfer Agent Instructions to its transfer agent, and any subsequent transfer agent, with instructions to issue certificates or credit shares to the applicable balance accounts at DTC, registered in the name of each Buyer or its respective nominee(s), for the Conversion Shares issued upon conversion of the Series A Preferred Shares in such amounts as specified from time to time by each Buyer to the Company upon conversion of the Series A Preferred Shares. The Company warrants that no instruction other than the Transfer Agent Instructions referred to in this Section 5(b) will be given by the Company to its transfer agent, and that the Securities shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement and the other Transaction Documents. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Buyer. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that a Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

The obligation of the Company hereunder to issue and sell the applicable Series A Preferred Shares to each Buyer at the Closing, is subject to the satisfaction, at or before the Closing Date of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived (in whole or in part) by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(a) Such Buyer shall have executed each of the Transaction Documents to which it is a party and delivered the same to the Company.

(b) Such Buyer shall have delivered its applicable Purchase Price to the Company for the Series A Preferred Shares being purchased by such Buyer at the Closing by wire transfer of immediately available funds pursuant to the wire instructions provided by the Company.

(c) The representations and warranties of such Buyer shall be true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date, except for representations and warranties that speak as of a specific date other than the Closing Date (which shall be true and correct as of such specified date).

(d) Such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

7. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE.

The obligation of each Buyer hereunder to purchase the applicable Series A Preferred Shares at the Closing is subject to the satisfaction, at or before the Closing Date of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived (in whole or in part) by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) The Company shall have duly executed and delivered to such Buyer each of the Transaction Documents.

(b) The Company shall have delivered to such Buyer a copy of the Transfer Agent Instructions, which instructions shall have been delivered to and acknowledged in writing by the Company's transfer agent.

(c) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company in its jurisdiction of formation issued by the Secretary of State, as of a date within ten (10) days of the Closing Date.

(d) The Company shall have delivered to such Buyer a certificate, executed by the Secretary of the Company and dated as of the Closing Date, certifying (i) the resolutions consistent with Section 3(b) as adopted by the Board in a form reasonably acceptable to such Buyer, (ii) the Certificate of Incorporation, (iii) the Bylaws and (iv) that the Company has performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the Closing Date.

(e) The representations and warranties of the Company shall be true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date, except for representations and warranties that speak as of a specific date other than the Closing Date (which shall be true and correct as of such specified date).

(f) The Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the Closing Date.

(g) The Common Stock (i) shall be designated for quotation or listed on the Principal Market and (ii) shall not be suspended, in each case, on the Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Closing Date, either (A) in writing by the SEC or the Principal Market or (B) by falling below the minimum listing maintenance requirements of the Principal Market.

(h) The Certificate of Designation shall have been filed with the Secretary of State of the State of Delaware and shall be in full force and effect, enforceable against the Company in accordance with its terms and shall not have been amended.

(i) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities other than the Required Approvals.

(j) Such Buyer shall have received the Company's wire instructions on Company's letterhead duly executed by an authorized executive officer of the Company.

8. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile or .pdf signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile or .pdf signature.

(c) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) Severability. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(e) Entire Agreement; Amendments. This Agreement and the other Transaction Documents supersede all other prior oral or written agreements between the Buyers, the Company, their affiliates and Persons acting on their behalf with respect to the matters discussed herein, and this Agreement, the other Transaction Documents, and the instruments referenced herein and therein contain the entire

understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the holders of at least a majority of the aggregate number of Conversion Shares issued or issuable pursuant to the terms of the Series A Preferred Shares (the "**Required Holders**"). Any amendment or waiver effected in accordance with this Section 8(e) shall be binding upon each Buyer and holder of Securities and the Company. No such amendment shall be effective to the extent that it applies to less than all of the Buyers or holders of Securities. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to the Transaction Documents and holders of Series A Preferred Shares.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement or any of the other Transaction Documents must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (iii) upon delivery, when sent by electronic mail; or (iii) one (1) Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses, facsimile numbers and e-mail addresses for such communications shall be:

If to the Company:

Lifecore Biomedical, Inc.
3515 Lyman Boulevard
Chaska, Minnesota 55318
Telephone: (952) 368-4300
Attention: John D. Morberg
Email: John.Morberg@lifecore.com

with a copy (for informational purposes only) to:

Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA
Telephone: (714) 755-8050
Attention: Darren J. Guttenberg, Esq.
Email: Darren.Guttenberg@lw.com

If to a Buyer, to its address, facsimile number and e-mail address set forth on the Schedule of Buyers, with copies to such Buyer's representatives as set forth on the Schedule of Buyers,

with a copy (for informational purposes only) to:

Olshan Frome Wolosky LLP
1325 Avenue of the Americas
New York, NY 10019
Telephone: (212) 451-2206; (212) 451-2230
Attention: Elizabeth Gonzalez-Sussman, Esq.; Michael R. Neidell, Esq.
Email: EGonzalez@olshanlaw.com; MNeidell@olshanlaw.com

or to such other address, facsimile number and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine or e-mail containing the time, date, recipient facsimile number or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Series A Preferred Shares. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Required Holders. No Buyer shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the Company; provided, however, that an Buyer may assign its rights and obligations hereunder, in whole or in part, to any affiliate of such Buyer without the Company's prior written consent.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except that each Indemnitee shall have the right to enforce the obligations of the Company with respect to Section 8(k).

(i) Survival. The representations and warranties of the Company and the Buyers contained in Sections 2 and 3, and the agreements and covenants set forth in Sections 4, 5 and 9 shall survive the Closing and the delivery and exercise or conversion of Securities, as applicable. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification. In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Buyer and each other holder of the Securities and all of their stockholders, partners, members, officers, directors, employees and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**"), as incurred, from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby, (b) any breach of any covenant, agreement or obligation of the Company contained in the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby or (c) any cause of action, suit or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company) and arising out of or resulting from (i) the execution, delivery, performance or enforcement of the Transaction Documents or any other certificate, instrument or document contemplated

hereby or thereby, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, or (iii) the status of such Buyer or holder of the Securities as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents. For the avoidance of doubt, the indemnification set forth in this Section 8(k) is intended to apply, and shall apply, to direct claims asserted by any Buyer against the Company as well as any third party claims asserted by an Indemnitee (other than a Buyer) against the Company. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 8(k) shall be the same as those set forth in Section 7 of the Registration Rights Agreement.

(l) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(m) Remedies. Each Buyer and each holder of the Securities shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company and each Buyer recognizes that in the event that it fails to perform, observe, or discharge any or all of its obligations under the Transaction Documents, any remedy at law may prove to be inadequate relief to the Buyers or the Company, as applicable. The Company and each Buyer therefore agrees that the non-breaching party shall be entitled to seek temporary and permanent injunctive relief in any such case without the necessity of proving actual damages and without posting a bond or other security.

(n) Adjustments. All Series A Preferred Shares and Purchase Prices per Series A Preferred Share set forth in this Agreement shall be adjusted as appropriate for any stock dividend, stock split, stock combination, reclassification or similar transaction relating to the Series A Preferred Shares occurring after the date hereof.

(o) Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Buyer exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

(p) Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under any Transaction Document are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as, and the Company acknowledges that the Buyers do not so constitute, a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Buyers are in any way acting in concert or as a group, and the Company shall not assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents and the Company acknowledges that the Buyers are not acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. The Company acknowledges and each Buyer confirms that it has independently participated

in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose.

[Signature Page Follows]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

COMPANY:

LIFECORE BIOMEDICAL, INC.

By: /s/ James. G. Hall
Name: James. G. Hall
Title: Chief Executive Officer

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

BUYERS:

LEGION PARTNERS, L.P. I

By: Legion Partners Asset Management, LLC
Investment Advisor

By: /s/ Christopher S. Kiper
Name: Christopher S. Kiper
Title: Managing Director

LEGION PARTNERS, L.P. II

By: Legion Partners Asset Management, LLC
Investment Advisor

By: /s/ Christopher S. Kiper
Name: Christopher S. Kiper
Title: Managing Director

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

22NW FUND, LP

By: /s/ Aron English
Name: Aron English
Title: President

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

WYNNEFIELD PARTNERS SMALL CAP VALUE, L.P.

By: Wynnefield Capital Management, LLC,
its General Partner

By: /s/ Nelson Obus
Name: Nelson Obus
Title: Co-Managing Member

WYNNEFIELD PARTNERS SMALL CAP VALUE, L.P. I

By: Wynnefield Capital Management, LLC,
its General Partner

By: /s/ Nelson Obus
Name: Nelson Obus
Title: Co-Managing Member

WYNNEFIELD SMALL CAP VALUE OFFSHORE FUND LTD

By: Wynnefield Capital, Inc.,
its Investment Manager

By: /s/ Nelson Obus
Name: Nelson Obus
Title: Co-Managing Member

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

CSC PARTNERS FUND LP

By: /s/ Jeffrey Bronchick
Name: Jeffrey Bronchick
Title: Principal, Portfolio Manager

COVE STREET CAPITAL SMALL CAP VALUE FUND, A SERIES MANAGED PORTFOLIO SERIES

By: Cove Street Capital, LLC,
its Investment Advisor

By: /s/ Jeffrey Bronchick
Name: Jeffrey Bronchick
Title: Principal, Portfolio Manager

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

Anil Shrivastava
325 Capital LLC
Managing Partner

For **325 CAPITAL MASTER FUND**

By: /s/ Anil Shrivastava

Anil Shrivastava
325 Capital LLC
Managing Partner

For **GOTHIC ERP 649947 (USD)**

By: /s/ Anil Shrivastava

Anil Shrivastava
325 Capital LLC
Managing Partner

For **GOTHIC CORP 649429 (USD)**

By: /s/ Anil Shrivastava

Anil Shrivastava
325 Capital LLC
Managing Partner

For **GOTHIC JBD LLC 650324 (USD)**

By: /s/ Anil Shrivastava

Anil Shrivastava
325 Capital LLC
Managing Partner

For **GOTHIC HSP CORP 649359 (USD)**

By: /s/ Anil Shrivastava

Annex A

Schedule of Buyers

(1)	(2)	(3)	(4)	(5)
Buyer	**Address, Facsimile Number and Email**	**Number of Series A Preferred Shares**	**Purchase Price**	**Legal Representative's Address, Facsimile Number and Email**
Legion Partners, L.P. I	12121 Wilshire Blvd, Suite 1240, Los Angeles, CA 90025 916 914-2100 CKiper@legionpartners.com DKatz@legionpartners.com	11,414	$11,414,000	1325 Avenue of the Americas, New York, NY 10019 (212) 451-2222 EGonzalez@olshanlaw.com MNeidell@olshanlaw.com
Legion Partners, L.P. II	12121 Wilshire Blvd, Suite 1240, Los Angeles, CA 90025 916 914-2100 CKiper@legionpartners.com DKatz@legionpartners.com	1,086	$1,086,000	1325 Avenue of the Americas, New York, NY 10019 (212) 451-2222 EGonzalez@olshanlaw.com MNeidell@olshanlaw.com
22NW Fund, LP	1455 NW Leary Way, Suite 400 Seattle, WA 98107 jstoner@EnglishCap.com	15,000	$15,000,000	Adam Finerman 45 Rockefeller Plaza New York, NY 10111-0100 212.589.4233 afinerman@bakerlaw.com
Wynnefield Partners Small Cap Value, L.P.	450 Seventh Avenue, Suite 509 New York, NY 10123 212-760-0824 nobus@wynnecap.com szelkowicz@wynnecap.com	1,040	$1,040,000	Kane Kessler, P.C. 600 Third Avenue, 35th Floor New York, NY 10022 Email: rlawrence@kanekessler.com Attention: Robert L. Lawrence, Esq. 212-245-3009

Wynnefield Partners Small Cap Value, L.P. I	450 Seventh Avenue, Suite 509 New York, NY 10123 212-760-0824 nobus@wynnecap.com szelkowicz@wynnecap.com	1,560	$1,560,000	Kane Kessler, P.C. 600 Third Avenue, 35th Floor New York, NY 10022 Email: rlawrence@kanekessler.com Attention: Robert L. Lawrence, Esq. 212-245-3009
Wynnefield Small Cap Value Offshore Fund Ltd	450 Seventh Avenue, Suite 509 New York, NY 10123 212-760-0824 nobus@wynnecap.com szelkowicz@wynnecap.com	650	$650,000	Kane Kessler, P.C. 600 Third Avenue, 35th Floor New York, NY 10022 Email: rlawrence@kanekessler.com Attention: Robert L. Lawrence, Esq. 212-245-3009
CSC PARTNERS FUND LP	525 South Douglas Street, Suite 225 El Segundo, CA 90245 jbronchick@covestreetcapital.com	1,500	$1,500,000	Davis Graham & Stubbs LLP 1550 17th Street Suite 500 Denver, CO 80202 f. 303.893.1379 peter.schwartz@dgslaw.com Attention: Peter H. Schwartz
Cove Street Capital Small Cap Value Fund, a series Managed Portfolio Series	Managed Portfolio Series 615 East Michigan Street Milwaukee, WI 53202 brian.wiedmeyer@usbank.com	1,500	$1,500,000	John Hadermayer Vice President | Regulatory Administration p. 414.721.8328 john.hadermayer@usbank.com
325 Capital Master Fund	DUMAC, Inc. Attn: Josh Schoedler 280 S Mangum St., Suite 210 Durham, NC 27701 ashrivastava@325Capital.com	774	$774,000	BOA-ML Restricted Processing Attn: Account N 3E720075 1500 Merrill Lynch Drive NJ2-150-02-40 Pennington, NJ 08534

Gothic ERP 649947 (USD)	DUMAC, Inc. Attn: Josh Schoedler 280 S Mangum St., Suite 210 Durham, NC 27701 ashrivastava@325Capital.com	415	$415,000	Josh Cohen Sidley Austin LLP One South Dearborn Chicago, IL 60603 (312) 853-0834 Joshua.cohen@sidley.com
Gothic Corp 649429 (USD)	DUMAC, Inc. Attn: Josh Schoedler 280 S Mangum St., Suite 210 Durham, NC 27701 ashrivastava@325Capital.com	2,247	$2,247,000	Josh Cohen Sidley Austin LLP One South Dearborn Chicago, IL 60603 (312) 853-0834 Joshua.cohen@sidley.com
Gothic JBD LLC 650324 (USD)	DUMAC, Inc. Attn: Josh Schoedler 280 S Mangum St., Suite 210 Durham, NC 27701 ashrivastava@325Capital.com	838	$838,000	Josh Cohen Sidley Austin LLP One South Dearborn Chicago, IL 60603 (312) 853-0834 Joshua.cohen@sidley.com
Gothic HSP Corp 649359 (USD)	DUMAC, Inc. Attn: Josh Schoedler 280 S Mangum St., Suite 210 Durham, NC 27701 ashrivastava@325Capital.com	726	$726,000	Josh Cohen Sidley Austin LLP One South Dearborn Chicago, IL 60603 (312) 853-0834 Joshua.cohen@sidley.com

Exhibit A

Certificate of Designations

Exhibit B

Registration Rights Agreement

Exhibit C

Irrevocable Transfer Agent Instructions

Exhibit D

Closing Press Release

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this "**Agreement**"), dated as of January 9, 2023, by and among Lifecore Biomedical, Inc. (f/k/a Landec Corporation), a Delaware corporation with its principal executive offices located at 3515 Lyman Boulevard, Chaska, Minnesota 55318 (the "**Company**"), and the investors (each, a "**Buyer**" and collectively, the "**Buyers**") listed on the Schedule of Buyers attached as Annex A hereto (the "**Schedule of Buyers**").

WHEREAS:

A. In connection with the Securities Purchase Agreement by and among the parties hereto of even date herewith (the "**Securities Purchase Agreement**"), the Company has agreed, upon the terms and subject to the conditions of the Securities Purchase Agreement, to issue and sell to each Buyer on the Closing Date (as defined in the Securities Purchase Agreement), shares of the Company's Series A Convertible Preferred Stock, par value $0.001 per share (the "**Preferred Shares**"), which will, among other things, be convertible into shares of the Company's common stock, par value $0.001 per share (the "**Common Stock**") (the shares of Common Stock issuable pursuant to the terms of the Certificate of Designations (as defined below), including, without limitation, upon conversion of the Preferred Shares and the PIK Shares (as defined in the Securities Purchase Agreement), collectively, the "**Conversion Shares**") in accordance with the terms and conditions of the Certificate of Designations of the Preferred Shares (the "**Certificate of Designations**").

B. In accordance with the terms of the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "**1933 Act**"), and applicable state securities laws.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each of the Buyers hereby agree as follows:

1. Definitions.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

(a) "**Additional Effective Date**" means the date that an Additional Registration Statement is declared effective by the SEC.

(b) "**Additional Effectiveness Deadline**" means the date which is the earlier of (i) ninety (90) calendar days after the earlier of the applicable Additional Filing Date and the applicable Additional Filing Deadline and (ii) the fifth (5th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that the applicable Additional Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if such Additional Effectiveness Deadline falls on a Saturday, Sunday or

other day that the SEC is closed for business, such Additional Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(c) "**Additional Filing Date**" means the date on which an Additional Registration Statement is filed with the SEC.

(d) "**Additional Filing Deadline**" means if Cutback Shares are required to be included in any Additional Registration Statement, the later of (i) the date forty-five (45) days after the date substantially all of the Registrable Securities registered under the immediately preceding Registration Statement are sold and (ii) the date six (6) months from the Initial Effective Date or the most recent Additional Effective Date, as applicable.

(e) "**Additional Registrable Securities**" means (i) any Cutback Shares not previously included in the Initial Registration Statement or any Additional Registration Statement and (ii) any shares of Common Stock of the Company issued or issuable with respect to the Preferred Shares, the Conversion Shares or the Cutback Shares, as applicable, as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, in each case, without regard to any limitations on the issuance of Common Stock pursuant to the terms of the Certificate of Designations.

(f) "**Additional Registration Statement**" means a registration statement or registration statements of the Company filed under the 1933 Act covering the resale of any Additional Registrable Securities.

(g) "**Additional Required Registration Amount**" means any Cutback Shares not previously included in the Initial Registration Statement or any Additional Registration Statement, all subject to adjustment as provided in Section 2(f), without regard to any limitations on the issuance of Common Stock pursuant to the terms of the Certificate of Designations.

(h) "**Affiliate**" shall have the meaning ascribed to such term in Rule 405 of the 1933 Act.

(i) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are generally are open for use by customers on such day.

(j) "**Conversion Rate**" shall have the meaning ascribed to such term in the Certificate of Designations.

(k) "**Conversion Amount**" shall have the meaning ascribed to such term in the Certificate of Designations.

(l) "**Cutback Shares**" means any of the Initial Required Registration Amount or the Additional Required Registration Amount(s) of Registrable Securities not included in the Initial Registration Statement or all Additional Registration Statements previously declared effective hereunder as a result of a limitation on the maximum number of shares of Common Stock of the Company permitted to be registered by the staff of the SEC pursuant to Rule 415. The number of Cutback Shares shall be allocated pro rata among the Investors with each Investor entitled to elect the portion of its Conversion Shares that are to be considered Cutback Shares.

(m) "**effective**" and "**effectiveness**" refer to a Registration Statement that has been declared effective by the SEC and is available for the resale of the Registrable Securities required to be covered thereby.

(n) "**Effective Date**" means the Initial Effective Date and the Additional Effective Date(s), as applicable.

(o) "**Effectiveness Deadline**" means the Initial Effectiveness Deadline and the Additional Effectiveness Deadline(s), as applicable.

(p) "**Eligible Market**" means the Principal Market, The New York Stock Exchange, Inc., the NYSE American, The NASDAQ Capital Market or The NASDAQ Global Market.

(q) "**Filing Date**" means the Initial Filing Date and the Additional Filing Date(s), as applicable.

(r) "**Filing Deadline**" means the Additional Filing Deadline(s), as applicable.

(s) "**Initial Effective Date**" means the date that the Initial Registration Statement is declared effective by the SEC.

(t) "**Initial Effectiveness Deadline**" means the date which is the earlier of (i) the date that is ninety (90) days after the Closing and (ii) the fifth (5th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that the Initial Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if the Initial Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Initial Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(u) "**Initial Filing Date**" means the date on which the Initial Registration Statement is filed with the SEC.

(v) "**Initial Registrable Securities**" means (i) the Conversion Shares issued or issuable pursuant to the terms of the Certificate of Designations and (ii) any shares of Common Stock of the Company issued or issuable with respect to the Preferred Shares or the Conversion Shares, as applicable, as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, in each case, without regard to any limitations on the issuance of Common Stock pursuant to the terms of the Certificate of Designations.

(w) "**Initial Registration Statement**" means a registration statement or registration statements of the Company filed under the 1933 Act covering the resale of the Initial Registrable Securities.

(x) "**Initial Required Registration Amount**" means 150% of the initial number of Conversion Shares issuable upon conversion of the Preferred Shares, including the PIK Shares (assuming for purposes hereof that (x) the Preferred Shares are convertible at the Conversion Rate and (y) dividends on the Preferred Shares are paid in the form of PIK Shares for a period of five (5) years after the Closing, and without taking into account any limitations on the conversion of the Preferred Shares set forth in the Certificate of Designations) pursuant to the terms of the Certificate of Designations, based on the Conversion Rate in effect as of the Initial Filing Date, subject to adjustment as provided in Section 2(f).

(y) "**Investor**" means a Buyer or any transferee or assignee thereof to whom a Buyer assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

(z) "**Person**" means an individual, a limited liability company, a partnership (limited or general), a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(aa) "**Principal Market**" means The NASDAQ Global Select Market.

(bb) "**register**," "**registered**," and "**registration**" refer to a registration effected by preparing and filing one or more Registration Statements in compliance with the 1933 Act and pursuant to Rule 415, and the declaration or ordering of effectiveness of such Registration Statement(s) by the SEC.

(cc) "**Registrable Securities**" means the Initial Registrable Securities and the Additional Registrable Securities, as applicable.

(dd) "**Registration Statement**" means the Initial Registration Statement and the Additional Registration Statement(s), as applicable.

(ee) "**Required Holders**" means the holders of at least a majority of the Registrable Securities.

(ff) "**Required Registration Amount**" means the Initial Required Registration Amount and the Additional Registration Amount(s), as applicable.

(gg) "**Rule 415**" means Rule 415 promulgated under the 1933 Act or any successor rule providing for offering securities on a continuous or delayed basis.

(hh) "**SEC**" means the United States Securities and Exchange Commission.

(ii) "**Trading Day**" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal national securities exchange or securities market on which the Common Stock is then traded; provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time).

2. Registration.

(a) Initial Mandatory Registration. The Company shall prepare and file with the SEC the Initial Registration Statement on Form S-3 covering the resale of all of the Initial Registrable Securities. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration on another appropriate form reasonably acceptable to the Required Holders, subject to the provisions of Section 2(e). The Initial Registration Statement prepared pursuant hereto shall register for resale at least the number of shares of Common Stock equal to the Initial Required Registration Amount determined as of the date the Initial Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(f). The Initial Registration Statement shall contain (except if otherwise directed by the Required Holders or if not permitted under SEC regulations or not advisable under SEC rules or guidance) the "Plan of Distribution" section in substantially the form attached hereto as Exhibit A (it being understood that the Company may include in such section any such additional information not otherwise contained therein that is required to be included in such sections under SEC regulations). The Company shall use its reasonable best efforts to have the Initial Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the Initial Effectiveness Deadline. By 9:30 a.m. New York time on the second (2nd) Business Day following the Initial Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to the Initial Registration Statement.

(b) Additional Mandatory Registrations. The Company shall prepare, and, as soon as practicable but in no event later than the applicable Additional Filing Deadline, file with the SEC an Additional Registration Statement on Form S-3 covering the resale of all of the Additional Registrable Securities not previously registered on an Additional Registration Statement hereunder. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration on another appropriate form reasonably acceptable to the Required Holders, subject to the provisions of Section 2(e). To the extent the staff of the SEC does not permit the applicable Additional Required Registration Amount to be registered on an Additional Registration Statement, the Company shall file, by no later than the applicable Additional Filing Deadline, Additional Registration Statements successively trying to register on each such Additional Registration Statement the maximum number of remaining Additional Registrable Securities until the Additional Required Registration Amount has been registered with the SEC. Each Additional Registration Statement prepared pursuant hereto shall register for resale at least that number of shares of Common Stock equal to the applicable Additional Required Registration Amount determined as of the date such Additional

Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(f). Each Additional Registration Statement shall contain (except if otherwise directed by the Required Holders or if not permitted under SEC regulations or not advisable under SEC rules or guidance) the "Plan of Distribution" section in substantially the form attached hereto as Exhibit A (it being understood that the Company may include in such sections any such additional information not otherwise contained therein that is required to be included in such sections under SEC regulations).The Company shall use its reasonable best efforts to have each Additional Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the applicable Additional Effectiveness Deadline. By 9:30 a.m. New York time on the second (2nd) Business Day following each Additional Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to the applicable Additional Registration Statement.

(c) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase or decrease in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number or amount of Registrable Securities held by each Investor at the time the Registration Statement covering such initial number of Registrable Securities or increase or decrease thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Investor's Registrable Securities, each transferee shall be allocated a pro rata portion of the then remaining number of Registrable Securities included in such Registration Statement for such transferor. Any shares of Common Stock included in a Registration Statement and which remain allocated to any Person which ceases to hold any Registrable Securities covered by such Registration Statement shall be allocated to the remaining Investors, pro rata based on the number or amount of Registrable Securities then held by such Investors which are covered by such Registration Statement. In no event shall the Company include any securities other than Registrable Securities on any Registration Statement without the prior written consent of the Required Holders.

(d) Legal Counsel. Subject to Section 5 hereof, the Required Holders shall have the right to select one legal counsel to review and oversee any registration pursuant to this Section 2 ("**Legal Counsel**"), which shall be Olshan Frome Wolosky LLP or such other counsel that is designated by the Required Holders. The Company and Legal Counsel shall reasonably cooperate with each other in performing the Company's obligations under this Agreement.

(e) Ineligibility for Form S-3. In the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on Form S-1 or another appropriate form reasonably acceptable to the Required Holders and (ii) use its reasonable best efforts to register the Registrable Securities on Form S-3 as soon as such form is available, to the extent of such availability, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the SEC.

(f) Sufficient Number of Shares Registered. In the event the number of securities available under a Registration Statement filed pursuant to Section 2(a) or Section 2(b) is insufficient to cover the Required Registration Amount of Registrable Securities required to be

covered by such Registration Statement or an Investor's allocated portion of the Registrable Securities pursuant to Section 2(c), the Company shall amend or supplement the applicable Registration Statement, or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount as of the Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than twenty (20) days after the necessity therefor arises. The Company shall use its reasonable best efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. For purposes of the foregoing provision, the number of securities available under a Registration Statement shall be deemed "insufficient to cover all of the Registrable Securities" if at any time the number of securities available for resale under such Registration Statement is less than the Required Registration Amount, as applicable. The calculation set forth in the foregoing sentence shall be made without regard to any limitations on the issuance of Common Stock pursuant to the terms of the Certificate of Designations and such calculation shall assume that the Preferred Shares, including the PIK Shares, are then convertible in full into shares of Common Stock at the then prevailing Conversion Rate and that dividends on the Preferred Shares are paid in the form of PIK Shares for a period of five (5) years after the Closing, without taking into account any limitations on the conversion of the Preferred Stock set forth in the Certificate of Designations; provided, that actual redemptions of the Preferred Shares shall reduce the calculation set forth in the foregoing sentence by the amount of the Preferred Shares redeemed on an as-converted basis.

(g) Effect of Failure to File and Obtain and Maintain Effectiveness of Registration Statement. If (i) after the Initial Effectiveness Deadline, the Initial Registration Statement when declared effective fails to register the Initial Required Registration Amount of Initial Registrable Securities (a "**Registration Failure**"), (ii) a Registration Statement covering the resale of all of the Registrable Securities required to be covered thereby and required to be filed by the Company pursuant to this Agreement is (A) not filed with the SEC on or before the applicable Filing Deadline (a "**Filing Failure**") or (B) not declared effective by the SEC on or before the applicable Effectiveness Deadline, (an "**Effectiveness Failure**"), (iii) on any day after the applicable Effective Date, sales of all of the Registrable Securities required to be included on such Registration Statement cannot be made (other than during an Allowable Grace Period (as defined in Section 3(o)) pursuant to such Registration Statement or otherwise (including, without limitation, because of the suspension of trading or any other limitation imposed by an Eligible Market, a failure to keep such Registration Statement effective, a failure to disclose such information as is necessary for sales to be made pursuant to such Registration Statement, a failure to register a sufficient number of shares of Common Stock or a failure to maintain the listing of the Common Stock on an Eligible Market) (a "**Maintenance Failure**") or (iv) at any time during the period commencing from the six (6) month anniversary of the Closing Date and ending at such time that all of the Registrable Securities, if a Registration Statement is not available for the resale of all of the Registrable Securities, may be sold without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1), if the Company shall (x) fail for any reason to satisfy the requirements of Rule 144(c)(1), including, without limitation, the failure to satisfy the current public information requirement under Rule 144(c) or (y) if the Company has ever been an issuer described in Rule 144(i)(1)(i) or becomes such an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) (a "**Public Information Failure**") then, as partial relief for the damages to any holder by reason of any such

delay in or reduction of its ability to sell the underlying shares of Common Stock (which remedy shall be the sole monetary remedy but shall not be exclusive of any other remedies available at law or in equity, including, without limitation, specific performance or the additional obligation of the Company to register any Cutback Shares), the Company shall pay to each holder of Registrable Securities relating to such Registration Statement an amount in cash equal to two percent (2.0%) of the aggregate Conversion Amount of such Investor's Preferred Shares outstanding as of the applicable Registration Delay Payment Date, on each of the following dates (each such date, a "**Registration Delay Payment Date**"): (i) on the three-month anniversary after the date of a Registration Failure and every three-month anniversary thereafter (prorated for periods totaling less than three months) until such Registration Failure is cured, (ii) on the three-month anniversary after the date of a Filing Failure and every three-month anniversary thereafter (prorated for periods totaling less than three months) until such Filing Failure is cured; (iii) on the three-month anniversary after the date of an Effectiveness Failure and every three-month anniversary thereafter (prorated for periods totaling less than three months) until such Effectiveness Failure is cured; (iv) on the three-month anniversary after the initial date of a Maintenance Failure and every three-month anniversary thereafter (prorated for periods totaling less than three months) until such Maintenance Failure is cured and (v) on the three-month anniversary after the date of a Public Information Failure and every three-month anniversary thereafter (prorated for periods totaling less than three months) until such Public Information Failure is cured. The payments to which a holder shall be entitled pursuant to this Section 2(h) are referred to herein as "**Registration Delay Payments**." Registration Delay Payments shall be paid on the earlier of (I) the dates set forth above and (II) the third (3rd) Business Day after the event or failure giving rise to the Registration Delay Payments is cured. In the event the Company fails to make Registration Delay Payments in a timely manner, such Registration Delay Payments shall bear interest at the rate of one percent (1.0%) per month (prorated for partial months) until paid in full. Notwithstanding the foregoing, in no event shall the aggregate amount of Registration Delay Payments payable by the Company to an Investor pursuant to this Section 2(g) exceed (i) in any three-month period, two percent (2.0%) of the Conversion Amount outstanding as of the applicable Registration Delay Payment Date, of, or, corresponding to, such Investor's Registrable Securities included, or required to be included, in the applicable Registration Statement and (ii) in total in any twelve-month period, eight percent (8.0%) of the Conversion Amount outstanding as of the applicable Registration Delay Payment Date, of, or, corresponding to, such Investor's Registrable Securities included, or required to be included, in the applicable Registration Statement. Without limiting the remedies available to the Investors, the Company acknowledges that any failure by the Company to comply with its obligations under this Section 2 will result in material irreparable injury to the Investors for which there is no adequate remedy at law, that it would not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Investors may obtain such relief as may be required to specifically enforce the Company's obligations under this Section 2.

3. Related Obligations.

At such time as the Company is obligated to file a Registration Statement with the SEC pursuant to Section 2(a), 2(b), 2(e), 2(f) or 2(g), the Company will use its reasonable best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company shall have the following obligations:

(a) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to the Registrable Securities and use its reasonable best efforts to cause such Registration Statement relating to the Registrable Securities to become effective as soon as practicable after such filing (but in no event later than the Effectiveness Deadline). The Company shall keep each Registration Statement effective pursuant to Rule 415 at all times until the earlier of (i) the date as of which the Investors may sell all of the Registrable Securities covered by such Registration Statement without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1) (or any successor thereto) promulgated under the 1933 Act or (ii) the date on which the Investors shall have sold all of the Registrable Securities covered by such Registration Statement (the "**Registration Period**"). The Company shall ensure that each Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading. The term "reasonable best efforts" shall mean, among other things, that the Company shall submit to the SEC, within two (2) Business Days after the later of the date that (i) the Company learns that no review of a particular Registration Statement will be made by the staff of the SEC or that the staff has no further comments on a particular Registration Statement, as the case may be, and (ii) the approval of Legal Counsel pursuant to Section 3(c) (which approval is promptly sought) and advice of counsel to the Company, a request for acceleration of effectiveness of such Registration Statement to a time and date not later than two (2) Business Days after the submission of such request. The Company shall respond in writing to comments made by the SEC in respect of a Registration Statement as soon as practicable, but in no event later than fifteen (15) days after the receipt of comments by or notice from the SEC that an amendment is required in order for a Registration Statement to be declared effective.

(b) The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and the prospectus used in connection with such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep such Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement (including pursuant to this Section 3(b)) by reason of the Company filing a report on Form 10-K, Form 10-Q, Form 8-K or any analogous report under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), the Company shall incorporate such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

(c) The Company shall (A) permit Legal Counsel to review and comment upon (i) a Registration Statement at least five (5) Business Days prior to its initial filing with the SEC and (ii) all amendments and supplements to all Registration Statements (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any similar

or successor reports) within a reasonable number of days prior to their filing with the SEC, and (B) not file any Registration Statement or amendment or supplement thereto in a form to which Legal Counsel reasonably objects in writing. The Company shall not submit a request for acceleration of the effectiveness of a Registration Statement or any amendment or supplement thereto without the prior approval of Legal Counsel, which consent shall not be unreasonably withheld, conditioned or delayed. The Company shall furnish to Legal Counsel, without charge, (i) copies of any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to any Registration Statement, (ii) promptly after the same is prepared and filed with the SEC, one copy of any Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference (to the extent not previously provided), if requested by an Investor, and all exhibits and (iii) upon the effectiveness of any Registration Statement, one copy of the prospectus included in such Registration Statement and all amendments and supplements thereto, in each case, which copies may be provided in electronic form. The Company and Legal Counsel shall reasonably cooperate in performing their respective obligations pursuant to this Section 3.

(d) The Company shall furnish to each Investor whose Registrable Securities are included in any Registration Statement, without charge, (i) promptly after the same is prepared and filed with the SEC, at least one copy of such Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference (to the extent not previously provided), if requested by an Investor, all exhibits and each preliminary prospectus, (ii) upon the effectiveness of any Registration Statement, a reasonable number of copies of the prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such Investor may reasonably request) and (iii) such other documents, including copies of any preliminary or final prospectus, as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor, in each case which copies may be provided in electronic form. Notwithstanding the foregoing, the Company shall not be obligated to furnish any of the foregoing to the Investors to the extent any of them are filed, furnished or otherwise made publicly available on the Company's website or the SEC's EDGAR (or any similar) electronic filing system.

(e) The Company shall use its reasonable best efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by Investors of the Registrable Securities covered by a Registration Statement under such other securities or "blue sky" laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify Legal Counsel and each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the

registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(f) The Company shall notify Legal Counsel and each Investor in writing of the happening of any event, as promptly as practicable after becoming aware of such event, but in any event within one (1) Trading Day of becoming aware of such event, as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, nonpublic information), and promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, and deliver a reasonable number of copies of such supplement or amendment to Legal Counsel and each Investor (or such other number of copies as Legal Counsel or such Investor may reasonably request). The Company shall also promptly notify Legal Counsel and each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to Legal Counsel and each Investor by facsimile or email on the same day of such effectiveness and by overnight mail), (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, and (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate. By 9:30 a.m. New York City time on the date following the second (2nd) Trading Day any post-effective amendment has become effective, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Registration Statement.

(g) The Company shall use its reasonable best efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify Legal Counsel and each Investor who holds Registrable Securities being sold of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(h) The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Investor and allow such Investor, at the Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(i) The Company shall use its reasonable best efforts either to (i) cause all of the Registrable Securities consisting of shares of Common Stock covered by a Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange or (ii) secure the inclusion for quotation of all of such Registrable Securities on the Principal Market or (iii) if, despite the Company's reasonable best efforts, the Company is unsuccessful in satisfying the preceding clauses (i) and (ii), to secure the inclusion for quotation on another Eligible Market for such Registrable Securities The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3(i).

(j) The Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Investors may reasonably request and registered in such names as the Investors may request, subject to applicable law.

(k) If requested by an Investor, the Company shall as soon as practicable but subject to the timing requirements set out elsewhere in this Agreement with regard to the filing of any prospectus supplement or post-effective amendment, as applicable (i) incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement if reasonably requested by an Investor holding any Registrable Securities.

(l) The Company shall use its reasonable best efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

(m) The Company shall otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

(n) Within two (2) Business Days after a Registration Statement which covers Registrable Securities is declared effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the SEC.

(o) Notwithstanding anything to the contrary herein, at any time after the Effective Date, the Company may delay the disclosure of material, non-public information concerning the Company the disclosure of which at the time is not, in the good faith opinion of the

Board of Directors of the Company after consultation with its counsel, in the best interest of the Company and would be required to be disclosed in any Registration Statement so that such Registration Statement would not be materially misleading (a "**Grace Period**"); provided, that the Company shall promptly (i) notify the Investors in writing of the existence of material, non-public information giving rise to a Grace Period (provided that in each notice the Company will not disclose the content of such material, non-public information to the Investors) and the date on which the Grace Period will begin, and (ii) notify the Investors in writing of the date on which the Grace Period ends; and, provided further, that no Grace Period shall exceed twenty (20) consecutive Trading Days and during any three hundred sixty five (365) day period such Grace Periods shall not exceed an aggregate of thirty (30) Trading Days, and the first day of any Grace Period must be at least five (5) Trading Days after the last day of any prior Grace Period (each, an "**Allowable Grace Period**"). During the term of any Grace Period, the Company after consultation with its counsel may (i) defer any registration of Registrable Securities and have the right not to file and not to cause the effectiveness of any registration statement covering any Registrable Securities, (ii) suspend the use of any prospectus and Registration Statement covering any Registrable Securities and (iii) require the Investors holding Registrable Securities to suspend any offerings or sales of Registrable Securities pursuant to a Registration Statement. For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the Investors receive the notice referred to in clause (i) and shall end on and include the later of the date the Investors receive the notice referred to in clause (ii) and the date referred to in such notice. The provisions of Section 3(g) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by the first sentence of Section 3(f) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary, the Company shall use reasonable best efforts to cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Securities Purchase Agreement in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale, prior to the Investor's receipt of the notice of a Grace Period and for which the Investor has not yet settled, subject to applicable law.

(p) Neither the Company nor any Subsidiary or Affiliate thereof shall identify any Investor as an underwriter in any public disclosure or filing with the SEC, the Principal Market or any Eligible Market without the prior written consent of such Investor and any Investor being deemed an underwriter by the SEC shall not relieve the Company of any obligations it has under this Agreement or any other Transaction Document (as defined in the Securities Purchase Agreement); provided, however, that the foregoing shall not prohibit the Company from including the disclosure found in the "Plan of Distribution" section attached hereto as Exhibit A in the Registration Statement; provided, further, that in such circumstances, such Investor shall be given the option to be excluded from such Registration Statement and not be identified as an underwriter therein, and in the event that the Investor does not exercise that option, the Investor shall provide prior written consent to be identified as an underwriter.

(q) Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Buyers in this Agreement or otherwise conflicts with the provisions hereof.

4. Obligations of the Investors.

(a) At least five (5) Business Days prior to the first anticipated Filing Date of a Registration Statement, the Company shall notify each Investor in writing of the information the Company requires from each such Investor if such Investor elects to have any of such Investor's Registrable Securities included in such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete any registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish in a timely manner to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

(b) Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

(c) During such time as any Investor may be engaged in a distribution of the Registrable Securities, such Investor will comply with all laws applicable to such distribution, including Regulation M promulgated under the 1934 Act, and, to the extent required by such laws, will, among other things (i) not engage in any stabilization activity in connection with the securities of the Company in contravention of such laws; (ii) distribute the Registrable Securities acquired by them solely in the manner described in the applicable Registration Statement and (iii) if required by applicable law, cause to be furnished to each agent or broker-dealer to or through whom such Registrable Securities may be offered, or to the offeree if an offer is made directly by such Investor, such copies of the applicable prospectus (as amended and supplemented to such date) and documents incorporated by reference therein as may be required by such agent, broker-dealer or offeree.

(d) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of Section 3(f), such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of copies of the supplemented or amended prospectus as contemplated by Section 3(g) or the first sentence of Section 3(f) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Securities Purchase Agreement in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of Section 3(f) and for which the Investor has not yet settled, subject to applicable law.

(e) Each Investor covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to the Registration Statement.

5. Expenses of Registration.

All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel for the Company shall be paid by the Company. The Company shall also reimburse the Investors for the reasonable fees and disbursements of Legal Counsel in connection with registration, filing or qualification pursuant to Sections 2 and 3 of this Agreement, not to exceed $35,000 for each such registration, filing or qualification.

6. Indemnification.

In the event any Registrable Securities are included in a Registration Statement under this Agreement:

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend each Investor, the directors, officers, partners, members, employees, agents, representatives of, and each Person, if any, who controls any Investor within the meaning of the 1933 Act or the 1934 Act (each, an "**Indemnified Person**"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys' fees, amounts paid in settlement or expenses, joint or several (collectively, "**Claims**"), incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("**Indemnified Damages**"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered ("**Blue Sky Filing**"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or (iv) any violation of this Agreement (the matters in the foregoing clauses (i) through (iv) being, collectively, "**Violations**"). For the avoidance of doubt, the indemnification set forth in this Section 6 is intended to apply, and shall apply, to direct claims asserted by any Buyer against the

Company as well as any third party claims asserted by an Indemnitee (other than a Buyer) against the Company. Subject to Section 6(c), the Company shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person for such Indemnified Person expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto, if such prospectus was timely made available by the Company pursuant to Section 3(d); (ii) shall not apply to a Claim by an Indemnified Person to the extent caused solely by its own gross negligence or willful misconduct; and (iii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

(b) In connection with any Registration Statement in which an Investor is participating, each such Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, an "**Indemnified Party**"), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and, subject to Section 6(c), such Investor shall reimburse the Indemnified Party for any legal or other expenses reasonably incurred by an Indemnified Party in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed; provided, further, however, that the Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

(c) Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and, except in the case of a direct claim against the indemnifying party, the indemnifying party shall

have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses of not more than one counsel for all such Indemnified Person or Indemnified Party to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the Indemnified Person or Indemnified Party, as applicable, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. In the case of an Indemnified Person, legal counsel referred to in the immediately preceding sentence shall be selected by the Investors holding at least a majority in interest of the Registrable Securities included in the Registration Statement to which the Claim relates. The Indemnified Party or Indemnified Person shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person which relates to such action or Claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person of a release from all liability in respect to such Claim or litigation and such settlement shall not include any admission as to fault on the part of the Indemnified Party. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is prejudiced in its ability to defend such action. For the avoidance of doubt, the provisions of this Section 6(c) shall not apply to direct claims between the Company and a Buyer.

(d) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

(e) The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

7. Contribution.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (ii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the sale of such Registrable Securities pursuant to such Registration Statement.

8. Reports Under the 1934 Act.

With a view to making available to the Investors the benefits of Rule 144 promulgated under the 1933 Act or any other similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration ("**Rule 144**"), the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under Sections 13(a) or 15(d) of the 1934 Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting requirements of Rule 144, the 1933 Act and the 1934 Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration. Notwithstanding the foregoing, the Company shall not be obligated to send or deliver any of the foregoing to the Investors to the extent any of them are filed, furnished or otherwise made publicly available on the Company's website or the SEC's EDGAR (or any similar) electronic filing system.

9. Assignment of Registration Rights.

The rights under this Agreement shall be automatically assignable by the Investors to any transferee of all or any portion of such Investor's Registrable Securities if: (i) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under

the 1933 Act or applicable state securities laws; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein by delivering to the Company a duly executed joinder agreement in a form reasonably satisfactory to the Company; and (v) such transfer shall have been made in accordance with the applicable requirements of the Securities Purchase Agreement.

10. Amendment of Registration Rights.

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Holders. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Registrable Securities. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to this Agreement.

11. Miscellaneous.

(a) A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by facsimile or electronic mail (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses, facsimile numbers and email addresses for such communications shall be:

If to the Company:

Lifecore Biomedical, Inc.
3515 Lyman Boulevard
Chaska, Minnesota 55318
Telephone: (952) 368-4300
Attention: John D. Morberg
Email: John.Morberg@lifecore.com

with a copy (for informational purposes only) to:

Latham & Watkins LLP

650 Town Center Drive, 20th Floor
Costa Mesa, CA
Telephone: (714) 755-8050
Attention: Darren J. Guttenberg, Esq.
Email: Darren.Guttenberg@lw.com

If to Legal Counsel (or the contact information to be provided for any other Legal Counsel that is designated by the Required Holders pursuant to Section 2(d)):

Olshan Frome Wolosky LLP
1325 Avenue of the Americas
New York, NY 10019
Telephone: (212) 451-2206; (212) 451-2230
Attention: Elizabeth Gonzalez-Sussman, Esq.; Michael R. Neidell, Esq.
Email: EGonzalez@olshanlaw.com; MNeidell@olshanlaw.com

If to a Buyer, to its address, facsimile number and/or email address set forth on the Schedule of Buyers attached hereto, with copies to such Buyer's representatives as set forth on the Schedule of Buyers, or to such other address, facsimile number and/or email address to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine or email containing the time, date, recipient facsimile number or e-mail address or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

(d) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices

to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY**.

(e) If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(f) This Agreement, the other Transaction Documents and the instruments referenced herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Transaction Documents and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

(g) Subject to the requirements of Section 9, this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto.

(h) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile or electronic transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

(j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) All consents and other determinations required to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Required Holders, determined as if all of the outstanding Preferred Shares then held by the Investors have been converted for Registrable Securities without regard to any limitations on the issuance of Common Stock pursuant to the terms of the Certificate of Designations.

(l) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

(m) This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(n) The obligations of each Investor hereunder are several and not joint with the obligations of any other Investor, and no provision of this Agreement is intended to confer any obligations on any Investor vis-à-vis any other Investor. Nothing contained herein, and no action taken by any Investor pursuant hereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated herein.

* * * * * *

[Signature Page Follows]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

COMPANY:

LIFECORE BIOMEDICAL, INC.

By: /s/ James. G. Hall
Name: James. G. Hall
Title: Chief Executive Officer

LEGION PARTNERS, L.P. I

By: Legion Partners Asset Management, LLC
Investment Advisor

By: /s/ Christopher S. Kiper
Name: Christopher S. Kiper
Title: Managing Director

LEGION PARTNERS, L.P. II

By: Legion Partners Asset Management, LLC
Investment Advisor

By: /s/ Christopher S. Kiper
Name: Christopher S. Kiper
Title: Managing Director

22NW FUND, LP

By: /s/ Aron English
Name: Aron English
Title: President

[*Signature Page to Registration Rights Agreement*]

WYNNEFIELD PARTNERS SMALL CAP VALUE, L.P.

By: Wynnefield Capital Management, LLC,
its General Partner

By: /s/ Nelson Obus
Name: Nelson Obus
Title: Co-Managing Member

WYNNEFIELD PARTNERS SMALL CAP VALUE, L.P. I

By: Wynnefield Capital Management, LLC,
its General Partner

By: /s/ Nelson Obus
Name: Nelson Obus
Title: Co-Managing Member

WYNNEFIELD SMALL CAP VALUE OFFSHORE FUND LTD

By: Wynnefield Capital, Inc.,
its Investment Manager

By: /s/ Nelson Obus
Name: Nelson Obus
Title: Co-Managing Member

CSC PARTNERS FUND LP

By: /s/ Jeffrey Bronchick
Name: Jeffrey Bronchick
Title: Principal, Portfolio Manager

COVE STREET CAPITAL SMALL CAP VALUE FUND, A SERIES MANAGED PORTFOLIO SERIES

By: Cove Street Capital, LLC,
its Investment Advisor

By: /s/ Jeffrey Bronchick
Name: Jeffrey Bronchick
Title: Principal, Portfolio Manager

Anil Shrivastava
325 Capital LLC
Managing Partner

For **325 CAPITAL MASTER FUND**

By: /s/ Anil Shrivastava

Anil Shrivastava
325 Capital LLC
Managing Partner

For **GOTHIC ERP 649947 (USD)**

By: /s/ Anil Shrivastava

Anil Shrivastava
325 Capital LLC
Managing Partner

For **GOTHIC CORP 649429 (USD)**

By: /s/ Anil Shrivastava

Anil Shrivastava
325 Capital LLC
Managing Partner

For **GOTHIC JBD LLC 650324 (USD)**

By: /s/ Anil Shrivastava

Anil Shrivastava
325 Capital LLC
Managing Partner

For **GOTHIC HSP CORP 649359 (USD)**

By: /s/ Anil Shrivastava

Annex A

Schedule of Buyers

- Legion Partners, L.P. I
- Legion Partners, L.P. II
- 22NW Fund, LP
- Wynnefield Partners Small Cap Value, L.P.
- Wynnefield Partners Small Cap Value, L.P. I
- Wynnefield Small Cap Value Offshore Fund Ltd
- CSC PARTNERS FUND LP
- Cove Street Capital Small Cap Value Fund, a series Managed Portfolio Series
- 325 Capital Master Fund
- Gothic ERP 649947 (USD)
- Gothic Corp 649429 (USD)
- Gothic JBD LLC 650324 (USD)
- Gothic HSP Corp 649359 (USD)

Exhibit A

Plan of Distribution

The selling stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

– ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

– block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;

– purchases by a broker-dealer as principal and resale by the broker-dealer for its account;

– an exchange distribution in accordance with the rules of the applicable exchange;

– privately negotiated transactions;

– short sales effected after the date the registration statement of which this prospectus is a part is declared effective by the U.S. Securities and Exchange Commission;

– through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;

– broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;

– a combination of any such methods of sale; and

– any other method permitted by applicable law.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act of 1933, as amended (the "Securities Act"), amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders

also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from this offering.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act, provided that they meet the criteria and conform to the requirements of that rule.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the common stock or interests therein may be "underwriters" within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are "underwriters" within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act.

To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, and any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the common stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

If the selling stockholders want to sell their shares of our common stock under this prospectus in the United States, the selling stockholders will also need to comply with state

securities laws, also known as "Blue Sky laws," with regard to secondary sales. All states offer a variety of exemption from registration for secondary sales. Many states, for example, have an exemption for secondary trading of securities registered under Section 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") or for securities of issuers that publish continuous disclosure of financial and non-financial information in a recognized securities manual, such as Standard & Poor's. The broker for the selling stockholders will be able to advise the selling stockholders in which states shares of our common stock are exempt from registration for secondary sales.

Any person who purchases shares of our common stock from the selling stockholders offered by this prospectus who then wants to sell such shares will also have to comply with Blue Sky laws regarding secondary sales.

We have advised the selling stockholders that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. In addition, to the extent applicable, we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

We have agreed to indemnify the selling stockholders against liabilities, including liabilities under the Securities Act and state securities laws, relating to the registration of the shares offered by this prospectus.

We have agreed with the selling stockholders to use reasonable best efforts to cause the registration statement of which this prospectus constitutes a part effective and to remain continuously effective until the earlier of (1) such time as all of the shares covered by this prospectus have been disposed of pursuant to and in accordance with such registration statement or (2) the date on which all of the shares may be sold without restriction pursuant to Rule 144 of the Securities Act.

LIMITED WAIVER AND FOURTH AMENDMENT TO CREDIT AND GUARANTY AGREEMENT

This **LIMITED WAIVER AND FOURTH AMENDMENT TO CREDIT AND GUARANTY AGREEMENT**, dated as of January 9, 2023 (this "**Amendment**"), is entered into by and among **LIFECORE BIOMEDICAL, INC.** (f/k/a Landec Corporation), a Delaware corporation, as Credit Party Representative for itself and on behalf of the other Credit Parties, and **GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.**, as Administrative Agent and US Collateral Agent, the Lenders party hereto.

RECITALS:

WHEREAS, reference is hereby made to that certain Credit Agreement and Guaranty Agreement, dated as of December 31, 2020 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the "**Existing Credit Agreement**", and as further amended by this Amendment, the "**Credit Agreement**"; capitalized terms used herein (including the preamble, recitals, and Reaffirmation attached hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement, as amended hereby), by and among Landec Corporation, as a Company and Credit Party Representative, the other Credit Parties party thereto from time to time, the Lenders party thereto from time to time, GSSLG, as Administrative Agent and US Collateral Agent and GLAS Americas, as MXN Collateral Agent;

WHEREAS, Credit Party Representative has informed the Administrative Agent that the Events of Default identified on Exhibit C hereto have occurred and are continuing (collectively, the "**Specified Defaults**"); and

WHEREAS, at the request of the Credit Parties, on the Fourth Amendment Effective Date (as defined herein), the Lenders are willing to make certain amendments to the Existing Credit Agreement, and the Administrative Agent and the Lenders have agreed to do so, but solely on the terms and conditions set forth herein.

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

1. Amendments to Credit Agreement.

(a) Subject to the terms and conditions set forth herein, including satisfaction of each condition set forth in Section 4 below, and in reliance on the representations, warranties, covenants and agreements of the Credit Parties set forth herein, the Existing Credit Agreement (exclusive of the Schedules and Exhibits thereto except as set forth in paragraphs (b) and (c) below) shall be amended to delete the stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following examples: double-underline text and double-underline text) as set forth in Exhibit A hereto.

2. Limited Waiver.

(a) Subject to satisfaction of the conditions precedent set forth in Section 4 below, the Administrative Agent and the Lenders party hereto (constituting Requisite Lenders) hereby waive, as of the date hereof, the Specified Defaults (collectively, the "**Limited Waiver**").

(b) Except as expressly set forth herein, the Limited Waiver shall not be deemed to constitute a consent to, or waiver or approval of, any other act, any other omission or any other failure by the Credit Parties to comply with the terms and provisions of the Existing Credit Agreement or any of the other Credit Documents.

(c) The Limited Waiver is a limited, one time waiver and, except as expressly set forth herein, shall not be deemed to: (i) constitute a waiver of any Default, Event of Default or any other breach by the Credit Parties of, or non-compliance by the Credit Parties with, the Existing Credit Agreement or any of the other Credit Documents, whether now existing or hereafter arising, (ii) constitute a waiver of any right or remedy of any Secured Party under the Existing Credit Agreement or any other Credit Documents which does not arise as a result of the Specified Defaults (in each case prior to giving effect to this Limited Waiver) or (iii) establish a custom or course of dealing or conduct between any Secured Party, on the one hand, and the Credit Parties, on the other hand.

(d) Each Secured Party expressly reserves the right to exercise all rights and remedies under the Existing Credit Agreement and all other Credit Documents and under applicable law with respect to the occurrence of any Event of Default other than the Specified Defaults.

3. Representations, Warranties, Covenants and Acknowledgements. To induce the Administrative Agent and the Lenders to enter into this Amendment, each Credit Party:

(a) represents and warrants that (i) as of the date hereof, each of the representations and warranties set forth herein, in the Credit Agreement and each other Credit Document is true and correct in all material respects on and as of the date hereof to the same extent as though made on and as of the date hereof (unless such representation or warranty is qualified as to materiality or Material Adverse Effect, in which case, such representation or warranty shall be true and correct in all respects), except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date (unless such representation or warranty is qualified as to materiality or Material Adverse Effect, in which case, such

representation or warranty shall be true and correct in all respects); (ii) as of the date hereof, no Default or Event of Default has occurred and is continuing under (x) the Credit Agreement or any other Credit Document or (y) any ABL Credit Document; (iii) such Credit Party has the power and is duly authorized to enter into, deliver and perform its obligations under this Amendment; (iv) each of this Amendment and the Credit Agreement, as amended hereby, is the legal, valid and binding obligation of such Credit Party enforceable against such Credit Party in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability; (v) the execution, delivery and performance of this Amendment does not conflict with, result in a breach of or constitute (with notice or lapse of time or both) a default under any Contractual Obligation of such Credit Party; (vi) the payment and indemnification obligations set forth in Sections 9.6 (*Right to Indemnity*), 10.2 (*Expenses*), and 10.3 (*Indemnity and Related Reimbursement*) of the Credit Agreement of each applicable party are hereby reaffirmed by the applicable parties by their signatures hereto; (vii) on the Fourth Amendment Effective Date, after giving effect to the transactions contemplated by this Amendment, such Credit Party (other than Yucatan Foods, LLC, Procesadora Tanok, S. de R.L. de C.V. or Tanokotan, S. de R.L. de C.V.) is Solvent, and (viii) the Initial Cash Flow Report delivered pursuant to Section 4(b) below was prepared in good faith and fairly presents in all material respects the information set forth therein.

(b) reaffirms each of the agreements, covenants and undertakings set forth in the Credit Agreement and each other Credit Document to which it is a party executed in connection therewith or pursuant thereto, in each case, as modified by the terms of this Amendment;

(c) further acknowledges and agrees that no right of offset, defense, counterclaim, recoupment, claim, cause of action or objection in favor of such Credit Party against any Agent or Lender exists as of the date hereof arising out of or with respect to (i) this Amendment, the Credit Agreement or any other Credit Document or (ii) any other document now or heretofore evidencing, securing or in any way relating to the foregoing;

(d) further acknowledges and agrees that (i) except as expressly set forth herein, this Amendment is not intended, and should not be construed, as any kind of amendment, waiver, consent or other agreement related to the Credit Agreement or the other Credit Documents; (ii) except as expressly set forth herein, this Amendment shall not represent any amendment, waiver, consent or other agreement related to any future action of any Credit Party; (iii) except as expressly set forth herein, the Agents and Lenders reserve all of their respective rights under the Credit Agreement and all other Credit Documents; (iv) the amendments and other agreements contained herein do not and shall not create (nor shall any Credit Party rely upon the existence of or claim or assert that there exists) any obligation of any Agent or Lender to consider or agree to any future, amendment, waiver, consent or other agreement and, in the event any Agent or Lender subsequently agrees to consider any future amendment, waiver, consent or other agreement, neither the amendments and other agreements contained herein nor any other conduct of any Agent or Lender shall be of any force or effect on any Agent's or Lender's consideration or decision with respect to any such requested amendment, waiver, consent or agreement, and no Agent or any Lender shall have any obligation whatsoever to consider or agree to any future amendment, waiver, consent or other agreement; (v) this Amendment shall constitute a Credit Document for all purposes under the Credit Agreement and the other Credit Documents; and (vi) to the extent any representation, warranty, certification or other statement made herein shall be false in any material respect as of the date made or deemed made or if the Credit Parties fail to timely satisfy any of the conditions listed in this Amendment to the satisfaction of Administrative Agent, such occurrence shall be deemed an immediate Event of Default under the Credit Agreement;

(e) further acknowledges and agrees that neither this Amendment nor any document executed in connection herewith shall be deemed to constitute a refinancing, substitution or novation of the Credit Agreement, any other Credit Document, the Obligations or any other obligations and liabilities thereunder; and

(f) further acknowledges and agrees that as of the date hereof and after giving effect this Amendment, no Default has occurred and is continuing under the Existing Credit Agreement or any other Credit Document or would result from the execution and delivery of this Amendment.

4. Conditions to Effectiveness. The satisfaction of each of the following shall constitute conditions precedent to the effectiveness of this Amendment (such date being the "**Fourth Amendment Effective Date**"):

(a) Delivery of Counterparts. On or before the date hereof, the Administrative Agent shall have received executed counterparts of:

(i) this Amendment, including the Reaffirmation attached hereto as Exhibit B;

(ii) the Fee Letter;

(iii) a fully-executed Solvency Certificate, dated as of the Fourth Amendment Effective Date; and

(iv) any other documents or agreements reasonably requested by the Administrative Agent in connection herewith, in each case, duly executed and delivered by each applicable Credit Party and each other Person party thereto.

(b) Delivery of Documents. On or before the date hereof, the Administrative Agent shall have received:

(i) a "bring-down" secretary's certificate of each Credit Party (other than any Mexican Subsidiary) (A) certifying that there have been no changes to such Credit Party's Organizational Documents (or attaching any such changes); (B) attaching signature and incumbency certificates of the officers of such Person executing this Amendment; (C) resolutions of the Board of Directors of each

Credit Party approving and authorizing the execution, delivery and performance of this Amendment, certified as of the Fourth Amendment Effective Date by an appropriate Authorized Officer as being in full force and effect without modification or amendment; and (D) attaching a good standing certificate from the applicable Governmental Authority of such Credit Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Fourth Amendment Effective Date;

(ii) a fully-executed acknowledgment and consent regarding the Intercreditor Agreement, whereby the ABL Lender acknowledges this Amendment and consents to the Fee Letter;

(iii) the most recent ABL Borrowing Base certificate delivered to ABL Agent pursuant to the terms of the ABL Credit Agreement;

(iv) the Initial Cash Flow Report, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders

(v) executed copies of the Series A Convertible Preferred Stock Documents, which are in form and substance reasonably satisfactory to the Requisite Lenders; and

(vi) an executed copy of a waiver and amendment under the ABL Credit Agreement in form and substance satisfactory to the Requisite Lenders.

(c) Accuracy of Representations and Warranties. All of the representations and warranties of the Credit Parties contained in Section 4 of the Credit Agreement or any other Credit Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct in all material respects, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(d) Expenses. The Credit Parties shall have paid, to the extent invoiced on or before the date hereof, to the Administrative Agent (or its advisors) and the MXN Collateral Agent all reasonable and documented costs and expenses (including the attorneys' fees of Paul Hastings LLP) of the Administrative Agent and the MXN Collateral Agent in connection with preparation, execution and delivery of this Amendment and all other related documents together with any other amounts, if any, in any case required to be paid under Section 10.2 (*Expenses*) of the Credit Agreement and unpaid on the date hereof.

5. Ratification; Reference to and Effect Upon the Existing Credit Agreement.

(a) Each Credit Party party hereto, hereby consents to this Amendment and each of the transactions referenced herein, and hereby reaffirms its obligations under the Credit Agreement and each other Credit Document to which it is a party, as applicable.

(b) Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Existing Credit Agreement or instruments securing the same. Except as specifically amended above, the Existing Credit Agreement and the other Credit Documents shall remain in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of any party to the Existing Credit Agreement or any other Credit Document, nor constitute a waiver of any provision of the Existing Credit Agreement or any other Credit Document. Upon the effectiveness of this Amendment, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of similar import shall mean and be a reference to the Credit Agreement.

6. Release; Indemnification.

(a) In further consideration of the execution of this Amendment by the Administrative Agent and the Lenders, each Credit Party, individually and on behalf of its successors (including any trustees acting on behalf of such Credit Party and any debtor in possession with respect to such Credit Party), assigns, Subsidiaries and Affiliates (collectively, the "**Releasors**"), hereby forever releases each Agent and Lender and their respective successors, assigns, parents, Subsidiaries, Affiliates, officers, employees, directors, agents and attorneys (collectively, the "**Releasees**") from any and all debts, claims, demands, liabilities, responsibilities, disputes, causes, damages, actions and causes of actions (whether at law or in equity) and obligations of every nature whatsoever, whether liquidated or unliquidated, whether known or unknown, whether matured or unmatured, whether fixed or contingent that such Releasor has, had or may have against the Releasees, or any of them, which arise from or relate to any actions which the Releasees, or any of them, have or may have taken or omitted to take in connection with the Credit Agreement or the other Credit Documents prior to the date hereof, including with respect to the Obligations, any Collateral, the Credit Agreement, any other Credit Document and any third party liable in whole or in part for the Obligations. This provision shall survive and continue in full force and effect whether or not each Credit Party shall satisfy all other provisions of this Amendment or the other Credit Documents, including payment in full of all Obligations. Each Releasor understands, acknowledges and agrees that the foregoing release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(b) Each Credit Party hereby acknowledges and agrees that such Credit Party's obligations under this Amendment shall include an obligation to indemnify and hold the Releasees harmless with respect to any Indemnified Liabilities in any manner relating to or

arising out of the negotiation, preparation, execution, delivery, performance, administration and enforcement of this Amendment to the extent required by Section 10.3 (*Indemnity*) of the Credit Agreement.

7. Effect; Relationship of Parties. Except as expressly modified hereby or in connection herewith, the Credit Agreement and the other Credit Documents shall be and remain in full force and effect as originally written, and shall constitute the legal, valid, binding and enforceable obligations of the Credit Parties to the Agents and Lenders, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. The relationship of the Administrative Agent, the MXN Collateral Agent and the Lenders, on the one hand, and the Credit Parties, on the other hand, has been and shall continue to be, at all times, that of creditor and debtor and not as joint venturers or partners. Nothing contained in this Amendment, any instrument, document or agreement delivered in connection herewith, the Credit Agreement or any of the other Credit Documents shall be deemed or construed to create a fiduciary relationship between or among the parties hereto or thereto.

8. Miscellaneous. Sections 1.3 (*Interpretation*), 10.6(a) (*Successor and Assigns; Participations*), 10.11 (*Severability*), 10.13 (*Headings*), 10.14 (*Applicable Law*), 10.15 (*Consent to Jurisdiction*), 10.16 (*Waiver of Jury Trial*), 10.19 (*Effectiveness; Counterparts*), 10.20 (*Entire Agreement*), 10.22 (*Electronic Execution of Assignment and Credit Documents*), 10.23 (*No Fiduciary Duty*), 10.24 (*Acknowledgment and Consent to Bail-In of EEA Financial Institutions*), and 10.25 (*Intercreditor Agreement*) of the Credit Agreement are hereby incorporated herein by reference *mutatis mutandis*.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

LIFECORE BIOMEDICAL, INC., as Credit Party Representative for itself and on behalf of the other Credit Parties

By:_____/s/ John D. Morberg_____
Name: John D. Morberg
Title: Chief Financial Officer

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as Administrative Agent, US Collateral Agent and Lender

By: /s/ Greg Watts
Name: Greg Watts
Title:

PRIVATE DEBT INVESTORS FEEDER, LLC, as a Lender

By: Guggenheim Corporate Funding, LLC, as Manager

By: /s/ Julio Quintero
Name: Julio Quintero
Title: Attorney-in-Fact

SOUTH CAROLINA RETIREMENT SYSTEMS GROUP TRUST, as a Lender

By: Guggenheim Partners Investment Management, LLC, as Manager

By: /s/ Julio Quintero
Name: Julio Quintero
Title: Attorney-in-Fact

Exhibit A

Amended Credit and Guaranty Agreement

See attached.

Execution Version
as amended through Amendment No. 4

CREDIT AND GUARANTY AGREEMENT

dated as of December 31, 2020,

by and among

LIFECORE BIOMEDICAL, INC. (F/K/A LANDEC CORPORATION),
CURATION FOODS, INC.,
LIFECORE BIOMEDICAL OPERATING COMPANY, INC. (F/K/A LIFECORE BIOMEDICAL, INC.),
as Borrowers,

and

certain of its Affiliates party hereto from time to time, as guarantors,
the other Credit Parties party hereto from time to time as guarantors,

the Lenders party hereto from time to time,

and

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.,
as Administrative Agent and Collateral Agent

$170,000,000 Senior Secured Credit Facilities

CREDIT AND GUARANTY AGREEMENT

This **CREDIT AND GUARANTY AGREEMENT**, dated as of December 31, 2020, is entered into by and among **LIFECORE BIOMEDICAL, INC.**, a Delaware corporation ("**Holdings**"), **CURATION FOODS, INC.**, a Delaware corporation ("**Curation**"), and **LIFECORE BIOMEDICAL OPERATING COMPANY, INC.**, a Delaware corporation ("**Lifecore**" and, together with Holdings and Curation, collectively, "**Companies**" and, each, a "**Company**") as borrowers, the other Credit Parties party hereto from time to time, the Lenders party hereto from time to time and **GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.** ("**GSSLG**"), as Administrative Agent and US Collateral Agent, and **GLAS AMERICAS LLC**, a limited liability company organized and existing under the laws of the State of New York, as MXN Collateral Agent.

RECITALS:

WHEREAS, the Lenders have agreed to extend certain credit facilities to Companies in the amounts and upon the terms and conditions more particularly set forth herein, the proceeds of which will be used for the purposes specified in Section 2.5;

WHEREAS, each Credit Party has agreed to guarantee the Obligations of the other Credit Parties and to secure all of its respective Obligations by granting to Collateral Agent, for the benefit of the Secured Parties, a First Priority Lien on substantially all of its respective assets (other than the ABL Priority Collateral upon which the Collateral Agent shall be granted a junior priority Lien), including a pledge of all of the Capital Stock issued by each Subsidiary of Holdings, subject to the limitations set forth herein and in the Collateral Documents; and

WHEREAS, the business of Holdings and its Subsidiaries is a mutual and collective enterprise, and the Credit Parties believe that the consolidation of all Loans and other accommodations under this Agreement will enhance Companies Subsidiaries' aggregate borrowing powers and facilitate the administration of their relationship with the Agents and Lenders, all to the Credit Parties' respective individual and mutual advantage.

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

SECTION 1. DEFINITIONS AND INTERPRETATION

1.1. Definitions. The following terms used herein, including in the preamble, recitals, appendices, schedules and exhibits hereto, shall have the following meanings:

"**ABL Agent**" means Bank of Montreal, as administrative agent for the ABL Lenders under the ABL Credit Agreement and any successor administrative agent appointed in accordance with the terms thereof.

"**ABL Availability**" means, as of any date of determination, (a) the "Maximum Borrowing Amount" (as defined in the ABL Credit Agreement) at such time minus (b) "Total Revolving Credit Outstandings" (as defined in the ABL Credit Agreement).

"**ABL Borrowing Base**" means the "Borrowing Base" as defined in the ABL Credit Agreement.

"**ABL Collateral Documents**" means all "Security Instruments" or similar term as defined in the ABL Credit Agreement, and all other security agreements, mortgages, deeds of trust and other collateral documents executed and delivered at any time in connection with any ABL Credit Agreement.

"**ABL Commitment**" means "Commitment" as defined in the ABL Credit Agreement.

"**ABL Credit Agreement**" means that certain Credit Agreement, dated as of the Closing Date, by and among Companies, the ABL Agent and the ABL Lenders, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of the Intercreditor Agreement.

"**ABL Credit Documents**" means, collectively, the ABL Credit Agreement, the ABL Security Instruments, the Intercreditor Agreement, the other "Loan Documents" (as defined in the ABL Credit Agreement) and all other agreements, instruments and other documents executed and delivered at any time in connection with the ABL Credit Agreement (in each case, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of the Intercreditor Agreement).

"**ABL Indebtedness**" means, collectively, the "Obligations" as defined in the ABL Credit Agreement not to exceed the amount of any such Indebtedness permitted pursuant to Section 6.1(k).

"**ABL Lenders**" means the lenders from time to time party to the ABL Credit Agreement.

"**ABL Letters of Credit**" means the letters of credit issued in accordance with the ABL Credit Agreement.

"**ABL Loans**" means the revolving loans made in accordance with the ABL Credit Agreement.

"**ABL Priority Collateral**" as defined in the Intercreditor Agreement.

"**Acquisition**" means the acquisition of, by purchase or otherwise (other than purchases or other acquisitions of inventory, materials, equipment and capital expenditures, in each case, in the ordinary course of business), the business of, a substantial portion of the property or assets of, or a substantial portion of the Capital Stock or other evidence of beneficial ownership of, or any division, line of business or business unit of, any Person.

"**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 Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

"**Administrative Agent**" means GSSLG in its capacity as administrative agent for the Lenders pursuant to Section 9, and any successor administrative agent appointed in accordance with the terms thereof.

"**Adverse Proceeding**" means any action, suit, proceeding, hearing (in each case, whether administrative, judicial or otherwise), governmental investigation involving Holdings or any of its Subsidiaries, or arbitration (whether or not purportedly on behalf of Holdings or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of Holdings or any of its Subsidiaries, threatened against or affecting Holdings or any of its Subsidiaries or any property of Holdings or any of its Subsidiaries.

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

"**Affected Lender**" as defined in Section 2.17(c).

"**Affected Loans**" as defined in Section 2.17(c).

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly controlling (including any member of the senior management group of such Person), controlled by or under common control with such Person or any Subsidiary of such Person. For the purposes of this definition, the terms "controlling", "controlled by" and "under common control with", as applied to any Person, mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ability to exercise voting power, by contract or otherwise. Notwithstanding anything in this definition to the contrary, (i) Windset shall be deemed to be an Affiliate and (ii) no Agent, no Lender and none of their respective Affiliates shall be considered an "Affiliate" of any Credit Party or of any Subsidiary of any Credit Party.

"**Agent**" means each of Administrative Agent, Collateral Agent, Syndication Agent, Documentation Agent, and any other Person appointed as an agent, arranger, bookrunner or similar title or capacity under or otherwise in connection with the Credit Documents.

"**Agent Affiliates**" as defined in Section 10.1(b)(iii).

"**Aggregate Amounts Due**" as defined in Section 2.16.

"**Aggregate Payments**" as defined in Section 7.2.

"**Agreement**" means this Credit and Guaranty Agreement.

"**Anti-Bribery and Anti-Corruption Laws**" means any and all requirements of law related to anti-bribery or anti-corruption matters, including the United States Foreign Corrupt Practices Act of 1977 and any other anticorruption law applicable to Holdings or any of its Subsidiaries.

"**Anti-Terrorism and Anti-Money Laundering Laws**" means any and all requirements of law related to engaging in, financing or facilitating terrorism or money laundering, including the PATRIOT Act, the Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act", 31 U.S.C. §§5311-5330 and 12 U.S.C. §§1818(s), 1820(b) and 1951-1959), the Trading With the Enemy Act (50 U.S.C. §4301 et seq.), Executive Order 13224 (effective September 24, 2001) and each of the laws, regulations and executive orders administered by OFAC (31 C.F.R., Subtitle B, Chapter V).

"**Applicable Margin**" means a percentage, per annum, equal to (a) 8.50% with respect to SOFR Loans and (b) 7.50% with respect to Base Rate Loans.

"**Approved Professional Advisor**" means CR3 Partners, or another financial advisor reasonably acceptable to the Requisite Lenders.

"**Approved Professional Advisor Toggle Date**" means the earlier of (a) first date after the Fourth Amendment Effective Date that each of the following requirements are satisfied as of such date: (i) the Leverage Ratio is less than 6.00:1:00 as of the last day of the Fiscal Quarter most recently ended, (ii) Consolidated Liquidity is not less than $15,000,000 at all times for a consecutive period of at least one full Fiscal

Quarter ending as of the end of the Fiscal Quarter as of which the criteria in subclause (a)(i) is satisfied, (iii) no Event of Default has occurred and is continuing as of such date of determination, and (iv) pursuant to one or more Permitted Curation Sales, either (A) 100% of the Capital Stock of Curation's Subsidiaries, or all or substantially all of the assets of Curation's Subsidiaries, have been sold, transferred or other disposed of, or (B) all or substantially all of the assets of Curation's Subsidiaries have been liquidated in a manner reasonably satisfactory to the Requisite Lenders in their sole discretion, (b) the Elevated Reporting Toggle Date, and (c) such date consented to in writing by the Requisite Lenders in their sole discretion.

"**Approved Electronic Communication**" as defined in Section 10.1(b)(iii).

"**Asset Sale**" means a sale, lease or sublease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer (including through a plan of division), exclusive license (as licensor or sublicensor), liquidation or other disposition to, or any exchange of property with, any Person (other than to or with a Credit Party that is not Holdings or a Mexican Subsidiary), in one transaction or a series of transactions, of all or any part of Holdings' or any of its Subsidiaries' respective businesses, assets or properties of any kind, whether real, personal or mixed, whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, including the Capital Stock of any of Holdings' Subsidiaries, other than (a) inventory sold to unaffiliated customers in the ordinary course of business and (b) the leasing or subleasing of Real Estate Assets (x) in existence on the Closing Date, and (y) following the Closing Date, in the ordinary course of business in an amount not to exceed $150,000 in the aggregate during any Fiscal Year (in each case, other than sale and leaseback transactions prohibited under Section 6.11). For purposes of clarification, the term "Asset Sale" shall include (i) the sale or other disposition for value of any contracts, (ii) the early termination or modification of any contract resulting in the receipt by Holdings or any of its Subsidiaries of a Cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts that would have been due through the date of termination or modification without giving effect thereto) and (iii) a Permitted Curation Sale.

"**Asset Sale Expenditures**" as defined in the definition of the term "**Consolidated Adjusted EBITDA**".

"**Asset Sale Leverage Ratio**" means, as of any date of determination, the ratio of (i) the Consolidated Funded Debt as of such date; provided, however, for purposes of determining the Asset Sale Leverage Ratio, any Indebtedness in this clause (i) attributable to ABL Indebtedness shall be based on the average balance of such ABL Indebtedness for (x) in the case of any date of determination occurring prior to the first anniversary of the Closing Date, the period beginning on the Closing Date and ending on such date, or (y) in the case of any date of determination occurring on or after the first anniversary of the Closing Date, the four-Fiscal Quarter period ending on such date to (ii) pro forma Consolidated Adjusted EBITDA for the four-Fiscal Quarter period ending on such date (or, if such date of determination is not the last day of a Fiscal Quarter in respect of which financial statements and a Compliance Certificate have been or were required to be delivered, for the four-Fiscal Quarter ending as of the most recently concluded Fiscal Quarter for which financial statements have previously been or were required to be delivered).

"**Asset Sale Reinvestment Amounts**" as defined in Section 2.13(a).

"**Asset Sale Reinvestment Period**" as defined in Section 2.13(a).

"**Assignment Agreement**" means an assignment and assumption agreement substantially in the form of Exhibit B.

"**Assignment Effective Date**" as defined in Section 10.6(b).

"**Assumed Indebtedness**" means unsecured Indebtedness of a Person that becomes a Subsidiary as a result of any Permitted Acquisition or other Investment permitted under Section 6.7 which (a) is in existence at the time such Person becomes a Subsidiary, (b) has not been incurred or created in connection with, or in anticipation or contemplation of, such Person becoming a Subsidiary, (c) in respect of which only such Person and its Subsidiaries, if any, so acquired are obligors with respect to such Indebtedness, in each case, only so long as at the time of consummation of any such Permitted Acquisition or other permitted Investment permitted under Section 6.7, (i) no Event of Default has occurred or is continuing or would result therefrom and (ii) the Credit Parties are in compliance with Section 6.8.

"**Authorized Officer**" means, as applied to any Person that is an entity, any duly authorized natural person holding the position of chairman of the Board of Directors (if an officer), chief executive officer, president, vice president, Chief Financial Officer or, if approved by Administrative Agent, any other officer position with similar authority; provided, the secretary or assistant secretary of such Person, or another officer of such Person satisfactory to Administrative Agent, shall have delivered an incumbency certificate to Administrative Agent verifying the authority of such Authorized Officer.

"**Availability**" means, at any time of determination, an amount equal to:

(i) with respect to any Class of Commitments, an amount equal to the lesser of (a) the aggregate amount of undrawn Commitments of such Class and (b) the difference of (I) the Maximum Credit Amount less (II) the aggregate outstanding principal (or equivalent) balance of Consolidated Funded Debt (including any outstanding Loans and any other Indebtedness (including any outstanding ABL Loans and ABL Letters of Credit) that will be incurred simultaneously with or on the same date as such Credit Extension) at such time; and

(ii) with respect to all Commitments, an amount equal to the lesser of the aggregate amount of undrawn Commitments of all Classes, and (b) the difference of (I) the Maximum Credit Amount less (II) the aggregate outstanding principal (or equivalent) balance of Consolidated Funded Debt (including any outstanding Loans and any other Indebtedness (including any

outstanding ABL Loans and ABL Letters of Credit) that will be incurred simultaneously with or on the same date as such Credit Extension) at such time.

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.17(b)(iv).

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an 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 that is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"**Bankruptcy Code**" means Title 11 of the United States Code.

"**Base Rate**" means, for any day, a rate per annum equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus 0.50%, (iii) the sum of (a) Adjusted Term SOFR (after giving effect to the Floor with respect to Adjusted Term SOFR) that would be payable on such day for a SOFR Loan with a one-month Interest Period plus (b) the difference between the Applicable Margin for SOFR Loans and the Applicable Margin for Base Rate Loans, and (iv) the Floor. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR shall be effective on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR, respectively.

"**Base Rate Loan**" means a Loan bearing interest at a rate determined by reference to the Base Rate.

"**Base Rate Term SOFR Determination Day**" as defined in the definition of "**Term SOFR**".

"**Benchmark**" means, initially, the Term SOFR Reference Rate; provided, if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.17.

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

(a) the sum of(i) Daily Simple SOFR and (ii) 0.11448% (11.448 basis points); or

(b) the sum of(i) the alternate benchmark rate that has been selected by Administrative Agent and the Credit Party Representative 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 to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or clause (b) above would be less than the interest rate specified in clause (a) of the definition of "Floor", the Benchmark Replacement will be deemed to be the interest rate specified in clause (a) of the definition of "Floor" for the purposes of this Agreement and the other Credit 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 Administrative Agent and the Credit Party Representative giving due consideration to (a) 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 (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

"**Benchmark Replacement Date**" means a date and time determined by the Administrative Agent, which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or clause (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely

ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which 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 (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

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

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

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

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

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

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

"**Benchmark Unavailability Period**" means the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 2.17 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 2.17.

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation in form and substance reasonably acceptable to the Administrative Agent.

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

"**Beneficiary**" means each Agent, Lender and Lender Counterparty.

"**Benefit Plan**" means any of (i) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (ii) a "plan" as defined in Section 4975 of the Internal Revenue Code or (iii) 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 Internal Revenue Code) the assets of any such "employee benefit plan" or "plan".

"**Board of Directors**" means (i) with respect to any corporation or company, the board of directors of such corporation or company or any committee thereof duly authorized to act on behalf of such board, (ii) with respect to any partnership, the board of directors or equivalent governing body of the general partner of such partnership, (iii) with respect to any limited liability company, the manager, the managing member or members or any controlling committee or board of managers (or equivalent governing body) of such limited liability company or the sole member or the managing member thereof, and (iv) with respect to any other Person, the entity, individual, board or committee of such Person serving a similar function.

"**Board of Governors**" means the Board of Governors of the United States Federal Reserve System, or any successor Governmental Authority.

"**Business Day**" means any day excluding Saturday, Sunday and any day that is a legal holiday under the laws of the State of New York, the State of Texas or Mexico, or is a day on which banking institutions located in any such state or Mexico City, Mexico are authorized or required by law or other governmental action to close.

"**Capital Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by such Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of such Person.

"**Capital Lease Obligations**" means, as applied to any Person that is a lessee under any Capital Lease, that portion of obligations under such Capital Lease that is properly classified as a liability on a balance sheet in conformity with GAAP.

"**Capital Stock**" means any and all shares, stock, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership or profits interests in a Person that is another type of entity, including partnership interests, membership interests, voting trust certificates, certificates of interest and profits interests, participations or similar arrangements, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire, subscribe, convert to or otherwise receive or participate in the economic or other rights associated with any of the foregoing.

"**Cash**" means money, currency or a credit balance in any Deposit Account.

"**Cash Equivalents**" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the U.S. Federal Government or (b) issued by any agency of the U.S., in each case of clauses (a) and (b), the obligations of which are backed by the full faith and credit of the U.S., mature within one year after such date and have, at the time of the acquisition thereof, a rating of at least A-1 from S&P and at least P-1 from Moody's; (ii) marketable direct obligations issued by any state of the U.S. or any political subdivision of any such state or any public instrumentality thereof, in each case, maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iii) certificates of deposit or bankers' acceptances maturing within three months after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the U.S. or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than $1,000,000,000; and (iv) shares of any money market mutual fund that (a) has at least 95.00% of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than $5,000,000,000, and (c) has the highest rating obtainable from both S&P and Moody's.

"**cGMP**" as defined in the preamble to Section 4.30.

"**Change in Law**" means the occurrence, after the date hereof, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the U.S. or foreign regulatory authorities, in each case, pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"**Change of Control**" means, at any time, (i) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) (a) becomes the "beneficial owner" (as defined in Rules 13d 3 and 13d 5 under the Exchange Act) of 35% or more on a fully diluted basis of the voting interests in the Capital Stock of Holdings, or (b) shall have obtained the power (whether or not exercised) to elect a majority of the Directors of Holdings; (ii) Holdings shall cease to beneficially own and control 100% on a fully diluted basis of the economic and voting interests in the Capital Stock of each Company (other than Curation or one or more of its Subsidiaries in connection with a Permitted Curation Sale); (iii) any Company shall cease to beneficially own and control 100% (directly or indirectly) on a fully diluted basis of the economic and voting interests in the Capital Stock of each of its Subsidiaries, except where such failure is the result of a transaction permitted under the Credit Documents (other than Curation or one or more of its Subsidiaries in connection with a Permitted Curation Sale); (iv) during any period of twelve (12) consecutive months, a majority of the members of the Board of Directors of any Credit Party cease to be composed of individuals (x) who were members of that Board of Directors on the first day of such period, (y) whose election or nomination to that Board of Directors was approved by individuals referred to in clause (x) above constituting at the time of such election or nomination at least a majority of that Board of Directors or (z) whose election or nomination to that Board of Directors was approved by individuals referred to in clauses (x) and (y) above constituting at the time of such election or nomination at least a majority of that Board of Directors; or (v) any "change of control" or similar event under the ABL Credit Agreement or the definitive documentation with respect to any Subordinated Indebtedness shall occur.

"**Chief Financial Officer**" means, as applied to any Person that is an entity, any duly authorized natural person holding the position of chief financial officer or, if approved by Administrative Agent, any other officer position with similar financial responsibility; provided, the secretary or assistant secretary of such Person, or another officer of such Person satisfactory to Administrative Agent, shall have delivered an incumbency certificate to Administrative Agent verifying the authority of such Chief Financial Officer.

"**Class**" means (i) with respect to the Lenders, each of the following classes of Lenders: (a) Lenders having Initial Term Loan Exposure, and (b) Lenders having Multi-Draw Term Loan Exposure, (ii) with respect to Loans, each of the following classes of Loans: (a) Initial Term Loans, and (b) Multi-Draw Term Loans, and (iii) with respect to Commitments, each of the following classes of Commitments: (a) Initial Term Loan Commitments, and (b) Multi-Draw Term Loan Commitments.

"**Closing Date**" means December 31, 2020.

"**Closing Date Certificate**" means a certificate dated as of the Closing Date and substantially in the form of Exhibit E-1.

"**Collateral**" means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are granted and/or purported to be granted to ABL Agent or any Agent under any of the ABL Collateral Documents or the Collateral Documents in each case, subject to the Intercreditor Agreement, together with all rents, issues, profits, products and Proceeds thereof.

"**Collateral Access Agreement**" means a collateral access agreement in form and substance satisfactory to Collateral Agent.

"**Collateral Agent**" means, as the context requires, each of US Collateral Agent and MXN Collateral Agent, in each case, with their permitted sub-agents, designees, successors and/or assigns.

"**Collateral Documents**" means, collectively, the Intercreditor Agreement, the Pledge and Security Agreement, each Mexican Collateral Document (from and after the Mexican Subsidiary Joinder Date), any Intellectual Property Security Agreements, any Mortgages, any Deposit Account Control Agreements, any Securities Account Control Agreements, any Collateral Access Agreements, and all other instruments, documents and agreements that are expressly designated pursuant to their terms to be "Collateral Documents" or are otherwise executed and delivered by or on behalf of any Credit Party or any other Person pursuant to this Agreement or any of the other Credit Documents in order to grant to, or perfect in favor of, any Collateral Agent, for the benefit of the Secured Parties, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

"**Collateral Questionnaire**" means a collateral questionnaire in form satisfactory to Collateral Agent that provides information with respect to the real, personal and mixed property of each Credit Party and their respective Subsidiaries.

"**Commitment**" means, as the context requires, any Initial Term Loan Commitment or Multi-Draw Term Loan Commitment.

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. 1 et seq.).

"**Company**" means (i) Holdings, (ii) Curation, (iii) Lifecore, (iv) each other Person signatory hereto as a "Company" and (v) each other Person joined as a "Company" to this Agreement and the other Credit Documents after the Closing Date pursuant to Section 5.10. At any time there is only one Person party hereto and to the other Credit Documents as "Company", all references herein or therein to "a Company", "any Company", "each Company" or "Companies" shall be deemed to be a reference to such Person.

"**Compliance Certificate**" means a certificate of the Chief Financial Officer of Credit Party Representative substantially in the form of Exhibit D.

"**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 "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 2.17(d) and other technical, administrative or operational matters) that Administrative Agent decides (in consultation with the Credit Party Representative) may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as Administrative Agent decides (in consultation with the Credit Party Representative) is reasonably necessary in connection with the administration of this Agreement and the other Credit Documents).

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

"**Consensual Proceeding**" means (a) the entry of an order for relief with respect to Curation or one or more of its direct or indirect Subsidiaries, (b) the commencement of a voluntary case with respect to Curation or one or more of its direct or indirect Subsidiaries under any Debtor Relief Law, (c) the provision of any consent by Holdings or any of its Subsidiaries to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of the property of Curation or one or more of its direct or indirect Subsidiaries or (d) an assignment by Curation or one or more of its direct or indirect Subsidiaries for the benefit of creditors, in each case, that has been consented to in writing by the Requisite Lenders.

"**Consolidated Adjusted EBITDA**" means, for any period, an amount determined for Holdings and its Subsidiaries on a consolidated basis equal to:

(a) Consolidated Net Income, plus

(b) in each case, to the extent reducing Consolidated Net Income and constituting Valid Expense Items, the sum, without duplication, of the amounts for such period of:

(i) Consolidated Interest Expense, plus

(ii) provisions for taxes based on income, profits or capital, including federal, state, provincial, territorial, franchise, excise, property and similar taxes and foreign withholding taxes paid or accrued, including giving effect to any penalties and interest with respect thereto, and state taxes in lieu of business fees (including business license fees) and payroll tax credits, income tax credits and similar credits and including an amount equal to the amount of tax distributions actually made (for the actual payment of Taxes) to the holders of Equity Interests of Holdings or its Subsidiaries or any direct or indirect parent of Holdings or its Subsidiaries in respect of such period (in each case, to the extent attributable to the operations of Holdings and its Subsidiaries), which shall be included as though such amounts had been paid as income taxes directly by Holdings or its Subsidiaries, plus

(iii) total depreciation expense, plus

(iv) total amortization expense, plus

(v) to the extent not capitalized under GAAP, Transaction Costs not exceeding $1,500,000, plus

(vi) to the extent not capitalized under GAAP, Specified Compliance Costs not to exceed $5,000,000 in the aggregate for the twelve (12) month period following the Closing Date, plus

(vii) to the extent not capitalized under GAAP, (A) other non-cash charges, impairments or losses for such period (excluding (x) any non-cash compensation charge or expense arising from any grant of stock, stock options or other equity based awards (including any long-term management equity incentive plans) and the payment of the exercise price and/or tax withholding obligations with respect to the vesting, settlement and/or exercise of such award described in this clause (x) and (y) any such non-cash charge to the extent that it represents an accrual or reserve for potential cash charges in any future period or amortization of a prepaid cash charge that was paid in a prior period (including, but not limit to, write-offs or impairment charges in respect of accounts receivable or inventory)) and (B) any Specified Inventory Charges for such period, plus

(viii) to the extent not capitalized under GAAP, one-time, unusual, non-recurring or extraordinary expenses, losses or charges actually incurred in such period (not including any revenue based losses or incremental margin) and, without duplication, other reasonable and documented fees, charges, costs and expenses (including third party legal, investigative and consulting expenses) actually incurred during such period in respect of restructuring, severance, relocation, integration, facilities opening, facilities closures, business optimization, signing, retention or completion bonuses, recruiting, transition, and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities), including any one-time expense relating to enhanced accounting function or other transaction costs; provided, that the aggregate amount of such losses, fees, charges, costs and expenses that may be added back to Consolidated Net Income in the calculation of Consolidated Adjusted EBITDA pursuant to this clause (viii) in any trailing twelve (12) month period shall not exceed (A) for any such period ending prior to the consummation of a Permitted Curation Sale of the type described in (I) clauses (i) and (ii) of the definition thereof or (II) a sale of substantially all of Curation in a series of transactions in accordance with clause (iii) of the definition thereof, (1) with respect to the 12 month period ending May 31, 2023, the greater of (x) $7,500,000 and (y) 10% of Consolidated Adjusted EBITDA for such period, (2) with respect to the 12 month period ending August 31, 2023, the greater of (x) $7,000,000 and (y) 10% of Consolidated Adjusted EBITDA for such period, (3) with respect to the 12 month period ending November 30, 2023, the greater of (x) $6,000,000 and (y) 10% of Consolidated Adjusted EBITDA for such period, and (4) with respect to any 12 month period ending on February 28, 2023, the last day of any Fiscal Quarter ending prior to such date, February 28, 2024, or the last day of any Fiscal Quarter ending after February 28, 2024, the greater of (x) $5,000,000 and (y) 10% of Consolidated Adjusted EBITDA for such period (in each case determined prior to giving effect to any adjustments to Consolidated Adjusted EBITDA pursuant to this clause (viii)) and (B) for any such period ending after the consummation of a Permitted Curation Sale of the type described in (I) clauses (i) and (ii) of the definition thereof or (II) a sale of substantially all of Curation in a series of transactions in accordance with clause (iii) of the definition thereof, the greater of (x) $2,500,000 and (y) 10% of Consolidated Adjusted EBITDA for such period (determined prior to giving effect to any adjustments to Consolidated Adjusted EBITDA pursuant to this clause (viii)); provided, the adjustments described under this clause (viii) shall be supported by reasonably detailed schedules and information with respect to such adjustments, plus

(ix) to the extent not capitalized under GAAP, any cash expenses, losses or charges actually incurred during such period in connection with any Asset Sale, whether or not such Asset Sale was successfully consummated (the "**Asset Sale Expenditures**"); provided, that the aggregate amount of any such Asset Sale Expenditures in respect of Asset Sales that are not successfully consummated that may be added back to Consolidated Net Income in the calculation of Consolidated Adjusted EBITDA pursuant to this clause (ix) shall not exceed (A) in the event such Asset Sale Expenditures are incurred prior to the consummation of a Permitted Curation Sale of the type described in (I) clauses (i) and (ii) of the definition thereof or (II) a sale of substantially all of Curation in a series of transactions in accordance with clause (iii) of the definition thereof, $5,000,000 and (B) in the event such Asset Sale Expenditures are incurred after the consummation of a Permitted Curation Sale of the type described in (I) clauses (i) and (ii) of the definition thereof or (II) a sale of substantially all of Curation in a series of transactions in accordance with clause (iii) of the definition thereof, $2,500,000; provided, the adjustments described under this clause (ix) shall be supported by reasonably detailed schedules and information with respect to such adjustments; plus

(x) to the extent not capitalized under GAAP, any reasonably documented and factually supportable (and, to the extent requested by the Requisite Lenders, disclosed in reasonable itemization and detail to the Requisite Lenders) out-of-pocket fees, costs and expenses payable by Holdings or any of its Subsidiaries to the extent paid or payable to non-Affiliates within 90 days of the Fourth Amendment Effective Date in connection with the expenses incurred by the Credit Parties in connection with the efforts by the Credit Parties to prepare for a potential proceeding under the applicable Debtor Relief Laws and other transactions (other than any Permitted Curation Sale) contemplated by the Fourth Amendment (which shall include, for the avoidance of doubt, fees, costs and expenses paid or payable (A) to Ernst & Young LLP in respect of overages incurred in connection with its Fiscal Year 2021 audit of

Holdings and its Subsidiaries, (B) to the Approved Professional Advisor prior to the Fourth Amendment Effective Date, (C) to Pachulski Stang Ziehl & Jones LLP and (D) in connection with the IQVIA report); plus

(xi) to the extent not capitalized under GAAP, reasonably documented and factually supportable (and, to the extent requested by the Requisite Lenders, disclosed in reasonable itemization and detail to the Requisite Lenders) out-of-pocket fees, costs and expenses payable to any Approved Professional Advisor reasonably acceptable to the Requisite Lenders, minus

(c) in each case, to the extent increasing Consolidated Net Income and constituting Valid Expense Items, the sum, without duplication, for such period of all non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent that it represents the reversal of an accrual or reserve for potential cash gains in any prior period, which such non-cash gains shall include any adjustment in the fair market value of the Windset Investment), plus, other non-ordinary course income (which non-ordinary course income, for the avoidance of doubt, shall (i) include (and result in a reduction of Consolidated Adjusted EBITDA to the extent increasing Consolidated Net Income for) any cash amounts received in connection with an Asset Sale of the Windset Investment and (ii) not include (or result in a reduction of Consolidated Adjusted EBITDA to the extent increasing Consolidated Net Income following the Windset Pledge Event for) (A) any cash dividends, other cash payments or distributions, other than the type described in the immediately preceding clause (i); minus

(d) any cash gains in such period in respect of the sale or other disposition of any inventory which was previously the subject of Specified Inventory Charges.

Notwithstanding the foregoing or anything to the contrary in this Agreement:

(i) with respect to any fiscal month set forth on Schedule 1.1(a), Consolidated Adjusted EBITDA for such fiscal month shall be the amount set forth opposite thereto on Schedule 1.1(a);

(ii) for purposes of "annualizing" any calculation of Consolidated Adjusted EBITDA under this Agreement, add-backs, adjustments or other income or gain items that are in the nature of "one-time" or "non-recurring" items or are otherwise made in respect of transactions, events, or circumstances that are not expected to recur in future periods may not be "annualized" unless approved by Administrative Agent in its sole discretion;

(iii) with respect to any period during which a Permitted Acquisition or similar Investment or an Asset Sale has occurred (or, with respect to Curation and/or one or more of its direct or indirect Subsidiaries, the commencement of the liquidation of the assets thereof or the commencement of a Consensual Proceeding with respect thereto) (each, a "**Subject Transaction**"), for purposes of determining compliance with the financial covenants set forth in Section 6.8 or any other calculation herein using Consolidated Adjusted EBITDA (but not for purposes of determining the Applicable Margin), Consolidated Adjusted EBITDA shall be calculated with respect to such period on a Pro Forma Basis (which pro forma adjustments shall be certified by the Chief Financial Officer of Credit Party Representative and may only be included in determining such compliance to the extent approved by Requisite Lenders in their sole discretion) using the historical audited financial statements of any business so acquired or sold (or, with respect to Curation and/or one or more of its direct or indirect Subsidiaries, the commencement of the liquidation of the assets thereof or the commencement of a proceeding with respect thereto under the Bankruptcy Code) during such period and the consolidated financial statements of Holdings and its Subsidiaries, which shall be reformulated as if such Subject Transaction, and any Indebtedness incurred or repaid in connection therewith, had been consummated or incurred or repaid at the beginning of such period (and assuming that such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to outstanding Loans incurred during such period); provided, notwithstanding anything to the contrary in this Agreement, any such adjustments specified in this clause (iii) shall be subject to the approval of Requisite Lenders in their sole discretion for all purposes of this Agreement;

(iv) from and after the Mexican Subsidiary Joinder Date, unless the conditions set forth in Section 5.10(b) have been satisfied, the Consolidated Adjusted EBITDA attributable to any Mexican Subsidiary not then party to the Mexican Subsidiary Security Agreement shall be excluded from the calculation of Consolidated Adjusted EBITDA (on both a current and historical basis) until such time as the requirements of Section 5.10(b) have been fulfilled with respect to such Mexican Subsidiary; provided, notwithstanding the foregoing, the provisions of this clause (iv) shall not be construed as a consent by Administrative Agent or any Lender to the failure of any Credit Party to perform its obligations set forth in Section 5.10(b).

"**Consolidated Capital Expenditures**" means, for any period, the aggregate of all expenditures of Holdings and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in the "purchase of property and equipment or similar items", or that should otherwise be capitalized, as reflected in the consolidated statement of cash flows of Holdings and its Subsidiaries.

"**Consolidated Cash Interest Expense**" means, for any period, Consolidated Interest Expense for such period, excluding (i) any paid-in-kind interest, (ii) any amortization of deferred financing costs, (iii) any realized or unrealized gains or losses attributable to Interest Rate Agreements, (iv) Cash costs associated with incurring or terminating Interest Rate Agreements and Cash costs associated with breakage in respect of Interest Rate Agreements and (v) penalties and interest relating to Taxes paid in cash.

"**Consolidated Current Assets**" means, as at any date of determination, the total assets of Holdings and its Subsidiaries on a consolidated basis that are properly classified as current assets in conformity with GAAP, excluding Cash and Cash Equivalents.

"**Consolidated Current Liabilities**" means, as at any date of determination, the total liabilities of Holdings and its Subsidiaries on a consolidated basis that are properly classified as current liabilities in conformity with GAAP, excluding the current portion of long-term debt.

"**Consolidated Excess Cash Flow**" means, for any period, an amount (if positive) determined for Holdings and its Subsidiaries on a consolidated basis equal to:

(a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income (excluding (x) the impact of any non-cash adjustments included in calculating Consolidated Net Income during such period and (y) any Specified Extraordinary Receipts of the type described in clause (ii) of the definition thereof received during such period (solely to the extent such Specified Extraordinary Receipts are used to repay then outstanding ABL Indebtedness (which, for the avoidance of doubt, shall not be required to be accompanied by a permanent reduction of ABL Commitments)), minus

(b) the sum, without duplication, of the amounts for such period paid from Internally Generated Cash (other than clause (iii) below), in each case, to the extent not reducing Consolidated Net Income in the calculation thereof during such period of (i) to the extent permitted or otherwise required hereunder, mandatory and scheduled repayments of Indebtedness for borrowed money (but not, for the avoidance of doubt, voluntary prepayments or any repayments in respect of the ABL Indebtedness unless such prepayment or repayment simultaneously and permanently reduces the ABL Commitments in the amount of such payment) and scheduled payments of Capital Lease Obligations (excluding any interest expense portion thereof but including any principal representing capitalized interest), plus (ii) Consolidated Capital Expenditures actually made during such period, plus (iii) Consolidated Capital Expenditures that are planned to be consummated or made, in each case, (A) in accordance with an executed, definitive agreement with respect to such planned or consummated Consolidated Capital Expenditures, and (B) during the period of four consecutive Fiscal Quarters of Holdings following the end of such period (provided that amounts described in this clause (iii) will not reduce Consolidated Excess Cash Flow in subsequent periods and, to the extent not paid during such following four consecutive Fiscal Quarter period, will increase Consolidated Excess Cash Flow in the subsequent period), plus (iv) Consolidated Cash Interest Expense, plus (v) provisions for current Taxes based on the income of Holdings and its Subsidiaries and payable by such Persons in cash with respect to such period, plus (vi) Specified Compliance Costs to the extent permitted hereunder, plus (vii) the Consolidated Working Capital Adjustment (if positive) during such period, plus (viii) Transaction Costs paid in cash during such period plus (ix) Asset Sale Expenditures.

"**Consolidated Fixed Charges**" means, for any period, the sum, without duplication, of the amounts determined for Holdings and its Subsidiaries on a consolidated basis equal to (i) Consolidated Cash Interest Expense, (ii) scheduled payments of principal (or equivalent amounts) on Consolidated Funded Debt, and (iii) an amount not less than zero equal to actual cash Taxes paid with respect to such period (net of any cash refunds in respect of Taxes received in such period). Notwithstanding the foregoing, with respect to any period during which a Subject Transaction has occurred, for purposes of determining compliance with the financial covenant set forth in Section 6.8(b), the components of Consolidated Fixed Charges shall be calculated with respect to such period on a Pro Forma Basis (which pro forma adjustments shall be certified by the Chief Financial Officer of Credit Party Representative and may only be included in determining such compliance to the extent approved by Administrative Agent in its sole discretion) using the historical audited financial statements of any business so acquired or to be acquired or sold or to be sold and the consolidated financial statements of Holdings and its Subsidiaries, which shall be reformulated as if such Subject Transaction, and any Indebtedness incurred or repaid in connection therewith, had been consummated or incurred or repaid at the beginning of such period (and assuming that such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to outstanding Loans incurred during such period); provided, notwithstanding anything to the contrary in this Agreement, any adjustments specified in this sentence shall be subject to the approval of Administrative Agent in its sole discretion for all purposes of this Agreement.

"**Consolidated Funded Debt**" means, as at any date of determination, the aggregate amount of all Indebtedness of the type described in clauses (i), (ii), (iv), (vi) (to the extent of unreimbursed amounts thereunder), (viii), (ix) and (x) of the definition of "Indebtedness" (in the case of such clauses (viii), (ix) and (x), solely in respect of Indebtedness of the type described in clauses (i), (ii), (iv) or (vi) (to the extent of unreimbursed amounts thereunder) of the definition of "Indebtedness" and limited to an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP), in each case, of Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP.

"**Consolidated Gross Profit**" means, for any period, (i) aggregate total revenues of Lifecore and its Subsidiaries for such period minus (ii) the aggregate cost of sales of Lifecore and its Subsidiaries for such period, in each case determined on a consolidated basis in accordance with the Lifecore's historical public reporting and accounting practices as of the Closing Date. Notwithstanding the foregoing or anything to the contrary in this Agreement, with respect to any Fiscal Quarter set forth on Schedule 1.1(c), Consolidated Gross Profit for such Fiscal Quarter shall be the amount set forth opposite thereto on Schedule 1.1(c).

"**Consolidated Interest Expense**" means, for any period, (i) total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Holdings and its Subsidiaries determined on a consolidated basis with respect to all outstanding Indebtedness, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Interest Rate Agreements (other than in connection with the early termination thereof), but excluding, however, (x) any amounts referred to in the Fee Letter payable on or before the Closing Date and (y) annual agency fees paid to any administrative agents and collateral agents with respect to any secured or unsecured loans, debt facilities, debentures, bonds, commercial paper facilities or other forms of Indebtedness, in each case which shall be on market terms minus (ii) total interest income of Holdings and its Subsidiaries determined on a consolidated basis.

"**Consolidated Liquidity**" means, as at any date of determination, an amount determined for Holdings and its Subsidiaries on a consolidated basis equal to the sum of (i) the Qualified Cash of Holdings and its Subsidiaries as of such date, plus (ii) ABL Availability as of such date; provided, at any time that the conditions set forth in Section 5.02 of the ABL Credit Agreement cannot be satisfied as of such time, the ABL Availability shall be deemed to be zero, minus (iii) Stretched Payables (other than any Stretched Payables the amount or validity of which are currently being actively contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of Holdings and its Subsidiaries).

"**Consolidated Maintenance Capital Expenditures**" means, for any period, the aggregate of all Consolidated Capital Expenditures of Holdings and its Subsidiaries during such period during such period to the extent such Consolidated Capital Expenditures are incurred to maintain existing property and equipment rather than to build or acquire new property and equipment or otherwise grow and expand the business of Holdings and its Subsidiaries.

"**Consolidated Net Income**" means, for any period, the net income (or loss) of Holdings and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP; provided that, the following items shall be excluded or otherwise disregarded in the calculation of Consolidated Net Income, without duplication: (a) the income (or loss) of any Person that is not a Wholly-Owned Subsidiary; provided that notwithstanding the foregoing, in the case of income derived from the Windset Investment such income shall be included in Consolidated Net Income to the extent that (I) the Windset Pledge Event shall have occurred, (II) any such income is actually received by Holdings or such Subsidiary in the form of dividends or distributions paid in cash and (III) such dividends or distributions are paid in accordance with the Windset's Organizational Documents, (b) the income (or loss) of any Person accrued prior to the date it becomes a Credit Party or is merged into or consolidated with any Credit Party or such Person's assets are acquired by any Credit Party, (c) the income of any Subsidiary of Holdings to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of that income is not at the time permitted by operation of the terms of its Organizational Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary, (d) any after-Tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, and (e) to the extent not included in clauses (a) through (d) above, any net extraordinary gains or net extraordinary losses.

"**Consolidated Unfinanced Capital Expenditures**" means, for any period, the difference of (a) Consolidated Capital Expenditures made during such period which are not financed from the proceeds of any Indebtedness (other than ABL Loans or Multi-Draw Term Loans) minus (b) Consolidated Capital Expenditures made during such period which are financed from Net Asset Sale Proceeds, Net Insurance/Condemnation Proceeds and/or proceeds of Permitted Capital Stock Issuances.

"**Consolidated Working Capital**" means, as at any date of determination, an amount equal to Consolidated Current Assets minus Consolidated Current Liabilities.

"**Consolidated Working Capital Adjustment**" means, for any period of determination on a consolidated basis, the amount (which may be a negative number) equal to the difference of (i) Consolidated Working Capital as of the beginning of such period minus (ii) Consolidated Working Capital as of the end of such period.

"**Contractual Obligation**" means, as applied to any Person, any provision of any Security issued by such Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which such 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.

"**Contributing Guarantors**" as defined in Section 7.2.

"**Controlled Account**" means (i) any Deposit Account of a Credit Party that is subject to a Deposit Account Control Agreement, and (ii) any Securities Account of a Credit Party that is subject to a Securities Account Control Agreement.

"**Conversion/Continuation Date**" means the effective date of a conversion or continuation, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"**Conversion/Continuation Notice**" means a conversion/continuation notice substantially in the form of Exhibit A-2.

"**Counterpart Agreement**" means a counterpart agreement substantially in the form of Exhibit G.

"**Covered Entity**" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R.§ 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R.§ 382.2(b).

"**Covered Party**" has the meaning assigned to it in Section 10.25.

"**Credit Card Processor**" means any servicing agent, processing agent, factor or financial intermediary who facilitates,

services, processes or manages the credit authorization, billing transfer or payment procedures with respect to such Credit Party's sales transactions involving credit card, debit card or other electronic funds transfer (EFT) purchases.

"**Credit Date**" means the date of a Credit Extension.

"**Credit Documents**" means, collectively, this Agreement, the Collateral Documents, the Fee Letter, the Intercreditor Agreement and all other documents, certificates, instruments (including any promissory notes issued from time to time hereunder to evidence the Loans) and agreements that are expressly designated pursuant to their terms to be "Credit Documents" or are otherwise executed and delivered by or on behalf of any Credit Party or any other Person for the benefit of any Agent or any Lender in connection herewith.

"**Credit Extension**" means the making of a Loan.

"**Credit Party**" means each Company and each Guarantor.

"**Credit Party Representative**" means Holdings, for itself and on behalf of the other Credit Parties in its capacity as Credit Party Representative pursuant to Section 2.24.

"**Curation**" as defined in the preamble hereto.

"**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 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.

"**Debtor Relief Laws**" means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the U.S., any state or territory thereof, the District of Columbia or any other applicable jurisdictions.

"**Default**" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"**Defaulting Lender**" means, subject to Section 2.21(b), any Lender that (i) has failed to (a) fund all or any portion of its Loans within two Business Days after the date such Loans were required to be funded hereunder or (b) pay to Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days after the date when due, (ii) has notified Credit Party Representative or Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (iii) has failed, within three Business Days after written request by Administrative Agent or Credit Party Representative, to confirm in writing to Administrative Agent and Credit Party Representative that it will comply with its prospective funding obligations hereunder (provided, such Lender shall cease to be a Defaulting Lender pursuant to this clause (iii) upon receipt of such written confirmation by Administrative Agent and Credit Party Representative), or (iv) has, or has a direct or indirect parent company that has, (a) become the subject of a proceeding under any Debtor Relief Law, (b) had appointed for it a receiver, custodian, trustee, conservator, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (c) has become the subject of a Bail-In Action; provided, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the U.S. or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (i) through (iv) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.21(b)) upon delivery of written notice of such determination to Credit Party Representative and each Lender.

"**Default Rate**" means the additional rate of interest payable pursuant to Section

"**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.

"**Deposit Account**" means any "deposit account" as defined in Article 9 of the UCC.

"**Deposit Account Control Agreement**" means, with respect to a Deposit Account, an agreement in form and substance reasonably satisfactory to Collateral Agent that (i) is entered into by and among Collateral Agent, the financial institution or other Person at which such Deposit Account is maintained, and the Credit Party maintaining such Deposit Account, and (ii) is effective for Collateral Agent to obtain "control" (within the meaning of Article 9 of the UCC) of such Deposit Account.

"**Director**" means, with respect to any Person, any natural person constituting a member of the Board of Directors of such Person.

"**Dispose**" means, with respect to any Person, any conveyance, sale, lease (as lessor), license (as licensor), exchange, assignment, transfer or other disposition by such Person of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of Cash, Cash Equivalents, Securities or any other property or assets. For purposes of clarification, the term "Dispose" shall include (i) the sale or other disposition for value of any contracts, and (ii) the early termination or modification of any contract by any Person resulting in the receipt by such Person of a Cash payment or other consideration in exchange for such event (other than payments in the ordinary course for previously accrued and unpaid amounts due through the date of termination or modification).

"**Disqualified Capital Stock**" means any Capital Stock that, by its terms (or by the terms of any other instrument, agreement or Capital Stock into which it is convertible or for which it is exchangeable), or upon the occurrence of any event or condition (i) matures or is mandatorily redeemable (other than solely for Capital Stock that is not otherwise Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder or beneficial owner thereof (other than solely for Capital Stock that is not otherwise Disqualified Capital Stock), in whole or in part, (iii) is secured by any assets of Holdings or any of its Subsidiaries, (iv) provides for the scheduled payments of dividends, distributions or other Restricted Junior Payments in Cash, or (v) is or becomes convertible into or exchangeable for Indebtedness or any other obligation, instrument, agreement or Capital Stock that would meet any of the conditions in clauses (i), (ii), (iii) or (iv) of this definition, in each case, prior to the date that is 180 days after the Latest Maturity Date, except, in the case of clauses (i) and (ii), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior Payment in Full of all Obligations.

"**Disqualified Institution**" means, on any date, any Person that is a competitor of the Credit Parties, which Person has been designated by Credit Party Representative as a "Disqualified Institution" by written notice to the Administrative Agent not less than three (3) Business Days prior to such date; provided that "Disqualified Institutions" shall exclude (i) any Person that Credit Party Representative has designated as no longer being a "Disqualified Institution" by written notice delivered to the Administrative Agent from time to time and (ii) any Person referred to above, so long as any Event of Default has occurred and is continuing.

"**Distribution**" as defined in Section 7.7.

"**Dollars**" and the sign "**$**" mean the lawful money of the U.S.

"**Domestic Subsidiary**" means any Subsidiary organized under the laws of the U.S., any state thereof or the District of Columbia.

"**Earn-Out Obligations**" means contingent payment obligations of the Credit Parties and their Subsidiaries approved by the Administrative Agent in respect of and in accordance with any one or more Permitted Acquisitions consummated after the Closing Date.

"**Earn-Out Subordination Agreement**" means any subordination agreement executed by a holder of Earn-Out Obligations in favor of the Administrative Agent from time to time after the Closing Date in form and substance and on terms and conditions satisfactory to the Administrative Agent, which such subordination agreement shall include, at a minimum, contractual subordination.

"**EEA Financial Institution**" means (i) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (ii) any entity established in an EEA Member Country that is a parent of an institution described in clause (i) of this definition, or (iii) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in clause (i) or clause (ii) 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 other Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Elevated Reporting Toggle Date**" means the earlier of (a) first date after the Fourth Amendment Effective Date that each of the following requirements are satisfied as of such date: (i) the Leverage Ratio is less than 5.00:1:00 as of the last day of the Fiscal Quarter most recently ended, (ii) Consolidated Liquidity is not less than $15,000,000 at all times for a consecutive period of at least one full Fiscal Quarter ending as of the end of the Fiscal Quarter as of which the criteria in subclause (a)(i) is satisfied, and (iii) no Event of Default has occurred and is continuing as of such date of determination, and (b) such date consented to in writing by the Requisite Lenders in their sole discretion.

"**Eligible Assignee**" means (i) in the case of the Term Loans or Term Loan Commitments, (a) any Lender and any Affiliate or Related Fund (other than a Natural Person) of any Lender (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), and (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) that extends credit or buys loans as one of its businesses; provided, with respect to clause (b) of this clause (i), Administrative Agent's consent shall be required for any such Person to become a Lender; and (ii) any other Person (other than a Natural Person) approved by Credit Party Representative (so long as no Default or Event of Default has occurred and is continuing, it being understood that the Credit Parties shall be deemed to have approved such Person if Credit Party Representative fails to either approve or reject such Person within two Business Days after any request for such approval by Administrative Agent) and Administrative Agent; provided, (a) no Person owning or controlling any trade obligations or Indebtedness of any Credit Party (other than the Obligations) or any Capital Stock of any Credit Party (in each case, other than any Person approved in writing by Administrative Agent) shall, in any event, be an Eligible Assignee and (b) no Disqualified Institution shall be an Eligible Assignee.

"**Employee Benefit Plan**" means any "employee benefit plan" as defined in Section 3(3) of ERISA that is or was sponsored, maintained or contributed to by, or required to be contributed to by, Holdings or any of its Subsidiaries.

"**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 (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations and other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, or the protection of human, plant or animal health or welfare, in any manner applicable to Holdings or any of its Subsidiaries or any Facility.

"**ERISA**" means the Employee Retirement Income Security Act of 1974.

"**ERISA Affiliate**" means, as applied to any Person, (i) any corporation that is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which such Person is a member; (ii) any trade or business (whether or not incorporated) that is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which such Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which such Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of Holdings or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of Holdings or such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of Holdings or such Subsidiary and with respect to liabilities arising after such period for which Holdings or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

"**ERISA Event**" means (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30 day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Holdings, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition that might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission that could give rise to the imposition on Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, Taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l) or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to Section 303(k) of ERISA with respect to any Pension Plan.

"**Erroneous Payment**" as defined in Section 9.13(a).

"**Erroneous Payment Deficiency Assignment**" as defined in Section 9.13(d).

"**Erroneous Payment Impacted Class**" as defined in Section 9.13(d).

"**Erroneous Payment Return Deficiency**" as defined in Section 9.13(d).

"**Erroneous Payment Subrogation Rights**" as defined in Section 9.13(e).

"**EU Bail-In Legislation Schedule**" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person).

"**Event of Default**" means each of the conditions or events set forth in

"**Exchange Act**" means the Securities Exchange Act of 1934.

"**Excluded Accounts**" means (i) payroll, employee benefits or zero balance accounts maintained by the Credit Parties, as long as (a) in the case of payroll accounts, the total amount on deposit at any time does not exceed the current amount of payroll obligations of the Credit Parties, (b) in the case of zero balance accounts, any deposits or funds in any such accounts are transferred at least once each Business Day into a Controlled Account (including, for the avoidance of doubt, at any time following the exercise of exclusive control by any Agent under the applicable control agreement with respect to such Controlled Account), and (ii) any Deposit Account of any Credit Party which holds cash collateral with respect to third party letters of credit or other obligations or Indebtedness permitted to be incurred hereunder, in each case, to the extent the pledge of such Cash is permitted hereunder, (c) accounts of the Mexican Subsidiaries that are maintained in the ordinary course of business, in all cases containing cash amounts that do not exceed at any time $2,000,000 in the aggregate for all such accounts under this clause (c) (so long as, from and after the Mexican Subsidiary Joinder Date, such cash is subject to the First Priority Lien of the Collateral Agent pursuant to the Mexican Subsidiary Security Agreement) and (d) any other Deposit Accounts maintained in the ordinary course of business, in all cases containing cash amounts that do not exceed at any time $100,000 for any such account and $250,000 in the aggregate for all such accounts under this clause (d).

"**Excluded Swap Obligation**" means, with respect to any Guarantor at any time, any obligation (a "Swap Obligation") of such Guarantor to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act, if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a Lien to secure, such Swap Obligation (or any guarantee thereof) is illegal at such time under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time such guarantee or grant of a Lien becomes effective with respect to such related Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Company under Section 2.22) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.19, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.19(e) and (d) any withholding Taxes imposed under FATCA.

"**Existing Financial Statements**" means the audited and unaudited financial statements for the periods ending on or prior to August 31, 2022, in each case in the form previously certified pursuant to a Financial Officer Certification and delivered to Agent and the Lenders in accordance with Sections 5.1(b) and (c) hereof.

"**Existing Indebtedness**" means Indebtedness and other obligations outstanding under that certain Credit Agreement, dated as of September 23, 2016 by and among Holdings, as borrower, the other Loan Parties (as defined therein) from time to time party thereto, the lenders party from time to time party thereto, and JPMorgan Chase Bank, N.A., as administrative agent thereunder, as in effect on the Closing Date immediately prior to giving effect to any payment of such Indebtedness and other obligations on the Closing Date.

"**Extraordinary Receipts**" means an amount equal to any Cash received by or paid for the account of Holdings or any of its Subsidiaries outside of the ordinary course of such Person's business, including any such payments in respect of purchase price adjustments (excluding working capital adjustments), Tax refunds, judgments, settlements for actual or potential litigation or similar claims, pension plan reversions, proceeds of insurance and indemnity payments, in each case, determined net of any bona fide direct costs incurred in connection with obtaining such Cash receipts to the extent paid or payable to non-Affiliates (including reasonable, out-of-pocket fees, costs and expenses associated therewith, whether as a result of settlement or otherwise); provided, the term "Extraordinary Receipts" shall not include (i) proceeds of any indemnity payment to the extent that no Event of Default exists at the time of receipt of such proceeds and such proceeds are promptly (and in any event within five Business Days) used to pay related third party claims and expenses, (ii) the Specified Extraordinary Receipts (solely to the extent such Specified Extraordinary Receipts are used to repay then outstanding ABL Indebtedness (which, for the avoidance of doubt, shall not be required to be accompanied by a permanent reduction of ABL Commitments) or (iii) proceeds of the type otherwise subject to Sections 2.13(a) through 2.13(d).

"**Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Holdings or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"**Fair Share**" as defined in Section 7.2.

"**Fair Share Contribution Amount**" as defined in Section 7.2.

"**FATCA**" means Sections 1471 through 1474 of the Internal Revenue 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

promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"**FDA**" means the U.S. Food and Drug Administration and any successor Governmental Authority.

"**FDA Law and Regulation**" as defined in the preamble to Section 4.30.

"**FDA Permits**" as defined in Section 4.30(a).

"**Federal Funds Effective Rate**" means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the NYFRB on the next Business Day; provided, (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the preceding Business Day as so published on the next Business Day, and (ii) if no such rate is so published on such next Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to GSSLG or any other Lender selected by Administrative Agent on such day on such transactions as determined by Administrative Agent.

"**Fee Letter**" means that certain second amended and restated fee letter agreement, dated as of the Fourth Amendment Effective Date, between GSSLG and Credit Party Representative.

"**Financial Officer Certification**" means, with respect to the financial statements for which such certification is required, the certification of the Chief Financial Officer of Holdings that, as of the date of such certification, such financial statements fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"**Financial Plan**" as defined in Section 5.1(i).

"**First Priority**" means, (i) with respect to any Lien purported to be created in any Collateral not consisting of Capital Stock pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Liens, and (ii) with respect to any Lien purported to be created in any Collateral consisting of Capital Stock pursuant to any Collateral Document, that such Lien is the highest priority Lien to which such Collateral is subject, other than any non-consensual Permitted Liens for Taxes, statutory obligations or other obligations that arise and have higher priority by operation of law, in each case subject to the terms of the Intercreditor Agreement.

"**Fiscal Quarter**" means a fiscal quarter of Holdings of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of Holdings and its Subsidiaries ending on the last Sunday of May of each calendar year.

"**Fixed Charge Coverage Ratio**" means the ratio as of the last day of (i) the first Fiscal Quarter ending after the Closing Date of (a) the sum of (I) Consolidated Adjusted EBITDA for such Fiscal Quarter, minus (II) Consolidated Maintenance Capital Expenditures for such period made in accordance with this Agreement, to (b) Consolidated Fixed Charges for such Fiscal Quarter, (ii) the second Fiscal Quarter ending after the Closing Date of (a) the sum of Consolidated Adjusted EBITDA for the two Fiscal Quarters period ending on such date, minus (II) Consolidated Maintenance Capital Expenditures for such period made in accordance with this Agreement, to (b) Consolidated Fixed Charges for such two Fiscal Quarters, (iii) the third Fiscal Quarter period ending after the Closing Date of (a) the sum of (I) Consolidated Adjusted EBITDA for the three Fiscal Quarter period ending on such date, minus (II) Consolidated Maintenance Capital Expenditures for such period made in accordance with this Agreement, to (b) Consolidated Fixed Charges for such three Fiscal Quarter period, and (iv) any other Fiscal Quarter of (a) the sum of (I) Consolidated Adjusted EBITDA for the four-Fiscal Quarter period then ending, minus (II) Consolidated Maintenance Capital Expenditures for such period, to (b) Consolidated Fixed Charges for such four-Fiscal Quarter period made in accordance with this Agreement.

"**Flood Certificate**" means a "Standard Flood Hazard Determination Form" of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

"**Flood Hazard Property**" means any Real Estate Asset subject to a Mortgage in favor of Collateral Agent, for the benefit of the Secured Parties, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"**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.

"**Flood Zone**" means areas having special flood hazards as described in the National Flood Insurance Act of 1968.

"**Floor**" means (a) with respect to Adjusted Term SOFR and any Benchmark Replacement, 3.75%, and (B) with respect to the Base Rate, 5.75%.

"**Food Laws**" means all current or future federal, state, local or foreign (or any subdivision of any of them) statutes, ordinances, orders, rules, regulations, judgments, standards, Governmental Authorizations or any other requirements of Governmental Authorities concerning or relating to matters of food, drink, consumables and related products and the design, development, manufacture, preparation, assembly, packaging, testing, labeling, distribution, transportation, marketing, storage, service or sale of food, drink, consumables or other related or comparable items in any jurisdiction in which Holdings or any of its Subsidiaries have food service or similar operations, including the FDCA, any FDA Law or Regulation, the Food Security Act of 1985, the Federal Trade Commission Act, the Fair Packaging and Labeling Act, the Consumer Product Safety Commission Act, the Poison Prevention Packaging Act and the Food Safety Modernization Act, 21 CFR § Part 111.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Fourth Amendment**" means that certain Fourth Amendment to Credit and Guaranty Agreement dated as of January 9, 2023, by and among the Credit Parties, Administrative Agent and the Lenders party thereto.

"**Fourth Amendment Effective Date**" shall have the meaning set forth in the Fourth Amendment.

"**Fraudulent Transfer Laws**" means, collectively, §548 of the Bankruptcy Code, 11 U.S.C. §548, or any applicable provisions of comparable state law.

"**Fund**" means any Person (other than a Natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

"**Funding Guarantor**" as defined in Section 7.2.

"**Funding Notice**" means a funding notice substantially in the form of Exhibit A-1.

"**GAAP**" means, subject to Section 1.2, U.S. generally accepted accounting principles in effect as of the date of determination.

"**GCP**" as defined in the preamble to Section 4.30.

"**GLAS**" means GLAS Americas LLC, a limited liability company organized and existing under the laws of the State of New York, together with any successor thereto from time to time.

"**GLP**" as defined in the preamble to Section 4.30.

"**Goldman Sachs**" means Goldman Sachs & Co. LLC.

"**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 a state of the U.S., the U.S. or a foreign entity or government, including without limitation, the FDA.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**GSSLG**" as defined in the preamble hereto.

"**Guaranteed Obligations**" as defined in Section 7.1.

"**Guarantor**" means (i) each Company, to the extent that such Company is not already the primary obligor in respect of any particular Obligations, and (ii) each other Person joined as a "Guarantor" to this Agreement after the Closing Date pursuant to Section 5.10. At any time there is only one Person party hereto and to the other Credit Documents as "Guarantor", all references herein or therein to "a Guarantor", "any Guarantor", "each Guarantor" or "Guarantors" shall be deemed to be a reference to such Person.

"**Guaranty**" means (i) the guaranty of each Guarantor set forth in Section 7, and (ii) each other guaranty of the Obligations that is made by any other Guarantor in favor of Collateral Agent, for the benefit of the Secured Parties.

"**Guggenheim**" means, collectively, Guggenheim Credit Services, LLC, South Carolina Retirement Systems Group Trust and Private Debt Investors Feeder, LLC.

"**Hazardous Materials**" means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or that may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

"**Hazardous Materials Activity**" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, 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 Materials, and any corrective action or response action with respect to any of the foregoing.

"**Health Care Laws**" means all applicable federal and state laws, rules or regulations relating to the regulation, provision or administration of, or payment for, healthcare products or services, including without limitation, (i) the federal Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)), the Federal Civil Monetary Penalty Authority (Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code), the Physician Self-Referral Law, commonly known as the "Stark Law" (42 U.S.C. §§ 1395nn and 1396b), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the Federal Criminal False Claims Act (18 U.S.C. § 287), the False Statements Relating to Health Care Matters law (18 U.S.C. § 1035), Health Care Fraud (18 U.S.C. § 1347), or any regulations promulgated pursuant to such statutes, or similar state or local statutes or regulations; (ii) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) ("HIPAA") and the regulations promulgated thereunder and similar state or local statutes or regulations governing the privacy or security of patient information; (iii) the Health Information Technology for Economic and Clinical Health Act (Title XIII) of the American Recovery and Reinvestment Act of 2009 and the regulations promulgated thereunder; (iv) Medicaid (Title XIX of the Social Security Act) and the regulations promulgated thereunder as well as comparable state Medicaid statutes and regulations; (v) TRICARE (10 U.S.C. § 1071 et seq.) and the regulations promulgated thereunder; (vi) the FDCA and the regulations promulgated thereunder; (vii) quality and safety laws, rules or regulations relating to the regulation, storage, provision or administration of, or payment for, healthcare products or services, including prescription products, including but not limited to the FDCA; (viii) the Physician Payments Sunshine Act (Section 6002 of the Patient Protection and Affordable Care Act of 2010, as amended, 42 U.S.C. § 1320-7h) and any other federal or state disclosure, transparency or "Sunshine" law; (ix) laws governing the provision of services to employees with workers compensation coverage or licensure or certification as a healthcare organization to provide such services; (x) federal and state medical and pharmacy practice Laws and pharmacology and controlled substances laws, including the Federal Controlled Substances Act (21 U.S.C. §§ 801, et seq.); and (xi) licensure laws, rules or regulations relating to the regulation, provision or administration of, or payment for, healthcare items, services or goods and the ownership or operation of medical equipment, supplies or accessories, each of (i) through (x) as amended from time to time.

"**Hedge Agreement**" means any Interest Rate Agreement, and any other derivative or hedging contract, agreement, confirmation or other similar transaction or arrangement that is entered into by Holdings or any of its Subsidiaries, including any commodity or equity exchange, swap, collar, cap, floor, adjustable strike cap, adjustable strike corridor, cross-currency swap or forward rate agreement, spot or forward foreign currency or commodity purchase or sale, listed or over-the-counter option or similar derivative right related to any of the foregoing, non-deliverable forward or option, foreign currency swap agreement, currency exchange rate price hedging arrangement or other arrangement designed to protect against fluctuations in interest rates or currency exchange rates, commodity, currency, or Securities values or any combination of the foregoing agreements or arrangements.

"**Highest Lawful Rate**" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged or received under the laws applicable to any Lender that are in effect as of the Closing Date or, to the extent allowed by law, under such applicable laws that may be in effect after the Closing Date and allow a higher maximum nonusurious interest rate than applicable laws in effect as of the Closing Date.

"**Historical Financial Statements**" means, as of the Closing Date, (i) the audited financial statements of Holdings and its Subsidiaries for the Fiscal Year ended May 31, 2020, consisting of consolidated and consolidating balance sheets and the related consolidated and consolidating statements of income, stockholders' equity and cash flows for such Fiscal Year, and (ii) for the interim period from June 1, 2020 to the Closing Date, the unaudited financial statements of Holdings and its Subsidiaries, consisting of consolidated and consolidating balance sheets and the related consolidated and consolidating statements of income, stockholders' equity and cash flows for each quarterly period completed on or prior to October 31, 2020, in the case of clauses (i) and (ii), certified by the Chief Financial Officer of Credit Party Representative that they fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject, if applicable, to changes resulting from audit and normal year-end adjustments.

"**Holdings**" as defined in the preamble hereto.

"**Immaterial Fee-Owned Property**" means, as of any date of determination, any (i) individual fee-owned Real Estate Asset having a fair market value less than $2,000,000 and (ii) fee-owned Real Estate Assets having a fair market value less than $4,000,000 in the aggregate; provided, notwithstanding the foregoing, any fee-owned Real Estate Asset designated as a Material Real Estate Asset pursuant to clause (iii) of the definition thereof and any fee-owned Real Estate Asset set forth on Schedule 1.1(b) shall not constitute "Immaterial Fee-Owned Properties".

"**Increased-Cost Lender**" as defined in Section 2.22.

"**Indebtedness**", as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) Capital Lease Obligations; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA and any trade payable incurred in the ordinary course of business unless (a) due more than 90 days from the date of incurrence of the obligation in respect thereof, or (b) such obligation is evidenced by a note or a similar written instrument); (v) all indebtedness secured by any Lien on any property or asset owned or held by such Person regardless of whether the indebtedness secured thereby shall have been assumed by such Person or is nonrecourse to the credit of such Person; (vi) the face amount of any letter of credit or similar instrument issued for the account of (or similar credit transaction entered into for the benefit of) such Person or as to which such Person is otherwise liable for reimbursement of drawings or is otherwise an obligor; (vii) Disqualified Capital Stock; provided, the amount of Indebtedness represented by such Disqualified Capital Stock shall be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price (for purposes hereof, the "maximum fixed repurchase price" of any Disqualified Capital Stock that does not have a fixed repurchase price shall be

calculated in accordance with the terms of such Disqualified Capital Stock as if such Disqualified Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Agreement, and as if such price were based upon, or measured by, the fair market value of such Disqualified Capital Stock); (viii) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (ix) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (x) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or provide any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under clause (a) or (b) of this clause (x), the primary purpose or intent thereof is as described in clause (ix) above; (xi) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including under any Hedge Agreement, in each case, whether entered into for hedging or speculative purposes or otherwise; provided, the "principal" amount of obligations under any Hedge Agreement that has not been terminated shall be deemed to be the Net Mark-to-Market Exposure of Holdings and its Subsidiaries thereunder; (xii) any obligations consisting of accounts payable or other monetary liabilities that do not fall into the foregoing categories of Indebtedness but are overdue more than 90 days ("**Stretched Payables**"); and (xiii) all Assumed Indebtedness.

"**Indemnified Liabilities**" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), Indemnified Taxes, expenses and disbursements of any kind or nature whatsoever (including attorneys' fees and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect, special or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee (whether asserted by a third party or by any Credit Party or any of its affiliates), in any manner relating to or arising out (i) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from or other realization upon any of the Collateral or the enforcement of the Guaranty)); (ii) the statements contained in the any Environmental Claim or Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Holdings or any of its Subsidiaries.

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

"**Indemnitee**" means each Agent (including, as applicable, in its capacity as a non-fiduciary agent under Section 2.6) and each Lender, and each of their respective affiliates, officers, partners, members, Directors, trustees, employees, managers, advisors, consultants, administrators, agents and sub-agents.

"**Indemnitee Agent Party**" as defined in Section 9.6.

"**Initial Term Loan**" means a term loan made by a Lender to Companies pursuant to Section 2.1(a)(i).

"**Initial Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund an Initial Term Loan, and "Initial Term Loan Commitments" means such commitments of all Lenders in the aggregate. The amount of each Lender's Initial Term Loan Commitment, if any, is set forth on Appendix A-1, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Initial Term Loan Commitments as of the Closing Date immediately prior to giving effect to the funding of the Initial Term Loans is $150,000,000.

"**Initial Term Loan Exposure**" means, with respect to any Lender, as of any time of determination, the outstanding principal amount of the Initial Term Loans of such Lender; provided, at any time prior to the making of the Initial Term Loans, the Initial Term Loan Exposure of any Lender shall be equal to such Lender's Initial Term Loan Commitment.

"**Installment**" as defined in Section 2.11(a).

"**Insurance/Condemnation Reinvestment Amounts**" as defined in Section 2.13(b).

"**Insurance/Condemnation Reinvestment Period**" as defined in Section 2.13(b).

"**Intellectual Property**" as defined in the Pledge and Security Agreement.

"**Intellectual Property Security Agreement**" means a short-form security agreement with respect to the Intellectual Property of any Credit Party in form and substance reasonably satisfactory to Collateral Agent.

"**Intercompany Note and Subordination**" means a "global" intercompany promissory note and subordination that evidences and subordinates certain Indebtedness and other monetary liabilities owed among Credit Parties and their Subsidiaries, in form and substance satisfactory to Administrative Agent.

"**Intercreditor Agreement**" means that certain Intercreditor Agreement, dated as of the Closing Date by and among Collateral Agent, ABL Agent, MXN Collateral Agent and the Credit Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Interest Payment Date**" means (i) with respect to any Base Rate Loan, (a) the last day of each month, commencing on the first such date to occur after the Closing Date, and (b) the final maturity date of such Loan; and (ii) with respect to any SOFR Loan, (a) the last day of each Interest Period applicable to such Loan (provided, in the case of any Interest Period longer than three months, the term "Interest Payment Date" shall also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period, and (b) the final maturity date of such Loan.

"**Interest Period**" means, in connection with a SOFR Loan, an interest period of one-, three- or six-months, as selected by Credit Party Representative in the applicable Notice, (i) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (ii) thereafter, commencing on (and including) the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (c) of this definition, end on the last Business Day of a calendar month; (c) no Interest Period with respect to any portion of the Term Loans shall extend beyond the Term Loan Maturity Date; and (d) no tenor that has been removed from this definition pursuant to Section 2.17(b)(iv) shall be available for specification in such Funding Notice or Conversion/Continuation Notice. For purposes hereof, the date of a Loan initially shall be the date on which such Loan is made and thereafter shall be the effective date of the most recent conversion or continuation of such Loan.

"**Interest Rate Agreement**" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (i) for the purpose of hedging or managing the interest rate exposure associated with Holdings' and its Subsidiaries' operations, (ii) approved by Administrative Agent, and (iii) not for speculative purposes.

"**Interest Rate Determination Date**" means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986.

"**Internally Generated Cash**" means, with respect to any period, any Cash of Holdings or any of its Subsidiaries generated during such period as a result of such Person's operations, excluding Net Asset Sale Proceeds and the proceeds of Asset Sales of ABL Priority Collateral, Net Insurance/Condemnation Proceeds, Extraordinary Receipts, Net Equity Proceeds, Net Debt Proceeds (other than Cash proceeds of revolving loans under the ABL Loan Agreement) and any other Cash that is generated from an incurrence of Indebtedness or any other liability (other than Cash proceeds of revolving loans under the ABL Loan Agreement).

"**Investment**" means (i) any direct or indirect purchase or other acquisition by Holdings or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person, including the establishment or other creation of a Subsidiary or any other interest in the Securities of any Person, and any other Acquisition; (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by Holdings or any of its Subsidiaries from any Person, of any Capital Stock of such Person; and (iii) any direct or indirect loan, advance (other than advances to employees for customary moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business and consistent with past practice) or capital contributions by Holdings or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales of inventory to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

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

"**Joint Venture**" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any Wholly-Owned Subsidiary of any Person be considered to be a "Joint Venture" to which such Person is a party.

"**Junior Priority**" means, (i) with respect to any Lien purported to be created in any Collateral (other than ABL Priority Collateral) not consisting of Capital Stock pursuant to any ABL Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than (I) the Lien of Collateral Agent hereunder for the benefit of the Secured Parties on the Collateral as security for the Obligations in accordance with the Intercreditor Agreement and (II) any Permitted Liens, and (ii) with respect to any Lien purported to be created in any Collateral consisting of Capital Stock pursuant to any ABL Collateral Document, that such Lien is the highest priority Lien to which such Collateral is subject, other than (I) the Lien of Collateral Agent hereunder for the benefit of the Secured Parties on the Collateral as security for the Obligations in accordance with the Intercreditor Agreement and (II) any non-consensual Permitted Liens for Taxes, statutory obligations or other obligations that arise and have higher priority by operation of law.

"**Key Performance Indicator Report**" means a monthly report as mutually agreed by Administrative Agent and Companies.

"**Latest Maturity Date**" means, as of any time of determination, the latest possible maturity or expiration date applicable to any Loan or Commitment hereunder at such time, in each case, as extended in accordance with this Agreement from time to time, as the case may be.

"**Leasehold Property**" means any leasehold interest of any Credit Party as lessee under any lease of real property.

"**Lender**" means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement.

"**Lender Counterparty**" means each Lender, each Agent, and each of their respective Affiliates, in each case that is a counterparty to a Hedge Agreement (including any Person that is a Lender or an Agent (or any Affiliate of a Lender or an Agent) as of the Closing Date but subsequently, whether before or after entering into such Hedge Agreement, ceases to be an Agent or a Lender or any Affiliate of an Agent or a Lender, as the case may be); provided, that at any time a Lender is a Defaulting Lender and such Lender or its Affiliate enters into a Hedge Agreement, such Lender or Affiliate shall be deemed not to be a Lender Counterparty for purposes of such Hedge Agreement so long as such Lender is a Defaulting Lender.

"**Leverage Incurrence Multiple**" means, as of any date of determination during the periods set forth below, the correlative multiple set forth opposite such period below:

Fiscal Quarter	Leverage Incurrence Multiple
Closing Date until February 28, 2022	6.75
March 1, 2022 through August 31, 2022	6.50
September 1, 2022 and thereafter	6.25

"**Leverage Ratio**" means, as of any date of determination, the ratio of (i) the Consolidated Funded Debt as of such date, to (ii) Consolidated Adjusted EBITDA for the four-Fiscal Quarter period ending on such date (or, if such date of determination is not the last day of a Fiscal Quarter in respect of which financial statements and a Compliance Certificate are being delivered, for the four-Fiscal Quarter period ending as of the most recently concluded Fiscal Quarter for which financial statements have previously been or were required to be delivered).

"**Lien**" means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

"**Lifecore**" as defined in the preamble hereto.

"**Loan**" means, as the context requires, an Initial Term Loan or a Multi-Draw Term Loan, together with any PIK Interest added to the outstanding principal amount of the Loans pursuant to Section 2.7(g), and any fee or other Obligations that are paid-in-kind pursuant to the terms of the Credit Documents by adding such amounts to the outstanding principal amount of the Loans.

"**Margin Stock**" as defined in Regulation U.

"**Material Adverse Effect**" means any material adverse effect on or material adverse developments with respect to (i) the business operations, properties, assets, condition (financial or otherwise) or prospects of Holdings and its Subsidiaries taken as a whole; (ii) the ability of any Credit Party to fully and timely perform its Obligations; (iii) the legality, validity, binding effect, or enforceability against any Credit Party of any Credit Document to which it is a party; (iv) the validity, perfection or priority of any Lien in favor of Collateral Agent, for the benefit of the Secured Parties, on the Collateral taken as a whole; or (v) the rights, remedies and benefits available to, or conferred upon, any Agent, any Lender or any other Secured Party under any Credit Document.

"**Material Contract**" means any and all contracts or other arrangements to which Holdings or any of its Subsidiaries is a party (other than the Credit Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect, including those contracts and arrangements that are listed on Schedule 4.16.

"**Material Indebtedness**" means (a) ABL Indebtedness, and (b) Indebtedness (other than the Obligations) of any Company or any of its Subsidiaries with an individual principal amount of $2,000,000 or more or, solely for purposes of Section 8.1(b), that, collectively with any other Indebtedness in respect of which any relevant default or other specified event has occurred, has an aggregate principal amount of $5,000,000 or more.

"**Material Real Estate Asset**" means any and all of the following: (i) all fee-owned Real Estate Assets other than any Immaterial Fee-Owned Properties (ii) any Real Estate Asset at which Lifecore or any of its Subsidiaries is manufacturing pharmaceutical products, (iii) any Real Estate Asset which serves as a chief executive office for any Credit Party and (iv) any Real Estate Asset listed on Schedule 1.1(b).

"**Maximum Credit Amount**" means, at any time of determination, an amount equal to the product of (i) Consolidated Adjusted EBITDA of Holdings and its Subsidiaries for the 12 months ending as of the last day of the most recently ended month for which financial statements have been or were required to be delivered pursuant to Section 5.1(a), multiplied by (ii) the Leverage Incurrence Multiple in effect at such time. The Maximum Credit Amount shall be determined on a Pro Forma Basis.

"**Mexican Collateral Documents**" means (i) the Mexican Subsidiary Security Agreement, and (ii) any other collateral or security documents executed in connection herewith from time to time and governed by the laws of Mexico, in each case, as amended, restated, supplemented or otherwise modified from time to time in accordance therewith and with this Agreement.

"**Mexican Subsidiaries**" means (a) Tanok and (b) Tanokatan.

"**Mexican Subsidiary Joinder Date**" has the meaning assigned to such term in Section 5.10(b).

"**Mexican Subsidiary Security Agreement**" has the meaning assigned to such term in Section 5.10(b).

"**Mexican Subsidiary Reorganization Activities**" means (a) the conversion of Tanok into a Mexican maquiladora and (b) the conversion of Tanokatan into a Mexican operating entity.

"**Mexico**" means the United Mexican States.

"**Moody's**" means Moody's Investors Service, Inc., or any successor to its rating agency business.

"**Mortgage**" means a mortgage, deed of trust, or similar instrument in form and substance reasonably acceptable to Collateral Agent.

"**Mortgaged Real Estate Documents**" means, with respect to each fee-owned Real Estate Asset that is required to be subject to a Mortgage pursuant to this Agreement:

(i) one or more fully executed and notarized Mortgages encumbering such Real Estate Asset, in each case, in proper form for recording in all appropriate places in all applicable jurisdictions;

(ii) (a) ALTA mortgagee title insurance policies or, solely to the extent that Collateral Agent in its sole discretion waives the requirement for a policy to be issued, unconditional commitments therefor, in each case, issued by one or more title companies reasonably satisfactory to Collateral Agent with respect to such Real Estate Asset (each, a "Title Policy"), each Title Policy to be in amounts not less than the fair market value of such Real Estate Asset as reasonably determined by Borrower, together with a title report with respect thereto reasonably satisfactory to Collateral Agent issued by such title companies and dated not more than 60 days prior to the date of the applicable Mortgage, (b) complete and accurate copies of all documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to Collateral Agent, and (c) evidence satisfactory to Collateral Agent that such Credit Party has paid to such title companies or to the appropriate Governmental Authorities all expenses and premiums of such title companies and all other sums required in connection with the issuance of each Title Policy and all recording and stamp Taxes (including mortgage recording and intangible Taxes) payable in connection with recording the Mortgages for such Real Estate Asset in the appropriate real estate records;

(iii) (a) a completed Flood Certificate with respect to such Real Estate Asset, which Flood Certificate shall (I) be addressed to Collateral Agent, (II) otherwise comply with the Flood Program and (III) be in form and substance satisfactory to Collateral Agent in its reasonable discretion; (b) if the Flood Certificate indicates that such Real Estate Asset is located in a Flood Zone, the applicable Credit Party's written acknowledgment of receipt of written notification from Collateral Agent (I) as to the existence of such Real Estate Asset in a Flood Zone and (II) as to whether the community in which such Real Estate Asset is located is participating in the Flood Program; and (c) if such Real Estate Asset is located in a Flood Zone and is located in a community that participates in the Flood Program, evidence that the applicable Credit Party has obtained a policy of flood insurance that is in compliance with all applicable requirements of the Flood Program or, solely to the extent agreed to by Collateral Agent in its sole discretion, excluded any structures existing in such Flood Zone from any such Mortgage in a manner satisfactory to Collateral Agent in its sole discretion;

(iv) ALTA surveys of such Real Estate Asset, either (A) certified to Collateral Agent and dated not more than 30 days prior to the date of the applicable Mortgage and otherwise in form and substance reasonably satisfactory to Collateral Agent or (B) confirmed by the Credit Party Representative or the owner of such Real Estate Asset by a survey affidavit satisfactory to the title company providing the Title Policy insuring the Mortgage on such Real Estate Asset to be an accurate representation of the current status of such Real Estate Asset such that the title company may delete the standard survey exceptions from the Title Policy;

(v) an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in the state in which such Real Estate Asset is located with respect to the enforceability of the Mortgage(s) to be recorded in such state and such

other matters as Collateral Agent may reasonably request, in form and substance reasonably satisfactory to Collateral Agent; and

(vi) reports and other information, in each case, in form, scope and substance reasonably satisfactory to Administrative Agent, regarding environmental matters relating to such Real Estate Asset, including any Phase I Report requested by Collateral Agent with respect to such Real Estate Asset.

"**Multi-Draw Commitment Period**" means the period from the Closing Date through and including the Multi-Draw Commitment Termination Date.

"**Multi-Draw Commitment Termination Date**" means the earliest to occur of (i) December 31, 2022, (ii) the date the Multi-Draw Term Loan Commitments are permanently reduced to zero pursuant to Section 2.12(b) or 2.14; and (iii) the date of the termination of the Multi-Draw Term Loan Commitments pursuant to Section 2.13(j) or Section 8.1.

"**Multi-Draw Term Loan**" means a term loan made by a Lender to Companies pursuant to Section 2.1(a)(ii), whether on the Closing Date or the Third Amendment Effective Date.

"**Multi-Draw Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund a Multi-Draw Term Loan (including under the Multi-Draw Term Loan Commitments in effect as of the Third Amendment Effective Date) and "Multi-Draw Term Loan Commitments" means such commitments of all Lenders in the aggregate. The amount of each Lender's Multi-Draw Term Loan Commitment, if any, is set forth on Appendix A-2 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Multi-Draw Term Loan Commitments as of the Third Amendment Effective Date is $20,000,000.

"**Multi-Draw Term Loan Exposure**" means, with respect to any Lender, as of any time of determination, the sum of (i) the outstanding principal amount of the Multi-Draw Term Loans of such Lender, plus (ii) the amount of such Lender's unused Multi-Draw Term Loan Commitment.

"**Multiemployer Plan**" means any Employee Benefit Plan that is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"**MXN Collateral Agent**" means GLAS, not in its individual capacity, but solely in its capacity as collateral agent for the Lenders pursuant to Section 9 in respect of Collateral located in Mexico from time to time, and any successor collateral agent appointed in accordance with the terms thereof.

"**Narrative Report**" means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of Holdings and its Subsidiaries in the form prepared for presentation to senior management thereof for the applicable month, Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate with comparison to and variances from the immediately preceding period and budget.

"**Natural Person**" means a natural person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person.

"**Net Asset Sale Proceeds**" means, with respect to any Asset Sale an amount equal to (i) Cash payments received by Holdings or any of its Subsidiaries from such Asset Sale of Term Loan Priority Collateral (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise (including by way of a milestone payment, as applicable), but only as and when so received), minus (ii) any bona fide direct costs incurred in connection with such Asset Sale of Term Loan Priority Collateral to the extent paid or payable to non-Affiliates, including (a) income or gains Taxes payable by Holdings or any of its Subsidiaries as a result of any gain recognized in connection with such Asset Sale of Term Loan Priority Collateral during the Tax period the sale occurs, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Permitted Lien on the Capital Stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale of Term Loan Priority Collateral, and (c) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Holdings or any of its Subsidiaries in connection with such Asset Sale of Term Loan Priority Collateral; provided, upon release of any such reserve, the amount released shall be considered Net Asset Sale Proceeds. To the extent that any Asset Sale consists of both Term Loan Priority Collateral and ABL Priority Collateral, the Net Asset Sale Proceeds in respect of such Asset Sale shall be determined in accordance with Section 4.3 of the Intercreditor Agreement. Upon the Payment in Full of the ABL Priority Debt (as defined in the Intercreditor Agreement), each reference in the first sentence of this definition to "Asset Sale of Term Loan Priority Collateral" shall thereafter be deemed to be a reference to "Asset Sale".

"**Net Debt Proceeds**" means an amount equal to any Cash proceeds from the incurrence of any Indebtedness of Holdings or any of its Subsidiaries (other than any Cash proceeds received with respect to any Indebtedness permitted to be incurred pursuant to Section 6.1), net of underwriting discounts and commissions and other reasonable, out-of-pocket costs and expenses associated therewith, including reasonable legal fees and expenses, in each case, solely to the extent such discounts, commissions, costs, fees and expenses are paid to non-Affiliates.

"**Net Equity Proceeds**" means an amount equal to any Cash proceeds from a capital contribution to, or the issuance of any Capital Stock of, Holdings or any of its Subsidiaries (other than pursuant to any employee stock or stock option compensation plan), net of underwriting discounts and commissions and other reasonable, out-of-pocket costs and expenses associated therewith, including reasonable legal fees and expenses, in each case, solely to the extent such discounts, commissions, costs, fees and expenses are paid to non-Affiliates.

"**Net Insurance/Condemnation Proceeds**" means an amount equal to: (i) any Cash payments or proceeds received by Holdings or any of its Subsidiaries in respect of any Term Loan Priority Collateral (a) under any casualty, business interruption or "key man" insurance policies in respect of any covered loss thereunder, or (b) as a result of the taking of any assets of Holdings or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by Holdings or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Holdings or such Subsidiary in respect thereof, and (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition to the extent paid or payable to non-Affiliates, including income or gains Taxes payable by Holdings or any of its Subsidiaries as a result of any gain recognized in connection therewith during the Tax period the Cash payments or proceeds are received. To the extent that any of the events described in clause (i) of the first sentence of this definition involve both Term Loan Priority Collateral and ABL Priority Collateral, the Net Insurance/Condemnation Proceeds in respect of such event shall be determined in accordance with Section 4.3 of the Intercreditor Agreement. Upon the Payment in Full of the ABL Priority Debt (as defined in the Intercreditor Agreement), the reference in the first sentence of this definition to "in respect of any Term Loan Priority Collateral" shall thereafter be deemed to be deleted.

"**Net Mark-to-Market Exposure**" of a Person means, as of any time of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from Hedge Agreements or other Indebtedness of the type described in clause (xi) of the definition thereof. As used in this definition, "unrealized losses" means the fair market value of the cost to such Person of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming such Hedge Agreement or such other Indebtedness were to be terminated as of that date), and "unrealized profits" means the fair market value of the gain to such Person of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming such Hedge Agreement or such other Indebtedness were to be terminated as of that date).

"**Non-Consenting Lender**" as defined in Section 2.22.

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

"**Notice**" means a Funding Notice or a Conversion/Continuation Notice.

"**NYFRB**" means the Federal Reserve Bank of New York.

"**Obligation Aggregate Payments**" as defined in Section 2.23(b).

"**Obligation Fair Share**" as defined in Section 2.23(b).

"**Obligation Fair Share Contribution Amount**" as defined in Section 2.23(b).

"**Obligation Fair Share Shortfall**" as defined in Section 2.23(b).

"**Obligations**" means all obligations (whether now existing or hereafter arising, absolute or contingent, joint, several or independent) of every nature of each Credit Party from time to time owed to the Agents (including former Agents), the Lenders and the Lender Counterparties (or any of the foregoing Persons) under any Credit Document or Secured Hedge Agreement, whether for principal, interest (including interest that, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding), payments for early termination of Secured Hedge Agreements, obligations to pay, discharge and satisfy the Erroneous Payment Subrogation Rights, fees, expenses, indemnification or otherwise, in each case, excluding, with respect to any Guarantor, Excluded Swap Obligations with respect to such Guarantor.

"**Obligee Guarantor**" as defined in Section 7.7.

"**OFAC**" means the Office of Foreign Assets Control of the U.S. Department of the Treasury and any successor Governmental Authority.

"**Organizational Documents**" means (i) with respect to any corporation or company, its certificate, memorandum, or articles of incorporation or organization, and its bylaws, (ii) with respect to any limited partnership, its certificate or declaration of limited partnership and its partnership agreement, (iii) with respect to any general partnership, its partnership agreement, (iv) with respect to any limited liability company, its certificate or articles of organization or formation and its operating agreement or limited liability company agreement, and (v) in each case, any shareholders agreement, voting agreement, proxy or similar agreement with respect to Capital Stock issued by such Person. In the event any term or condition of this Agreement or any other Credit 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 Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Loan or Credit Document).

"**Other Taxes**" means any and all present or future stamp, court, intangible, recording, filing, documentary, excise, property or similar Taxes (and interest, fines, penalties and additions related thereto) arising from any payment made hereunder or from the execution, delivery or enforcement of, or with respect to, this Agreement or any other Credit Document except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"**PACA**" means the Perishable Agriculture Commodities Act, 1930.

"**PASA**" means the Packers and Stockyard Act, 1921.

"**Paid in Full**" and "Payment in Full" mean, with respect to any or all of the Obligations, Guaranteed Obligations or ABL Indebtedness, as the context requires, that each of the following events has occurred, as applicable: (i) the indefeasible payment or repayment in full in immediately available funds of (a) the principal amount of all outstanding Loans or ABL Loans, as the case may be, (b) all accrued and unpaid interest, fees, premiums or other charges owing in respect of any Loan, Commitment, or any ABL Loan, or otherwise under any Credit Document or any ABL Credit Document, as the case may be, and (c) all accrued and unpaid costs and expenses payable by any Credit Party to any Agent, any Lender, the ABL Agent or any ABL Lender, pursuant to any Credit Document or any ABL Credit Document, as the case may be, whether or not demand has been made therefor, including any and all indemnification and reimbursement claims that have been asserted by any such Person prior to such time, (ii) the indefeasible payment or repayment in full in immediately available funds of all other outstanding Obligations, Guaranteed Obligations, or ABL Indebtedness other than unasserted contingent indemnification and contingent reimbursement obligations, (iii) the termination in writing of all of the Commitments or ABL Indebtedness, as the case may be, (iv) the termination in writing, expiration, cash collateralization, novation, unwinding or rollover of all Secured Hedge Agreements to the satisfaction of the applicable Lender Counterparties in their respective sole discretion, and (v) receipt by Administrative Agent and the ABL Agent, as the case may be, of a release from the Credit Parties in favor of the Secured Parties in form and substance satisfactory to Administrative Agent or the ABL Agent, as the case may be.

"**Participant Register**" as defined in Section 10.6(h)(i).

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

"**Payment Recipient**" as defined in Section 9.13(a).

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

"**Pension Plan**" means any Employee Benefit Plan, other than a Multiemployer Plan, that is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"**Periodic Term SOFR Determination Day**" as defined in the definition of the term "Term SOFR".

"**Permitted Acquisition**" means any Acquisition by a Credit Party so long as:

(a) the Person to be (or whose assets are to be) acquired does not oppose such Acquisition and the division or line or lines of business of the Person to be acquired constitute any material line of business conducted by the Credit Parties as of the Closing Date and any business related thereto or any reasonable extensions thereof;

(b) the cost of such Acquisition (including cash and other property given as consideration, any Indebtedness assumed or acquired by any Credit Party or any Subsidiary in connection with such Acquisition, and all additional purchase price amounts in the form of earnouts and other contingent obligations calculated at the maximum amount thereof) does not exceed $2,000,000 individually and $5,000,000 when aggregated with all other Acquisitions consummated during the term of this Agreement;

(c) in the event such Acquisition includes any Capital Stock or other evidence of beneficial ownership of any Person, all of the Capital Stock (except for any such Capital Stock in the nature of Directors' qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Credit Party in connection with such Acquisition shall be owned 100% by a Credit Party, and the Credit Parties shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of a Credit Party, each of the actions set forth in Sections 5.10, 5.11 and 5.13, as applicable;

(d) prior to or simultaneously with the closing of such Acquisition, the provisions of Section 5.10 have been satisfied;

(e) after giving effect to such Acquisition on a Pro Forma Basis and the costs related thereto (including cash and other property (other than Capital Stock or options to acquire Capital Stock of any Credit Party) given as consideration, any Indebtedness incurred, assumed or acquired by any Credit Party or any Subsidiary thereof in connection with such Acquisition, all additional purchase price amounts in the form of earnouts and other contingent obligations calculated at the maximum amount thereof, and all fees expenses and transaction costs incurred in connection therewith), Companies shall be in compliance with the financial covenants set forth in Section 6.8;

(f) Credit Party Representative shall have furnished to the Administrative Agent at least five (5) Business Days prior to the date on which any such Acquisition is to be consummated or such shorter time as Administrative Agent may allow, a certificate of an officer of Companies, in form and substance reasonably satisfactory to the Administrative Agent, (i) certifying that all of the requirements set forth in this definition will be satisfied on or prior to the consummation of such Acquisition and (ii) a reasonably detailed calculation of item (d) above (and such certificate shall be updated as necessary to make it accurate as of the date the Acquisition is consummated);

(g) the Person to be (or whose assets are to be) acquired (i) is organized under the laws of, and substantially all its assets (or the assets of such division or line of business, as the case may be) are located in, the United States of America, any State thereof, the District of Columbia or Canada and (ii) for the four-Fiscal Quarter period most recently ended prior to the date of such Acquisition, shall have generated earnings before income Taxes, depreciation and amortization during such period that shall be great than $0.00 during such period (calculated in a manner substantially consistent as "Consolidated Adjusted EBITDA"); and

(h) Credit Party Representative shall have furnished the Administrative Agent with ten (10) days' prior written notice of such intended Acquisition and shall have furnished the Administrative Agent with a current draft of the applicable acquisition documents (and final copies thereof as and when executed), and to the extent available, appropriate financial statements and quality of earnings report of the Person which is the subject of such Acquisition, pro forma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month for the acquired Person, individually, and on a Consolidated basis with all Credit Parties), and, to the extent available, such other information as the Administrative Agent may reasonably request.

"**Permitted Capital Stock Issuances**" means the issuance by Holdings of Capital Stock (other than Disqualified Capital Stock); provided, (i) no Event of Default has occurred or is continuing at the time of such issuance (or will be caused thereby), (ii) the use of the Net Equity Proceeds thereof in accordance with clause (iii) is permitted under the ABL Credit Agreement, and (iii) such Net Equity Proceeds are used solely to fund Consolidated Capital Expenditures of Holdings and its Subsidiaries in an aggregate amount not to exceed the maximum amount of Consolidated Capital Expenditures permitted in accordance with Section 6.8(e).

"**Permitted Curation Sale**" means, without duplication, (a) the sale, transfer, liquidation or other disposition, in one transaction or a series of transactions, in each case to a non-Affiliate, of (i) 100% of the Capital Stock of Curation and/or one or more of its Subsidiaries, (ii) all or substantially all of the assets of Curation and/or one or more of its Subsidiaries or (iii) one or more divisions, lines of business or business units of Curation and/or one or more of its Subsidiaries, whether as going concern sale, a liquidation of the assets thereof or otherwise; provided, at least 90% of the consideration for such sale, transfer or other disposition in this clause (a)(iii) that is payable at the closing of such transaction or as a result of customary post-closing purchase price adjustments shall consist of Cash paid upon the closing of such transaction or at such later date when such purchase price adjustment is due, as the case may be; provided, further, the Credit Parties notify Administrative Agent in writing (which may be by means of an Approved Electronic Communication) of such proposed sale, transfer, disposition, or liquidation at least ten (10) Business Days prior to the proposed closing date of such sale, transfer, disposition, or liquidation and all Net Asset Sale Proceeds are applied in accordance with Section 2.13(a); provided, further, that after giving effect to any such sale, transfer or other disposition there shall be no Overadvance (as defined in the ABL Credit Agreement) under the ABL Credit Agreement, and the Credit Parties shall have no remaining liabilities with respect to the obligations or operations of Curation and its Subsidiaries, including any contingent obligations in respect of the Subsidiaries, lines of business or business units, or assets sold, transferred or otherwise disposed of, and (b) subject, in each case, to the satisfaction (or waiver by the Requisite Lenders) any additional conditions that may be set forth in the applicable consent of the Requisite Lender applicable thereto, any Consensual Proceeding.

"**Permitted Liens**" means, collectively, the Liens permitted pursuant to Section 6.2.

"**Permitted Series A Convertible Preferred Stock**" means the issuance by Holdings on or before the Fourth Amendment Effective Date of certain Capital Stock (other than Disqualified Capital Stock) constituting paid in kind preferred equity evidenced by the Series A Convertible Preferred Stock Documents; provided, that (i) the Net Equity Proceeds thereof are not less than $30,000,000, and (ii) such Net Equity Proceeds are used solely in accordance with Section 2.5.

"**Permitted Tax Distributions**" for any taxable period in which Holdings and its Subsidiaries are members of a consolidated, combined or similar income tax group of which Holdings is the common parent (a "Tax Group"), distributions by Holdings or any such Subsidiary thereof to Holdings to pay federal, foreign, state and local income Taxes of such Tax Group that are attributable to the taxable income of Holdings and its Subsidiaries; provided that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that Holdings and its Subsidiaries would have been required to pay as a stand-alone Tax Group, reduced by any portion of such income Taxes directly paid by Holdings and its Subsidiaries.

"**Person**" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts and other organizations, whether or not legal entities, and Governmental Authorities.

"**Phase I Report**" means, with respect to any Facility, a report that (i) conforms to the ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, E1527 and (ii) was conducted no more than six months prior to the date such report is required to be delivered hereunder, by one or more environmental consulting firms reasonably satisfactory to Administrative Agent.

"**PIK Interest**" shall mean payment-in-kind of interest in respect of the Loans by increasing the outstanding principal amount thereof by an amount equal to such portion of interest, rather than paying such portion of interest in cash.

"**PIK Margin**" means a percentage, per annum, equal to 2.00%.

"**Platform**" as defined in Section 10.1(b).

"**Pledge and Security Agreement**" means that certain Pledge and Security Agreement, dated as of the Closing Date, by and among each Credit Party and Collateral Agent.

"**Prime Rate**" means, for any day, the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 70% of the nation's 10 largest banks), as in effect from time to time, or, if such source or rate is unavailable, any replacement or successor source or rate as determined by Administrative Agent. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Administrative Agent or any Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"**Principal Office**" means, Administrative Agent's "Principal Office" as set forth on Appendix B, or such other office or office of a third party or sub-agent, as appropriate, as such Person may from time to time designate in writing to Credit Party Representative, Administrative Agent and, as applicable, each Lender; provided, for the purpose of making any payment on the Obligations or any other amount due hereunder or under any other Credit Document, the Principal Office of Administrative Agent shall be 200 West Street, New York, New York, 10282 (or such other location within the City and State of New York as Administrative Agent may from time to time designate in writing to Credit Party Representative and each Lender); provided, further, all wires to Administrative Agent shall be made to the wiring instructions provided by Administrative Agent in writing from time to time.

"**Privacy Laws**" means, collectively, (i) all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality or security of personal information, including (a) laws imposing minimum information security requirements (such as Cal. Civ. Code § 1798.81.5 and 201 Mass. Code Reg. 17.00); (b) laws requiring the secure disposal of records containing certain personal information (such as N.Y. Gen. Bus. Law § 399 H); (c) the European Union (General Data Protection Regulation 2016/679 and European Union Member State laws supplemental thereto and the EU Directive 2002/58/EC; (d) the Canadian Personal Information Protection and Electronic Documents Act (PIPEDA) and relevant provincial laws; (e) the California Consumer Privacy Act of 2018 (CCPA) (Cal. Civ. Code §§ 1798.100 to 1798.199) and all implementing regulations with respect thereto; (f) Section 5 of the Federal Trade Commission Act and any other unfair trade practice laws of any Governmental Authority; (g) the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6827, and all regulations implementing the same; (h) the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., as amended by the Fair and Accurate Credit Transactions Act, and all implementing regulations with respect hereto; (i) Health Insurance Portability and Accountability Act of 1996 (codified as amended in scattered sections of 29 U.S.C. and 42 U.S.C.) and all implementing regulations with respect thereto; (j) the Controlling the Assault of Non-Solicited Pornography and Marketing Act; (k) the Telephone Consumer Protection Act of 1991; (l) the rules and regulations of the National Automated Clearing House Association, information security breach notification laws (such as Cal. Civ. Code §§ 1798.29, 1798.82 - 1798.84); and (m) all other similar international, federal, state, provincial, municipal and local requirements; and (ii) all applicable industry standards concerning privacy, data protection, confidentiality or information security, in each case, to the extent such laws, rules, regulations, directives and governmental requirements and such industry standards are applicable to Holdings, any of its Subsidiaries, their respective property or their respective business.

"**Pro Forma Basis**" means a calculation giving pro forma effect to (i) the adjustments related to Subject Transactions described in the definition of the terms "Consolidated Adjusted EBITDA" and "**Consolidated Fixed Charges**", as applicable, and (ii) when used with respect to determining the permissibility of any specific transaction hereunder, such specific transaction as if it were a Subject Transaction.

"**Pro Rata Share**" means (i) with respect to all payments, computations and other matters relating to the Initial Term Loan of any Lender, the percentage obtained by dividing (a) the Initial Term Loan Exposure of that Lender, by (b) the aggregate Initial Term Loan Exposure of all Lenders; and (ii) with respect to all payments, computations and other matters relating to the Multi-Draw Term Loan of any Lender, the percentage obtained by dividing (a) the Multi-Draw Term Loan Exposure of that Lender, by (b) the aggregate Multi-Draw Term Loan Exposure of all Lenders. For all other purposes with respect to each Lender, "Pro Rata Share" means the percentage obtained by dividing (I) an amount equal to the sum of the Initial Term Loan Exposure and the Multi-Draw Term Loan Exposure, by (II) an amount equal to the sum of the aggregate Initial Term Loan Exposure and the aggregate Multi-Draw Term Loan Exposure.

"**Projections**" as defined in Section 4.8.

"**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.

"**QFC**" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"**QFC Credit Support**" has the meaning assigned to it in Section 10.25.

"**Qualified Cash**" means, at any time of determination, the aggregate balance sheet amount of unrestricted Cash and, to the extent readily monetized, Cash Equivalents included in the consolidated balance sheet of Holdings and its Subsidiaries as of such time that (i) is

free and clear of all Liens other than Liens in favor of Collateral Agent, for the benefit of the Secured Parties, and non-consensual Permitted Liens, (ii) may be applied to payment of the Obligations without violating any law, contract, or other agreement, (iii) is in Controlled Accounts, and (iv) is not Net Asset Sale Proceeds, Net Insurance/Condemnation Proceeds, Net Equity Proceeds or Net Debt Proceeds.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Credit Party that has total assets exceeding $10,000,000 at the time such Swap Obligation is incurred or such other Person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Reaffirmation Agreement**" means that certain Reaffirmation Agreement, dated as of the Third Amendment Effective Date, by and among Administrative Agent, Collateral Agent and the Credit Parties.

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Credit Party in any real property.

"**Recipient**" means (a) the Administrative Agent, or (b) any Lender.

"**Register**" as defined in Section 2.6(b).

"**Regulation D**" means Regulation D of the Board of Governors and all official rulings and interpretations thereunder or thereof.

"**Regulation T**" means Regulation T of the Board of Governors and all official rulings and interpretations thereunder or thereof.

"**Regulation U**" means Regulation U of the Board of Governors and all official rulings and interpretations thereunder or thereof.

"**Regulation X**" means Regulation X of the Board of Governors and all official rulings and interpretations thereunder or thereof.

"**Related Fund**" means any Fund, investor, entity or account that is managed, sponsored, advised, or administered by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or affiliate of an entity that manages, administers, or advises a Lender, including any limited partner or investor in any of the foregoing persons or entities described in clauses (a) or (b).

"**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 indoor or outdoor 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 of Governors or the NYFRB, or a committee officially endorsed or convened by the Board of Governors or the NYFRB, or any successor thereto.

"**Replacement Lender**" as defined in Section 2.22.

"**Requisite Lenders**" means, at any time of determination, one or more Lenders having or holding more than 50% of the aggregate Voting Power Determinants of all Lenders; provided, (i) the amount of Voting Power Determinants of any Defaulting Lender shall be disregarded for purposes of this definition (including clause (ii) of this proviso), and (ii) to the extent that the total number of Lenders (treating all Lenders that are Affiliates as a single Lender) is greater than one, solely for purposes of any requested consent, waiver, amendment, or other modification requiring the affirmative vote of "Requisite Lenders" (but, for the avoidance of doubt, not for the purpose of exercising or enforcing any rights and remedies available under any Credit Document or applicable law), "Requisite Lenders" shall also include at least two (treating all Lenders that are Affiliates as a single Lender) Lenders.

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

"**Restricted Junior Payment**" means (i) any dividend, other distribution or liquidation preference, direct or indirect, on account of any shares of Capital Stock of Holdings or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in shares of Capital Stock (other than any Disqualified Capital Stock) to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of Capital Stock of Holdings or any of its Subsidiaries (or any direct or indirect parent thereof) now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of Capital Stock of Holdings or any of its Subsidiaries (or any direct or indirect parent thereof) now or hereafter outstanding; and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, Subordinated Indebtedness.

"**S&P**" means S&P Global Ratings, a division of S&P Global, Inc., or any successor to its rating agency business.

"**Sanctioned Country**" means, at any time, a country, territory or region that is, or whose government is, the subject or target of any Sanctions, including, as of the Closing Date, the Crimea region of Ukraine, Cuba, Iran, North Korea, Sudan and Syria.

"**Sanctioned Person**" means, at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (i) any Person listed in any Sanctions-related list of designated Persons maintained by the U.S. (including by OFAC, the U.S. Department of the Treasury, or the U.S. Department of State) or by the United Nations Security Council, the European Union or any EU member state, Her Majesty's Treasury of the United Kingdom or any other relevant sanctions authority, (ii) any Person located, operating, organized or resident in a Sanctioned Country, or (iii) any Person owned or controlled, directly or indirectly, by any such Person described in clause (i) or (ii) of this definition.

"**Sanctions**" means sanctions or trade embargoes enacted, imposed, administered or enforced from time to time by (i) the U.S. government, including those administered by OFAC, the U.S. Department of State, or the U.S. Department of Commerce, (ii) the United Nations Security Council, the European Union or any of its member states or Her Majesty's Treasury of the United Kingdom, or (iii) any other relevant sanctions authority.

"**Second Amendment Effective Date**" means December 17, 2021.

"**Secured Hedge Agreement**" means, at any time of determination, any and all Hedge Agreements between any of the Credit Parties and either (x) GSSLG and any of its Affiliates and (y) any other Lender Counterparty so long as for purposes of this clause (y), the relevant Credit Parties or Lender Counterparties have provided Administrative Agent and Collateral Agent written notice and copies of such Hedge Agreements.

"**Secured Parties**" means each Agent, Lender and Lender Counterparty and shall include all former Agents, Lenders and Lender Counterparties to the extent that any Obligations owing to such Persons were incurred while such Persons were Agents, Lenders or Lender Counterparties and such Obligations have not been paid or satisfied in full.

"**Securities**" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, including any Capital Stock and any Hedge Agreements or other derivatives.

"**Securities Account**" means any "securities account" as defined in Article 8 of the UCC and any "commodity account" as defined in Article 9 of the UCC.

"**Securities Account Control Agreement**" means, with respect to a Securities Account, an agreement in form and substance reasonably satisfactory to Collateral Agent that (i) is entered into by and among Collateral Agent, the Securities Intermediary at which such Securities Account is maintained, and the Credit Party having rights in or to the underlying financial assets credited to or maintained in such Securities Account, and (ii) is effective for Collateral Agent to obtain "control" (within the meaning of Article 8 and 9 of the UCC, as applicable) of such Securities Account.

"**Securities Act**" means the Securities Act of 1933.

"**Securities Intermediary**" means any "securities intermediary" or "commodity intermediary" as such terms are defined in the UCC.

"**Series A Convertible Preferred Stock Documents**" means each of the following documents: (i) that certain Securities Purchase Agreement, dated as of January 9, 2023, by and among Holdings, and certain investors listed on Annex A attached thereto, (ii) that certain Registration Rights Agreement, dated as of January 9, 2023, by and among Holdings, and certain investors listed on Annex A attached thereto, and (iii) that certain Certificate of Designations, Preferences And Rights Of Series A Convertible Preferred Stock Of Lifecore Biomedical, Inc., dated as of January 9, 2023.

"**SOFR**" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"**SOFR Administrator**" means the NYFRB (or a successor administrator of the secured overnight financing rate).

"**SOFR Loan**" means a Loan bearing interest at a rate determined by reference to Adjusted Term SOFR, other than pursuant to clause (iii) of the definition of "Base Rate".

"**Solvency Certificate**" means a certificate of the Chief Financial Officer of Credit Party Representative substantially in the form of Exhibit E-2.

"**Solvent**" means, with respect to any Person, that as of the date of determination, both (i) (a) the sum of such Person's debt (including contingent liabilities) does not exceed the present fair saleable value of such Person's present assets; (b) such Person's capital is not

unreasonably small in relation to its business as contemplated on such date of determination and reflected in the Projections or with respect to any transaction contemplated or to be undertaken after such date of determination; (c) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (d) such Person is "solvent" within the meaning given that term and similar terms under the Bankruptcy Code and other applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under FASB Accounting Standards Codification Topic 450-20).

"**Specified Compliance Costs**" means, with respect to any period on or prior to the first anniversary of the Closing Date, the reasonably documented and actually incurred fees, costs and expenses payable by Holdings or any of its Subsidiaries in connection with the environmental and FCPA compliance matters associated with regulatory permitting at the Tanok facility in Mexico during such period, net of any amounts in respect thereof from any indemnification rights actually received during such period.

"**Specified Extraordinary Receipts**" means any Extraordinary Receipts actually received by one or more Credit Parties (i) consisting of a tax refund in an amount equal to $4,100,000 in respect of carry-back amounts related to the three Fiscal Year period ending with Fiscal Year 2021 for which amended returns were filed prior to the Closing Date and/or (ii) in respect of recovery of damages, expenses, or other consideration in connection with the matter described on page 13 of Holdings' Form 10-Q for the period ending August 30, 2020 in the section entitled "Compliance Matters and Related Litigation" under the heading "Legal Contingencies," including but not limited to (a) recovery, indemnification, or reimbursement of expenses or other consideration received from any insurance carrier, (b) recovery from the Indemnification Escrow created in the December 1, 2018 acquisition of Yucatan Foods (whether that recovery comes in the form of stock or cash), and (c) any proceeds from or related to the litigation entitled Haerizadeh v. Landec, et al, Superior Court for the State of California, County of Los Angeles, Case Number 20SMCV01202, including any proceeds from the Cross-Complaint filed by Holdings and Curation in that action or settlements with parties to that action; provided, however, any Specified Extraordinary Receipts received by any Credit Party may only be retained by such Credit Party so long as (x) no Event of Default has occurred and is continuing at the time such Specified Extraordinary Receipts are received by such Credit Party, and (y) the Credit Parties have actually paid from such Specified Extraordinary Receipts all amounts related to the matters described in clauses (a) through (c) of this definition generating such Specified Extraordinary Receipts, including without limitation, payment in full of all expenses, payments made in satisfaction in full of any third-party claims, and payment in full of (or the establishment of adequate segregated reserves in respect of) all reasonably foreseeable prospective mitigation costs, fines, penalties or similar obligations or amounts fines or fees related to such matter.

"**Specified Inventory Charges**" means, to the extent not duplicative of other amounts added back to Consolidated Adjusted EBITDA, non-cash write offs and/or impairment charges associated with the discontinuation of a product line or stock-keeping unit associated with inventory acquired prior to the Closing Date (including those identified on Schedule 1.1(d)), not to exceed $2,000,000 for the most recently ended four Fiscal Quarter period for which financial statements have previously been or were required to be delivered hereunder.

"**Subject Transaction**" as defined in the definition of the term "Consolidated Adjusted EBITDA".

"**Stretched Payables**" as defined in the definition of the term "Indebtedness".

"**Subordinated Indebtedness**" means any Indebtedness or other obligation that is contractually subordinated in payment or Lien ranking to the Obligations or related Liens.

"**Subordination Agreement**" means, with respect to any Subordinated Indebtedness, the corresponding subordination or intercreditor agreement, if any, by and among Administrative Agent and/or Collateral Agent, on the one hand, and the creditor or creditors (or their respective agents) in respect of such Subordinated Indebtedness, on the other hand, which shall be in form and substance satisfactory to Administrative Agent.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity (i) the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with GAAP or (ii) of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election or appointment 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; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"**Supported QFC**" has the meaning assigned to it in Section 10.26.

"**Swap Obligation**" as defined in the definition of the term "**Excluded Swap Obligation**".

"**Tanok**" means Procesdora Tanok, S. de R. L. de C. V., a Mexican limited liability company.

"**Tanokatan**" means Tanokatan, S. de R. L. de C. V., a Mexican limited liability company.

"**Target Leverage**" has the meaning assigned to it in Section 2.13(g).

"**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (together with interest, penalties and other additions thereto) of any nature and whatever called, imposed, levied, collected, withheld or assessed by any Governmental Authority.

"**Term Loan**" means, as the context requires, an Initial Term Loan or a Multi-Draw Term Loan.

"**Term Loan Commitment**" means, as the context requires, the Initial Term Loan Commitment or the Multi-Draw Term Loan Commitment of a Lender, and "Term Loan Commitments" means such commitments of all Lenders in the aggregate.

"**Term Loan Maturity Date**" means the earlier of (i) December 31, 2025, and (ii) the date that all Term Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.

"**Term Loan Priority Account**" as defined in the Intercreditor Agreement.

"**Term Loan Priority Collateral**" as defined in the Intercreditor Agreement. "Term SOFR" means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) 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; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "Base Rate Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate 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 Base Rate Term SOFR Determination Day.

"**Term SOFR Adjustment**" means (a) for any calculation with respect to a Base Rate Loan, 0.11448% (11.448 basis points) per annum and (b) for any calculation with respect to a SOFR Loan, a percentage per annum as set forth below for the applicable Interest Period:

Interest Period	Percentage
One month	0.11448% (11.448 basis points)
Three months	0.26161% (26.161 basis points)
Six months	0.42826% (42.826 basis points)

"**Term SOFR Administrator**" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Administrative Agent in its reasonable discretion).

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

"**Terminated Lender**" as defined in Section 2.22.

"**Third Amendment**" means that certain Third Amendment to Credit and Guaranty Agreement dated as of the Third Amendment Effective Date, by and among the Credit Parties, Administrative Agent and the Lenders party thereto.

"**Third Amendment Effective Date**" means April 1, 2022.

"**Title Policy**" as defined in the definition of the term "**Mortgaged Real Estate Documents**".

"**Transaction Costs**" means the reasonable and documented out-of-pocket fees, costs and expenses payable by Holdings or any of its Subsidiaries to the extent paid or payable to non-Affiliates on or before the Closing Date in connection with the transactions contemplated by the Credit Documents and the ABL Credit Documents.

"**Type of Loan**" means with respect to any Loan, a Base Rate Loan or a SOFR Loan.

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent statute or law) as in effect in any applicable jurisdiction.

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

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

"**Unadjusted Benchmark Replacement**" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"**Unfinanced Capital Expenditure Ratio**" means as of the last day of (i) the first Fiscal Quarter ending after the Closing Date of (a) Consolidated Adjusted EBITDA for such Fiscal Quarter, to (b) Consolidated Unfinanced Capital Expenditures for such Fiscal Quarter, (ii) the second Fiscal Quarter ending after the Closing Date of (a) Consolidated Adjusted EBITDA for the two Fiscal Quarters period ending on such date, to (b) Consolidated Unfinanced Capital Expenditures for such two Fiscal Quarters, (iii) the third Fiscal Quarter period ending after the Closing Date of (a) Consolidated Adjusted EBITDA for the three Fiscal Quarter period ending on such date, to (b) Consolidated Unfinanced Capital Expenditures for such three Fiscal Quarter period, and (iv) any other Fiscal Quarter of (a) Consolidated Adjusted EBITDA for the four-Fiscal Quarter period then ending on such date, to (b) Consolidated Unfinanced Capital Expenditures for such four-Fiscal Quarter period ending on such date.

"**U.S.**" means the United States of America.

"**US Collateral Agent**" means GSSLG in its capacity as collateral agent for the Lenders pursuant to Section 9 in respect of Collateral existing in the U.S. from time to time, and any successor collateral agent appointed in accordance with the terms thereof.

"**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.

"**U.S. Lender**" as defined in Section 2.19(c).

"**U.S. Special Resolution Regime**" has the meaning assigned to it in Section

"**U.S. Tax Compliance Certificate**" means a tax compliance certificate substantially in the form of Exhibit C.

"**Valid Expense Item**" means any charge, compensation, cost, expense, reserve, accrual, fee or loss, as applicable, that is reasonably documented, factually supportable, actually incurred, set, established or accrued (in each case, as determined in accordance with GAAP) and, except for non-Cash items, paid or payable to Persons who are not Affiliates of Holdings and its Subsidiaries, unless otherwise expressly permitted hereunder.

"**Voting Power Determinants**" means, individually or collectively, as applicable, the Initial Term Loan Exposure and the Multi-Draw Term Loan Exposure.

"**WARN Act**" as defined in Section 4.19.

"**Wholly-Owned**" means, in reference to any Subsidiary of a specified Person, that 100% of the Capital Stock of such Subsidiary (other than (i) Directors' qualifying shares and (ii) shares issued to foreign nationals to the extent required by applicable law) is owned, directly or indirectly, by such Person and/or one or more of such specified Person's other Subsidiaries that also qualify as Wholly-Owned Subsidiaries under this definition.

"**Windset**" means Windset Holdings 2010 Ltd., a corporation governed by the laws of Canada.

"**Windset Investment**" means the Investment of Curation in the Capital Stock of Windset.

"**Windset Pledge Event**" means the date, if any, that Companies (a) shall have obtained the necessary consents in order to grant a First Priority Lien on and in the Windset Investment in favor of the Collateral Agent, for the benefit of the Secured Parties, and (b) shall have delivered, all such documents, instruments, agreements and certificates as are reasonably requested by Collateral Agent in order to grant and to perfect a First Priority Lien in favor of Collateral Agent, for the benefit of the Secured Parties, in 100% of the Windset Investment.

"**Withholding Agent**" means Holdings and the Administrative Agent.

"**Write-Down and Conversion Powers**" means, 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.

1.2. Accounting Terms, Financials Statements, Calculations. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Credit Party Representative to the Lenders pursuant to Sections 5.1(a), 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(e), if applicable). Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements. Notwithstanding the foregoing, (i) for purposes of determining compliance with the financial covenants contained in this Agreement, any election by any Credit Party to measure an item of Indebtedness using fair value (as permitted by Accounting Standards Codification Section 825-10 or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made and (ii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to any change in accounting treatment of "operating" and "capital" leases scheduled to become effective for fiscal years beginning after December 15, 2018 as set forth in the Accounting Standards Update No. 2016-02, Leases, (Topic 842), issued by the Financial Accounting Standards Board in February 2016, or any similar publication issued by the Financial Accounting Standards Board in connection therewith, in each case if such change would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) was not required to be so treated under GAAP as in effect prior to December 15, 2018. For purposes of determining pro forma compliance with any financial covenant as of any date prior to the initial test date on which such financial covenant is to be tested hereunder, the level of any such financial covenant shall be deemed to be the covenant level for such initial test date. Notwithstanding anything to the contrary in this Agreement, for purposes of determining compliance with any basket, accordion or incremental feature, test, or condition under any provision of this Agreement or any other Credit Document, no Credit Party may retroactively divide, classify, re-classify or deem or otherwise treat a historical transaction as having occurred in reliance on a basket or exception that was not available at the time of such historical transaction or if and to the extent that such basket or exception was relied upon for any later transaction. When used herein, the term "financial statements" shall be construed to include all notes and schedules thereto. Whenever the term "Holdings" is used in respect of a financial covenant or a related definition, it shall be construed to mean "Holdings and its Subsidiaries on a consolidated basis" unless the context clearly requires otherwise. Except as otherwise provided therein, this Section 1.2 shall apply equally to each other Credit Document as if fully set forth therein, *mutatis mutandis*.

1.3. Interpretation. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. Any requirement for a referenced agreement, instrument, certificate or other document to be in "substantially" the form of an Appendix, Schedule or Exhibit hereto means that such referenced document shall be in the form of such Appendix, Schedule or Exhibit with such modifications to such form as are approved by Administrative Agent and, in the case of any Collateral Document, Collateral Agent, in each case, in such Agent's sole discretion. Each reference herein to Collateral Agent in respect of any Collateral Document shall be a reference to the US Collateral Agent and/or the MXN Collateral Agent party to such Collateral Document, as the case may be. The words "hereof", "hereunder", "hereby" and words of similar import used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The use herein of the words "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The word "will" shall be construed as having the same meaning and effect as the word "shall". The words "assets" and "property" shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties of any relevant Person or Persons. The terms "lease" and "license" shall be construed to include sublease and sublicense. Whenever the context may require, any pronoun shall be construed to include the corresponding masculine, feminine and neuter forms. References to Persons include their respective permitted successors and assigns. Except as otherwise expressly provided herein, references to statutes, legislative acts, laws, regulations and rules shall be deemed to refer to such statutes, acts, laws, regulations and rules as in effect from time to time, including any amendments of the same and any successor statutes, acts, laws, regulations and rules, unless any such reference is expressly limited to refer to any statute, act, law, regulation or rule "as in effect on" a specified date. Except as otherwise expressly provided herein, any reference in or to this Agreement (including any Appendix, Schedule, or Exhibit hereto), any other Credit Document, or any other agreement, instrument or other document shall be construed to refer to the referenced agreement, instrument or document as assigned, amended, restated, supplemented or otherwise modified from time to time, in each case, in accordance with the express terms of this Agreement and any other relevant Credit Document unless such reference is expressly limited to refer to such agreement, instrument or other document "as in effect on" a specified date. Unless otherwise expressly stated, if a Person may not take an action under this Agreement, then it may not take that action indirectly, or take any action assisting or supporting any other Person in taking that action directly or indirectly. "Taking an action indirectly" means taking an action that is not expressly prohibited for the Person but is intended to have substantially the same effects as the prohibited action. Except as otherwise provided therein, this Section 1.3 shall apply equally to each other Credit Document as if fully set forth therein, *mutatis mutandis*.

1.4. Rates. Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any

other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Credit Parties. Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, in each case, pursuant to the terms of this Agreement, and shall have no liability to any Credit Party, any Lender or any other Person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 2. LOANS

2.1. Term Loans.

(a) Term Loan Commitments. Subject to the terms and conditions hereof:

(i) each Lender severally agrees to make, on the Closing Date, an Initial Term Loan to Companies in an amount equal to such Lender's Initial Term Loan Commitment; and

(ii) each Lender severally agrees to make, at any time after the Closing Date and prior to the Multi-Draw Commitment Termination Date, one or more Multi-Draw Term Loans to Companies in an amount not to exceed such Lender's Multi-Draw Term Loan Commitment immediately prior to giving effect to any such Multi-Draw Term Loan; provided, after giving effect to the making of the Multi-Draw Term Loans, in no event shall Availability with respect to the Multi-Draw Term Loan Commitments be less than $0. Companies may make only one borrowing under the Initial Term Loan Commitment, which borrowing may only occur on the Closing Date. Companies may make one or more borrowings of the Multi-Draw Term Loan Commitment, which borrowings may only occur during the Multi-Draw Commitment Period. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.11(a) and 2.13, all amounts owed hereunder with respect to the Initial Term Loans and the Multi-Draw Term Loans shall be Paid in Full no later than the Term Loan Maturity Date. Each Lender's Initial Term Loan Commitment shall terminate immediately and fully without further action by any Person upon the funding of such Lender's Initial Term Loan Commitment on the Closing Date. Each Lender's Multi-Draw Term Loan Commitment shall (x) automatically and permanently be reduced by the amount of each Multi-Draw Term Loan made hereunder, and (y) terminate immediately and without further action by any Person on the Multi-Draw Commitment Termination Date.

(b) Borrowing Mechanics for Term Loans.

(i) Credit Party Representative shall deliver to Administrative Agent a duly executed Funding Notice no later than three Business Days prior to the Closing Date with respect to Initial Term Loans to be made on the Closing Date. Following the Closing Date, whenever Companies desire that the Lenders make Multi-Draw Term Loans, Credit Party Representative shall deliver to Administrative Agent a duly executed Funding Notice no later than 1:00 p.m. (New York City time) at least three Business Days in advance of the proposed Credit Date in the case of a SOFR Loan, and at least one Business Day in advance of the proposed Credit Date in the case of a Base Rate Loan. Except as otherwise provided herein, a Funding Notice for an Initial Term Loan or a Multi-Draw Term Loan, as applicable, that is a SOFR Loan shall be irrevocable on and after the related Interest Rate Determination Date, and Companies shall be bound to make a borrowing in accordance therewith. Promptly upon receipt by Administrative Agent of such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing.

(ii) Each Lender shall make its Initial Term Loan or Multi-Draw Term Loan, as the case may be, available to Administrative Agent not later than 12:00 p.m. (New York City time) on the applicable Credit Date, by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Term Loans available to Companies on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from the Lenders to be credited to the account of Credit Party Representative as designated in writing to Administrative Agent in the applicable Funding Notice by Credit Party Representative.

2.2. [Intentionally Reserved].

2.3. [Intentionally Reserved].

2.4. Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All Loans shall be made, and all required participations shall be purchased, by the Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby, nor shall any Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Companies a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. In the event that (i) Administrative Agent declines to make a requested amount available to Companies until such time as all applicable Lenders have made payment to Administrative Agent, (ii) a Lender fails to fund to Administrative Agent all or any portion of the Loans required to be funded by such Lender hereunder prior to the time specified in this Agreement, and (iii) such Lender's failure results in Administrative Agent failing to make a corresponding amount available to Companies on the Credit Date, at Administrative Agent's option, such Lender shall not receive interest hereunder with respect to the requested amount of such Lender's Loans for the period commencing with the time specified in this Agreement for receipt of payment by Companies through and including the time of Companies' receipt of the requested amount. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Credit Party Representative, and Companies shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the rate payable hereunder for Base Rate Loans for such Class of Loans. Nothing in this Section 2.4(b) shall be deemed to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that any Company may have against any Lender as a result of any default by such Lender hereunder.

2.5. Use of Proceeds. The proceeds of the Initial Term Loans made on the Closing Date shall be applied by Companies (together with any ABL Loans made on the Closing Date) to repay in full all Existing Indebtedness, to pay Transaction Costs and for general working capital and general corporate purposes of Companies and their Subsidiaries. The proceeds of the Multi-Draw Term Loans made after the Closing Date shall be applied by Companies for Permitted Acquisitions and Consolidated Capital Expenditures of Holdings and its Subsidiaries. For the avoidance of any doubt, in no event may any proceeds of the Multi-Draw Term Loans be used for general corporate purposes or to pay any of the costs, fines, penalties or other related obligations in respect of the matters described in clauses (a) through (c) of the definition of "Specified Extraordinary Receipts" or for any other obligations relating to future Adverse Proceedings. Notwithstanding anything to the contrary in this Agreement, no Credit Extension or proceeds thereof may be used in any manner that conflicts with Section 4.18 or Section 4.26. Notwithstanding anything to the contrary in this Agreement, the Net Equity Proceeds in respect of the Permitted Series A Convertible Preferred Stock shall be retained by Holdings and its Subsidiaries for capital expenditures, working capital purposes and other general corporate purposes of Holdings and its Subsidiaries (other than making Restricted Junior Payments and repayment of Indebtedness for borrowed money, other than repayment of amounts outstanding under the ABL Credit Agreement which shall be a permitted use).

2.6. Evidence of Debt; Register; Promissory Notes.

(a) Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Companies to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Companies, absent manifest error; provided, the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or any Company's Obligations in respect of any applicable Loans; provided, further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent (or any agent or sub-agent appointed by it) shall maintain at its Principal Office a register for the recordation of the names and addresses of the Lenders and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The Register shall be available for inspection by Credit Party Representative or any Lender (with respect to (i) any entry relating to such Lender's Loans, and (ii) the identity of the other Lenders (but not any information with respect to such other Lenders' Loans)) at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record, or shall cause to be recorded, in the Register the Commitments and the Loans in accordance with the provisions of Section 10.6 and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on Companies and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or any Company's Obligations in respect of any Loan. Each Company hereby designates Administrative Agent to serve as such Company's non-fiduciary agent solely for purposes of maintaining the Register as provided in this Section 2.6, and each Company hereby agrees that, to the extent Administrative Agent serves in such capacity, Administrative Agent and its officers, Directors, employees, agents, sub-agents and affiliates shall constitute "Indemnitees".

(c) Promissory Notes. If so requested by any Lender by written notice to Credit Party Representative (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, Companies shall execute and deliver to such Lender (or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Credit Party Representative's receipt of such notice) a promissory note or notes, in form and substance reasonably acceptable to Administrative Agent, to evidence such Lender's Term Loans or Term Loan Commitments.

2.7. Interest on Loans.

(a) Except as otherwise set forth herein, each Class of Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) if a Base Rate Loan, at the Base Rate plus the Applicable Margin; or

(ii) if a SOFR Loan, at the Adjusted Term SOFR plus the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any SOFR Loan, shall be selected by Credit Party Representative and notified to Administrative Agent and the Lenders pursuant to the applicable Notice, as the case may be.

(c) In connection with SOFR Loans there shall be no more than five Interest Periods outstanding at any time. In the event Credit Party Representative fails to specify between a Base Rate Loan or a SOFR Loan in the applicable Notice, such Loan (if outstanding as a SOFR Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event Credit Party Representative fails to specify an Interest Period for any SOFR Loan in the applicable Notice, Credit Party Representative shall be deemed to have selected an Interest Period of one month. As soon as practicable after 1:00 p.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the SOFR Loans for which an interest rate is then being determined for the applicable Interest Period and will promptly give notice thereof to Credit Party Representative and each Lender.

(d) Interest payable pursuant to Section 2.7(a) for Base Rate Loans (including Base Rate Loans determined by reference to the Adjusted Term SOFR) shall be computed on the basis of a 365 or 366-day year, as the case may be, for the actual number of days elapsed in the period during which it accrues. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a SOFR Loan, the date of conversion of such SOFR Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a SOFR Loan, the date of conversion of such Base Rate Loan to such SOFR Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein (including Section 2.7(g)), interest on each Loan (i) shall accrue on a daily basis and shall be payable in arrears on each Interest Payment Date with respect to interest accrued on and to each such Interest Payment Date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in arrears at maturity of the Loans, including final maturity of the Loans.

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

(g) On each Interest Payment Date, the Borrowers shall pay, in addition to any other interest due under this Agreement, PIK Interest with respect to the applicable Loans for which interest is paid on such Interest Payment Date accrued for the month or Interest Period, as applicable, in an amount equal to the PIK Margin. All such PIK Interest shall be capitalized and added to the outstanding principal amount of the applicable Loans on the applicable Interest Payment Date. For purposes of this Agreement and the other Credit Documents, amounts so capitalized pursuant to the foregoing sentence will constitute a portion of the outstanding principal amount of the Loans and will bear interest (which shall be due and payable) in accordance with this Agreement. Notwithstanding anything to the contrary contained in this Agreement or in any other Credit Document, in the event that any Event of Default has occurred and is continuing as of any Interest Payment Date, PIK Interest shall be payable in cash upon and after demand by the Requisite Lenders.

2.8. Conversion/Continuation.

(a) Subject to Section 2.17 and so long as no Default or Event of Default shall have occurred and then be continuing, Companies shall have the option:

(i) to convert at any time all or any part of any Term Loan equal to $500,000 and integral multiples of $250,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a SOFR Loan may only be converted on the expiration of the Interest Period applicable to such SOFR Loan unless Companies shall pay all amounts due under Section 2.17(d) in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any SOFR Loan, to continue all or any portion of such Loan equal to $500,000 and integral multiples of $250,000 in excess of that amount as a SOFR Loan.

(b) Subject to Section 3.2(b), Credit Party Representative shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 1:00 p.m. (New York City time) at least one Business Day in advance of the proposed conversion date in the case of a conversion to a Base Rate Loan and at least three Business Days in advance of the proposed conversion or continuation date in the case of a conversion to, or a continuation of, a SOFR Loan. Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any SOFR Loans shall be irrevocable on and after the related Interest Rate Determination Date, and Companies shall be bound to effect a conversion or continuation in accordance therewith. If on any day a Loan is outstanding with respect to which a Funding Notice or a Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then, for that day, such Loan shall be a Base Rate Loan.

2.9. Default Interest. Upon (i) the occurrence and during the continuance of an Event of Default arising under Section 8.1(f) or 8.1(g) or (ii) the written election of Administrative Agent or the Requisite Lenders upon the occurrence and during the continuance of any other Event of Default, in each case, the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under any Debtor Relief Laws) from the date of occurrence of such Event of Default payable on demand at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans); provided, any SOFR Loans (a) may be converted to Base Rate Loans at the revocable election of Administrative Agent at any time after the occurrence of such Event of Default (irrespective of whether the Interest Period in effect at the time of such conversion has expired), and (b) unless the Requisite Lenders otherwise consent in writing that SOFR Loans are available, will automatically be converted to Base Rate Loans upon the expiration of the Interest Period in effect at the time any such increase in the interest rate is effective, and in each case thereupon shall become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans. Payment or acceptance of (i) the increased rates of interest provided for in this Section 2.9 or (ii) any amount of interest that is less than the amount due, in each case, is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of any Agent or any Lender.

2.10. Fees.

(a) [Intentionally Reserved].

(b) Companies jointly and severally agree to pay to the Lenders having Multi-Draw Term Loan Commitments a commitment fee equal to (i) any unused portion of the Multi-Draw Term Loan Commitments multiplied by (ii) 0.50% per annum. The fee referred to in this Section 2.10(b) shall be paid to Administrative Agent as set forth in Section 2.15(a) and, upon receipt, Administrative Agent shall promptly distribute to each such Lender its Pro Rata Share thereof.

(c) All fees referred to in Section 2.10(b) shall be calculated on the basis of a 360-day year and the actual number of days elapsed and shall be payable monthly in arrears on the last day of each month during the Multi-Draw Commitment Period, as applicable, commencing on the first such date to occur after the Closing Date, and on the Multi-Draw Commitment Termination Date.

(d) In addition to any of the foregoing fees, Companies jointly and severally agree to pay to the Agents and the Lenders, as applicable, such other fees in the amounts and at the times separately agreed upon, including the fees set forth in the Fee Letter.

2.11. Scheduled Payments/Commitment Reductions.

(a) Scheduled Installments. The principal amounts of the Term Loans shall be repaid in consecutive quarterly installments and at final maturity (each such payment, an "**Installment**")

(i) the Initial Term Loans shall be repaid on the last day of each Fiscal Quarter (commencing February 28, 2025) in Installments equal to $1,875,000; and

(ii) the Multi-Draw Term Loans shall be repaid on the last day of each Fiscal Quarter (commencing February 28, 2025) in Installments equal to 1.25% of the principal amount of the Multi-Draw Term Loans advanced as of such date.

Notwithstanding the foregoing, the Initial Term Loans and the Multi-Draw Term Loans, together with all other amounts owed hereunder with respect thereto, shall, in any event, be Paid in Full no later than the Term Loan Maturity Date.

(b) [Intentionally Reserved].

(c) [Intentionally Reserved].

2.12. Voluntary Prepayments/Commitment Reductions.

(a) Voluntary Prepayments.

(i) Any time and from time to time:

(A) with respect to Base Rate Loans, Companies may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of $500,000 and integral multiples of $250,000 in excess of that amount; and

(B) with respect to SOFR Loans, Companies may prepay any such Loans on any Business Day in whole or in part (together with any amounts due pursuant to Section 2.17(d)) in an aggregate minimum amount of $500,000 and integral multiples of $250,000 in excess of that amount.

(ii) All such prepayments shall be made:

(A) upon not less than one Business Day's prior written or telephonic notice in the case of Base Rate Loans; and

(B) upon not less than three Business Days' prior written or telephonic notice in the case of SOFR Loans,

in each case, given to Administrative Agent by 1:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to Administrative Agent (and Administrative Agent will promptly transmit such written notice for Term Loans to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be (I) applied in accordance with Section 2.14(b), and (II) accompanied by any amounts due under Section 2.17(d) and the Fee Letter in connection therewith.

(b) Voluntary Commitment Reductions.

(i) Companies may, upon not less than three Business Days' prior written or telephonic notice confirmed in writing to Administrative Agent (which original written notice Administrative Agent will promptly transmit to each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part any unused portion of the Multi-Draw Term Loan Commitments; provided, any such partial reduction of the Multi-Draw Term Loan Commitments shall be in an aggregate minimum amount of $500,000 and integral multiples of $100,000 in excess of that amount.

(ii) Companies' notice to Administrative Agent shall be irrevocable (unless otherwise agreed to by Administrative Agent in its sole discretion) and shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Multi-Draw Term Loan Commitments shall be effective on the date specified in Companies notice and shall reduce the Multi-Draw Term Loan Commitment of each Lender proportionately to its Pro Rata Share thereof. Any such voluntary termination or reduction shall be accompanied by any amounts due under the Fee Letter in connection therewith.

2.13. Mandatory Prepayments/Commitment Reductions.

(a) Asset Sales. No later than the third Business Day following the date of receipt by any Credit Party or any of its Subsidiaries of any Net Asset Sale Proceeds (it being understood that such Net Asset Sale Proceeds shall be promptly deposited into and thereafter maintained in a Controlled Account which is a Term Loan Priority Account (and in any event no later than the next Business Day) following receipt thereof), Companies shall prepay the Loans as set forth in Section 2.14(b) in an aggregate amount equal to such Net Asset Sale Proceeds; provided, that (i) so long as no Default or Event of Default shall have occurred and be continuing, and (ii) (A) in the case of Net Asset Sale Proceeds resulting from Asset Sales (other than in respect of Asset Sales of the Windset Investment (which shall solely be the subject of clause (B) below or the second to last sentence of this Section 2.13(a)) or any Permitted Curation Sale (which shall solely be the subject of clause (C) below or the second to last sentence of this Section 2.13(a))), to the extent that, after giving effect to receipt of such Net Asset Proceeds, the aggregate Net Asset Sale Proceeds from all such Asset Sales during the period commencing on the Closing Date and ending on such date of determination do not exceed $5,000,000, (B) in the case of Net Asset Sale Proceeds resulting from Asset Sales of the Windset Investment, an amount of such Net Asset Sale Proceeds, if any, that is not subject to repayment in accordance with the second to last sentence of this Section 2.13(a) or (C) in the case of Net Asset Sale Proceeds resulting from Asset Sales constituting a Permitted Curation Sale, an amount of such Net Asset Sale Proceeds, if any, that is not subject to repayment in accordance with the second to last sentence of this Section 2.13(a) (such amounts, "**Asset Sale Reinvestment Amounts**"), upon delivery of a written notice to Administrative Agent, Companies shall have the option to invest such Asset Sale Reinvestment Amounts within three hundred sixty-five (365) days of receipt thereof (as extended, if at all, in accordance with the proviso below, the "**Asset Sale Reinvestment Period**") in long-term productive assets that constitute Term Loan Priority Collateral of the general type used in the business of (I) Companies, in respect of Asset Sale Reinvestment Amounts generated in accordance with clause (ii)(A) above (so long as any such individual or aggregate investment in the amount of $5,000,000 or more has been consented to by Administrative Agent and the Requisite Lenders) and (II) Lifecore or any of its Subsidiaries, in respect of any Asset Sale Reinvestment Amounts generated in accordance with clauses (ii)(B) or (ii)(C) above (such assets, "**Additional Assets**"); provided further, that the Asset Sale Reinvestment Period shall be extended for up to an additional one hundred eighty (180) days in respect of any Asset Sale Reinvestment Amounts where the Credit Parties have, on or before the expiration of the initial Asset Sale Reinvestment Period, entered into a definitive agreement for the purchase or other acquisition of Additional Assets. In the event that the Asset Sale Reinvestment Amounts are not reinvested in accordance with the provisions above prior to the earliest of (i) the last day of such Asset Sale Reinvestment Period and (ii) the date of the occurrence of an Event of Default, Administrative Agent shall apply such Asset Sale Reinvestment Amounts to the Obligations as set forth in Section 2.14(b). Prior to entering into any Asset Sale of assets which constitute Term Loan Priority Collateral, the Credit Party Representative shall provide not less than three (3) Business Days' prior written notice thereof and the Net Asset Sale Proceeds of such Assets shall be deposited into a deposit account subject to a Control Agreement whereby Administrative Agent has a First Priority security interest therein. If Administrative Agent does not receive prior written notice that Term Loan Priority Collateral is the subject of an Asset Sale, then the Credit Parties shall be deemed to have represented and warranted to Administrative Agent on the date such Asset Sale is consummated that none of the assets subject to such Asset Sale constitute Term Loan Priority Collateral. In addition to the foregoing, (i) 100% of the Net Asset Sale Proceeds resulting from an Asset Sale, in whole or in part, of the Windset Investment shall be used to prepay the Loans (a "Windset Sale") and (ii) 100% of the Net Asset Sale Proceeds resulting from a Permitted Curation Sale shall be used to prepay the Loans; provided that, so long as no Default or Event of Default shall have occurred and be continuing, (x) in the case of the foregoing clause (i), if after giving effect to any such prepayment of the Loans from 100% of such Net Asset Sale Proceeds, if made, the Asset Sale Leverage Ratio would be less than 4.37 to 1.00, Companies shall only be required to prepay the Loans in an amount of such Net Asset Sale Proceeds such that, after giving effect to such prepayment of the Loans from such Net Asset Sale Proceeds, the Asset Sale Leverage Ratio would be equal to 4.37 to 1.00 (with the remainder of such Net Asset Sale Proceeds constituting Asset Sale Reinvestment Amounts subject to reinvestment in accordance with the provisions of this clause (x);

provided that, to the extent at any time, or from time to time, during the applicable Asset Sale Reinvestment Period applicable to such Windset Sale, the Asset Sale Leverage Ratio would be greater than 4.37 to 1.00, any amount necessary to cause the Asset Sale Leverage Ratio to not be greater than 4.37 to 1.00 shall cease to constitute Asset Sale Reinvestment Amounts and Companies shall, not later than the third Business Day following such occurrence, prepay the Loans in such amount as set forth in Section 2.14(b)) and (y) in the case of the foregoing clause (ii), if after giving effect to any such prepayment of the Loans from 100% of such Net Asset Sale Proceeds, if made, the Asset Sale Leverage Ratio would be less than 4.00 to 1.00, Companies shall only be required to prepay the Loans in an amount of such Net Asset Sale Proceeds such that, after giving effect to such prepayment of the Loans from such Net Asset Sale Proceeds, the Asset Sale Leverage Ratio would be equal to 4.00 to 1.00 (with the remainder of such Net Asset Sale Proceeds constituting Asset Sale Reinvestment Amounts subject to reinvestment in accordance with the provisions of this clause (y); provided that, to the extent at any time, or from time to time, during the applicable Asset Sale Reinvestment Period applicable to such Permitted Curation Sale, the Asset Sale Leverage Ratio would be greater than 4.00 to 1.00, any amount necessary to cause the Asset Sale Leverage Ratio to not be greater than 4.00 to 1.00 shall cease to constitute Asset Sale Reinvestment Amounts and Companies shall, not later than the third Business Day following such occurrence, prepay the Loans in such amount as set forth in Section 2.14(b).

(b) Insurance/Condemnation Proceeds. No later than the third Business Day following the date of receipt by any Credit Party, or Administrative Agent as lender's loss payee, of any Net Insurance/Condemnation Proceeds (it being understood that such Net Insurance/Condemnation Proceeds received by any Credit Party shall be promptly deposited into and thereafter maintained in a Controlled Account which is a Term Loan Priority Account (and in any event no later than the next Business Day) following receipt thereof), Companies shall prepay the Loans as set forth in Section 2.14(b) in an aggregate amount equal to such Net Insurance/Condemnation Proceeds; provided, (i) so long as no Default or Event of Default shall have occurred and be continuing, and (ii) to the extent that the aggregate Net Insurance/Condemnation Proceeds in any Fiscal Year do not exceed $500,000 (such amounts, "**Insurance/Condemnation Reinvestment Amounts**"), upon delivery of a written notice to Administrative Agent, Companies shall have the option to invest such Net Insurance/Condemnation Proceeds within three hundred sixty-five (365) days of receipt thereof (as extended, if at all, in accordance with the proviso below, the "**Insurance/Condemnation Reinvestment Period**") in long-term productive assets that constitute Term Loan Priority Collateral of the general type used in the business of the Credit Parties, which investment may include the repair, restoration or replacement of the relevant assets in respect of which such Net Insurance/Condemnation Proceeds were received (such assets, "**Replaced Assets**"); provided further, that the Insurance/Condemnation Reinvestment Period shall be extended for up to an additional one hundred eighty (180) days in respect of any Net Insurance/Condemnation Proceeds where the Credit Parties have, on or before the expiration of the initial Insurance/Condemnation Reinvestment Period, entered into a definitive agreement for the replacement of Replaced Assets. In the event that the Insurance/Condemnation Reinvestment Amounts are not reinvested by Companies prior to the earlier of (x) the expiration of the applicable Insurance/Condemnation Reinvestment Period, and (y) the date of the occurrence of an Event of Default, Administrative Agent shall apply such Insurance/Condemnation Reinvestment Amounts to the Obligations as set forth in Section 2.14(b). Upon receipt of any Net Insurance/Condemnation Proceeds generated from assets which constitute Term Loan Priority Collateral, the Credit Party Representative shall provide not less than three (3) Business Days' prior written notice thereof and the Net Insurance/Condemnation Proceeds shall be deposited in a deposit account subject to a Control Agreement whereby Administrative Agent has a First Priority security interest therein.

(c) Issuance of Equity Securities. No later than the third Business Day following the date of receipt by any Credit Party or any of its Subsidiaries of any Net Equity Proceeds from any Person other than a Credit Party (it being understood that any such Net Equity Proceeds shall be deposited into and thereafter maintained in a Controlled Account which is a Term Loan Priority Account on the same Business Day as receipt thereof), excluding any such Net Equity Proceeds resulting from Permitted Capital Stock Issuances and any such Net Equity Proceeds used for purposes approved in writing by Administrative Agent in its sole discretion, Companies shall prepay the Loans as set forth in Section 2.14(b) in an aggregate amount equal to 100% of such Net Equity Proceeds; provided that the prepayment requirement set forth in this Section 2.13(c) shall not apply to the Net Equity Proceeds received by Holdings and its Subsidiaries in respect of the Permitted Series A Convertible Preferred Stock.

(d) Issuance of Debt. No later than the third Business Day following the date of receipt by any Credit Party or any of its Subsidiaries of any Net Debt Proceeds (it being understood that any such Net Debt Proceeds shall be promptly deposited into and thereafter maintained in a Controlled Account which is a Term Loan Priority Account (and in any event no later than the next Business Day) following receipt thereof), Companies shall prepay the Loans as set forth in Section 2.14(b) in an aggregate amount equal to 100% of such Net Debt Proceeds; provided, notwithstanding the foregoing, the payment required under this Section 2.13(d) shall not be construed as (or otherwise deemed to be) a consent by any Agent or any Lender to the incurrence of such Indebtedness not otherwise permitted by this Agreement.

(e) Consolidated Excess Cash Flow. In the event that there shall be Consolidated Excess Cash Flow for any Fiscal Year (commencing with the Fiscal Year ending on or about May 30, 2022), no later than the date required for delivery of annual financial statements with respect to such Fiscal Year pursuant to Section 5.1(c), Companies shall prepay the Loans as set forth in Section 2.14(b) in an aggregate amount equal to (x) (i) 50.0% of such Consolidated Excess Cash Flow for such Fiscal Year at any time the Leverage Ratio is greater than or equal to 4.00:1.00 for such Fiscal Year, and (ii) 25.0% of such Consolidated Excess Cash Flow for such Fiscal Year at any time the Leverage Ratio is less than 4.00:1.00 for such Fiscal Year, in each case, as evidenced by the Compliance Certificate delivered under Section 5.1(d) with respect to such Fiscal Year, minus (y) the aggregate amount of all voluntary prepayments of the Term Loans made during such Fiscal Year and any payments of the ABL Indebtedness, solely to the extent accompanied by a corresponding permanent commitment reduction. Any amounts prepaid pursuant to this Section 2.13(e) with respect to any Fiscal Year in excess of the amounts required pursuant to the immediately preceding sentence shall be treated as voluntary prepayments made pursuant to Section 2.12(a).

(f) Extraordinary Receipts. No later than the third Business Day following the date of receipt by any Credit Party or any of its Subsidiaries of any Extraordinary Receipts (it being understood that such Extraordinary Receipts shall be promptly deposited into and thereafter maintained in a Controlled Account which is a Term Loan Priority Account (and in any event no later than the next Business Day) following receipt thereof) in excess of $500,000 in the aggregate in any trailing 12 month period, Companies shall prepay the Loans as set forth in Section 2.14(b) in an aggregate amount equal to such Extraordinary Receipts.

(g) Target Leverage. If at the end of any Fiscal Quarter, the Leverage Ratio is or, after giving effect to any transaction would be, in excess of the maximum Leverage Ratio indicated in Section 6.8(c) for the period currently in effect (the "**Target Leverage**"), then the Companies shall prepay the Term Loans, not later than three (3) Business Days after the date when the Companies are required to deliver the Compliance Certificate to Administrative Agent with respect to such fiscal quarter pursuant to Section 5.1(d), or if earlier, the date when such Compliance Certificate is actually delivered to Administrative Agent, in each case as set forth in Section 2.14(b) of the Credit Agreement in an aggregate amount equal the amount needed to reduce the Leverage Ratio at the end of such fiscal quarter and after giving effect to such prepayment to a level that does not exceed the Target Leverage.

(h) Prepayment Certificate. Concurrently with any prepayment of the Loans and reduction of the Commitments pursuant to Sections 2.13(a) through 2.13(g), Credit Party Representative shall deliver to Administrative Agent a certificate of its Chief Financial Officer demonstrating the calculation of the applicable net proceeds, Consolidated Excess Cash Flow or other amount owing to the Lenders under any of the Credit Documents, if any, as the case may be, and certifying the amount of such proceeds mandatorily prepaid under the ABL Credit Agreement and the Intercreditor Agreement as the result of such amounts. In the event that Companies shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Companies shall promptly make an additional prepayment of the Loans and the Commitments shall be permanently reduced in an amount equal to such excess, and Credit Party Representative shall concurrently therewith deliver to Administrative Agent a certificate of its Chief Financial Officer demonstrating the derivation of such excess.

(i) Intercreditor Agreement. Each of the prepayments of the Loans pursuant to Sections 2.13(a) through 2.13(g), and the application of such prepayments pursuant to Section 2.14, shall be subject to the terms of the Intercreditor Agreement.

(j) Mandatory Termination of Multi-Draw Term Loan Commitment. To the extent the Loans shall have been prepaid in full pursuant to and in accordance with Section 2.14(b) below, any then unused Multi-Draw Term Loan Commitments shall automatically terminate in full, and be reduced to zero, without any further action required by any Person.

2.14. Application of Prepayments.

(a) [Intentionally Reserved].

(b) Application of Prepayments by Type of Loans. Any voluntary prepayments of Term Loans pursuant to Section 2.12 and any mandatory prepayment of any Loan pursuant to Section 2.13 shall be applied as follows:

first, to the payment of all fees (other than any premium, including under the Fee Letter) and all expenses specified in Section 10.2, in each case, to the full extent thereof;

second, to the payment of any accrued interest at the Default Rate, if any; third, to the payment of any accrued interest (other than Default Rate interest);

fourth, to the payment of the applicable premium (including under the Fee Letter), if any, on any Loan or Commitment;

fifth, to prepay Term Loans on a pro rata basis (in accordance with the respective outstanding principal amounts thereof), which shall be applied to reduce the remaining scheduled Installments of principal of the Term Loans on a pro rata basis; and

sixth, to payment of any remaining Obligations then due and payable.

(c) [Intentionally Reserved].

(d) Application of Prepayments of Loans to Base Rate Loans and SOFR Loans. Considering each Class of Loans being prepaid separately, any prepayment thereof shall be applied first to Base Rate Loans to the full extent thereof before application to SOFR Loans, in each case, in a manner that minimizes the amount of any payments required to be made by Companies pursuant to Section 2.17(d).

2.15. General Provisions Regarding Payments.

(a) All payments by Companies of principal, interest, fees and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 3:00 p.m. (New York City time) on the date due by wire transfer to an account designated by Administrative Agent from time to time that is maintained by Administrative Agent or its Affiliates for the account of the Lenders or Administrative Agent. For purposes of computing interest and fees, funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Companies on the next Business Day.

(b) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payment received in respect of any Loan on a date when interest or premium is due and payable with respect to such Loan) shall be applied to the payment of interest and premium then due and payable before application to principal.

(c) Administrative Agent (or any agent or sub-agent appointed by it) shall promptly distribute to each Lender, at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any SOFR Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder.

(f) Each Company hereby authorizes Administrative Agent to charge such Company's accounts with Administrative Agent or any of its Affiliates in order to cause timely payment to be made to Administrative Agent of all principal, interest, fees and expenses due hereunder (subject to sufficient funds being available in its accounts for that purpose).

(g) Administrative Agent shall deem any payment by or on behalf of Companies hereunder that is not made in same day funds prior to 3:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to Companies and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or an Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next Business Day) at the Default Rate from the date such amount was due and payable until the date such amount is Paid in Full.

(h) If an Event of Default shall have occurred and not otherwise been waived, and the Obligations have become due and payable in full hereunder, whether by acceleration, maturity or otherwise, all payments or proceeds received by any Agent hereunder or under any Collateral Document in respect of any of the Obligations, including all proceeds received by any Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral, shall be applied in full or in part as follows:

first, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to each Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by any Agent in connection therewith, and all amounts for which any Agent is entitled to indemnification hereunder or under any Collateral Document (in its capacity as an Agent and not as a Lender) and all advances made by any Agent under any Collateral Document for the account of the applicable Credit Party thereunder, and to the payment of all costs and expenses paid or incurred by any Agent in connection with the exercise of any right or remedy hereunder or under any Collateral Document, all in accordance with the terms hereof or thereof;

second, to the extent of any excess of such proceeds, to the payment of all other Obligations for the ratable benefit of the Lenders and the Lender Counterparties; and

third, to the extent of any excess of such proceeds, to the payment to or upon the order of such Credit Party or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

2.16. Ratable Sharing. The Lenders hereby agree among themselves that, except as otherwise provided in the Fee Letter, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of the Loans made and applied in accordance with the terms of Section 2.14), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) that is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of any Credit Party or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Each Credit Party expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, consolidation, set-off or counterclaim with respect to any and all monies owing by such Credit Party to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.16 shall not be construed to apply to (a) any payment made by any Credit Party pursuant to and in accordance with the express terms of any Credit Document (including (x) the application of funds arising from the existence of a Defaulting Lender and (y) amounts received by a Lender pursuant to Sections 2.18 or 2.19) or (b) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it.

2.17. Making or Maintaining SOFR Loans.

(a) Changed Circumstances/Temporary Adjusted Term SOFR Unavailability. Subject to clause (b) below, if, on or prior to the first day of any Interest Period for any SOFR Loan:

(i) Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term SOFR" cannot be determined pursuant to the definition thereof, or

(ii) the Requisite Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Adjusted Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such SOFR Loan, and the Requisite Lenders have provided notice of such determination to Administrative Agent, Administrative Agent will reasonably promptly so notify the Credit Party Representative and each Lender.

Upon notice thereof by Administrative Agent to the Credit Party Representative, any obligation of the Lenders to make SOFR Loans, and any right of the Companies to continue SOFR Loans or to convert Base Rate Loans to SOFR Loans, shall be suspended (to the extent of the affected SOFR Loans or affected Interest Periods) until Administrative Agent (with respect to clause (ii), at the instruction of the Requisite Lenders) revokes such notice. Upon receipt of such notice, (i) the Credit Party Representative may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or affected Interest Periods) or, failing that, the Companies will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such conversion, the Credit Parties shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to this Section 2.17. Subject to clause (b), if Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term SOFR" cannot be determined pursuant to the definition thereof on any given day, the interest rate on Base Rate Loans shall be determined by Administrative Agent without reference to clause (iii) of the definition of "Base Rate" until Administrative Agent revokes such determination.

(b) Benchmark Replacement.

(i) Notwithstanding anything to the contrary herein or in any other Credit Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, 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 Credit 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 Credit 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 Credit 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 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 Credit Document so long as Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Requisite Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Credit Document.

(iii) Notices; Standards for Decisions and Determinations. Administrative Agent will promptly notify the Credit Party Representative and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Administrative Agent will notify the Credit Party Representative of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to this Section 2.17(b) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.17(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Credit Document, except, in each case, as expressly required pursuant to this Section 2.17(b).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Credit 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 Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (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 not or will not be representative for a Benchmark (including a Benchmark Replacement),

then Administrative Agent may 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.

(v) Benchmark Unavailability Period. Upon the Credit Party Representative's receipt of notice of the commencement of a Benchmark Unavailability Period, the Credit Party Representative may revoke any pending request for a SOFR Loan of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Credit Party Representative will be deemed to have converted any such request into a request for a Base Rate Loan or a conversion to a Base Rate Loan. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the 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 Base Rate.

(c) Illegality or Impracticability of SOFR Loans. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Administrative Agent) that the making, maintaining, converting to, or continuation of its SOFR Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the Closing Date that materially and adversely affect the ability of such Lender to make, maintain, convert to, or continue its SOFR Loans, then, and in any such event, such Lender shall be an "Affected Lender" and such Affected Lender shall on that day give written or telephonic (promptly confirmed in writing) notice to the Credit Party Representative and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). Thereafter(1) the obligation of the Affected Lender to make Loans as, or to convert Loans to, SOFR Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (2) to the extent such determination by the Affected Lender relates to a SOFR Loan then being requested by the Credit Party Representative pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (3) the Affected Lender's obligation to maintain its outstanding SOFR Loans (the "Affected Loans") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a SOFR Loan then being requested by the Credit Party Representative pursuant to a Funding Notice or a Conversion/Continuation Notice, Company shall have the option, subject to the provisions of Section 2.17(d), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving written or telephonic (promptly confirmed in writing) notice to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender). For the avoidance of doubt, the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to clause (iii) of the definition of "Base Rate", in each case, until such Affected Lender notifies Administrative Agent and the Credit Party Representative that the circumstances giving rise to such determination no longer exist.

(d) Compensation for Breakage or Non-Commencement of Interest Periods. Company shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or calculated to be due and payable by such Lender to lenders of funds borrowed by it to make or carry its SOFR Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any SOFR Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any SOFR Loan does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its SOFR Loans occurs on any day other than the last day of an Interest Period applicable to that Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or (iii) if any prepayment of any of its SOFR Loans is not made on any date specified in a notice of prepayment given by the Credit Party Representative.

(e) Booking of SOFR Loans. Any Lender may make, carry or transfer SOFR Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

2.18. Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.19 (which shall be controlling with respect to the matters covered thereby), in the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any Change in Law (i) subjects such Lender (or its applicable lending office), Administrative Agent or any company controlling such Lender or Administrative Agent to any additional Tax (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder, any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder, or its deposits, reserves, other liabilities or capital attributable thereto; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, liquidity, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender or any company controlling such Lender; or (iii) imposes any other condition (other than with respect to Taxes) on or affecting such Lender (or its applicable lending office) or any company controlling such Lender or such Lender's obligations hereunder or the ability of such Lender to make, maintain, convert to, or continue its SOFR Loans; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) or Administrative Agent with respect thereto; then, in any such case, Companies shall promptly pay to such Lender or Administrative Agent, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Person in its sole discretion shall determine) as may be necessary to compensate such Person for any such increased cost or reduction in

amounts received or receivable hereunder. Such Lender or Administrative Agent shall deliver to Credit Party Representative (in the case of a Lender, with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Person under this Section 2.18(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy and Liquidity Adjustment. In the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (i) any Change in Law regarding capital adequacy or liquidity, or (ii) compliance by any Lender (or its applicable lending office) or any company controlling such Lender with any Change in Law regarding capital adequacy or liquidity, in each case, has or would have the effect of reducing the rate of return on the capital of such Lender or any company controlling such Lender as a consequence of, or with reference to, such Lender's Loans or Commitments or participations therein or other obligations hereunder with respect to the Loans, to a level below that which such Lender or such controlling company could have achieved but for such Change in Law (taking into consideration the policies of such Lender or such controlling company with regard to capital adequacy and liquidity), then from time to time, within five Business Days after receipt by Credit Party Representative from such Lender of the statement referred to in the next sentence, Companies shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling company for such reduction. Such Lender shall deliver to Credit Party Representative (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.18(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(c) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.18 shall not constitute a waiver of such Lender's right to demand such compensation; provided, Companies shall not be required to compensate a Lender pursuant to this Section 2.18 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies Credit Party Representative of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

2.19. Taxes; Withholding.

(a) Payments to Be Free and Clear. All sums payable by or on behalf of any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax.

(b) Withholding of Taxes. If the applicable Withholding Agent is (in such Withholding Agent's reasonable good faith discretion) required by law to make any deduction or withholding on account of any Tax from any sum paid or payable by any Credit Party to Administrative Agent or any Lender under any of the Credit Documents: (i) the applicable Withholding Agent shall be entitled to pay or cause to be paid any such Tax in accordance with applicable law; and (iii) if such Tax is an Indemnified Tax, the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including for any Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.19), the Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment for Indemnified Taxes been required or made.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "Non-U.S. Lender") shall, to the extent such Lender is legally entitled to do so, deliver to Company and Administrative Agent, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Company or Administrative Agent (each in the reasonable exercise of its discretion), (i) two copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP and/or W-8IMY (or, in each case, any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code, Treasury Regulations, or other applicable law or reasonably requested by Company to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of U.S. federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, (ii) if such Lender is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code, a U.S. Tax Compliance Certificate together with two copies of Internal Revenue Service Form W-8BEN, W-8BEN-E or W-8IMY (or, in each case, any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of U.S. federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents or (iii) subject to, and only upon a Lender's good faith determination that delivery will not expose such Lender to any adverse legal, commercial or tax consequences, executed copies of any other form prescribed by law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by law to permit Borrower or the Administrative Agent to determine the withholding or deduction required to be made. Each Lender that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "U.S. Lender") shall deliver to Administrative Agent and Company on or prior to the Closing Date (or, if later, on or prior to the date on which such Lender becomes a party to this Agreement) two copies of Internal Revenue Service Form W-9 (or any successor form), properly completed and duly executed by such Lender, certifying that such U.S. Lender is entitled to an exemption from U.S. backup withholding tax, or otherwise prove that it is entitled to such an exemption. Each Lender required to deliver any forms, certificates or other evidence with respect to U.S. federal income tax withholding matters pursuant to this Section 2.19(c) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to Company two new copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY, and/or W-9 (or, in any case, any successor form), or a U.S. Tax Compliance Certificate and two copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, or W-8IMY (or, in each case, any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation

required under the Internal Revenue Code and reasonably requested by Company to confirm or establish that such Lender is not subject to deduction or withholding of U.S. federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and Company of its inability to deliver any such forms, certificates or other evidence.

(d) FATCA. If a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to Credit Party Representative and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Credit Party Representative or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by Credit Party Representative or Administrative Agent as may be necessary for the Credit Parties and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of the immediately preceding sentence of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof.

(e) Payment of Other Taxes by Credit Parties. Without limiting the provisions of Section 2.19(b), the Credit Parties shall timely pay to the relevant Governmental Authorities in accordance with applicable law or, at the option of Administrative Agent timely reimburse it for the payment of, all Other Taxes.

(f) Indemnification by Credit Parties. Credit Parties shall jointly and severally indemnify Administrative Agent and any Lender for the full amount of any Indemnified Taxes (including any Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.19) paid or payable by Administrative Agent or Lender or any of their respective Affiliates and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Credit Party shall be conclusive absent manifest error. Such payment shall be due within ten days of such Credit Party's receipt of such certificate.

(g) Indemnification by Lenders. Each Lender shall severally indemnify Administrative Agent for (i) Indemnified Taxes attributable to such Lender (but only to the extent that Company has not already indemnified Administrative Agent therefor and without limiting the obligation of Company to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6(h)(i) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Credit Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Such payment shall be due within ten days of such Lender's receipt of such certificate. 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 Credit Document or otherwise payable by Administrative Agent to such Lender from any other source against any amount due to Administrative Agent under this paragraph (g).

(h) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 2.19, such Credit Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(i) Administrative Agent. The Administrative Agent (and any assignee or successor) will deliver, to the Credit Party Representative, on or prior to the execution and delivery of this Agreement (or, assignment or succession, if applicable), either (i) (A) two (2) executed copies of IRS Form W-8ECI with respect to any amounts payable to the Administrative Agent for its own account and (B) two (2) duly completed copies of IRS Form W-8IMY (together with any required supporting information evidencing that Administrative Agent can receive such payments for the account of others free of U.S. withholding Taxes) for the amounts the Administrative Agent receives for the account of others, or (ii) two (2) executed copies of IRS Form W-9, whichever is applicable, and in each case of (i) and (ii), with the effect that Companies can make payments to the Administrative Agent without deduction or withholding of any taxes imposed by the United States.

(j) Survival. Each party's obligations under this Section 2.19 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

2.20. Obligation to Mitigate. Each Lender agrees that, if such Lender requests payment under Sections 2.17, 2.18 or 2.19, then such Lender will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender if, as a result thereof, the additional amounts payable to such Lender pursuant to Sections 2.17, 2.18 or 2.19, as the case may be, in the future would be eliminated or reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Commitments or Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Commitments or Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.20 unless the Credit Parties agree to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by the Credit Parties pursuant to this Section 2.20 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Credit Party Representative (with a copy to Administrative Agent) shall be conclusive absent manifest error.

2.21. Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) **Defaulting Lender Waterfall**. Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 10.4 shall be applied at such time or times as may be determined by Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; second, as Credit Party Representative may request (so long as no Default or Event of Default shall have occurred and be continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; third, if so determined by Administrative Agent and Credit Party Representative, to be held in a Deposit Account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement, and fourth, so long as no Default or Event of Default shall have occurred and be continuing, to the payment of any amounts owing to the Credit Parties as a result of any judgment of a court of competent jurisdiction obtained by the Credit Parties against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and fifth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 3.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the applicable Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.21(a)(i) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(ii) **Certain Fees**.

(A) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.10(b) for any period during which that Lender is a Defaulting Lender (and the Credit Parties shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) With respect to any fees not required to be paid to any Defaulting Lender pursuant to clause (A) above, the Credit Parties shall not be required to pay the remaining amount of any such fee.

(b) Defaulting Lender Cure. If Credit Party Representative and Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the applicable Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided, no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of any Credit Party while that Lender was a Defaulting Lender; provided, further, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(c) Lender Counterparties. So long as any Lender is a Defaulting Lender, such Lender shall not be a Lender Counterparty with respect to any Secured Hedge Agreement entered into while such Lender was a Defaulting Lender.

2.22. Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that (a) (i) any Lender (each, an "**Increased-Cost Lender**") shall give notice to Credit Party Representative that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Sections 2.17, 2.18 or 2.19, (ii) the circumstances that have caused such Lender to be an Affected Lender or that entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Credit Party Representative's request for such withdrawal; or (b) (i) any Lender shall become and continue to be a Defaulting Lender, and (ii) such Defaulting Lender shall fail to cure the default pursuant to Section 2.21(b) within five Business Days after Credit Party Representative's or Administrative Agent's request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of Administrative Agent shall have been obtained but the consent of one or more of such other Lenders (each, a "**Non-Consenting Lender**") whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender, Defaulting Lender or Non-Consenting Lender (each, a "**Terminated Lender**"), Administrative Agent may (in the case of an Increased-Cost Lender, only after receiving written request from Credit Party Representative to remove such Increased-Cost Lender), by giving written notice to Credit Party Representative and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans and its Commitments, if any, in full to one or more Eligible Assignees (each a "**Replacement Lender**") in accordance with the provisions of Section 10.6 and such Terminated Lender shall pay the fees, if any, payable in connection with any such assignment from an Increased-Cost Lender, a Non-Consenting Lender, or a Defaulting Lender; provided, (i) on the date of such assignment, such Replacement Lender shall pay to such Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of such Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.10; (ii) on the date of such assignment, the Credit Parties shall pay any amounts payable to such Terminated Lender pursuant to

Sections 2.17, 2.18 or 2.19 or under any other Credit Document with respect to facts and circumstances prior to the effective date of such assignment; provided, such assignment shall not be deemed a prepayment and the Credit Parties shall not be required to pay any prepayment premium or other similar amount that would be payable pursuant to the Fee Letter in connection with a voluntary prepayment or otherwise; (iii) such assignment does not conflict with applicable law; and (iv) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender's Commitments, if any, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender. Each Lender agrees that if Administrative Agent exercises its option hereunder to cause an assignment by such Lender as a Terminated Lender, such Lender shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 10.6. In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, each Lender hereby authorizes and directs Administrative Agent to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 10.6 on behalf of a Terminated Lender, and any such documentation so executed by Administrative Agent shall be effective for purposes of documenting an assignment pursuant to Section 10.6.

2.23. Companies as Co-Borrowers.

(a) Joint and Several Liability. All Obligations of Companies under this Agreement and the other Credit Documents shall be joint and several Obligations of each Company. Notwithstanding anything to the contrary in this Agreement or any other Credit Document, the Obligations of each Company hereunder, solely to the extent that such Company did not receive proceeds of Loans from any borrowing hereunder, shall be limited to a maximum aggregate amount equal to the largest amount that would not render its Obligations subject to avoidance as a fraudulent transfer or conveyance under any Fraudulent Transfer Laws, in each case, after giving effect to all other liabilities of such Company, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Company in respect of intercompany Indebtedness to any other Credit Party or Affiliates of any other Credit Party to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by such Credit Party hereunder) and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation or contribution of such Company pursuant to (i) applicable law or (ii) any agreement providing for an equitable allocation among such Company and other Affiliates of any Credit Party of Obligations arising under Guaranties by such parties.

(b) Subrogation; Contribution. Until the Obligations shall have been Paid in Full, each Company shall withhold exercise of any right of subrogation, contribution or any other right to enforce any remedy that it now has or may hereafter have against any other Company or any Guarantor of the Obligations. Each Company further agrees that, to the extent the waiver of its rights of subrogation, contribution and remedies as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any such rights such Company may have against any other Company, any collateral or security or any Guarantor shall be junior and subordinate to any rights Collateral Agent may have against any other Company, any such collateral or security and any Guarantor. Companies under this Agreement and the other Credit Documents together desire to allocate among themselves, in a fair and equitable manner, their Obligations arising under this Agreement and the other Credit Documents. Accordingly, in the event any payment or distribution is made on any date by any Company under this Agreement and the other Credit Documents (a "**Funding Company**") such that its Obligation Aggregate Payments exceed its Obligation Fair Share as of such date, that Funding Company shall be entitled to a contribution from each other Company in the amount of such other Company's Obligation Fair Share Shortfall as of such date, with the result that all such contributions will cause each Company's Obligation Aggregate Payments to equal its Obligation Fair Share as of such date. "**Obligation Fair Share**" means, with respect to any Company as of any date of determination, an amount equal to (i) the ratio of (x) the Obligation Fair Share Contribution Amount with respect to such Company to (y) the aggregate of the Obligation Fair Share Contribution Amounts with respect to all Companies, multiplied by (ii) the aggregate amount paid or distributed on or before such date by all Funding Companies under this Agreement and the other Credit Documents in respect of the Obligations. "**Obligation Fair Share Shortfall**" means, with respect to any Company as of any date of determination, the excess, if any, of the Obligation Fair Share of such Company over the Obligation Aggregate Payments of such Company. "**Obligation Fair Share Contribution Amount**" means, with respect to any Company as of any date of determination, the maximum aggregate amount of the Obligations of such Company under this Agreement and the other Credit Documents that would not render its Obligations subject to avoidance as a fraudulent transfer or conveyance under any Fraudulent Transfer Laws; provided, solely for purposes of calculating the Obligation Fair Share Contribution Amount with respect to any Company for purposes of this Section 2.23, any assets or liabilities of such Company arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Company. "**Obligation Aggregate Payments**" means, with respect to any Company as of any date of determination, an amount equal to (i) the aggregate amount of all payments and distributions made on or before such date by such Company in respect of this Agreement and the other Credit Documents (including in respect of this Section 2.23), minus (ii) the aggregate amount of all payments received on or before such date by such Company from any other Company as contributions under this Section 2.23. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Company. The allocation among Companies of their Obligations as set forth in this Section 2.23 shall not be construed in any way to limit the liability of any Company hereunder or under any other Credit Document.

(c) [Intentionally Reserved].

(d) Obligations Absolute. Each Company hereby waives, for the benefit of the Beneficiaries, (i) any right to require any Beneficiary, as a condition of payment or performance by such Company, to (A) proceed against any other Company, any Guarantor or any other Person, (B) proceed against or exhaust any security held from any other Company, any Guarantor or any other Person, (C) proceed against or have resort to any balance of any Deposit Account, Securities Account, or any other credit on the books of any Beneficiary in favor of any other Company, any Guarantor or any other Person, or (D) pursue any other remedy in the power of any Beneficiary whatsoever; (ii) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any other Company or any Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any other Company or any Guarantor from any cause, other than Payment in Full of all Obligations; (iii) any defense

based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (iv) any defense based upon any Beneficiary's errors or omissions in the administration of the Obligations, except behavior that amounts to willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction; (v) (A) any principles or provisions of law, statutory or otherwise, that are or might be in conflict with the terms hereof and any legal or equitable discharge of such Company's Obligations, (B) the benefit of any statute of limitations affecting such Company's liability hereunder or the enforcement hereof, (C) any rights to set offs, recoupments and counterclaims, and (D) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or ensure any security interest or lien or any property subject thereto; (vi) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or under any Secured Hedge Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of any extension of credit to any Company and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (vii) any defenses or benefits that may be derived from or afforded by law that limit the liability of or exonerate guarantors or sureties, or that may conflict with the terms hereof.

2.24. Appointment of Credit Party Representative.

(a) Each Credit Party hereby appoints Holdings as "Credit Party Representative" to act as its agent, attorney-in-fact and representative for the purposes of issuing Notices, giving instructions with respect to the disbursement of the proceeds of the Loans, selecting interest rate options, giving and receiving all other notices and consents hereunder or under any of the other Credit Documents, executing Credit Documents on its behalf (including the Fee Letter), delivering all documents, reports, financial statements and written materials required to be delivered by any Credit Party under this Agreement or any of the other Credit Documents, taking all other actions (including in respect of compliance with covenants and amendments to the Credit Documents) on behalf of any Credit Party under the Credit Documents, and all other purposes incidental to any of the foregoing. Holdings hereby accepts the foregoing appointment as Credit Party Representative.

(b) Each Agent and each Lender may regard any notice or other communication pursuant to any Credit Document from Credit Party Representative as a notice or communication from all Credit Parties, and may give any notice or communication required or permitted to be given to any Credit Party hereunder to Credit Party Representative. Each Credit Party agrees that each notice, election, representation and warranty, covenant, agreement and undertaking made on its behalf by Credit Party Representative shall be deemed for all purposes to have been made by such Credit Party and shall be binding upon and enforceable against such Credit Party to the same extent as if the same had been made directly by such Credit Party.

SECTION 3. CONDITIONS PRECEDENT

3.1. Closing Date. The obligation of each Lender to enter into this Agreement and to make any Loan on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date (in each case, except to the extent required to be delivered or completed in accordance with Section 5.15):

(a) Credit Documents. Administrative Agent shall have received sufficient copies of each Credit Document to be dated as of the Closing Date, in each case, as Administrative Agent shall request, in form and substance satisfactory to Administrative Agent, and duly executed and delivered by each applicable Credit Party and each other Person party thereto.

(b) Organizational Documents; Incumbency. Administrative Agent shall have received in respect of each Credit Party (i) sufficient copies of each Organizational Document as Administrative Agent shall request, in each case, certified by an Authorized Officer of such Credit Party and, to the extent applicable, certified as of the Closing Date or a recent date prior thereto by the appropriate Governmental Authority; (ii) signature and incumbency certificates of the officers of such Credit Party executing any Credit Documents to which it is a party; (iii) resolutions of the Board of Directors of each Credit Party approving and authorizing the execution, delivery and performance of the Credit Documents, and the ABL Credit Documents, in each case, to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by an appropriate Authorized Officer as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of such Credit Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Closing Date; and (v) such other documents as Administrative Agent may reasonably request.

(c) Organizational and Capital Structure. The organizational structure and capital structure of Holdings and its Subsidiaries, both before and after giving effect to the transactions contemplated by the ABL Credit Documents, shall be as set forth on Schedule 4.2.

(d) ABL Credit Documents.

(i) (A) The ABL Credit Documents shall each be in form and substance satisfactory to Administrative Agent in its sole discretion and shall have been executed and delivered and be in full force and effect in accordance with their respective terms, and no provision thereof shall have been modified or waived in any respect determined by Administrative Agent to be material, in each case, without the consent of Administrative Agent, (B) all conditions to the transactions contemplated by the ABL Credit Documents shall have been satisfied prior to or concurrently with the effectiveness of this Agreement or the fulfillment of any such conditions shall have been waived with the consent of Administrative Agent, (C) the transactions contemplated by the ABL Credit Documents shall have become effective in accordance with the terms thereof and (D) the ABL Lenders shall have advanced to Companies gross proceeds of the ABL Loans in an aggregate amount not more than $40,000,000 pursuant to the ABL Credit Agreement.

(ii) Administrative Agent shall have received a fully executed or conformed copy of each ABL Credit Document and any documents executed in connection therewith on or prior to the Closing Date (including all exhibits, schedules, annexes or other attachments thereto, any amendment, restatement, supplement or other modification thereof, and any related side letter).

(e) [Intentionally Reserved].

(f) Existing Indebtedness. On the Closing Date, Holdings and its Subsidiaries shall have (i) repaid in full all Existing Indebtedness, (ii) terminated any commitments to lend or make other extensions of credit thereunder, (iii) delivered to Administrative Agent all documents or instruments necessary to release all Liens securing Existing Indebtedness or other obligations of Holdings and its Subsidiaries thereunder being repaid on the Closing Date, and (iv) made arrangements satisfactory to Administrative Agent with respect to the cancellation of any letters of credit outstanding thereunder.

(g) Transaction Costs. Credit Party Representative shall have delivered to Administrative Agent Credit Party Representative's reasonable best estimate of the Transaction Costs (other than fees payable to any Agent or any Lender).

(h) Governmental Authorizations and Consents. Each Credit Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case, that are necessary or advisable in connection with the transactions contemplated by the Credit Documents and the ABL Credit Documents to occur on or prior to the Closing Date (including the entering into of the Credit Documents and the ABL Credit Documents to be delivered on the Closing Date) and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Credit Documents or the ABL Credit Documents to occur on or prior to the Closing Date or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(i) Real Estate Assets. In order to create in favor of Collateral Agent, for the benefit of the Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority Lien in each fee-owned Material Real Estate Asset, Administrative Agent and Collateral Agent shall have received from each applicable Credit Party the Mortgaged Real Estate Documents, for each such fee-owned Material Real Estate Asset.

(j) Personal Property Collateral. In order to create in favor of Collateral Agent, for the benefit of the Secured Parties, a valid and perfected First Priority Lien in the personal property Collateral, each Credit Party shall have delivered to Collateral Agent:

(i) evidence satisfactory to Collateral Agent of the compliance by each Credit Party with their obligations under the Pledge and Security Agreement and the other Collateral Documents (including their obligations to authorize or execute, as the case may be, and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing Deposit Accounts or Securities Accounts as provided therein);

(ii) a completed Collateral Questionnaire dated the Closing Date, together with all attachments contemplated thereby;

(iii) duly executed and, as appropriate, notarized Intellectual Property Security Agreements, in proper form for filing or recording in all appropriate places in all applicable jurisdictions;

(iv) opinions of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) with respect to the creation and perfection of the Liens in favor of Collateral Agent in such Collateral and such other matters governed by the laws of each jurisdiction in which any Credit Party or any personal property Collateral is located as Collateral Agent may reasonably request, in each case, in form and substance reasonably satisfactory to Collateral Agent; and

(v) evidence that each Credit Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including (i) a Collateral Access Agreement executed by the landlord of each Leasehold Property, and (ii) an Intercompany Note and Subordination) and made or caused to be made any other filing and recording reasonably required by Collateral Agent.

(k) Environmental Reports. Administrative Agent shall have received reports and other information, in form, scope and substance satisfactory to Administrative Agent, regarding environmental matters relating to the Facilities.

(l) Financial Statements; Projections. The Lenders shall have received from Credit Party Representative (i) the Historical Financial Statements, (ii) pro forma consolidated and consolidating balance sheets of Holdings and its Subsidiaries as at the Closing Date, and reflecting the consummation of the transactions contemplated by the ABL Credit Documents, the related financings and the other transactions contemplated by the Credit Documents to occur on or prior to the Closing Date, which pro forma financial statements shall be in form and substance satisfactory to Administrative Agent, (iii) pro forma consolidated and consolidating income statements of Holdings and its Subsidiaries as at the Closing Date, and reflecting the consummation of the transactions contemplated by the ABL Credit Documents, the related financings and the other transactions contemplated by the Credit Documents to occur on or prior to the Closing Date, and (iv) the Projections.

(m) Evidence of Insurance. Collateral Agent shall have received a certificate from each applicable Credit Party's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, together with endorsements naming Collateral Agent, for the benefit of the Secured Parties, as additional insured and lender's loss payee thereunder to the extent required under Section 5.5.

(n) Opinions of Counsel to Credit Parties. The Agents, the Lenders and their respective counsel shall have received executed copies of the favorable written opinions of Latham & Watkins LLP, New York, California and Delaware counsel to the Credit Parties, Taft Stettinius & Hollister LLP, Ohio counsel to the Credit Parties, and Ballard Spahr LLP, Minnesota counsel to the Credit Parties, in each case, as to such matters as Administrative Agent may reasonably request, dated as of the Closing Date, and in form and substance reasonably satisfactory to Administrative Agent (and each Credit Party hereby instructs such counsel to deliver such opinions to the Agents and the Lenders).

(o) Fees. Companies shall have paid to each Agent and each Lender the fees payable on or before the Closing Date referred to in Section 2.10 and all expenses payable pursuant to Section 10.2 that have accrued to the Closing Date.

(p) Solvency Certificate. On the Closing Date, Administrative Agent shall have received a Solvency Certificate from each Company dated as of the Closing Date and addressed to Administrative Agent and Lenders, and in form, scope and substance satisfactory to Administrative Agent, with appropriate attachments and demonstrating that after giving effect to the consummation of the transactions contemplated by this Agreement, the other Credit Documents and the ABL Credit Documents to be consummated on the Closing Date and the Credit Extensions to be made on the Closing Date, each Company and its Subsidiaries each is and will be Solvent.

(q) Closing Date Certificate. Administrative Agent shall have received a Closing Date Certificate, together with all attachments thereto.

(r) [Intentionally Reserved].

(s) No Litigation. There shall not exist any action, suit, investigation, litigation, proceeding, hearing or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable opinion of Administrative Agent, singly or in the aggregate, materially impairs the transactions contemplated by the ABL Credit Documents, the financing thereof or any of the other transactions contemplated by the Credit Documents or the ABL Credit Documents, or that could have a Material Adverse Effect.

(t) Due Diligence. Administrative Agent and each Lender shall have completed, to its satisfaction, all legal, tax, environmental, business, industry, food safety, regulatory, compliance and other due diligence with respect to the business, assets, liabilities, operations and condition (financial or otherwise) of the Credit Parties in scope and determination satisfactory to Administrative Agent and the Requisite Lenders in their respective discretion (including satisfactory review of (i) the lease agreements for each Leasehold Property, (ii) all Material Contracts and (iii) management background checks), and, other than changes occurring in the ordinary course of business, no information or materials are or should have been available to the Credit Parties as of the Closing Date that are materially inconsistent with the information and materials previously provided to Administrative Agent and the Requisite Lenders for their respective due diligence review of the Credit Parties.

(u) Appraisal; Third Party Reports. Administrative Agent shall have received third party accounting and, quality of earnings (including cash proof analysis) and confirmation of no outstanding tax liens, any third party reports delivered in in connection with the ABL Credit Documents, and other consultants' reports, in each case, in form, scope and substance satisfactory to Administrative Agent and performed by one or more firms acceptable to Administrative Agent.

(v) Certain Material Contracts. Administrative Agent shall have received evidence that Lifecore Biomedical, LLC has entered into that certain Amendment No. 2 to Amended and Restated Supply Agreement by and between Lifecore Biomedical, LLC, a Minnesota limited liability company, and Alcon Pharmaceuticals Ltd., dated on or about the Closing Date.

(w) Minimum EBITDA. The pro forma income statement delivered pursuant to Section 3.1(l) shall demonstrate in form and substance reasonably satisfactory to Administrative Agent that Holdings and its Subsidiaries shall have generated for the trailing (12) month period ending November 30, 2020 Consolidated Adjusted EBITDA of at least $32,000,000.

(x) Minimum Liquidity. Holdings and its Subsidiaries shall demonstrate in form and substance reasonably satisfactory to Administrative Agent that on the Closing Date and immediately after giving effect to any Credit Extensions hereunder or ABL Loans to be made on the Closing Date, including the payment of all Transaction Costs hereunder or similar amount in respect of the ABL Credit Documents required to be paid in Cash, the Credit Parties shall have at least (i) $1,000,000 of Qualified Cash on hand Date and (ii) $15,000,000 of Consolidated Liquidity.

(y) Maximum Leverage Ratio. The pro forma balance sheet delivered pursuant to Section 3.1(l) shall demonstrate in form and substance reasonably satisfactory to Administrative Agent that on the Closing Date and immediately after giving effect to any Credit Extensions to be made on the Closing Date, including the payment of all Transaction Costs required to be paid in Cash, the ratio of (i) total Indebtedness for Holdings and its Subsidiaries as of the Closing Date to (ii) pro forma Consolidated Adjusted EBITDA for the trailing twelve (12) month period ending November 30, 2020 shall not be greater than 6.00:1.00.

(z) No Material Adverse Change. Since May 31, 2020, no event, circumstance or change shall have occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

(aa) [Intentionally Reserved].

(bb) Service of Process. On the Closing Date, Administrative Agent shall have received evidence that each Credit Party has appointed an agent in New York City for the purpose of service of process in New York City and such agent shall agree in writing to give Administrative Agent notice of any resignation of such service agent or other termination of the agency relationship.

(cc) [Intentionally Reserved].

(dd) KYC Documentation; Beneficial Ownership Certificate.

(i) At least 10 days prior to the Closing Date, the Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

(ii) At least five days prior to the Closing Date, any Credit Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered a Beneficial Ownership Certification in relation to such Credit Party.

Each Lender, by delivering its signature page to this Agreement and funding a Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, the Requisite Lenders or the Lenders, as applicable on the Closing Date.

3.2. Conditions to Each Credit Extension.

(a) Conditions Precedent. The obligation of each Lender to make any Loan, on any Credit Date, including the Closing Date, are subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions precedent:

(i) Administrative Agent shall have received a duly executed and delivered Funding Notice and any applicable letters of direction required by Administrative Agent in connections with the disbursement of any funds;

(ii) as of such Credit Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; provided, in each case, such materiality qualifier shall not apply to any representations and warranties to the extent already qualified or modified by materiality or similar concept in the text thereof;

(iii) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute a Default or an Event of Default; and

(iv) in the case of any such Credit Extension consisting of Multi-Draw Term Loans:

(A) with respect to any Credit Extensions requested on such Credit Date, (I) such Credit Extensions shall not exceed the Multi-Draw Term Loan Commitments immediately prior to giving effect to such Credit Extension and (II) Availability shall be $0 or greater before and after giving effect to such Credit Extensions; and

(B) after giving effect to such Credit Extension (excluding (I) any proceeds thereof that will be applied in the ordinary course of business for purposes permitted under Section 2.5 within 10 Business Days after such Credit Extension and (II) Net Asset Sale Proceeds and Net Insurance/Condemnation Proceeds that are on deposit in a Controlled Account in respect of which the Credit Parties have entered into a definitive agreement for the purchase or other acquisition of Additional Assets or for the replacement of Replaced Assets, as the case may be), the aggregate Cash and Cash Equivalents of Companies and their Subsidiaries will not exceed $5,000,000.

Any Agent or the Requisite Lenders shall be entitled, but not obligated to, request and receive, prior to the making of any Credit Extension, additional information reasonably satisfactory to the requesting party confirming the satisfaction of any of the foregoing if, in the good faith judgment of such Agent or the Requisite Lenders, such request is warranted under the circumstances.

(b) Notices. Any Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent. In lieu of delivering a Notice, Credit Party Representative may give Administrative Agent telephonic notice by the required time of any proposed borrowing or conversion/continuation, as the case may be; provided, each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the close of business on the date that telephonic notice is given. In the event of a discrepancy between the telephonic notice and the written notice, the written notice shall govern. In the case of any Notice that is irrevocable once given, if Credit Party Representative provides telephonic notice in lieu of written notice, such telephonic notice shall also be irrevocable once given. No Agent or Lender shall incur any liability to any Credit Party in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly authorized officer or other natural person authorized on behalf of Credit Party Representative or for otherwise acting in good faith.

(c) Each request for a borrowing of a Loan by Companies hereunder shall constitute a representation and warranty by the Credit Parties as of the applicable Credit Date that the conditions contained in Section 3.2(a) have been satisfied.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce the Agents and the Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, each Credit Party represents and warrants to each Agent and each Lender, on each Credit Date, including the Closing Date, that the following statements are true and correct (it being understood and agreed that the representations and warranties made on the Closing Date are deemed to be made concurrently with the consummation of the transactions contemplated by the ABL Credit Documents):

4.1. Organization; Requisite Power and Authority; Qualification. Each of Holdings and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified on Schedule 4.1, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2. Capital Stock and Ownership. The Capital Stock of each of Holdings and its Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the Closing Date, there is no existing option, warrant, call, right, commitment or other agreement to which Holdings or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of Holdings or any of its Subsidiaries outstanding that upon conversion or exchange would require, the issuance by Holdings or any of its Subsidiaries of any additional Capital Stock of Holdings or any of its Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase additional Capital Stock of Holdings or any of its Subsidiaries. Schedule 4.2 correctly sets forth the ownership interest of Holdings and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date both before and after giving effect to the transactions contemplated by the Credit Documents.

4.3. Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

4.4. No Conflict. The execution, delivery and performance by the Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate any provision of any law or any governmental rule or regulation applicable to Holdings or any of its Subsidiaries, any of the Organizational Documents of Holdings or any of its Subsidiaries, or any order, judgment or decree of any court or other agency of government binding on Holdings or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Material Contract or any ABL Credit Document; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Holdings or any of its Subsidiaries (other than any Liens created under any of the Credit Documents in favor of Collateral Agent, for the benefit of the Secured Parties); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Material Contract or any ABL Credit Document, except for such approvals or consents that have been obtained on or before the Closing Date and have been disclosed in writing to the Lenders and except for any such approvals or consents the failure of which to obtain will not have a Material Adverse Effect and will not materially reduce the value of the Collateral.

4.5. Governmental Consents. The execution, delivery and performance by the Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, and except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing or recordation, as of the Closing Date.

4.6. Binding Obligation. Each Credit Document required to be delivered hereunder has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7. Historical Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. As of the Fourth Amendment Effective Date, neither Holdings nor any of its Subsidiaries has any contingent liability or liability for Taxes long-term lease or unusual forward or long-term commitment that is not reflected in the Historical Financial Statements or the notes thereto and that in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Holdings and its Subsidiaries taken as a whole. Holdings and its Subsidiaries have not made as of the Fourth Amendment Effective Date, and as of the Fourth Amendment Effective Date do not expect to make, any accounting adjustments, restatements or other modifications to the Existing Financial Statements, other than those which have been disclosed in writing to the Administrative Agent and the Lenders prior to the Fourth Amendment Effective Date.

4.8. Projections. On and as of the Closing Date, the projections of Holdings and its Subsidiaries for the period of the Fiscal Year ending May 31, 2020 through and including the Fiscal Year ending on or about May 30, 2024, including quarterly projections for all periods prior to May 30, 2022 and annual projections for each Fiscal Year thereafter (the "Projections"), are based on good faith estimates and assumptions made by the management of Holdings and its Subsidiaries; provided, the Projections are not to be viewed as facts and that actual results during the period

or periods covered by the Projections may differ from such Projections and that the differences may be material; provided, further, as of the Closing Date, management of Holdings and its Subsidiaries believed that the Projections were reasonable and attainable.

4.9. No Material Adverse Change. Since May 31, 2020, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

4.10. No Restricted Junior Payments. Since May 31, 2020, neither Holdings nor any of its Subsidiaries has directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Junior Payment or agreed to do so except as permitted pursuant to Section 6.5.

4.11. Adverse Proceedings. Except as set forth on Schedule 4.11, there are no Adverse Proceedings that could reasonably be expected to result in a Material Adverse Effect or liability of Holdings, any of its Subsidiaries or any of their respective Affiliates in excess of $1,000,000 individually or $5,000,000 in the aggregate for all such Adverse Proceedings, in each case, during the term of this Agreement. Except as set forth on Schedule 4.11, neither Holdings nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws), or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that could reasonably be expected to result in a Material Adverse Effect or liability of Holdings, any of its Subsidiaries or any of their respective Affiliates in excess of $1,000,000 individually or $5,000,000 in the aggregate for all such defaults, in each case, during the term of this Agreement.

4.12. Payment of Taxes. All federal, state income and other material Tax returns and reports of Holdings and its Subsidiaries required to be filed by any of them have been timely filed, and all federal, state income and other material Taxes due and payable and all assessments, fees and other governmental charges upon Holdings and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises that are due and payable have been paid when due and payable (other than any Taxes the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of Holdings and its Subsidiaries). There is no proposed Tax assessment against Holdings or any of its Subsidiaries that is not being actively contested by Holdings or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.13. Properties.

(a) Title. Except as set forth on Schedule 4.13(a), each of Holdings and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid licensed rights in (in the case of licensed interests in Intellectual Property), and (iv) good title to (in the case of all other personal property), all of their respective properties and assets reflected in their respective Historical Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case, except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.9. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

(b) Real Estate. As of the Closing Date, Schedule 4.13(b) contains a true, accurate and complete list of (i) all Real Estate Assets, including an indication as to whether each such Real Estate Asset constitutes a Material Real Estate Asset (within the meaning of clauses (i) or (ii) of the definition thereof), and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting any Real Estate Asset of any Credit Party, regardless of whether such Credit Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect, and no Credit Party has any knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Credit Party, enforceable against such Credit Party in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.14. Environmental Matters. Neither Holdings nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law. There are and, to each of Holdings' and its Subsidiaries' knowledge, have been no conditions, occurrences or Hazardous Materials Activities that could reasonably be expected to form the basis of an Environmental Claim against Holdings or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 4.14, neither Holdings nor any of its Subsidiaries nor, to any Credit Party's knowledge, any predecessor of Holdings or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of Holdings' or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent (except for products used in the ordinary course of business, such as paint and cleaning products which are ancillary to the operations of Holdings and its Subsidiaries). Compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. Except as set forth on Schedule 4.14, no event or condition has occurred or is occurring with respect to Holdings or any of its Subsidiaries relating to any Environmental Law, any Release of Hazardous Materials or any Hazardous Materials Activity that, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect.

4.15. No Defaults. Neither Holdings nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists that, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect or liability of Holdings, any of its Subsidiaries or any of their respective Affiliates in excess of $1,000,000, individually or $5,000,000 in the aggregate for all such defaults, in each case, during the term of this Agreement.

4.16. Material Contracts. Schedule 4.16 contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date, and, together with any updates provided pursuant to Section 5.1(l), (a) all such Material Contracts are in full force and effect in all material respects, (b) no defaults currently exist thereunder, and (c) each such Material Contract has not been amended, waived or otherwise modified except as permitted under this Agreement.

4.17. Governmental Regulation. Neither Holdings nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation that may limit its ability to incur Indebtedness or that may otherwise render all or any portion of the Obligations unenforceable. Neither Holdings nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18. Federal Reserve Regulations; Exchange Act. Neither Holdings nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No portion of the proceeds of any Credit Extension has or will be used in any manner, whether directly or indirectly, that causes or could reasonably be expected to cause, such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

4.19. Employee Matters. Neither Holdings nor any of its Subsidiaries is engaged in any unfair labor practice. There is (a) no unfair labor practice complaint pending against Holdings or any of its Subsidiaries or, to the best knowledge of each Credit Party, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against Holdings or any of its Subsidiaries or, to the best knowledge of each Credit Party, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving Holdings or any of its Subsidiaries, and (c) to the best knowledge of each Credit Party, no union representation question existing with respect to the employees of Holdings or any of its Subsidiaries and, to the best knowledge of each Credit Party, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect or result in liabilities in excess of $1,000,000 individually or $5,000,000 in the aggregate for all such liabilities. Neither Holdings nor any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act (the "WARN Act") or any similar federal or state law that remains unpaid or unsatisfied and could reasonably be expected to result in a Material Adverse Effect or is in excess of $1,000,000 individually or $5,000,000 in the aggregate for all such liabilities.

4.20. Employee Benefit Plans. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) Holdings, each of its Subsidiaries and each of their respective ERISA Affiliates are in compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan and have performed all their obligations under each Employee Benefit Plan, (ii) each Employee Benefit Plan that is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter that would cause such Employee Benefit Plan to lose its qualified status, (iii) no liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by Holdings, any of its Subsidiaries or any of their ERISA Affiliates and (iv) no ERISA Event has occurred or is reasonably expected to occur. Except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by Holdings, any of its Subsidiaries or any of their ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan) did not exceed the aggregate current value of the assets of such Pension Plan. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of Holdings, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is $0. Holdings, each of its Subsidiaries and each of their ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan.

4.21. Certain Fees. Except as set forth on Schedule 4.21, no broker's or finder's fee or commission will be payable with respect to the transactions contemplated by this Agreement or the ABL Credit Documents, except as payable to the Agents and the Lenders.

4.22. Solvency. Each Credit Party is and, upon the incurrence of any Credit Extension by such Credit Party on any date on which this representation and warranty is made, will be Solvent.

4.23. [Intentionally Reserved].

4.24. Compliance with Laws. Except to the extent disclosed in due diligence pursuant to Section 3.1(t) and/or to the extent expressly disclosed (and clearly identified as such) in the disclosure schedules hereto, each of Holdings and its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property, including compliance, in all material respects, with all applicable Privacy Laws and Food Laws and all applicable Environmental Laws with respect to any Real Estate Asset or governing its business and the requirements of any permits issued under such Environmental Laws with respect to any such Real Estate Asset or the operations of Holdings or any of its Subsidiaries (it being understood, in the case of any statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities that are specifically referred to in any other provision of this Agreement, Holdings and its Subsidiaries shall also be required to represent and/or comply with, as applicable, the express terms of such provision).

4.25. Disclosure; Beneficial Ownership Certification.

(a) No representation or warranty of any Credit Party contained in any Credit Document or in any other documents, certificates or written statements furnished to any Agent or any Lender by or on behalf of Holdings or any of its Subsidiaries for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact (known to any Credit Party, in the case of any document not furnished by any of them) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by the Credit Parties to be reasonable at the time made, it being recognized by the Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or that should upon the reasonable exercise of diligence be known) to any Credit Party (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to the Lenders for use in connection with the transactions contemplated hereby.

(b) As of the Closing Date, the information included in each Beneficial Ownership Certification is true and correct in all respects.

4.26. Sanctions; Anti-Bribery and Anti-Corruption Laws; Anti-Terrorism and Anti-Money Laundering Laws. None of Holdings, any of its Subsidiaries, any Affiliate of any such Person, or any of their respective Directors, officers or, to the knowledge of any Credit Party, employees, agents, or advisors is a Sanctioned Person. Except to the extent relating to compliance with Anti-Bribery and Anti-Corruption Laws disclosed in due diligence pursuant to Section 3.1(t) and/or to the extent expressly disclosed (and clearly identified as such) in the disclosure schedules hereto, each of Holdings and its Subsidiaries and their respective Directors, officers and, to the knowledge of any Credit Party, employees, agents, advisors and Affiliates is in compliance with all and has not violated any (i) Sanctions, (ii) Anti- Bribery and Anti-Corruption Laws, or (iii) Anti-Terrorism and Anti-Money Laundering Laws. No part of the proceeds of any Credit Extension has or will be used, directly or indirectly, (A) for the purpose of financing any activities or business of or with any Sanctioned Person or in any Sanctioned Country, (B) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value to any Person in violation of any Anti- Bribery and Anti-Corruption Laws, or (C) otherwise in any manner that would result in a violation of Sanctions, Anti-Terrorism and Anti-Money Laundering Laws, or Anti- Bribery and Anti-Corruption Laws by any Person. Holdings and its Subsidiaries have established and currently maintain policies, procedures and controls that are designed (and otherwise comply with applicable law) to ensure that each of Holdings, its Subsidiaries and their respective Affiliates, and each of their respective Directors, officers, employees and agents, is and will continue to be in compliance with all applicable current and future Sanctions, Anti-Terrorism and Anti-Money Laundering Laws, and Anti-Bribery and Anti-Corruption Laws.

4.27. Privacy Laws. No privacy or information security enforcement action, investigation, litigation or claim, including under the Privacy Laws, has been instituted or otherwise exists against Holdings or any of its Subsidiaries. Subject to Section 5.15, Holdings and its Subsidiaries have established and currently maintain policies, procedures and controls that are designed (and otherwise comply with applicable law) to ensure that each of Holdings, its Subsidiaries and their respective Affiliates, and each of their respective Directors, officers, employees and agents, is and will continue to be in material compliance with all applicable current and future Privacy Laws.

4.28. Food Laws. All products designed, developed, manufactured, prepared, assembled, packaged, tested, labeled, distributed, marketed or sold by or on behalf of the Credit Parties that are subject to the jurisdiction of the FDA or a comparable Governmental Authority have been and are being designed, developed, tested, manufactured, prepared, assembled, packaged, distributed, labeled, marketed and sold in compliance with all applicable Food Laws, including product approval or clearance, good manufacturing practices, labeling, advertising and promotion, record-keeping, adverse event reporting, and have been and are being tested, investigated, designed, developed, manufactured, prepared, assembled, packaged, labeled, distributed, marketed, and sold in compliance with each applicable Food Law. Except for ordinary course inquiries or inspections by Governmental Authorities, neither Holdings nor any of its Subsidiaries is presently subject to any notice of any proceeding (including any suit, action, litigation, action, or investigation) that remains unresolved related to noncompliance with Food Laws. Subject to Section 5.15, Holdings and its Subsidiaries have established and currently maintain policies, procedures and controls that are designed (and otherwise comply with applicable law) to ensure that each of Holdings, its Subsidiaries and their respective Affiliates, and each of their respective Directors, officers, employees and agents, is and will continue to be in compliance with all applicable current and future Food Laws.

4.29. Health Care Laws.

(a) Holdings and its Subsidiaries, and to the knowledge of any Credit Party, each of their respective employees solely in respect of the exercise of their respective duties on behalf of Holdings or its Subsidiaries are, and at all times have been in compliance in all material respects with all Health Care Laws.

(b) No Credit Party nor any of its Subsidiaries has (i) received any written notice, citation, suspension, revocation, warning, or request for repayment from, nor, to the knowledge of any Credit Party, been the subject of any investigation by, a Governmental Authority that alleges that such Credit Party or any employee, officer, director, manager or owner of such Credit Party has violated in any Health Care Laws or that requires any adjustment, modification or alteration in such Credit Party's operations, activities, services or financial condition that has not been resolved, including any qui tam lawsuits of which such Credit Party has knowledge and is legally permitted to disclose, risk adjustment data validation or recovery audit contractor audits, (ii) been subject to a corporate integrity agreement, deferred prosecution agreement, settlement agreement or order mandating or prohibiting future or past activities, or (iii) settled any actions brought by any Governmental Authority with respect to any actual or alleged violation of any Health Care Laws.

(c) There are no restrictions imposed by any Governmental Authority upon any Credit Party's business, activities or services that would restrict or prevent such Credit Party from operating as it currently operates.

(d) Each Credit Party meets and has met in all material respects the requirements for participation in, and receipt of payment from, the Federal Health Care Programs (as such term is defined in 42 U.S.C. § 1320a-7b(f) (including TRICARE and U.S. Department of Veterans Affairs Programs)) in which such Credit Party currently participates or has participated. No Credit Party has for itself or any other Person, submitted or caused to be submitted to a Governmental Authority or any government plan a false or fraudulent claim for payment that is material to such Credit Party or such other person.

(e) Each Credit Party has timely filed, after taking into account any permitted time extensions, all regulatory reports, schedules, statements, documents, filings, submissions, forms, registrations and other documents, together with any amendments required to be made with respect thereto, that such Credit Party was required to file with any Governmental Authority, and all such regulatory filings complied with applicable Health Care Laws and orders. Each Credit Party has a compliance program that meets the requirements of its Governmental Authority contracts and Health Care Laws.

(f) No Credit Party has any knowledge of any inspections, audits, inquiries, investigations or proceedings under Health Care Laws of such Credit Party or, to the knowledge of such Credit Party, of any of its material customers, involving such Credit Party or its products.

(g) Neither any Credit Party nor any employee, officer, director, manager, or owner of a such Credit Party:

(i) is or ever has been (a) debarred, excluded or suspended from participation in Medicare, Medicaid or any "federal health care program" as defined in 42 U.S.C. § 1320a-7b(f), or (b) sanctioned, indicted or convicted of a crime, or pleaded nolo contendere or to sufficient facts, in connection with any allegation of violation of Health Care Laws or any "federal health care program" requirement;

(ii) has been convicted of a crime in connection with the delivery of health care services or participation in Medicare, Medicaid or other governmental healthcare program or been indicted, charged or, to each Credit Party's knowledge, under an investigation for any violation of applicable Health Care Laws;

(iii) is or ever has been party to an individual or corporate integrity agreement with the Office of Inspector General of the United States Department of Health and Human Services or otherwise has any continuing reporting obligations pursuant to any deferred prosecution, settlement or other integrity agreement with any Governmental Authority;

(iv) is or ever has been subject to a civil monetary penalty assessed under Section 1128A of the Social Security Act, sanctioned, indicted or convicted of a crime, or pleaded nolo contendere or to sufficient facts, in connection with any allegation of violation of law; or

(v) is or ever has been listed on the General Services Administration published list of parties excluded from federal procurement programs and non-procurement programs.

4.30. FDA Laws. Each of Holdings and its Subsidiaries is, and at all times has been, in compliance with the FDCA and all regulations promulgated thereunder and all other applicable laws and regulations of the relevant Government Authorities in the countries in which each of Holdings and its Subsidiaries distributes or markets its products, including but not limited to (i) the requirement for and the terms of all necessary FDA Permits, including, without limitation, approvals, clearances, exemptions, and licenses, (ii) current Good Manufacturing Practices ("**cGMP**"), (iii) establishment registration and product listing, (iv) labeling, promotion, and advertising, (v) Good Clinical Practices ("**GCP**") and Good Laboratory Practices ("**GLP**"), (vi) payment of all application, product and establishment fees, and (vii) recordkeeping and reporting requirements other than those applicable to cGMP, GCP, and GLP (collectively, "**FDA Law or Regulation**"). Without limiting the generality of the foregoing:

(a) Each of Holdings and its Subsidiaries holds all material registrations, clearances, approvals, licenses, authorizations, or permits required by or issued under the FDCA ("**FDA Permits**"), and has made all declarations, submissions, filings, and listings that are necessary to conduct its business and comply with FDA Law or Regulation. Each of Holdings' and its Subsidiaries' FDA Permits is in effect or where the failure to have such FDA Permits or make such declarations and filings could not reasonably be expected to have a Material Adverse Effect. A list of all FDA Permits is in full force and effect in all material respects and, to the knowledge of each Credit Party, no suspension, revocation, cancellation or withdrawal of such FDA Permit is threatened and there is no basis for believing that such FDA Permit will not be

renewable upon expiration or will be suspended, revoked, cancelled or withdrawn, except where the failure to have such FDA Permits could not reasonably be expected to have a Material Adverse Effect.

(b) Neither Holdings nor any of its Subsidiaries has, or, to the knowledge of any Credit Party, have any of its material customers, received any written notice or communication from any Governmental Authority of any actual or threatened investigation, inquiry, or administrative, judicial or regulatory action, hearing, or enforcement proceeding against Holdings or any of its Subsidiaries regarding any violation of applicable laws. No Credit Party has any knowledge of any material obligation arising under an investigation, inquiry, or administrative, regulatory or judicial action, hearing, or enforcement proceeding by or on behalf of the FDA, warning letter, untitled letter, Form FDA-483, notice of violation letter, consent decree, request for information or other notice, response, or commitment made to or with any Governmental Authority with respect to FDA Law or Regulation, and no such material obligation has been threatened.

(c) There is no product liability, civil, or criminal action, suit, proceeding, demand, claim, complaint, hearing, investigation, demand letter, warning letter, proceeding or request for information pending against or relating to each of Holdings and its Subsidiaries or to any of its respective employees that involves or arises from a material violation of FDA Law or Regulation, and neither Holdings nor any of its Subsidiaries has material liability for failure to comply with any FDA Law and Regulation. There is no act, omission, event, or circumstance, of which any Credit Party has knowledge, that would reasonably be expected to give rise to or lead to any such action, suit, demand, claim, complaint, hearing, investigation, notice, demand letter, warning letter, proceeding or request for information or any such material liability, except where the existence of any of the foregoing individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

(d) There has not been any violation of any FDA Law and Regulation by Holdings or any of its Subsidiaries in the product development efforts, submissions, production, marketing, distribution, labeling, record keeping and mandatory reports to FDA that could reasonably be expected to require or lead to investigation, corrective action or enforcement, regulatory or administrative action or proceedings relating to Holdings or any of its Subsidiaries, nor has there been any such violation by any officer, director, employee of such Credit Party that involves a matter within or related to the FDA's jurisdiction relating solely to the FDA-regulated products.

(e) None of any Credit Party's FDA-regulated products have been seized, withdrawn, recalled, detained, or subject to a suspension of research, manufacturing, distribution, or commercialization activity by a Governmental Authority. No proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, revocation, suspension, import refusal, or seizure of any product are pending or threatened against any Credit Party. Each FDA-regulated product: (1) has been cleared or approved by FDA as required, prior to distribution, where required; (2) has been designed, manufactured, prepared, assembled, labeled, packaged, repackaged, stored, installed, serviced, or processed in substantial compliance with FDA's Quality System Regulation for devices set forth in 21 C.F.R. Part 820 or cGMP regulations for drugs set forth in 21 C.F.R. Parts 210 and 211, as applicable; and (3) is labeled, promoted and advertised, including but not limited to online and in social media fora, in substantial compliance in all material respects in accordance with its Registration and approved claims and labeling or otherwise as permitted by Governmental Authorities and applicable law.

(f) No Credit Party has any knowledge of any inspections, audits, inquiries, investigations or proceedings under FDA Law or Regulation of Holdings or any of its Subsidiaries or, to the knowledge of such Credit Party, of any of its material customers, involving such Credit Party or its products.

(g) No officer, employee or agent of Holdings or any of its Subsidiaries has been, or has been threatened to be: (a) debarred under FDA proceedings under 21 U.S.C. § 335a; (b) disqualified under FDA investigator disqualification proceedings; (c) subject to FDA's Application Integrity Policy; or (d) subject to any enforcement proceeding arising from material false statements to FDA pursuant to 18 U.S.C. § 1001. Neither Holdings nor any of its Subsidiaries has failed to disclose a material fact required to be disclosed to the FDA or any other Government Authority in material violation of the FDA's policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for the FDA or any other Government Authority to invoke any similar policy.

4.31. PACA and PASA Representations.

(a) No Credit Part has, at any time within the preceding twelve (12) fiscal months, except as disclosed in writing to Administrative Agent, received notice under PACA or PASA with respect to past due payables delivered in order to preserve the benefits of any trust under PACA or PASA applicable to assets of a Credit Party or a Subsidiary (in each case other than the alternative customary invoice or other billing statement notice provisions afforded to PACA licensees in the ordinary course of business regarding a supplier reserving rights under PACA).

(b) Except for disputed payables or payables subject to set off or deduction in the ordinary course of business in an aggregate amount less than $100,000, all payables owing to Persons who may claim the benefit of any trust under PACA or PASA have been paid or will be paid consistent with ordinary course historical and industry practice (and in any event no later than forty-five (45) days after the trade terms applicable to such payables).

(c) Each Credit Party has taken all actions required (including delivery of any required notices and maintaining sales on statutorily required terms) to establish, obtain and preserve the rights and benefits (including under any trust or similar arrangement under PACA or PASA) available to it under PACA and PASA.

4.32. ABL Credit Documents.

(a) Delivery. The Credit Parties have delivered to Administrative Agent complete and correct copies of, (i) the ABL Credit Documents and of all exhibits and schedules thereto as of the Closing Date, any agreement required to be delivered in connection with any ABL Credit Document at or prior to the closing of the transactions contemplated by such ABL Credit Documents (including any side letter executed or otherwise required by any of the parties thereto), and (ii) copies of any amendment, restatement, supplement or other modification to or waiver under each ABL Credit Document entered into after the date hereof (including any such modification accomplished via a side letter or any other document).

(b) Credit Parties. Each Person that is a guarantor or a borrower under the ABL Credit Documents is a Credit Party hereunder.

SECTION 5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees with each Agent and each Lender that until Payment in Full of all Obligations, each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 5.

5.1. Financial Statements and Other Reports. Credit Party Representative will deliver to Administrative Agent and the Lenders:

(a) Monthly Reports. As soon as available, and in any event within 30 days after the end of each month (including any months ending prior to the Closing Date for which financial statements were not previously delivered, commencing with the month ended December 31, 2020), the consolidated and consolidating balance sheets of Holdings and its Subsidiaries as at the end of such month and the related consolidated (and, with respect to statements of income, consolidating) statements of income, stockholders' equity and cash flows of Holdings and its Subsidiaries for such month and for the period from the beginning of the then current Fiscal Year to the end of such month, setting forth, in each case, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail, together with a schedule of reconciliations for any reclassifications with respect to prior months or periods (and, in connection therewith, copies of any restated financial statements for any impacted month or period), a Financial Officer Certification and a Narrative Report with respect thereto, a Key Performance Indicator Report for such period and any other operating reports prepared by management for such period;

(b) Quarterly Financial Statements. As soon as available, and in any event within 45 days after the end of each other Fiscal Quarter of each Fiscal Year (including the fourth Fiscal Quarter and any Fiscal Quarter ending prior to the Closing Date for which financial statements were not previously delivered, commencing with the Fiscal Quarter ended February 28, 2021), the consolidated and consolidating balance sheets of Holdings and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated (and, with respect to statements of income, consolidating) statements of income, stockholders' equity and cash flows of Holdings and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth, in each case, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; provided that with respect to the Fiscal Quarter ended on or about November 30, 2022, the foregoing financial statements and Narrative Report shall be delivered not more than 45 days after the end of such Fiscal Quarter in draft form and subject to the ongoing review and comment of the Credit Parties' accountants and professional advisors, and may be updated from time to time thereafter prior to the delivery of the final versions thereof together with the Financial Officer Certification with respect thereto, which shall be delivered as soon as available, and in any event on or before February 20, 2023.

(c) Annual Financial Statements. As soon as available, and in any event within 120 days after the end of each Fiscal Year (including any Fiscal Year ending prior to the Closing Date for which financial statements were not previously delivered, commencing with the Fiscal Year ending on or about May 30, 2021), (i) the consolidated and consolidating balance sheets of Holdings and its Subsidiaries as at the end of such Fiscal Year and the related consolidated (and, with respect to statements of income, consolidating) statements of income, stockholders' equity and cash flows of Holdings and its Subsidiaries for such Fiscal Year, setting forth, in each case, in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Financial Plan for the Fiscal Year covered by such financial statements, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such consolidated and consolidating financial statements, a report thereon of Ernst & Young LLP or other independent certified public accountants of recognized national standing selected by Holdings, and reasonably satisfactory to Administrative Agent (which report and accompanying financial statements shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards);

(d) Compliance Certificate. Together with each delivery of financial statements of Holdings and its Subsidiaries pursuant to Sections 5.1(b) and Section 5.1(c), a duly executed and completed Compliance Certificate, which shall include a reporting of the status of the matters relating to compliance with the ongoing litigation and/or the Anti-Bribery and Anti-Corruption Laws disclosed in due diligence pursuant to Section 3.1(t) and/or otherwise disclosed pursuant to Sections 4.11, 4.24 or 4.26, as the case may be, in each case to the fullest extent possible; provided, however, no Credit Party shall be required to waive the attorney-client privilege or work product protections (in each case, to the extent not created in contemplation of such Credit Party's obligations hereunder); provided, that no supplemental information provided through such reporting shall amend, supplement or otherwise modify any disclosure schedule or representation hereunder, or be deemed a waiver of any Default or Event of Default resulting from the matters disclosed therein, except as consented to by Administrative Agent and Requisite Lenders in writing;

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements, the consolidated financial statements of Holdings and its Subsidiaries delivered pursuant to Section 5.1(b) or 5.1(c) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such Sections had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to Administrative Agent;

(f) Notice of Default; Material Adverse Effect. Promptly and in any event within three days after any officer of any Credit Party obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Holdings or any of its Subsidiaries with respect thereto; (ii) any notices of default under the ABL Credit Documents or any notice of any Enforcement Action (as defined in the Intercreditor Agreement); (iii) that any Person has given any notice to Holdings or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in Section 8.1(b); or (iv) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of an Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Default, Event of Default, default, event or condition, and what action the Credit Parties have taken, are taking and propose to take with respect thereto;

(g) Notice of Adverse Proceedings; Food Safety Matters.

(i) Promptly and in any event within five days after any officer of any Credit Party obtaining knowledge of (A) the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by Credit Party Representative to Administrative Agent and the Lenders, or (B) any development in any Adverse Proceeding that in the case of either clause (A) or (B) if adversely determined, could be reasonably expected to (I) result in a Material Adverse Effect or liability of Holdings, any of its Subsidiaries or any of their respective Affiliates in excess of $250,000, individually or $500,000 in the aggregate for all such Adverse Proceedings or (II) result in any criminal, civil, administrative, or injunctive penalties or relief imposed against any of Holdings, its Subsidiaries and their respective Affiliates or any of their respective Directors, officers or employees, or (III) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to any Credit Party to enable Lenders and their counsel to evaluate such matters;

(ii) promptly and in any event within five days after any officer of any Credit Party obtaining knowledge of (A) any written notice (together with copies of any documentation reasonably requested by Administrative Agent relating thereto) received by any Credit Party or any Subsidiary of any administrative or regulatory action, proceeding, investigation, or inspection by or on behalf of the U.S. Food and Drug Administration, the U.S. Centers for Disease Control and Prevention, any federal, state or local health agency or department, or any comparable Governmental Authority, including warning letters, FDA Form-483s, untitled letters, notices of violation, consent decrees, or requests for information (provided, notice to Administrative Agent and each Lender shall only be required pursuant to this clause (ii) with respect to written notices received from any state or local health agency or department with respect to matters that are reasonably expected, individually or in the aggregate, to result in liabilities in excess of $1,000,000 or which seeks to enjoin or otherwise suspend the operation of any facility for a period in excess of two Business Days), and (B) any recalls or market withdrawals issued by any Credit Party or any Subsidiary, in each case, to the extent the same could reasonably be expected to result in losses, claims, damages, liabilities, penalties, fines and related expenses in excess of $1,000,000; and

(iii) promptly and in any event within five days after any officer of any Credit Party obtaining knowledge of (A) any written notice (together with copies of any documentation reasonably requested by Administrative Agent relating thereto) received by any Credit Party or any Subsidiary from any Governmental Authority alleging any of any potential or actual violations of any FDA Law or Regulation or Health Care Law, (B) any inspections, audits, inquiries, investigations, enforcement actions or proceedings under FDA Law or Regulation or Health Care Laws of any Credit Party or, to the knowledge of any Credit Party, any of its material customers related to Health Care Laws involving such Credit Party or its products, (C) notice of the exclusion or debarment from any governmental healthcare program or debarment or disqualification by FDA of any Credit Party or any employee or material customer, (D) any notice that a product manufactured by any Credit Party has been seized, withdrawn, recalled or subject to a suspension of manufacturing by a Governmental Authority, or (E) the receipt of notice, or occurrence of any decision, to conduct a voluntary or mandatory recall, withdrawal, removal, suspension of manufacturing or marketing, or discontinuation of any product manufactured by any Credit Party.

(h) ERISA and Employment Matters. (i) Promptly and in any event within five days after becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking, or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; (ii) promptly and in any event within five days after the same is available to any Credit Party, copies of (A) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan; (B) all notices received by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (C) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent shall reasonably request, and (iii) promptly and in any event within one day after Holdings or any of its Subsidiaries sends notice of a plant closing or mass layoff (as defined in the WARN Act) to employees, copies of each such notice sent by such Person.

(i) Financial Plan. As soon as practicable and in any event no later than 30 days after the beginning of each Fiscal Year, a consolidated plan and financial forecast and updated model for such Fiscal Year and each Fiscal Year (or portion thereof) thereafter through

the final maturity date of the Loans (a "**Financial Plan**"), including (i) a forecasted consolidated and consolidating balance sheet and forecasted consolidated and consolidating statements of income and cash flows of Holdings and its Subsidiaries for each such Fiscal Year, together with pro forma Compliance Certificates for each such Fiscal Year and an explanation of the assumptions on which such forecasts are based, (ii) forecasted consolidated and consolidating statements of income and cash flows of Holdings and its Subsidiaries for each month of each such Fiscal Year, (iii) forecasts demonstrating projected compliance with the requirements of Section 6.8 through the final maturity date of the Loans, and (iv) forecasts demonstrating adequate liquidity through the final maturity date of the Loans, in each case, together with an explanation of the assumptions on which such forecasts are based, all in form and substance reasonably satisfactory to the Agents; provided, however, each Financial Plan shall include a standalone report for Curation and Lifecore in addition to the Financial Plans provided in accordance with this Section 5.1(i);

(j) Insurance Report. As soon as practicable and in any event within 30 days of the last day of each Fiscal Year, one or more certificates from the Credit Parties' insurance broker(s) together with accompanying endorsements, in each case, in form and substance satisfactory to Administrative Agent, and a report outlining all material insurance coverage maintained as of the date of such report by Holdings and its Subsidiaries and all material insurance coverage planned to be maintained by Holdings and its Subsidiaries in the immediately succeeding Fiscal Year;

(k) [Intentionally Reserved];

(l) Notice Regarding Material Contracts or Material Indebtedness. Promptly, and in any event within two Business Days after (i) (A) any Material Contract of Holdings or any of its Subsidiaries is terminated or amended in a manner that is materially adverse to Holdings or such Subsidiary, as the case may be, or (a) any New Material Contract is entered into, or (ii) after any officer of any Credit Party or any of its Subsidiaries obtaining knowledge (A) of any condition or event that constitutes a default or an event of default under any Material Contract, the ABL Credit Documents or Material Indebtedness, (B) that any event, circumstance or condition exists or has occurred that gives any counterparty to such Material Contract a termination or assignment right thereunder, or (C) that notice has been given to any Credit Party or any of its Subsidiaries asserting that any such condition or event has occurred, a certificate of an Authorized Officer of the applicable Credit Party specifying the nature and period of existence of such condition or event and, in the case of clause (i) above, including copies of such material amendments or new contracts, delivered to Administrative Agent (to the extent such delivery is permitted by the terms of any such Material Contract; provided, no such prohibition on delivery shall be effective if it were bargained for by Holdings or its applicable Subsidiary with the intent of avoiding compliance with this Section 5.1(l)) and, in the case of clause (ii) above, as applicable, explaining the nature of such claimed default or event of default, and including an explanation of any actions being taken or proposed to be taken by such Credit Party or such Subsidiary with respect thereto;

(m) Environmental Reports and Audits. As soon as practicable and in any event within 10 days following receipt thereof, copies of all environmental audits, reports and notices with respect to environmental matters at any Facility or that relate to any environmental liabilities of Holdings or its Subsidiaries that, in any such case, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect or in liabilities that exceed $1,000,000 individually or $5,000,000 in the aggregate for all such liabilities, in each case, during the term of this Agreement;

(n) Information Regarding Collateral. Prior written notice of any change (i) in any Credit Party's corporate name, (ii) in any Credit Party's identity or corporate structure, (iii) in any Credit Party's jurisdiction of organization or formation, or (iv) in any Credit Party's Federal Taxpayer Identification Number or state organizational identification number. Each Credit Party agrees not to effect or permit any change referred to in the immediately preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for Collateral Agent to continue at all times following such change to have a valid, legal and perfected Lien in all the Collateral as contemplated in the Collateral Documents. Each Credit Party also agrees promptly to notify Collateral Agent if any material portion of the Collateral is lost, stolen, damaged or destroyed;

(o) Annual Collateral Verification. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.1(c), a certificate of an Authorized Officer (i) either (A) confirming that there has been no change in the information set forth in the Collateral Questionnaire delivered on the Closing Date or since the date of the most recent certificate delivered pursuant to this Section 5.1(o) or (B) identifying such changes and (ii) certifying that all UCC financing statements (including fixture filings, as applicable), all supplemental Intellectual Property Security Agreements, and any and all other appropriate filings, recordings and registrations, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (i) above (or in such Collateral Questionnaire) to the extent necessary to effect, protect and perfect the Liens under the Collateral Documents for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period);

(p) Aging Reports. Upon request of Administrative Agent or any Lender, together with each delivery of financial statements pursuant to Section 5.1(a), 5.1(b) and 5.1(c), (i) a summary of the accounts receivable aging report of Holdings and its Subsidiaries as of the end of such period, and (ii) a summary of the accounts payable aging report of Holdings and its Subsidiaries as of the end of such period;

(q) KYC Documentation. As soon as practicable and in any event within 10 days following Administrative Agent's or any Lender's request therefor after the Closing Date, all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act;

(r) ABL Reports and Notices. (i) Upon request of Administrative Agent or any Lender, any financial reporting (including ABL Borrowing Base certificates and statements of accounts), notice, financial information, data or other information given to the ABL Agent pursuant to the ABL Credit Documents (unless already provided to the Administrative Agent under the Credit Documents), and (ii)

substantially concurrent with any Permitted Curation Sale, receipt by Administrative Agent of evidence in form and substance reasonably satisfactory to Administrative Agent as to the amount of ABL Indebtedness repaid in connection therewith;

(s) Other Information. Promptly after any request, such other information and data with respect to Holdings or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent or any Lender;

(t) Valuation Reports. As soon as available, and in any event within 45 days after the end of each Fiscal Quarter of each Fiscal Year (including, to the extent received, the fourth Fiscal Quarter, commencing with the Fiscal Quarter ended February 28, 2021), copies, to the extent received, of the most recently delivered Duff & Phelps or other third-party reports, reasonably acceptable to Administrative Agent, relating to the fair market value of the Windset Investment;

(u) IQVIA Report. On or before February 28, 2023, the final IQVIA report;

(v) Retention of Professional Advisor. Until the Approved Professional Advisor Toggle Date, the Credit Parties shall continue to retain an Approved Professional Advisor as an ongoing consultant to: (A) analyze potential corporate cost savings and assist with optimization of FP&A functions, (B) assist with liquidity management, financial reporting and forecasting, and (C) assist with such other matters as may be reasonably required by the Requisite Lenders with respect to the foregoing items set forth in this subclause (v); and

(w) Elevated Reporting; Lender Meetings. Until the Elevated Reporting Toggle Date:

(i) The Borrowers shall provide to the Administrative Agent and the Lenders, not later than 11:00 a.m. (New York City time) on (i) the first Thursday after the Fourth Amendment Effective Date and (ii) subsequent thereto, the second and fourth Thursday of each month occurring after the Fourth Amendment Effective Date, a 13-week budget and cash flow forecast, which report shall include, among other things, forecasts of revenues/receipts, expenses by category, income and cash position, and financing activities and loan balances, availability, corporate overheads and breakdowns of the foregoing by line of business and otherwise be in form and substance reasonably satisfactory to the Administrative Agent and the Lenders (each a "**Cash Flow Report**" and, the Cash Flow Report delivered on or about the Fourth Amendment Effective Date, the "**Initial Cash Flow Report**") for the Holdings and its Subsidiaries covering the 13-week period that commences with the calendar week ending on the Friday occurring the day after the date on which each Cash Flow Report is delivered and includes the subsequent twelve (12) calendar weeks, in form substantially similar to the Initial Cash Flow Report.

(ii) Upon the request of Administrative Agent or the Requisite Lenders, the Credit Parties shall promptly host a conference call at such time as may be mutually agreed as between the Credit Party Representative and the Administrative Agent (in consultation with the Requisite Lenders), to discuss, without limitation, financial statements and other reports delivered pursuant to this Section 5.1, including Cash Flow Reports and Variance Reports, with relevant members of the Credit Parties' management, the Credit Parties' Approved Advisor, the Administrative Agent and the Lenders; provided that such meetings shall occur not more than once in any given month unless an Event of Default shall have occurred and be continuing.

To the extent practical, together with any delivery of financial information required under this Section 5.1, the Credit Parties shall deliver to Administrative Agent an Excel spreadsheet containing such financial information.

5.2. Existence. Except as otherwise permitted under Section 6.9, each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business; provided, no Credit Party or any of its Subsidiaries shall be required to preserve any such right or franchise, license or permit if such Person's Board of Directors shall determine 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.

5.3. Payment of Taxes and Claims. Each Credit Party will, and will cause each of its Subsidiaries to, pay all federal and state income and other material Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim that has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income Tax return with any Person (other than Holdings or any of its Subsidiaries).

5.4. Maintenance of Properties. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Holdings and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

5.5. Insurance. Holdings will maintain or cause to be maintained, with financially sound and reputable insurers, (i) business interruption insurance and directors and officers insurance reasonably satisfactory to Administrative Agent, and (ii) such casualty insurance, public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Holdings 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. Without limiting the generality of the foregoing, Holdings will maintain or cause to be maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Program, in each case in compliance with any applicable regulations of the Board of Governors, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) in the case of each liability insurance policy, name Collateral Agent, for the benefit of Secured Parties, as an additional insured thereunder as its interests may appear, (ii) in the case of each casualty insurance policy, contain a lender loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names Collateral Agent, for the benefit of Secured Parties as the lender loss payee thereunder, and (iii) in each case, provide for at least thirty days' prior written notice to Collateral Agent of any modification or cancellation of such policy.

5.6. Books and Records; Inspections. Each Credit Party will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to its business and activities. Each Credit Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by any Agent or any Lender to visit and inspect any of the properties of any Credit Party and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested.

5.7. Lenders Meetings. Each Credit Party will, upon the request of Administrative Agent or the Requisite Lenders, participate in a meeting of Administrative Agent and the Lenders once during each Fiscal Year to be held at Credit Party Representative's corporate offices (or at such other location as may be agreed to by Credit Party Representative and Administrative Agent or, if agreed to by Administrative Agent in its sole discretion, via a conference call or other teleconference) at such time as may be agreed to by Credit Party Representative and Administrative Agent.

5.8. Compliance with Laws. Each Credit Party will comply, and shall cause each of its Subsidiaries and shall use commercially reasonable efforts to cause all other Persons, if any, on or occupying any Facilities to comply, (i) in all material respects, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws or Privacy Laws or Regulation) (it being understood, in the case of any laws, rules, regulations and orders that are specifically referred to in any other provision of this Agreement, the Credit Parties shall also be required to represent and/or comply with, as applicable, the express terms of such provision), (ii) in all material respects, with the requirements of all Food Laws, Health Care and FDA Laws or Regulation, (iii) in all respects with any obligations or requirements imposed by any Governmental Authority arising from or concerning the investigations disclosed in due diligence pursuant to Section 3.1(t) that relate to the Tanok facility (including, but not limited to, compliance with any orders, judgments, settlement agreements, or other negotiated resolutions, as well as payment of any fines, taxes, penalties, disgorgement, fees, or other costs) (individually a "Tanok Obligation" and collectively the "**Tanok Obligations**"), in each case, on or before the respective date specified for satisfaction of each such Tanok Obligation and (iv) with all Sanctions, Anti-Bribery and Anti-Corruption Laws, and Anti-Terrorism and Anti-Money Laundering Laws in accordance with Section 4.26. For the avoidance of doubt, nothing in this Section 5.8 is intended to restrict or impair any rights of subrogation, reimbursement, indemnification or contribution that any Credit Party may have against any other Person with respect to satisfaction of the Tanok Obligations.

5.9. Environmental.

(a) **Environmental Disclosure**. Holdings will deliver to Administrative Agent and the Lenders:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Holdings or any of its Subsidiaries or by independent consultants, Governmental Authorities or any other Persons, with respect to significant environmental matters at any Facility or with respect to any Environmental Claims that, in any such case, individually or in the aggregate, could reasonably be expected to result in liabilities that exceed $25,000 individually or $100,000 in the aggregate for all such liabilities;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported to any Governmental Authority under any applicable Environmental Laws, (B) any remedial action taken by Holdings, any of its Subsidiaries or any other Person in response to (I) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect or resulting in liabilities that exceed $1,000,000 individually or $5,000,000 in the aggregate for all such liabilities, or (II) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect or in liabilities that exceed $1,000,000 individually or $5,000,000 in the aggregate for all such liabilities, and (C) any Credit Party's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by Holdings or any of its Subsidiaries, a copy of any and all written communications with respect to (A) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect or to liabilities that exceed $1,000,000 individually or $5,000,000 in the aggregate for all such liabilities, (B) any material Release required to be reported to any Governmental Authority, and (C) any request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether Holdings or any of its Subsidiaries may be potentially responsible for any material Hazardous Materials Activity;

(iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of stock, assets, or property by Holdings or any of its Subsidiaries that could reasonably be expected to (I) expose Holdings or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or result in liabilities that exceed $1,000,000 individually or $5,000,000 in the aggregate for all such liabilities or (II) adversely affect the ability of Holdings or any of its Subsidiaries to maintain in full force and effect all material Governmental Authorizations required under any Environmental Laws for their respective operations and (B) any proposed action to be taken by Holdings or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject Holdings or any of its Subsidiaries to any additional material obligations or requirements under any Environmental Laws; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Administrative Agent in relation to any matters disclosed pursuant to this Section 5.9(a).

(b) Hazardous Materials Activities. Each Credit Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Credit Party or its Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or result in liabilities that exceed $1,000,000 individually or $5,000,000 in the aggregate for all such liabilities, and (ii) make an appropriate response to any Environmental Claim against such Credit Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or result in liabilities that exceed $1,000,000 individually or $5,000,000 in the aggregate for all such liabilities.

5.10. Additional Credit Parties.

(a) In the event that any Person becomes a Subsidiary of any Credit Party, such Credit Party shall, concurrently with such Person becoming a Subsidiary of such Person becoming a Subsidiary of such Credit Party, (i) cause such Subsidiary to become a "Company" or a "Guarantor" hereunder, in each case, in Administrative Agent's sole discretion, and a "Grantor" under the Pledge and Security Agreement by delivering to the Agents a duly executed Counterpart Agreement, and (ii) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements and certificates as are reasonably requested by Collateral Agent in connection therewith, including such documents, instruments, agreements and certificates as are similar to those described in Sections 3.1(b) (*Organizational Documents; Incumbency*), 3.1(j) (*Personal Property Collateral*), 3.1(k) (*Environmental Reports*), 3.1(m) (*Evidence of Insurance*), 3.1(n) (*Opinions of Counsel to Credit Parties*), and 3.1(bb) (*Service of Process*). In addition, such Credit Party shall deliver, or cause such Subsidiary to deliver, as applicable, all such documents, instruments, agreements and certificates as are reasonably requested by Collateral Agent in order to grant and to perfect a First Priority Lien in favor of Collateral Agent, for the benefit of the Secured Parties, in 100% of the Capital Stock of such Subsidiary under the Pledge and Security Agreement (including, as applicable, original certificates evidencing such Capital Stock and related powers or instruments of transfer executed in blank, as applicable). With respect to each such Subsidiary, Credit Party Representative shall send to Administrative Agent prior written notice setting forth with respect to such Person (i) the date on which such Person is intended to become a Subsidiary of Holdings, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Subsidiaries of Holdings; provided, such written notice shall be deemed to supplement Schedule 4.1 and 4.2 for all purposes hereof automatically upon such Person becoming a Subsidiary. In the event that any Credit Party fails to perform its Obligations set forth in this Section 5.10, the Consolidated Adjusted EBITDA attributable to such Subsidiary shall be excluded from the calculation thereof until such time as the requirements of this Section 5.10 have been met; provided, notwithstanding the foregoing, this covenant shall not be construed as a consent by Administrative Agent or any Lender to the failure of any Credit Party to perform its obligations set forth in this Section 5.10.

(b) No later than the date that is sixty (60) days after the Closing Date (or such later date as Administrative Agent shall agree in its sole discretion) (the "**Mexican Subsidiary Joinder Date**"), Holdings shall cause each of the Mexican Subsidiaries to become a "Guarantor" hereunder by delivering to the Agents a duly executed Counterpart Agreement and a "grantor" (or similar term) under a floating lien pledge (*prenda sin transmisión de posesión*) (the "**Mexican Subsidiary Security Agreement**") in order to provide a First Priority Lien in favor of Collateral Agent, for the benefit of the Secured Parties, on the assets of such Mexican Subsidiaries (other than customary excluded assets to be agreed), and (ii) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements and certificates as are reasonably requested by Collateral Agent in connection therewith, including such documents, instruments, agreements and certificates as are similar to those described in Sections 3.1(b) (*Organizational Documents; Incumbency*), 3.1(j) (*Personal Property Collateral*), 3.1(k) (*Environmental Reports*), 3.1(m) (*Evidence of Insurance*), 3.1(n) (*Opinions of Counsel to Credit Parties*), and 3.1(b) (*Service of Process*).

5.11. Material Real Estate Assets; Additional Locations.

(a) Fee-Owned Real Estate Assets. In the event that any Credit Party acquires a fee-owned Material Real Estate Asset or a fee-owned Real Estate Asset owned on the Closing Date becomes a fee-owned Material Real Estate Asset, then such Credit Party shall promptly notify Collateral Agent thereof and, within 45 days of the date as acquiring such fee-owned Material Real Estate Asset or within 45 days after any Real Estate Asset owned on the Closing Date becomes a fee-owned Material Real Estate Asset (or at such later time as is approved by Collateral Agent in its sole discretion), shall take all such actions and execute and deliver, or cause to be executed and delivered, all Mortgaged Real Estate Documents that Collateral Agent shall reasonably request to create in favor of Collateral Agent, for the benefit of the Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority Lien in such fee-owned Material Real Estate Asset.

(b) Leasehold Real Estate Assets. In the event that any Credit Party leases or acquires a Leasehold Property constituting such Credit Party's chief executive office after the Closing Date or a Leasehold Property becomes such Credit Party's chief executive office after the Closing Date, then such Credit Party shall promptly notify Collateral Agent thereof and, contemporaneously with leasing such chief executive office or within 30 days after any Leasehold Property existing on the Closing Date becomes such Credit Party's chief executive office (or at such later time as is approved by Collateral Agent in its sole discretion), shall take all such actions and execute and deliver, or cause to be

executed and delivered, all such Leasehold Property documents with respect to each such Leasehold Property that Collateral Agent shall reasonably request.

(c) Appraisals. In addition to the foregoing, Credit Party Representative shall, at the request of Collateral Agent, deliver, from time to time, to Collateral Agent such appraisals as are required by law or regulation of Real Estate Assets with respect to which Collateral Agent has been granted a Mortgage. After the Fourth Amendment Effective Date, Administrative Agent may engage appraisers satisfactory to Administrative Agent in its sole discretion to conduct an appraisal of the real property, equipment and other fixed assets of the Credit Parties with the Credit Parties's cooperation and assistance, all upon reasonable notice and at such reasonable times during normal business hours (so long as no Default or Event of Default has occurred and is continuing), and in connection therewith the Credit Parties hereby agree to pay the (y) reasonable out-of-pocket costs and expenses of such appraisers incurred in connection with such appraisals, and (z) the reasonable costs of all such appraisals conducted by a third party on behalf of the Administrative Agent and Lenders, so long as such costs and expenses incurred when no Event of Default has occurred and is continuing, in the aggregate, do not exceed $125,000.

(d) Other New Locations. In the event that any Credit Party leases or acquires a new Leasehold Property or enters into an arrangement with a third party for physical or electronic storage of any material books and records or other information related to its business or operations, such Credit Party shall immediately commence using its commercially reasonably efforts to obtain a Collateral Access Agreement or a similar instrument executed by the relevant lessor or other counterparty in favor of Collateral Agent, for the benefit of the Secured Parties, with respect to such location simultaneously with entering into such lease or other arrangement.

5.12. Compliance with Contractual Obligations. Each Credit Party will comply, and will cause each of its Subsidiaries to comply, in all material respects with the obligations, requirements, covenants and conditions contained in all of its material Contractual Obligations, including the Material Contracts.

5.13. Further Assurances. At any time or from time to time upon the request of Administrative Agent or Collateral Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent or Collateral Agent may reasonably request in order to effect fully the purposes of the Credit Documents or to perfect or maintain the same or better priority of Collateral Agent's Lien in the Collateral (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by Holdings or any of its Subsidiaries that may be deemed to be part of the Collateral). In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as Administrative Agent or Collateral Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by a First Priority Lien on substantially all of the assets of Holdings and its Subsidiaries and all of the outstanding Capital Stock of each Subsidiary of Holdings.

5.14. Miscellaneous Business Covenants. Unless otherwise consented to by the Agents and the Requisite Lenders:

(a) Separateness. Holdings will and will cause each of its Subsidiaries to: (i) maintain entity records and books of account separate from those of any other entity that is an Affiliate of such entity; (ii) not commingle its funds or assets with those of any other entity that is an Affiliate of such entity; and (iii) provide that its Board of Directors will hold all appropriate meetings to authorize and approve such entity's actions, which meetings will be separate from those of other entities.

(b) Cash Management Systems. Holdings and its Subsidiaries shall establish and maintain cash management systems reasonably acceptable to Collateral Agent, including Controlled Accounts in accordance with the timeline established pursuant to Section 5.15 below.

(c) [Intentionally Reserved].

(d) Activities of Management. Each member of the senior management team of each Credit Party shall devote all or substantially all of his or her professional working time, attention and energies to the management of the businesses of the Credit Parties.

(e) Compliance with Material Contracts. Each Credit Party will comply, and will cause each of its Subsidiaries to comply, in all material respects with the obligations, requirements, covenants and conditions contained in all of its Material Contracts.

5.15. Post-Closing Matters. Each Credit Party shall, and shall cause each of its Subsidiaries to, as applicable, satisfy the requirements set forth on Schedule 5.15 on or before the respective date specified for each such requirement or such later date as is agreed to by Administrative Agent in its sole discretion.

5.16. PACA and PASA Compliance. Each Credit Party shall take all actions required (including delivery of any required notices and maintaining sales on statutorily required terms) to establish, obtain and preserve the rights and benefits (including under any trust or similar arrangement under PACA or PASA) available to it under PACA and PASA.

5.17. Credit Enhancements. If the ABL Agent or any holder of the ABL Indebtedness receives any additional guaranty, letter of credit, collateral or any other credit enhancement after the Closing Date from any Credit Party or any of its Subsidiaries, each Credit Party shall, and shall cause each of its Subsidiaries to, cause the same to be granted to Collateral Agent, for the benefit of the Secured Parties, subject to the terms of the Intercreditor Agreement. If any Person is included (or added) as a guarantor or borrower under the ABL Credit Documents or any assets are included (or added) as collateral under the ABL Credit Documents, each Credit Party shall, and shall cause each of its Subsidiaries to, cause such Person or assets, as applicable, to be included (or added) substantially concurrently with such inclusion (or addition) under the ABL Credit Documents) as a Credit Party or Collateral, as applicable, under the Credit Documents in accordance with this Agreement.

5.18. Health Care & FDA Related Covenants. Each Credit Party shall:

(a) comply with all applicable Health Care Laws and FDA Law or Regulation relating to the operation of such Person's business, except where non-compliance would not reasonably be expected to have a Material Adverse Effect;

(b) maintain, and cause each of its Subsidiaries to maintain, all records required to be maintained by any Governmental Authority or otherwise under any Health Care Laws and FDA Law or Regulation, except where the failure to maintain such records would not reasonably be expected to have a Material Adverse Effect; and

(c) keep in full force and effect, and cause each of its Subsidiaries to keep in full force and effect, all Governmental Authorizations required to operate such Person's business under applicable Health Care Laws and FDA Law or Regulation, which, if not maintained, would reasonably be expected to have a Material Adverse Effect.

SECTION 6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees with each Agent and each Lender that until Payment in Full of all Obligations, each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

6.1. Indebtedness. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(a) the Obligations;

(b) (i) Indebtedness of any Credit Party owing to any other Credit Party (except for, in each case, any Mexican Subsidiary), (ii) Indebtedness of any Credit Party owing to any Mexican Subsidiary and (iii) Indebtedness of any Mexican Subsidiary owing to any Credit Party or any other Mexican Subsidiary; provided, (A) all such Indebtedness shall (x) be unsecured, (y) be evidenced by the Intercompany Note and Subordination (other than in the case of clause (iii) above, prior to the Mexican Subsidiary Joinder Date) and (z) be subject to a First Priority Lien pursuant to the Pledge and Security Agreement (other than in the case of clause (iii) above, prior to the Mexican Subsidiary Joinder Date), (B) all such Indebtedness shall be subordinated in right of payment to the Payment in Full of all Obligations pursuant to the terms of the Intercompany Note and Subordination (other than in the case of clause (iii) above, prior to the Mexican Subsidiary Joinder Date), (C) any payment by any Guarantor under any guaranty of the Obligations shall result in a pro tanto reduction of the amount of any Indebtedness owed by such Guarantor to any Company or to any other Guarantor for whose benefit such payment is made and (D) in the case of clause (iii), the aggregate principal amount of such Indebtedness of a Mexican Subsidiary owing to any Credit Party shall not exceed $15,000,000 at any time outstanding;

(c) Indebtedness incurred or arising in the ordinary course of business (and not in connection with the borrowing of money) in respect of (i) obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms; (ii) performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees and similar instruments or obligations; and (iii) obligations to pay insurance premiums;

(d) Earn-Out Obligations, so long as subject to an Earn-Out Subordination Agreement;

(e) Indebtedness that may be deemed to exist pursuant to any performance, surety, appeal or similar bonds or statutory obligations incurred in the ordinary course of business, and guarantee obligations in respect of any such Indebtedness;

(f) Indebtedness in respect of netting services, overdraft protections and other services provided in connection with Deposit Accounts in the ordinary course of business;

(g) guaranties of any Credit Party with respect to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.1 of any other Credit Party or any of their Subsidiaries; provided, if the Indebtedness that is being guaranteed is unsecured and/or subordinate to the Obligations (in payment or Lien priority), then such guaranties shall also be unsecured and/or subordinated to the Obligations to the same extent as such guaranteed Indebtedness;

(h) Indebtedness existing on the Closing Date and described in Schedule 6.1, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement, and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof are not less favorable to the obligor thereon or to the Lenders than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under the immediately preceding clause (i) or (ii) above shall not (A) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being renewed, extended or refinanced, (B) exceed in a principal amount the Indebtedness being renewed, extended or refinanced, or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(i) Indebtedness in an aggregate amount not to exceed at any time $10,000,000 consisting of (i) Capital Lease Obligations and (ii) other purchase money Indebtedness; provided, in the case of (A) clause (i), any such Indebtedness shall be secured only by the asset subject to such Capital Lease and be on then market terms, and, (B) clause (ii), any such Indebtedness shall (I) be secured only by the asset

acquired in connection with the incurrence of such Indebtedness and (II) constitute not less than 90% of the aggregate consideration paid with respect to such asset;

(j) obligations under Hedge Agreements that are not for speculative purposes and are approved by Administrative Agent;

(k) to the extent subject to the Intercreditor Agreement and not exceeding the amount permitted under the Intercreditor Agreement, the ABL Indebtedness and any refinancing thereof permitted in accordance with the Intercreditor Agreement (including, without limitation, the provisions of Section 5.3(a)(vii) thereof in respect of prohibitions against changes to the borrowing base and related matters));

(l) Indebtedness incurred to finance or as part of the consideration for any Permitted Acquisition; provided, that, (i) no Event of Default exists at the time of or would be caused by the incurrence of such Indebtedness and (ii) such Indebtedness (u) does not exceed, in the aggregate for all Credit Parties and their Subsidiaries, for all Permitted Acquisitions on or after the Closing Date, $5,000,000, (v) is not secured by any Collateral, (w) bears interest (and provides for fees) at a rate (or amount) no greater than the then current arm's length market rate (or amount) for similar Indebtedness, (x) does not require the payment in cash of principal (other than in respect of working capital adjustments) prior to the Maturity Date, (y) has a maturity at least 91 days after the Maturity Date, and (z) such Indebtedness shall be contractually subordinated to the Obligations on terms satisfactory to Administrative Agent in its sole discretion pursuant to a Subordination Agreement;

(m) Indebtedness incurred in connection with financing insurance premiums in the ordinary course of business and the incurrence of obligations in respect of self-insurance in the ordinary course of business or consistent with industry practice;

(n) Assumed Indebtedness in an aggregate principal amount of all such Indebtedness of all Credit Parties and their Subsidiaries at any one time outstanding not to exceed $2,500,000;

(o) other unsecured Indebtedness (other than Indebtedness of the types listed in Section 6.1(a) through 6.1(n)) that does not exceed an aggregate amount, for all Credit Parties and their Subsidiaries, $1,000,000 outstanding at any time; and

(p) unsecured Indebtedness in an aggregate principal amount not to exceed $4,000,000 (plus paid in kind interest to the extent added to such aggregate principal amount); provided that such Indebtedness (i) shall be subordinated in right of payment to the Payment in Full of all Obligations pursuant to the terms of a subordination agreement satisfactory to the Requisite Lenders in their sole discretion, (ii) shall not be permitted be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom, (iii) shall only provide for interest, if any, that is paid in kind and not paid in cash, (iv) shall mature not less than 90 days after the Latest Maturity Date, and (v) shall have terms otherwise reasonably satisfactory to the Requisite Lenders in their sole discretion.

Notwithstanding anything in this Section 6.1 to the contrary, in no event shall any Credit Party at any time issue any Disqualified Capital Stock or permit any Disqualified Capital Stock to remain outstanding.

6.2. Liens. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or, with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Holdings or any of its Subsidiaries, whether now owned or hereafter acquired, leased (as lessee) or licensed (as licensee), or any income, profits, or royalties therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income, profits, or royalties under the UCC of any state or under any similar recording or notice statute or under any applicable intellectual property laws, rules or procedures, except:

(a) Liens in favor of Collateral Agent, for the benefit of the Secured Parties, granted pursuant to any Credit Document or any Secured Hedge Agreement;

(b) Liens for taxes, assessments or other governmental charges, not yet due or which are being properly contested, and which in all cases are junior to the Lien of the Collateral Agent;

(c) statutory Liens of landlords, banks (and rights of set-off), carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or ERISA or a violation of Section 436 of the Internal Revenue Code), in each case, incurred in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of five days) are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and for which adequate reserves have been made in accordance with GAAP;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety 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 or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments and other minor defects or irregularities in title, in each case, that do not and will not interfere in any material respect with the ordinary conduct of the business of Holdings or any of its Subsidiaries and that, in the aggregate for any parcel of real property subject thereto, do not materially detract from the value of such parcel;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any customary Cash earnest money deposits made by Holdings or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) non-exclusive outbound licenses of patents, copyrights, trademarks and other intellectual property rights granted by any Company or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of or materially detracting from the value of the business of Holdings or any of its Subsidiaries;

(l) Liens existing on the Closing Date and described in Schedule 6.2 or on a title report delivered in accordance with clause (ii) of the definition of the term "**Mortgaged Real Estate Documents**";

(m) (i) First Priority Liens in favor of the ABL Lenders on the ABL Priority Collateral securing the ABL Indebtedness permitted by Section 6.1(k), and (ii) Junior Priority Liens in favor of the ABL Lenders on the Collateral (other than the ABL Priority Collateral) securing the ABL Indebtedness permitted by Section 6.1(k), in each case, so long as such Liens are subject to the terms and conditions of the Intercreditor Agreement;

(n) Liens securing Capital Lease Obligations and purchase money Indebtedness permitted pursuant to Section 6.1(i); provided, any such Lien shall encumber only the asset subject to such Capital Lease or the asset acquired with the proceeds of such Indebtedness, as applicable; and

(o) Liens existing on the date hereof as described on Schedule 6.2 (setting forth, as of the Closing Date, the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Credit Party or such Subsidiary thereof subject thereto).

Notwithstanding anything in this Section 6.2 to the contrary, in no event shall any obligations of any Credit Party under any Hedge Agreement be secured by any Lien, except for any Secured Hedge Agreement that is secured by the Liens permitted under Section 6.2(a).

6.3. Equitable Lien. If any Credit Party or any of its Subsidiaries shall create or assume any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than Permitted Liens, it shall make or cause to be made effective provisions whereby the Obligations will be secured by such Lien equally and ratably with any and all other Indebtedness secured thereby as long as any such Indebtedness shall be so secured; provided, notwithstanding the foregoing, this covenant shall not be construed as a consent by the Requisite Lenders to the creation or assumption of any such Lien not otherwise permitted hereby.

6.4. No Further Negative Pledges. Except with respect to (a) specific property encumbered to secure payment of particular permitted Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale and (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided, such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be), no Credit Party shall enter into or permit any of its Subsidiaries to enter into any agreement prohibiting or triggering any requirement for equitable and ratable sharing of Liens or any similar obligations upon, the creation or assumption of any Lien upon any Credit Party's properties or assets, whether now owned or hereafter acquired, to secure the Obligations other than the ABL Credit Documents.

6.5. Restricted Junior Payments. No Credit Party shall, nor shall it permit any of its Subsidiaries or Affiliates through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except that:

(a) Holdings may declare and make dividend payments or other distributions payable solely in the common Capital Stock of Holdings (but not any Disqualified Capital Stock);

(b) any Subsidiary of a Company may declare and pay dividends or make other distributions to such Company or any other Credit Party that is a Company or Wholly-Owned Guarantor (including any Permitted Tax Distributions);

(c) Holdings may issue stock options, equity grants or similar instruments in the Capital Stock of Holdings to the directors, officers and/or employees of Holdings or one of more of its Subsidiaries in anticipation of a spin-off of Lifecore so long as no such issuance thereof would result in an Event of Default; and

(d) Holdings may purchase, redeem or otherwise acquire shares of its common stock or other common Capital Stock to acquire any such Capital Stock in connection with customary employee or management agreements, plans or arrangements, (i) all in an aggregate amount for all such purchases or redemptions not to exceed $250,000 during the term of this Agreement; or (ii) in connection with (x) the forfeiture of such Capital Stock, or (y) the payment of exercise price and/or tax withholding obligations with respect to the vesting, settlement and/or exercise of such Capital Stock.

Notwithstanding anything in this Section 6.5 to the contrary, in no event shall Holdings, Lifecore or any of their direct or indirect Subsidiaries (other than Curation or any of its direct or indirect Subsidiaries) make any Restricted Junior Payment to Curation or any of its direct or indirect Subsidiaries on or after the Fourth Amendment Effective Date without the written consent of the Administrative Agent and the Requisite Lenders other than Permitted Curation Investments, in each case, to the extent constituting Restricted Junior Payments.

6.6. Restrictions on Subsidiary Distributions. No Credit Party shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Holdings to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Holdings or any other Subsidiary of Holdings, (b) repay or prepay any Indebtedness owed by such Subsidiary to Holdings or any other Subsidiary of Holdings, (c) make loans or advances to Holdings or any other Subsidiary of Holdings, or (d) transfer any of its property or assets to Holdings or any other Subsidiary of Holdings, in each case, other than restrictions (i) in the Credit Documents and the ABL Credit Documents, (ii) in agreements evidencing purchase money Indebtedness permitted by Section 6.1(i) that impose restrictions on the property so acquired, (iii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, (iv) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement, (v) that are restrictions and conditions imposed by any law and (vi) that are customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder.

6.7. Investments. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make any Acquisition or make or own any Investment (including if made as an Acquisition) in any Person, including any Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) (i) equity Investments owned as of the Closing Date in any Subsidiary and (ii) Investments made after the Closing Date in any Company or Guarantor (in the case of this clause (ii), other than any Mexican Subsidiary);

(c) Investments (i) in any Securities voluntarily accepted in satisfaction or partial satisfaction thereof from financially troubled account debtors, and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of Holdings and its Subsidiaries;

(d) intercompany loans to the extent permitted under Section 6.1(b);

(e) to the extent constituting Investments, Investments in any Company or any of its Subsidiaries for purposes of making Consolidated Capital Expenditures permitted by Section 6.8 in respect of fixed assets directly owned by any Credit Party;

(f) loans and advances to employees of Holdings and its Subsidiaries made in the ordinary course of business in an aggregate principal amount not to exceed $1,000,000 at any time outstanding;

(g) guaranties permitted by Section 6.1(g);

(h) the Windset Investment as in effect as of the Closing Date;

(i) Hedge Agreements permitted under Section 6.1(k) to the extent constituting Investments;

(j) loans, investments, advances or prepayments made to growers, and prepayments on purchase contracts with growers, in each case made or entered into in the ordinary course of business and not to exceed $15,000,000 in the aggregate for all such loans, investments, advances and prepayments at any one time outstanding;

(k) Permitted Acquisitions;

(l) [Intentionally Reserved];

(m) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss; and

(n) other Investments (other than Investments of the types listed in Section 6.7(a) through 6.7(m)) in an aggregate amount not to exceed $1,000,000 during the term of this Agreement, so long as at the time of the making of such Investment no Default or Event of Default has occurred and is continuing or would result therefrom.

Notwithstanding anything in this Section 6.7 to the contrary, in no event shall any Credit Party or any of its Subsidiaries make any Investment that results in or facilitates in any manner any Restricted Junior Payment not otherwise permitted under the terms of Section 6.5.

Notwithstanding anything in this Section 6.7 to the contrary, in no event shall Holdings, Lifecore or any of their direct or indirect Subsidiaries (other than Curation or any of its direct or indirect Subsidiaries) make any Investment in Curation or any of its direct or indirect Subsidiaries on or after the Fourth Amendment Effective Date without the written consent of the Administrative Agent and the Requisite Lenders other than Investments in Curation or any of its direct or indirect Subsidiaries in the ordinary course of business consistent with the past practices of Holdings and its Subsidiaries in an aggregate amount not to exceed $6,000,000 (collectively, "**Permitted Curation Investments**").

6.8. Financial Covenants.

(a) [Intentionally Reserved].

(b) Fixed Charge Coverage Ratio. Holdings shall not permit the Fixed Charge Coverage Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending on or about May 30, 2021, to be less than the correlative ratio indicated:

Fiscal Quarter Ending On or About	Fixed Charge Coverage Ratio
May 30, 2021	1.10:1.00
August 31, 2021	1.10:1.00
November 30, 2021	1.15:1.00
February 28, 2022	1.20:1.00
May 30, 2022	1.20:1.00
August 31, 2022	1.20:1.00
November 30, 2022	not tested
February 28, 2023	not tested
May 30, 2023	0.75:1.00
August 31, 2023	0.75:1.00
November 30, 2023	1.00:1.00
February 29, 2024	1.00:1.00
May 30, 2024	1.10:1.00
August 31, 2024	1.10:1.00
November 30, 2024 and each Fiscal Quarter ending thereafter	1.20:1.00

(c) Leverage Ratio. Holdings shall not permit the Leverage Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending on or about February 28, 2021, to exceed the correlative ratio indicated:

Fiscal Quarter Ending On or About	Leverage Ratio
February 28, 2021	7.00:1.00
May 30, 2021	7.00:1.00

Fiscal Quarter Ending On or About	Leverage Ratio
August 31, 2021	7.00:1.00
November 30, 2021	7.00:1.00
February 28, 2022	7.00:1.00
May 30, 2022	6.75:1.00
August 31, 2022	6.75:1.00
November 30, 2022	Not tested
February 28, 2023	Not tested
May 30, 2023	8.00:1.00
August 31, 2023	7.75:1.00
November 30, 2023	6.75:1.00
February 29, 2024	6.50:1.00
May 30, 2024	6.25:1.00
August 31, 2024	6.00:1.00
November 30, 2024	5.75:1.00
February 28, 2025	5.50:1.00
May 30, 2025 and each Fiscal Quarter ending thereafter	5.25:1.00

(d) Minimum Consolidated Gross Profit. Holdings shall not permit Consolidated Gross Profits as of the last day of any Fiscal Quarter, for the four-Fiscal Quarter period ending on such date, beginning with the Fiscal Quarter ending on or about February 28, 2021, to be less than the correlative ratio indicated:

Fiscal Quarter Ending On or About	Consolidated Gross Profit
February 28, 2021	$28,750,000
May 30, 2021	$29,125,000
August 31, 2021	$28,500,000
November 30, 2021	$30,250,000
February 28, 2022	$31,500,000
May 30, 2022	$32,500,000
August 31, 2022	$33,250,000
November 30, 2022	$34,000,000

Fiscal Quarter Ending On or About	Consolidated Gross Profit
February 28, 2023	$34,750,000
May 30, 2023	$35,500,000
August 31, 2023	$37,750,000
November 30, 2023 and each Fiscal Quarter ending thereafter	$40,000,000

(e) Maximum Consolidated Capital Expenditures. Holdings shall not, and shall not permit its Subsidiaries to, make or incur Consolidated Capital Expenditures (w) in the Fiscal Quarter ending on or about February 28, 2021, in an aggregate amount for Holdings and its Subsidiaries in excess of $8,700,000, (x) in the two (2) Fiscal Quarter period ending on or about May 30, 2021, in an aggregate amount for Holdings and its Subsidiaries in excess of $17,400,000, (y) in the three (3) Fiscal Quarter period ending on or about August 31, 2021, in an aggregate amount for Holdings and its Subsidiaries in excess of $30,200,000 and (z) in any four (4) Fiscal Quarter period ending on or about the date set forth below, in an aggregate amount for Holdings and its Subsidiaries in excess of the corresponding maximum amount set forth below opposite such Fiscal Quarter:

Fiscal Quarter Ending On or About	Consolidated Capital Expenditures
November 30, 2021	$43,000,000
February 28, 2022	$47,100,000
May 30, 2022	$51,200,000
August 31, 2022	$54,400,000
November 30, 2022	$57,600,000
February 28, 2023	$60,700,000
May 30, 2023	$63,900,000
Fiscal Quarter Ending On or About	Consolidated Capital Expenditures
August 31, 2023	$57,800,000
November 30, 2023	$51,600,000
February 29, 2024	$45,400,000
May 30, 2024	$39,300,000
August 31, 2024	$39,900,000
November 30, 2024	$40,600,000
February 28, 2025	$41,200,000
May 30, 2025	$41,800,000

Notwithstanding the foregoing, the requirements under this clause (e) shall not be subject to the maximum amounts hereof so long as the Unfinanced Capital Expenditure Ratio as of the most recent date of determination from clause (b) above is greater than or equal to 1.00 to 1.00.

(f) [Intentionally Reserved]:

(g) Minimum Consolidated Liquidity. Holdings shall not permit Consolidated Liquidity to be less than (i) from and after the Fourth Amendment Effective Date until May 30, 2023, $1,000,000 at any time (or, to the extent that as of any date ABL Availability is reduced as a result of the imposition of new or additional Reserves (as defined in the ABL Credit Agreement as in effect on the date hereof) by the ABL Agent and such new or additional Reserves result in Consolidated Liquidity being less than $1,000,000 as of such date, for the three (3) consecutive Business Days following the date of such reduction), and (ii) from and after June 1, 2023, $7,500,000 at any time (or, to the extent that as of any date ABL Availability is reduced as a result of the imposition of new or additional Reserves (as defined in the ABL Credit Agreement as in effect on the date hereof) by the ABL Agent and such new or additional Reserves result in Consolidated Liquidity being less than $7,500,000 as of such date, for the three (3) consecutive Business Days following the date of such reduction).

6.9. Fundamental Changes; Disposition of Assets. No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger or consolidation (including through a plan of division), or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), consummate any Asset Sale, or Dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased (as lessee), or licensed (as licensee), except:

(a) any Credit Party other than Holdings may be merged with or into another Credit Party, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to another Credit Party; provided, in the case of any such merger, (i) if such Credit Party is a Borrower, a Borrower shall be the surviving Person, (ii) if such Credit Party is not a Mexican Subsidiary, a Credit Party that is not a Mexican Subsidiary shall be the surviving Person and (iii) in any other case, a Credit Party shall be the continuing or surviving Person;

(b) in connection with a Permitted Acquisition, any Subsidiary of a Credit Party may merge with or into or consolidate with any other Person or permit any other Person to merge with or into or consolidate with it; provided, that (i) if such Credit Party is a Borrower, a Borrower shall be the surviving Person, (ii) if such Credit Party is not a Mexican Subsidiary, a Credit Party that is not a Mexican Subsidiary shall be the surviving Person and (iii) in any other case, a Credit Party shall be the continuing or surviving Person;

(c) sales or other dispositions of assets that do not constitute Asset Sales;

(d) Asset Sales (other than the Permitted Curation Sale); provided, (A) no Event of Default shall have occurred and be continuing or would result therefrom, (B) the proceeds received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the Board of Directors of such Credit Party or such Subsidiary), (C) with respect to any such Disposition with a purchase price in excess of $2,000,000, at least (I) 90% of the consideration for such Asset Sale at or above $2,000,000 shall consist of Cash paid upon the closing of each applicable Asset Sale, and (II) 75% of the consideration for such Asset Sale at under $2,000,000 shall consist of Cash paid upon the closing of each applicable Asset Sale, and (D) the Net Asset Sale Proceeds thereof shall be applied as required, or reinvested to the extent permitted, by Section 2.13(a);

(e) the Permitted Curation Sale;

(f) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the exercise by Curation of the put option or exit with respect to the Windset Investment in accordance with the documents governing the Windset Investment as of the Closing Date for Cash consideration not less than the fair market value of the Windset Investment (as such value is determined in accordance with the documents governing the Windset Investment as of the Closing Date), so long as the Net Asset Sale Proceeds thereof shall be applied as required, or reinvested to the extent permitted, by Section 2.13(a);

(g) the leasing or subleasing of immaterial assets (other than sale and leaseback transactions prohibited under Section 6.11) in the ordinary course of business;

(h) disposals of obsolete or worn out property; and

(i) Asset Sales (other than the Permitted Curation Sale); provided, (A) no Event of Default shall have occurred and be continuing or would result therefrom, (B) the proceeds received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by management of such Credit Party or such Subsidiary), (C) 75% of the consideration for such Asset Sale shall consist of Cash paid upon the closing of each applicable Asset Sale, (D) the aggregate consideration for all such Asset Sales pursuant to this clause (i) shall not exceed $250,000 in any Fiscal Year and (E) the Net Asset Sale Proceeds thereof shall be applied or reinvested as required, or reinvested to the extent permitted, by Section 2.13(a).

Notwithstanding anything to the contrary contained in the Credit Documents, (i) no Credit Party shall, nor shall it permit any of its Subsidiaries to, consummate any "Division" (as defined in Section 18-217 of the Delaware Limited Liability Company Act) or similar organizational change that may hereafter be permitted under any applicable statute and (ii) this Section 6.9 shall not prohibit the Mexican Subsidiary Reorganization Activities prior to the Mexican Subsidiary Joinder Date.

Notwithstanding anything in this Section 6.9 to the contrary, in no event shall Holdings, Lifecore or any of their direct or indirect Subsidiaries (other than Curation or any of its direct or indirect Subsidiaries) enter into any Asset Sale with Curation or any of its direct or indirect Subsidiaries on or after the Fourth Amendment Effective Date without the written consent of the Administrative Agent and the Requisite Lenders other than

Permitted Curation Investments, in each case, to the extent constituting Asset Sales.

6.10. Disposal of Subsidiary Interests. Except for any sale of all of its interests in the Capital Stock of any of its Subsidiaries in compliance with the provisions of Section 6.9, no Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to another Credit Party (subject to the restrictions on such disposition otherwise imposed hereunder), or to qualify Directors if required by applicable law.

6.11. Sales and Leasebacks. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, that such Credit Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than Holdings or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property that has been or is to be sold or transferred by such Credit Party to any Person (other than Holdings or any of its Subsidiaries) in connection with such lease.

6.12. Transactions with Shareholders and Affiliates. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of 10% or more of Capital Stock of Holdings; provided, the foregoing restrictions shall not apply to (i) any transaction among Credit Parties; (ii) reasonable and customary fees paid to Directors of the Credit Parties or any of its Subsidiaries; (iii) reasonable and customary compensation arrangements for officers and other employees of Credit Parties or any of their Subsidiaries entered into in the ordinary course of business; (iv) any such transaction if the terms of such transaction are not less favorable to Holdings or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; and (v) transactions existing on the Closing Date and described on Schedule 6.12 The Credit Parties shall disclose in writing each transaction with any holder of 5.00% or more of Capital Stock of Holdings or any of its Subsidiaries or with any Affiliate of Holdings or of any such holder to Administrative Agent.

6.13. Conduct of Business; Foreign Subsidiaries. From and after the Closing Date, no Credit Party shall, nor shall it permit any of its Subsidiaries to, engage in (a) any business other than (i) the businesses engaged in by such Credit Party or such Subsidiary on the Closing Date and any business related thereto or any reasonable extensions thereof, and (ii) such other lines of business as may be consented to by Administrative Agent and the Requisite Lenders, or (b) any business or activities that conflict with Section 4.26. No Credit Party shall, nor shall any Credit Party permit any of its Subsidiaries to, form, create, incorporate or acquire any Foreign Subsidiary.

6.14. Permitted Activities of Holdings. Holdings shall not (a) incur, directly or indirectly, any Indebtedness or any other obligation or liability whatsoever other than the Indebtedness and obligations under this Agreement, the other Credit Documents, and the ABL Credit Documents; (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired, leased (as lessee), or licensed (as licensee) by it other than Permitted Liens of the types described in Section 6.2(a) through 6.2(d) and 6.2(m); (c) engage in any business or activity or own any assets other than (i) directly holding 100% of the Capital Stock of Companies; (ii) performing its obligations and activities incidental thereto under the Credit Documents, and to the extent not inconsistent therewith, the ABL Credit Documents; (iii) issuing its own Capital Stock to the extent permitted hereby; (iv) filing tax reports and paying Taxes, and other customary obligations in the ordinary course (and contesting any Taxes); (v) preparing reports to Governmental Authorities and to its shareholders; (vi) holding director and shareholder meetings, preparing organizational records and other organizational activities required to maintain its separate organizational structure or to comply with applicable laws; (vii) the maintenance of its legal existence (including the ability to incur and pay, as applicable, fees, costs and expenses and taxes related to such maintenance); (viii) making Restricted Junior Payments and Investments to the extent permitted by this Agreement; and (ix) to the extent not otherwise inconsistent with Holdings obligations in this Section 6.14, such other ordinary course activities that are consistent with its activities as of the Closing Date (or related thereto or any reasonable extensions thereof); (d) consolidate with or merge with or into, or Dispose of all or substantially all of its assets to, any Person; (e) Dispose of any Capital Stock of any of its Subsidiaries; (f) create or acquire any Subsidiary or make or own any Investment in any Person other than Companies; or (g) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

6.15. [Intentionally Reserved].

6.16. Amendments or Waivers with Respect to Certain Indebtedness.

(a) Except to the extent expressly permitted under the terms of the corresponding Subordination Agreement, no Credit Party shall, nor shall it permit any of its Subsidiaries to, amend or otherwise change the terms of any Subordinated Indebtedness, or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment or change is to increase the interest rate on such Indebtedness, increase the principal amount thereof, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, change any event of default or condition to an event of default with respect thereto (other than to eliminate any such event of default or increase any grace period related thereto), change the redemption, prepayment or defeasance provisions thereof, change the subordination provisions thereof (or of any guaranty thereof), or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders thereof (or a trustee or other representative on their behalf) that would be adverse to such Credit Party, such Subsidiary or the Lenders.

(b) Except to the extent expressly permitted under the terms of the Intercreditor Agreement, no Credit Party shall, nor shall it permit any of its Subsidiaries to, amend or otherwise change the terms of the ABL Indebtedness or the ABL Credit Documents.

6.17. Fiscal Year; Accounting Policies. No Credit Party shall, nor shall it permit any of its Subsidiaries to change its Fiscal Year-end from the last Sunday of May of any calendar year or make any change in its accounting policies that is not required under GAAP.

6.18. Deposit Accounts and Securities Accounts. No Credit Party shall establish or maintain a Deposit Account or a Securities Account that is not a Controlled Account, deposit proceeds in a Deposit Account that is not a Controlled Account or deposit, acquire or otherwise carry any security entitlement or commodity contract in a Securities Account that is not a Controlled Account; provided, the foregoing shall not apply to Excluded Accounts. No Credit Party shall (a) grant to any Person (other than to another Credit Party) automated clearing house (ACH) or similar debit rights to any Controlled Account, (b) allow any Credit Card Processor to transfer money owing to any Credit Party or any of its Subsidiaries to any account that is not a Controlled Account, or (c) from and after Payment in Full of the ABL Priority Debt (as defined in the Intercreditor Agreement), during the continuation of an Event of Default, if requested by Collateral Agent, fail to promptly (but no later than the first Business Day following such request by Collateral Agent) instruct any Credit Card Processor to transfer money owing to the Credit Parties or any of their Subsidiaries to an account designated by Collateral Agent.

6.19. Amendments to Organizational Documents and Material Contracts. No Credit Party shall, nor shall it permit any of its Subsidiaries to, (a) amend or permit any amendments to any of its Organizational Documents; or (b) amend, terminate, or waive or permit any amendment, termination or waiver of any provision of, any Material Contract or Material Indebtedness if, with respect to each of clause (a) and clause (b), such amendment, termination or waiver would be adverse, in any material respect, to the Agents or the Lenders; provided that this Section 6.19 shall not prohibit the Mexican Subsidiary Reorganization Activities prior to the Mexican Subsidiary Joinder Date.

6.20. Prepayments of Certain Indebtedness. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness of any Credit Party or any of its Subsidiaries prior to its scheduled maturity, other than (a) the Obligations, (b) Indebtedness under the ABL Credit Documents and (c) Indebtedness secured by a Permitted Lien if the asset securing such Indebtedness has been sold or otherwise disposed of in accordance with Section 6.9.

6.21. Use of Proceeds. No Credit Party shall use the proceeds of any Term Loans except as set forth in Section 2.5.

6.22. ABL Obligations. Not permit any Credit Party or any of their Subsidiaries to purchase or hold any of the ABL Indebtedness.

SECTION 7. GUARANTY

7.1. Guaranty of the Obligations. Subject to the provisions of Section 7.2 and any limitations set forth in the definition of the term "**Guarantor**", Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Administrative Agent, for the benefit of the Beneficiaries, the due and punctual Payment in Full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "**Guaranteed Obligations**").

7.2. Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the "**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by any Guarantor under this Guaranty (a "**Funding Guarantor**") such that its Aggregate Payments exceed its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to any Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors, multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the Guaranteed Obligations. "**Fair Share Contribution Amount**" means, with respect to any Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its Obligations subject to avoidance as a fraudulent transfer or conveyance under any Fraudulent Transfer Laws; provided, solely for purposes of calculating the Fair Share Contribution Amount with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "**Aggregate Payments**" means, with respect to any Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 7.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

7.3. Payment by Guarantors. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right that any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of any Company to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of the Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest that, but for any Company becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against such Company for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to the Beneficiaries as aforesaid.

7.4. Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety, other than Payment in Full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) This Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety.

(b) Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between any Credit Party and any Beneficiary with respect to the existence of such Event of Default.

(c) The obligations of each Guarantor hereunder are independent of the obligations of Companies and the obligations of any other guarantor (including any other Guarantor) of the obligations of Companies, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against any Company or any of such other guarantors and whether or not any Company is joined in any such action or actions.

(d) Payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations that has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations.

(e) Any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment of the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect of the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case, as such Beneficiary in its discretion may determine consistent herewith or with the applicable Secured Hedge Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Credit Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents or any Secured Hedge Agreement.

(f) This Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than Payment in Full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce, or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents or any Secured Hedge Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to depart from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents, any Secured Hedge Agreement or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case, whether or not in accordance with the terms hereof or of such Credit Document, such Secured Hedge Agreement or any such agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents or any Secured Hedge Agreement or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for Indebtedness other than the Guaranteed Obligations) to the payment of Indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Holdings or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a Lien in any collateral that secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims that any Company may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; (viii) the asserting or enforcing of any right, power or remedy (whether arising under the Credit Documents or any Secured Hedge Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto or with respect to any other guarantee of or security for the payment of the Guaranteed Obligations; (ix) any limitation of status or power, disability, incapacity or other circumstance relating to any Credit Party or any other Person, including any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, winding-up or other proceeding involving or affecting any Credit Party or any other Person; and (x) any other act or thing or omission, or delay to do any other act or thing, that may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

7.5. Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of the Beneficiaries, (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against any Company, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from any Company, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of any Company or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any Company or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any Company or any other Guarantor from any cause, other than Payment in Full of all Obligations; (c) any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior that amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, that are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's Obligations, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or ensure any Lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor or non-payment, notices of proof or reliance and notices of any action or inaction, including acceptance hereof, notices of default under this Agreement, any Secured Hedge Agreement, or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to any Company and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law that limit the liability of or exonerate guarantors or sureties, or that may conflict with the terms hereof.

7.6. Guarantors' Rights of Subrogation, Contribution. Until the Guaranteed Obligations shall have been Paid in Full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against any Company or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its Obligations, in each case, whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against any other Credit Party with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against any other Credit Party, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been Paid in Full, each Guarantor shall withhold exercise of any right of subrogation, reimbursement, indemnification or contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, indemnification or contribution such Guarantor may have against any Credit Party or against any collateral or security, and any rights of subrogation, reimbursement, indemnification or contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against any Credit Party, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when the Guaranteed Obligations shall not have been Paid in Full, such amount shall be held in trust for Administrative Agent, for the benefit of the Beneficiaries, and shall forthwith be paid over to Administrative Agent, for the benefit of the Beneficiaries, to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.7. Subordination of Other Obligations. Any Indebtedness of any Company or any other Guarantor now or hereafter held by any Guarantor (the "**Obligee Guarantor**") is hereby subordinated in right of payment to the Guaranteed Obligations, and any Distribution collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent, for the benefit of the Beneficiaries, and shall forthwith be paid over to Administrative Agent, for the benefit of the Beneficiaries, to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof. For purposes of this Section 7.7, "Distribution" means, with respect to any Indebtedness subordinated pursuant to this Section 7.7, (a) any payment or distribution by any Person of Cash, Securities or other property, by set-off or otherwise, on account of such Indebtedness, (b) any redemption of or purchase or other acquisition of such Indebtedness from the Obligee Guarantor by any other Person, and (c) the granting of any Lien to or for the benefit of the Obligee Guarantor or any other Person in or upon any property of any Person to secure such Indebtedness.

7.8. Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been Paid in Full. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

7.9. Authority of Guarantors or Companies. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or any Company or the officers, the Directors or any agents acting or purporting to act on behalf of any of them.

7.10. Financial Condition of Companies. Any Credit Extension may be made to Companies or continued from time to time, and any Secured Hedge Agreements may be entered into from time to time, in each case, without notice to or authorization from any Guarantor regardless of the financial or other condition of any Company at the time of any such grant or continuation or at the time any such Secured Hedge Agreement is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of any Company. Each Guarantor has adequate means to obtain information from each Company on a continuing basis concerning the financial condition of such Company and its ability to perform its obligations under the Credit Documents and any Secured Hedge Agreement, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of each Company and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby

waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Companies now known or hereafter known by any Beneficiary.

7.11. Bankruptcy.

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of the Requisite Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against any Company or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of any Company or any other Guarantor or by any defense that any Company or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations that accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and the Beneficiaries that the Guaranteed Obligations that are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order that may relieve any Credit Party of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by any Credit Party, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments that are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

7.12. Discharge of Guaranty Upon Sale of Guarantor. If all of the Capital Stock of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale (provided, Administrative Agent and Collateral Agent may, after receipt of a written certificate of the Chief Financial Officer of Credit Party Representative certifying that such transaction is permitted pursuant to the Credit Documents, execute and deliver any documentation reasonably requested by Credit Party Representative in writing to further evidence or reflect any such release, all at the expense of the Credit Parties).

7.13. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by any other Credit Party hereunder to honor all of such Credit Party's obligations under this Guaranty in respect of Swap Obligations (provided, each Qualified ECP Guarantor shall only be liable under this Section 7.13 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 7.13 or otherwise under this Guaranty, as it relates to such Credit Party, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 7.13 shall remain in full force and effect until the Guaranteed Obligations shall have been Paid in Full. Each Qualified ECP Guarantor intends that this Section 7.13 constitute, and this Section 7.13 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

SECTION 8. EVENTS OF DEFAULT

8.1. Events of Default. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by any Credit Party to pay (i) the principal of and premium, if any, on any Loan, whether at stated maturity, by acceleration or otherwise; (ii) when due any installment of principal of any Loan, by notice of voluntary prepayment, by mandatory prepayment or otherwise; (iii) any interest on any Loan or any fee hereunder within 3 Business Days after the date when due; or (iv) any other amount due hereunder within 5 Business Days after the date when due.

(b) Default in Other Agreements. (i) Failure of any Credit Party or any of its Subsidiaries to pay when due any principal of or interest on or any other amount, including any payment in settlement, payable in respect of one or more items of Material Indebtedness, in each case, beyond the grace period, if any, provided therefor; or (ii) breach or default by any Credit Party or any of its Subsidiaries with respect to any other term of (A) one or more items of Material Indebtedness, or (B) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Material Indebtedness, in each case, beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause the holder or holders of that Material Indebtedness (or a trustee on behalf of such holder or holders), with or without the passage of time, to cause, that Material Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or other redemption) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in Section 5.1, Section 5.2, Section 5.5, Section 5.6, Section 5.7, Section 5.8, Section 5.9, Section 5.10, Section 5.11, Section 5.14(b), Section 5.18 or Section 6; or

(d) Breach of Representations. Any representation, warranty, certification or other statement made or deemed made in favor of any Agent or other Secured Party in any Credit Document or in any statement or certificate delivered in writing pursuant thereto or in connection therewith shall be false or misleading in any material respect as of the date made or deemed made; provided, any materiality qualifier therein shall not apply to any representations, warranties, certifications or other statements to the extent already qualified or modified by materiality or similar concept in the text thereof; or

(e) Other Defaults Under Credit Documents. Any default in the performance of or compliance with any term contained herein or in any of the other Credit Documents, other than any such term referred to in any other provision of this Section 8.1 or consisting of a condition or status that is expressly required to exist or be satisfied at a specific time, and such term has not been fully and permanently performed or complied with within 30 days after the earlier of (i) an officer of such Credit Party becoming aware of such default or (ii) receipt by Credit Party Representative of notice from Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Holdings or any of its Subsidiaries in an involuntary case under any Debtor Relief Law, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Holdings or any of its Subsidiaries under any Debtor Relief Law; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Holdings or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Holdings or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Holdings or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for 60 days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver. (i) Holdings or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under any Debtor Relief Law, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Holdings or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) Holdings or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Board of Directors of Holdings or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f), in each case of the foregoing, other than a Consensual Proceeding; or

(h) Judgments and Attachments. There is entered into or filed against any Credit Party or such Credit Party's assets any money judgment, writ or warrant of attachment or similar process or any court approved settlement or other settlement (of any Adverse Proceeding) involving in the aggregate an amount in excess of $3,000,000 in any case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage and to which such money judgment, writ or warrant of attachment or similar process remains unpaid, undischarged, unvacated, unbonded or unstayed for a period of 60 days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party or any of its Subsidiaries decreeing the dissolution or split up of such Credit Party or any of its Subsidiaries and such order shall remain undischarged or unstayed for a period in excess of 30 days; or

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events that, individually or in the aggregate, results in or might reasonably be expected to result in liability of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of $5,000,000 during the term hereof; or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien under Section 430(k) of the Internal Revenue Code or ERISA or a violation of Section 436 of the Internal Revenue Code; or

(k) Change of Control. A Change of Control shall occur; or

(l) Guaranties, Collateral Documents and Other Credit Documents. At any time after the execution and delivery thereof, (i) any Guaranty for any reason, other than the Payment in Full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement, the Intercreditor Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the Payment in Full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case, for any reason other than the failure of Collateral Agent to take any action within its control, (iii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by the Lenders, under any Credit Document to which it is a party or shall contest the validity of or perfection of any Lien in any Collateral granted or purported to be granted pursuant to the Collateral Documents, or (iv) any Person (other than the Secured Parties) shall contest the validity or enforceability of the Intercreditor Agreement in writing or deny in writing that it has any further liability, including with respect to future advances by the Lenders, under the Intercreditor Agreement; or

(m) Subordinated Indebtedness. Any Subordinated Indebtedness permitted hereunder or the guarantees thereof shall cease for any reason to be validly subordinated to the Obligations as provided in the corresponding Subordination Agreement or the subordination terms of such Subordinated Indebtedness, as applicable, or any Person shall contest in any manner the validity or enforceability thereof or deny that it has further liability or obligation thereunder, or the Obligations for any reason, shall not have the priority contemplated with respect to any Subordinated Indebtedness, this Agreement or such subordination provisions; or

(n) FDA Regulatory Actions. (i) FDA or any comparable Governmental Authority issues a warning letter to any Credit Party that could reasonably be expected to have a Material Adverse Effect or (ii) Holdings or any of its Subsidiaries enters into a consent decree or other settlement agreement with the FDA or any comparable Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions, of $2,500,000 or more, or that would reasonably be expected to have a Material Adverse Effect;

(o) Criminal Adverse Proceeding. Notwithstanding the provisions of Section 5.8, the initiation of any criminal proceeding against any Credit Party, its Subsidiaries, or any of their current Directors or officers as evidenced by the filing of charges or presentation of allegations by a regulatory authority (but excluding any deferred prosecution proceedings so long as such Credit Party is in compliance with the terms of such deferred prosecution agreement) arising from or concerning the investigations disclosed in due diligence pursuant to Section 3.1(t) and Schedule 4.11;

THEN, (A) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (B) upon the occurrence of any other Event of Default, at the request of (or with the consent of) the Requisite Lenders, upon notice to Credit Party Representative by Administrative Agent, (I) the Commitments, if any, of each Lender having such Commitments shall immediately terminate; (II) each of the following shall immediately become due and payable, in each case, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (x) the unpaid principal amount of and accrued interest and premium on the Loans, and (y) all other Obligations; (III) Administrative Agent may cause Collateral Agent to enforce any and all Liens created pursuant to the Collateral Documents; and (IV) Administrative Agent and Collateral Agent may enforce any other rights and remedies available to them under any Credit Document or under applicable law.

8.2. Consent to Receiver. Without limiting the generality of the foregoing or limiting in any way the rights of the Agents and the Lenders under the Credit Documents or otherwise under applicable law, at any time after the occurrence and during the continuance of an Event of Default, the Agents, at the direction of the Requisite Lenders, shall be entitled to apply for and have a receiver, an interim receiver or a receiver-manager appointed under state, provincial, federal or foreign law by a court of competent jurisdiction or other proper Governmental Authority in any action taken by the Agents or the Lenders to enforce their rights and remedies hereunder and under the other Credit Documents in order to manage, protect, preserve, sell and otherwise dispose of all or any portion of the Collateral and continue the operation of the business of the Credit Parties, or any of them, and their respective Subsidiaries, and to collect all revenues and profits thereof and apply the same to the payment of all expenses and other charges of such receivership, including the compensation of such receiver, interim receiver or receiver-manager, and the payment of the other Obligations until a sale or other disposition of such Collateral shall be finally made and consummated. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH CREDIT PARTY HEREBY IRREVOCABLY CONSENTS TO AND WAIVES ANY RIGHT TO OBJECT TO OR OTHERWISE CONTEST THE APPOINTMENT OF A RECEIVER, AN INTERIM RECEIVER OR A RECEIVER-MANAGER DURING THE CONTINUANCE OF AN EVENT OF DEFAULT AS PROVIDED ABOVE. EACH CREDIT PARTY GRANTS SUCH WAIVER AND CONSENT KNOWINGLY AFTER HAVING DISCUSSED THE IMPLICATIONS THEREOF WITH COUNSEL, ACKNOWLEDGES THAT THE UNCONTESTED RIGHT TO HAVE A RECEIVER, AN INTERIM RECEIVER OR A RECEIVER-MANAGER APPOINTED FOR THE FOREGOING PURPOSES IS CONSIDERED ESSENTIAL BY THE LENDERS IN CONNECTION WITH THE ENFORCEMENT OF THEIR RIGHTS AND REMEDIES HEREUNDER AND UNDER THE OTHER CREDIT DOCUMENTS, AND THE AVAILABILITY OF SUCH APPOINTMENT AS A REMEDY UNDER THE FOREGOING CIRCUMSTANCES WAS A MATERIAL FACTOR IN INDUCING THE LENDERS TO MAKE (AND COMMIT TO MAKE) THE LOANS TO COMPANIES, AND AGREES TO ENTER INTO ANY AND ALL STIPULATIONS IN ANY LEGAL ACTIONS OR AGREEMENTS OR OTHER INSTRUMENTS IN CONNECTION WITH THE FOREGOING AND TO COOPERATE FULLY WITH THE AGENTS AND THE LENDERS IN CONNECTION WITH THE ASSUMPTION AND EXERCISE OF CONTROL BY SUCH RECEIVER, INTERIM RECEIVER OR RECEIVER-MANAGER OVER ALL OR ANY PORTION OF THE COLLATERAL AND PROPERTY OF THE CREDIT PARTIES AND THEIR SUBSIDIARIES. NO RIGHT CONFERRED UPON THE LENDERS OR THE AGENTS HEREBY OR BY ANY OTHER CREDIT DOCUMENT SHALL BE EXCLUSIVE OF ANY OTHER RIGHT REFERRED TO HEREIN OR THEREIN OR NOW OR HEREAFTER AVAILABLE AT LAW, IN EQUITY, BY STATUTE OR OTHERWISE.**

8.3. Cooperation of Credit Parties. If an Event of Default shall have occurred and be continuing, each Credit Party shall, and, if applicable, shall cause each of its Subsidiaries to, take any action which any Agent may reasonably request in the exercise of its rights and remedies under any Credit Document in order to transfer or assign any Collateral to Collateral Agent, for the benefit of the Secured Parties, or to such one or more third parties as Collateral Agent may designate, or to a combination of the foregoing. To enforce the provisions of this Section 8.3, the Agents are empowered to seek from any Governmental Authority, to the extent required, consent to or approval of any involuntary transfer of control of any entity whose Collateral is subject to any Credit Document for the purpose of seeking a bona fide purchaser to whom control ultimately will be transferred. Each Credit Party agrees to, and, if applicable, shall cause each of its Subsidiaries to agree to, cooperate with any such purchaser and with the Agents in the preparation, execution and filing of any forms and providing any information that may be necessary or helpful in obtaining the consent of any Governmental Authority to the assignment to such purchaser of the Collateral. Without limiting the obligations of any Credit Party hereunder in any respect, each Credit Party further agrees that if an Event of Default shall have occurred and be continuing and it or any of its Subsidiaries should fail or refuse for any reason whatsoever including any refusal to execute and file any completed application necessary or appropriate to obtain any Governmental Authorization necessary or appropriate for the exercise of any right of any Agent hereunder, each Credit Party agrees that such application may be executed and filed on such Credit Party's behalf by the clerk of any court of competent jurisdiction without notice to such Credit Party pursuant to court order.

SECTION 9. AGENTS

9.1. Appointment of Agents. (a) GSSLG is hereby appointed Administrative Agent and US Collateral Agent hereunder and under the other Credit Documents and each Lender hereby authorizes GSSLG, in such capacity, to act as Administrative Agent and US Collateral Agent in accordance with the terms hereof and of the other Credit Documents.

(b) The Lenders hereby appoint and designate GLAS as MXN Collateral Agent and collateral agent in each other jurisdiction for which GLAS enters a Collateral Document or otherwise acts as joint collateral agent for the benefit of the Secured Parties as agreed upon in writing from time to time, in such capacity, to act as its agent in accordance with the terms hereof and the other Credit Documents. Each Lender hereby irrevocably authorizes and appoints the MXN Collateral Agent as an agent (*comisionista*) under the terms of Articles 273 and 274 of the Mexican Commerce Code (*Código de Comercio*) and to take such action on its behalf under the provisions of this Agreement, the other Mexican Collateral Documents, the Intercreditor Agreement and any other instruments and agreements referred to herein or therein and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated or required of the MXN Collateral Agent by the terms hereof and thereof and such other powers as are reasonably incidental hereto and thereto. The duties of the MXN Collateral Agent under the this Agreement and the Credit Documents are solely mechanical and administrative in nature. The MXN Collateral Agent may perform any of its duties under the Credit Documents by or through any appointed sub-agents and any of their respective affiliates, officers, directors, agents or employees. Each party to this Agreement acknowledges and consents to the undertaking of the MXN Collateral Agent set forth in Section 9 and agrees to each of the other provisions of this Agreement applicable to the Collateral Agent.

(c) Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and in the other Credit Documents, as applicable. The provisions of this Section 9 are solely for the benefit of the Agents and the Lenders and no Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties hereunder and under the other Credit Documents, each Agent shall act solely as an agent or joint agent, as the case may be, of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Holdings or any of its Subsidiaries. It is understood and agreed that the use of the term "agent" herein or in any other Credit Documents (including the Intercreditor Agreement) (or any other similar term) with reference to Administrative Agent or Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. The MXN Collateral Agent shall have no responsibility for or liability with respect to monitoring compliance of any other party to this Agreement, the Credit Documents or any other document related hereto or thereto.

(d) GLAS and each other Collateral Agent that is not GSSLG, in their respective capacities as Collateral Agent under this Agreement or any other Credit Document, hereby agrees to act solely upon the instruction and at the written direction of Administrative Agent with respect to all acts, omissions or matters taken or not take by GLAS (or such other Collateral Agent that is not GSSLG) under the Credit Agreement and/or any other Credit Document to which it is a party. It is understood that the MXN Collateral Agent shall be fully justified in failing or refusing to take any such action under this Agreement if it shall not have received such written instruction, advice or concurrence of the Administrative Agent. This provision is intended solely for the benefit of the MXN Collateral Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

(e) If at any time or times it shall be necessary or prudent in order to conform to any law of any jurisdiction in which any of the Collateral shall be located, or the applicable Collateral Agent shall be advised by counsel, satisfactory to it, that it is reasonably necessary in the interest of the Secured Parties, or the Administrative Agent shall in writing so request the applicable Collateral Agent, or the applicable Collateral Agent shall deem it desirable for its own protection in the performance of its duties hereunder, the applicable Collateral Agent and the Credit Parties shall, at the reasonable request of the applicable Collateral Agent, execute and deliver all instruments and agreements necessary or proper to constitute one or more persons approved by the applicable Collateral Agent, the Administrative Agent and the Credit Party Representative, either to act as co-Collateral Agent or co-Collateral Agents of all or any of the Collateral, jointly with the applicable Collateral Agent originally named herein or any successor or successors, or to act as separate collateral agent or collateral agents for any such property. In case an Event of Default shall have occurred and be continuing, the applicable Agent may act under the foregoing provisions of this Section 9.1(e) without the concurrent consent of the Lenders, and the Lenders hereby appoint such Agent as its trustee and attorney to act under the foregoing provisions of this Section 9.1(e) in such case.

9.2. Powers and Duties. (a) Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents (including the Intercreditor Agreement) as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. In the event that any obligations are permitted to be incurred and subordinated in right of payment to the Obligations or are permitted to be secured by Liens on all or a portion of the Collateral, each Lender authorizes Administrative Agent and Collateral Agent, as applicable, to enter into the Intercreditor Agreement and any other intercreditor agreement, subordination agreements and amendments to the Collateral Documents to reflect such arrangements on terms that are acceptable to Administrative Agent and Collateral Agent, in their respective sole discretion, as applicable. Each Agent shall have only those duties and responsibilities that are expressly specified herein and in the other Credit Documents (including the Intercreditor Agreement). Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or of any of the other Credit Documents, a fiduciary relationship in respect of any Lender or any other Person, and nothing herein or in any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or of any of the other Credit Documents except as expressly set forth herein or therein.

(b) For the avoidance of doubt and notwithstanding anything to the contrary in any Collateral Document with respect to the responsibilities of a Collateral Agent, in the event of inconsistency between the terms of this Agreement and any other Collateral Document, the terms of this Agreement shall prevail.

(c) At the express written direction of Administrative Agent, Company shall promptly prepare, file or record any instrument, document or financing statement which has been approved by the Administrative Agent for the perfection or maintenance of any security interest created hereunder and as per the other Credit Documents, including the Intercreditor Agreement. Notwithstanding anything in the Credit Documents to the contrary, in no event shall the MXN Collateral Agent be responsible or held liable for any defect, irregularity, omission or error in any instrument, document or financing statement evidencing a security interest nor shall it be responsible for any preparation, filing,

recording, perfection, re-recording, re-filing or maintenance of any financing statement, perfection statement, continuation statement or other instrument in any public office or otherwise ensuring the perfection or maintenance of any security interest granted hereunder or pursuant to any Credit Document. The MXN Collateral Agent will have no additional duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto..

(d) None of the provisions in any Credit Document shall require the MXN Collateral Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties under this agreement, any of the other Credit Documents, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing the repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it, for which the MXN Collateral Agent may decline to act unless it received indemnity satisfactory to it.

(e) The MXN Collateral Agent shall not be required to exercise any of the rights or powers vested in it by any Credit Documents or to institute, conduct or defend any litigation under any Credit Document or in relation to any Credit Document, but shall be required to act or refrain from acting (and shall be fully protected in acting or refraining from acting) upon the request, order or direction of the Administrative Agent, subject to the provisions of the Intercreditor Agreement; provided, that the MXN Collateral Agent shall not be required to take any action hereunder at the request, order or discretion of Administrative Agent, any Secured Party or otherwise if the taking of such action, in the reasonable determination of the MXN Collateral Agent, (i) shall be in violation of any applicable law or contrary to any provision of this Agreement, (ii) shall expose the MXN Collateral Agent to liability hereunder or otherwise (unless it has received indemnity which it reasonably deems to be satisfactory with respect thereto), (iii) would subject the MXN Collateral Agent to a tax in any jurisdiction where it is not then subject to a tax, or (iv) would require the MXN Collateral Agent to qualify to do business in any jurisdiction where it is not then so qualified.

Except as expressly provided herein, the MXN Collateral Agent shall not be under any duty or obligation to take any affirmative action to exercise or enforce any power, right or remedy available to it under this Agreement (x) unless and until (and to the extent) expressly so directed by the Administrative Agent or (y) prior to the occurrence of an Event of Default (and upon such occurrence and during the continuation thereof, the MXN Collateral Agent shall act in accordance with the written instructions of the Administrative Agent pursuant to clause (x)). The MXN Collateral Agent shall not be deemed to have notice or knowledge of any matter hereunder, including an Event of Default, unless a Responsible Officer of the MXN Collateral Agent has received written notice of default thereof.

If, in performing its duties under this Agreement, the MXN Collateral Agent is required to decide between alternative courses of action, the MXN Collateral Agent may request written instructions from the Administrative Agent as to the course of action desired by it. If the MXN Collateral Agent does not receive such instructions within five (5) Business Days after it has requested them, the MXN Collateral Agent may, but shall be under no duty to, take or refrain from taking any such courses of action. The MXN Collateral Agent shall act in accordance with instructions received after such three (3) Business Day period except to the extent it has already, in good faith, taken or committed itself to take, action inconsistent with such instructions. The MXN Collateral Agent shall be entitled to rely on the advice of legal counsel in performing its duties hereunder and shall be deemed to have acted in good faith if it acts in accordance with such advice. The MXN Collateral Agent shall be fully protected in acting or refraining from any such courses of action in accordance with the terms herein.

(f) All of the rights, protections, immunities and indemnities granted to the MXN Collateral Agent in this Agreement shall apply in each Credit Document to which it is a party as if the same were set forth therein."

9.3. General Immunity.

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender or any other Person for the execution, effectiveness, genuineness (including the Intercreditor Agreement), validity, enforceability, collectability or sufficiency hereof or of any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to any Lender or by or on behalf of any Credit Party to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Default or Event of Default or as to the value or sufficiency of any Collateral or as to the satisfaction of any condition set forth in Section 3 or elsewhere herein (other than to confirm receipt of items expressly required to be delivered to such Agent) or to inspect the properties, books or records of Holdings or any of its Subsidiaries or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the component amounts thereof.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, Directors, employees or agents shall be liable to the Lenders or any other Person for any action taken or omitted by any Agent (i) under or in connection with any of the Credit Documents (including the Intercreditor Agreement), or (ii) with the consent or at the request of the Requisite Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement), in each case, except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. No Agent shall, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose or be liable for the failure to disclose any information relating to any Credit Party or any of its Affiliates that is communicated to or obtained by such Agent or any of its Affiliates in any capacity. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take any action) in connection herewith or with any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from the Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from the Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with

such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability, may be in violation of the automatic stay under any Debtor Relief Law, or may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Holdings and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or under any of the other Credit Documents in accordance with the instructions of the Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5).

(c) Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Credit Document by or through any one or more sub-agents appointed by such Agent from time to time. Such appointing Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.3 and of Section 9.6 shall apply to any Affiliates of any 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 an Agent. All of the rights, benefits and privileges (including the exculpatory and indemnification provisions) of this Section 9.3 and of Section 9.6 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by an Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Credit Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to the applicable Agent and not to any Credit Party, any Lender or any other Person and no Credit Party, Lender or other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent. No Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final, non-appealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(d) Notice of Default or Event of Default. No Agent shall be deemed to have knowledge of any Default or Event of Default unless and until written notice describing such Default or Event of Default is given to such Agent by a Credit Party or a Lender. In the event that Administrative Agent shall receive such a notice, Administrative Agent will endeavor to give notice thereof to the Lenders; provided, failure to give such notice shall not result in any liability on the part of Administrative Agent.

9.4. Agents Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with any Credit Party or any Affiliate of any Credit Party as if it were not performing the duties specified herein, and may accept fees and other consideration from the Credit Parties for services in connection herewith and otherwise without having to account for the same to the Lenders. The Lenders acknowledge that pursuant to such activities, the Agents or their Affiliates may receive information regarding any Credit Party or any Affiliate of any Credit Party (including information that may be subject to confidentiality obligations in favor of such Credit Party or such Affiliate) and acknowledge that the Agents and their Affiliates shall be under no obligation to provide such information to them.

9.5. Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Holdings and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Holdings and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of the Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to the Lenders.

(b) Each Lender, by delivering its signature page to this Agreement or an Assignment Agreement and funding its Term Loans on the Closing Date or other applicable Credit Date, as the case may be, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, the Requisite Lenders or the Lenders, as applicable, on the Closing Date or as of such other applicable Credit Date.

(c) Each Lender (i) represents and warrants that as of the Closing Date neither such Lender nor its Affiliates or Related Funds owns or controls (A) any trade obligations or Indebtedness of any Credit Party or any of their respective Subsidiaries or Affiliates (other than the Obligations) or (B) any Capital Stock of any Credit Party or any of their respective Subsidiaries or Affiliates and (ii) covenants and agrees that from and after the Closing Date neither such Lender nor its Affiliates and Related Funds shall purchase (A) any trade obligations or Indebtedness of any Credit Party described in clause (c)(i)(A) above, (B) Capital Stock described in clause (c)(i)(B) above or (C) ABL Loans, in each case, without the prior written consent of Administrative Agent.

(d) Each Lender represents and warrants, as of the date such Person became a Lender party hereto, to, and 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 Agents and their respective Affiliates that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans in connection with the Loans or the Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, and the conditions for exemptive relief thereunder have been satisfied in connection therewith;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of subsections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between Administrative Agent, in its sole discretion, and such Lender.

(e) In addition, unless either (i) Section 9.5(d)(i) is true with respect to such Lender or (ii) such Lender has provided another representation, warranty and covenant as provided in Section 9.5(d)(iv), each Lender further represents and warrants, as of the date such Person became a Lender party hereto, to, and 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 Agents and their respective Affiliates that:

(f) none of the Agents or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by any Agent under this Agreement, any other Credit Document or any documents related hereto or thereto);

(g) Administrative Agent hereby informs the Lenders that such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans or the Commitments for an amount less than the amount being paid for an interest in the Loans or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Credit Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

9.6. Right to Indemnity. Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, their Affiliates and their respective officers, partners, Directors, trustees, employees and agents (each, an "**Indemnitee Agent Party**"), to the extent that such Indemnitee Agent Party shall not have been reimbursed by any Credit Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) and disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnitee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Indemnitee Agent Party in any way relating to or arising out of this Agreement or the other Credit Documents, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY**; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Indemnitee Agent Party's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. If any indemnity furnished to any Indemnitee Agent Party for any purpose shall, in the opinion of such Indemnitee Agent Party, be insufficient or become impaired, such Indemnitee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; provided, further, this sentence shall not be deemed to require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

9.7. Successor Administrative Agent and Collateral Agent.

(a) Administrative Agent may resign at any time by giving 30 days' prior written notice thereof to the Lenders and Credit Party Representative. Administrative Agent shall have the right to appoint a financial institution to act as successor Administrative Agent

hereunder in such notice, subject to the reasonable satisfaction of Credit Party Representative and the Requisite Lenders, and Administrative Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the acceptance of such successor Administrative Agent by Credit Party Representative and the Requisite Lenders or (iii) such other date, if any, agreed to by the Requisite Lenders. Upon any such notice of resignation, if a successor Administrative Agent has not already been appointed by the resigning Administrative Agent, then the Requisite Lenders shall have the right, upon five Business Days' notice to Credit Party Representative to appoint a successor Administrative Agent. If neither the Requisite Lenders nor Administrative Agent have appointed a successor Administrative Agent, then the Requisite Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the resigning Administrative Agent automatically upon the effectiveness of such resignation; provided, until a successor Administrative Agent is so appointed by the Requisite Lenders or Administrative Agent, any collateral security held by Administrative Agent in its role as Collateral Agent on behalf of the Lenders under any of the Credit Documents shall continue to be held by the resigning Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning Administrative Agent and the resigning Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (ii) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the Liens created under the Collateral Documents, whereupon such resigning Administrative Agent shall be discharged from its duties and obligations hereunder. Except as provided above, any resignation of GSSLG or its successor as Administrative Agent pursuant to this Section 9.7 shall also constitute the resignation of GSSLG or its successor as Collateral Agent. After any resigning Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. Any successor Administrative Agent appointed pursuant to this Section 9.7 shall, automatically upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereunder.

(b) In addition to the foregoing, Collateral Agent may resign at any time by giving prior written notice thereof to the Lenders and Credit Party Representative. Administrative Agent shall have the right to appoint a financial institution as Collateral Agent hereunder, subject to the reasonable satisfaction of Credit Party Representative and the Requisite Lenders, and Collateral Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation, (ii) the acceptance of such successor Collateral Agent by Credit Party Representative and the Requisite Lenders or (iii) such other date, if any, agreed to by the Requisite Lenders. Upon any such notice of resignation or any such removal, if a successor Collateral Agent has not already been appointed by Administrative Agent, then the Requisite Lenders shall have the right, upon five Business Days' notice to Administrative Agent, to appoint a successor Collateral Agent. Until a successor Collateral Agent is so appointed by the Requisite Lenders or Administrative Agent, any collateral security held by Collateral Agent, for the benefit of the Lenders under any of the Credit Documents, shall continue to be held by the resigning Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning Collateral Agent under this Agreement and the Collateral Documents, and the resigning Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held hereunder or under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement and the Collateral Documents, and (ii) execute and deliver to such successor Collateral Agent or otherwise authorize the filing of such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the Liens created under the Collateral Documents, whereupon such resigning Collateral Agent shall be discharged from its duties and obligations under this Agreement and the Collateral Documents. After any resigning Collateral Agent's resignation hereunder as Collateral Agent, the provisions of this Agreement and the Collateral Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement or the Collateral Documents while it was Collateral Agent hereunder.

(c) Notwithstanding anything else herein to the contrary, Administrative Agent may, in its sole discretion at any time, remove and/or replace any MXN Collateral Agent as a Collateral Agent with thirty (30) days written notice to such MXN Collateral Agent; provided, any such replacement Collateral Agent shall be subject to the prior approval of Credit Party Representative (such approval not to be unreasonably withheld, conditioned or delayed), except such approval shall not be required (i) if such replacement Collateral Agent is GSSLG, any Lender and/or any of GSSLG's and/or any Lender's respective affiliates, (ii) upon the occurrence of an Event of Default and (iii) if, in Administrative Agent's reasonably judgment, and following consultation with Credit Party Representative, there is only one (1) other qualified Person who regularly performs collateral agency services in respect of similar financing transactions who is ready, willing and available in the applicable jurisdiction to act in the role of collateral agent in a manner substantially similar the MXN Collateral Agent and otherwise in form and substance satisfactory to Administrative Agent.

(d) Notwithstanding anything herein to the contrary, Administrative Agent and Collateral Agent may assign their rights and duties as Administrative Agent and Collateral Agent hereunder to an Affiliate of GSSLG without the prior written consent of, or prior written notice to, Credit Party Representative or any Lender; provided, the Credit Parties and the Lenders may deem and treat such assigning Administrative Agent and Collateral Agent as Administrative Agent and Collateral Agent for all purposes hereof, unless and until such assigning Administrative Agent or Collateral Agent, as the case may be, provides written notice to Credit Party Representative and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Administrative Agent and Collateral Agent hereunder and under the other Credit Documents.

9.8. Collateral Documents and Guaranty.

(a) Agents under Collateral Documents and Guaranty. Each Lender (including in its capacity as a Lender Counterparty or a potential Lender Counterparty and for and on behalf of each of its Affiliates that is or may be a Lender Counterparty) hereby further authorizes Administrative Agent and Collateral Agent, as applicable, on behalf of and for the benefit of the Secured Parties, to be the agent

for and representative of the Secured Parties with respect to the Guaranty, the Collateral and the Collateral Documents; provided, neither Administrative Agent nor Collateral Agent shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder of Obligations with respect to any Secured Hedge Agreement. Subject to Section 10.5, without further written consent or authorization from any Secured Party, Administrative Agent and Collateral Agent, as applicable, may execute any documents or instruments necessary to (i) in connection with a sale or disposition of assets permitted by this Agreement, release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which the Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented, or (ii) release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which the Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented. Upon request by any Agent at any time, the Lenders will confirm in writing such Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.8. Upon the reasonable request of Credit Party Representative, Administrative Agent and Collateral Agent may, after receipt of a written certificate of the Chief Financial Officer of Credit Party Representative certifying that such transaction is permitted pursuant to the Credit Documents (and Administrative Agent and Collateral Agent may rely conclusively on any such certificate without further inquiry and shall have no liability to any Secured Party for any inaccuracy or misrepresentation contained therein), execute and deliver any such release documentation reasonably requested by Credit Party Representative in connection with such permitted releases as described above, all at the expense of the Credit Parties.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Credit Documents to the contrary notwithstanding, the Credit Parties, Administrative Agent, Collateral Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the other Credit Documents may be exercised solely by Administrative Agent or Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms hereof and thereof, and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent, for the benefit of the Secured Parties, in accordance with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale or disposition and Collateral Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless the Requisite Lenders shall otherwise agree in writing) 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 public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale or other disposition.

(c) Rights under Secured Hedge Agreements. No Secured Hedge Agreement will create (or be deemed to create) in favor of any Lender Counterparty that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Guarantor under the Credit Documents. By accepting the benefits of the Collateral, each Lender Counterparty shall be deemed to have appointed Collateral Agent as its agent and agreed to be bound by the Credit Documents as a Secured Party, subject to the limitations set forth in this clause (c).

(d) Release of Collateral and Guarantees, Termination of Credit Documents. Notwithstanding anything to the contrary contained herein or in any other Credit Document, when all Obligations have been Paid in Full, upon request of Credit Party Representative, each Agent shall (without notice to, or vote or consent of, any Lender or any Lender Counterparty) take such actions as shall be required to release its Lien in all Collateral, and to release all guarantee obligations provided for in any Credit Document. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Company or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, any Company or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(e) No Duty. Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Collateral Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(f) Agency for Perfection. Each Agent and each Lender hereby appoints each other Agent and each other Lender as agent and bailee for the purpose of perfecting the Liens upon the Collateral in assets that, in accordance with Article 9 of the UCC, can be perfected only by possession or control (or where the Lien of a secured party with possession or control has priority over the Lien of another secured party), and each Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the other Secured Parties, except as otherwise expressly provided in this Agreement. Should Administrative Agent or any Lender obtain possession or control of any such Collateral, Administrative Agent or such Lender shall notify Collateral Agent thereof, and, promptly upon Collateral Agent's request therefor, shall deliver such Collateral to Collateral Agent or in accordance with Collateral Agent's instructions. Each Credit Party by its execution and delivery of this Agreement hereby consents to the foregoing.

9.9. Withholding Taxes. To the extent required by any applicable law, Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without duplication of the provisions of Section 2.19(g), if the Internal Revenue Service or any other Governmental Authority asserts a claim that Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, or if Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding Tax from such payment, such Lender shall indemnify Administrative Agent fully for all amounts paid, directly or

indirectly, by Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

9.10. Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Laws relative to any Credit Party, Administrative Agent shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its respective agents and counsel and all other amounts due to the Lenders and Administrative Agent under Sections 2.10, 10.2 and 10.3 allowed in such judicial proceeding); and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.10, 10.2 and 10.3. To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, its agents and counsel, and any other amounts due Administrative Agent under Sections 2.10, 10.2 and 10.3 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing contained in this Section 9.10 shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.11. Bankruptcy Plan Voting. In the case of the pendency of any proceeding under any Debtor Relief Laws relative to any Credit Party, each Lender shall submit any vote on a plan of reorganization or similar disposition plan of restructuring or liquidation (a "**Reorganization Plan**") to the Administrative Agent so that it is received by the Administrative Agent no later than three (3) Business Days prior to voting deadline established pursuant to the terms of such Reorganization Plan or any court order establishing voting procedures with respect to the Reorganization Plan (the "**Voting Procedures Order**"). If Lenders constituting more than half of the total number of Lenders and having or holding more than two-thirds of the aggregate Voting Power Determinants of all Lenders timely vote to accept the Reorganization Plan, the Administrative Agent shall submit a ballot on behalf of all Lenders voting to accept the Reorganization Plan in accordance with the terms of the Reorganization Plan or the Voting Procedures Order. If Lenders constituting more than half of the total number of Lenders and having or holding more than two-thirds of the aggregate Voting Power Determinants of all Lenders do not timely vote to accept the Reorganization Plan, the Administrative Agent shall submit a ballot on behalf of all Lenders voting to reject the Reorganization Plan in accordance with the terms of the Reorganization Plan or the Voting Procedures Order. For purposes of calculating the total number of Lenders and the number of Lenders voting to accept the Reorganization Plan, Lenders that are Affiliates shall be deemed to be a single Lender. No Lender may submit a ballot with respect to a Reorganization Plan in contravention of the procedures set forth in this Section 9.11, and the Administrative Agent is irrevocably authorized by each Lender to withdraw any vote submitted by such Lender in contravention of the procedures set forth in this Section 9.11.

9.12. Limitation of Liability of the MXN Collateral Agent. It is expressly understood and agreed by the parties hereto that this Agreement is executed and delivered by GLAS, not individually or personally but solely as MXN Collateral Agent under the Credit Documents, solely in the exercise of the powers and authority conferred and vested in it under this Agreement. The MXN Collateral Agent assumes no responsibility for the correctness of the recitals contained herein and shall not be responsible or accountable in any way whatsoever for or with respect to the validity, execution or sufficiency of the Credit Documents and makes no representation with respect thereto. In connection with the MXN Collateral Agent entering into and in the performance of its duties under any of the Credit Documents, to the extent not already provided for herein or therein, the MXN Collateral Agent shall be entitled to the benefit of every provision of this Agreement limiting the liability of or affording rights, privileges, protections, exculpations, immunities, indemnities or benefits to the MXN Collateral Agent as if they were expressly set forth therein mutatis mutandis. The MXN Collateral Agent shall not be in any way liable or responsible to any other party hereto for any loss or damage arising from any act, default omission or misconduct on the part of any delegate provided the MXN Collateral Agent has acted with due care in selecting such delegate.

9.13. Erroneous Payments.

(a) If the Administrative Agent notifies a Lender or Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient (and each of their respective successors and assigns), a "**Payment Recipient**") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous**

Payment") and demands the return of such Erroneous Payment (or a portion thereof) (provided, that without limiting any other rights or remedies (whether at law or in equity), the Administrative Agent may not make any such demand under this sentence with respect to an Erroneous Payment unless such demand is made within ten (10) Business Days of the date of receipt of such Erroneous Payment by the applicable Payment Recipient), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient pending its return or repayment as contemplated below in this Section 9.13 and held in trust for the benefit of the Administrative Agent, and such Lender, or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received). A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

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

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

(ii) such Lender or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within two (2) Business Days of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.13(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 9.13(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.13(a) or on whether or not an Erroneous Payment has been made.

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

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

(ii) Subject to Section 10.6 (but excluding, in all events, any assignment consent or approval requirements (whether from the Companies or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal

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

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Secured Party, to the rights and interests of such Lender or Secured Party, as the case may be) under the Credit Documents with respect to such amount (the "**Erroneous Payment Subrogation Rights**") (provided that the Credit Parties' Obligations under the Credit Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of the Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Companies or any other Credit Party; provided that this Section 9.13(e) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Companies relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Companies for the purpose of making such Erroneous Payment. Further, each party hereto agrees that, in the event a Secured Party is the recipient of an Erroneous Payment and such Secured Party fails to return such Erroneous Payment in accordance with Section 9.13(a), then the Administrative Agent shall be entitled to (x) collect from the Companies or any other Credit Party any Obligations owed by the Companies or any other Credit Party to such Secured Party up to and including the amount of the Erroneous Payment, plus any other amounts owed by such Secured Party under the indemnification provisions of this Agreement, and (y) exercise its rights and remedies under Section 9.13(c) until the Administrative Agent has received all amounts owed by the Secured Party to the Administrative Agent pursuant to Section 9.13(a).

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

(g) Each party's obligations, agreements and waivers under this Section 9.13 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 Obligations (or any portion thereof) under any Credit Document.

SECTION 10. MISCELLANEOUS

10.1. Notices.

(a) Notices Generally. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to any Credit Party, any Agent shall be sent to such Person's mailing address as set forth on Appendix B, and in the case of any Lender, the mailing address as indicated on Appendix B or otherwise indicated to Administrative Agent and Credit Party Representative in writing. Each notice hereunder shall be in writing and may be personally served or sent by facsimile (excluding any notices to any Agent) or U.S. mail or courier service and shall be deemed to have been given (i) when delivered in person, (ii) upon receipt of facsimile, (iii) when delivered by courier service and signed for against receipt thereof or (iv) three Business Days after depositing it in the U.S. mail with postage prepaid and properly addressed; provided, no notice to any Agent shall be effective until received by such Agent; provided, further, any such notice or other communication shall, at the request of any Agent, be provided to any sub-agent appointed pursuant to Section 9.3(c).

(b) Electronic Communications.

(i) Any notices and other communications to any Agent, any Lender or any Credit Party hereunder may be delivered or furnished by other electronic communication, including email and internet or intranet websites, such as Debt Domain, Intralinks, SyndTrak or another relevant website or other information platform (the "**Platform**"), pursuant to procedures approved by Administrative Agent in its sole discretion; provided, approval of such procedures may be limited to particular notices or communications; provided, further, notwithstanding the foregoing, in no event will notices by electronic communication be effective to any Agent or any Lender pursuant to Section 2 if any such Person has notified Administrative Agent that it is incapable of receiving notices under Section 2 by electronic communication. In the case of any notices by electronic communication permitted in accordance with this Agreement, unless Administrative Agent otherwise prescribes, (A) any notices and other communications permitted to be sent to an email address shall be delivered during normal business hours and deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment, but excluding any automatic reply to such email), except that, if such notice or other communication is not sent prior to noon, local time at the location of the recipient, then such notice or communication shall be deemed not to have been received until the opening of business on the next Business Day for the recipient, at the earliest, and (B) any notices or communications permitted to be 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 (A) of notification that such notice or communication is available and clearly identifying an accessible website address therefor.

(ii) Each Credit Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(iii) Any notice, demand or other communication, information, document or other material that any Credit Party provides to Administrative Agent or any other Agent pursuant to any Credit Document or the transactions contemplated therein that is distributed to the Lenders or any other Agent by means of electronic communications pursuant to this Section 10.1(b) (each, an "**Approved Electronic Communication**") and the Platform are provided "as is" and "as available". None of the Agents or any of their respective officers, Directors, employees, agents, advisors or representatives (the "**Agent Affiliates**") warrant the accuracy, adequacy or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Platform or the Approved Electronic Communications. In no event shall the Agent Affiliates have any liability to any of the Credit Parties, any Lender or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any credit party's or administrative agent's transmission of communications through the Platform. Each party hereto agrees that no Agent has any responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Approved Electronic Communication or otherwise required for the Platform.

(iv) Each Credit Party, each Lender and each Agent agrees that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with Administrative Agent's customary document retention procedures and policies.

(v) All uses of the Platform shall be governed by and subject to, in addition to this Section 10.1, separate terms and conditions posted or referenced in such Platform and related agreements executed by the Lenders and their Affiliates in connection with the use of such Platform.

(vi) Any notice of Default or Event of Default may be provided by telephone if confirmed promptly thereafter by delivery of written notice thereof.

(c) Change of Address. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

10.2. Expenses. Whether or not the transactions contemplated hereby shall be consummated, the Credit Parties agree to pay promptly (a) all the Agents' actual and reasonable costs and expenses incurred in connection with the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto; (b) all the Agents' costs of furnishing all opinions by counsel for the Credit Parties; (c) all the reasonable fees, expenses and disbursements of counsel to the Agents and Guggenheim in connection with the negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by any Credit Party; provided, such fees, expenses and disbursements of counsel to Guggenheim in connection with the negotiation, preparation and execution of the Credit Documents shall not exceed $30,000; (d) all the actual costs and reasonable expenses of creating, perfecting, recording, maintaining and preserving Liens in favor of Collateral Agent, for the benefit of the Secured Parties, including filing and recording fees, expenses and Other Taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to each Agent and of counsel providing any opinions that any Agent or the Requisite Lenders may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) any Agent's actual costs and reasonable fees, expenses and disbursements of any auditors, accountants, consultants or appraisers'; (f) all the actual costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other actual and reasonable costs and expenses incurred by each Agent in connection with the syndication of the Loans and the Commitments and the transactions contemplated by the Credit Documents and any consents, amendments, waivers or other modifications thereto; and (h) after the occurrence of a Default or an Event of Default, all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by any Agent or any Lender in enforcing or preparing for enforcement of any Obligations of or in collecting or preparing to collect any payments due from any Credit Party under any Credit Document by reason of such Default or Event of Default (including in connection with any actual or prospective sale of, collection from or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any actual or prospective refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work out" or pursuant to or in contemplation of any insolvency or bankruptcy cases or proceedings, including the engagement of a restructuring advisor or consultant satisfactory to Administrative Agent in its sole discretion and including filing and defending claims or challenges in any such proceedings and monitoring or taking any other actions in connection with any such proceedings.

10.3. Indemnity and Related Reimbursement.

(a) In the event that an Indemnitee becomes involved in any capacity in any action, proceeding or investigation brought by or against any Person (including whether brought by a third party or any Credit Party or any of its affiliates) relating to or arising out of any Indemnified Liabilities and whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees that on demand it will reimburse such Indemnitee for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith.

(b) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Indemnitee, from and against any and all Indemnified Liabilities, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory, or sole negligence of such Indemnitee; provided, no Credit Party shall have any obligation to any Indemnitee under this Section 10.3(b) with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise directly from the gross negligence or willful misconduct of such Indemnitee, in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction. **THE FOREGOING INDEMNIFICATION SHALL APPLY WHETHER OR NOT SUCH INDEMNIFIED LIABILITIES ARE IN ANY WAY OR TO ANY EXTENT OWED, IN WHOLE OR IN PART, UNDER ANY CLAIM OR THEORY OF STRICT LIABILITY, OR ARE CAUSED, IN WHOLE OR IN PART, BY ANY NEGLIGENT ACT OR OMISSION OF ANY KIND BY ANY INDEMNITEE**. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. Paragraph (b) of this Section shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) To the fullest extent permitted by applicable law, no Credit Party shall assert, and each Credit Party hereby waives, any claim against any Indemnitee on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of or in any way related to this Agreement or any other Credit Document or any agreement or instrument contemplated hereby or thereby or referenced to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Credit Party hereby waives, releases and agrees not to sue upon any such claim or such damages whether or not accrued and whether or not known or suspected to exist in its favor. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications or electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby.

(d) Each Credit Party also agrees that no Indemnitee will have any liability to any Credit Party or any person asserting claims on behalf of or in right of any Credit Party or any other Person in connection with or as a result of this Agreement or any other Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, in each case, except in the case of any Credit Party to the extent that any losses, claims, damages, liabilities or expenses incurred by such Credit Party or its Affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of such Lender or such Agent in performing its funding obligations under this Agreement; provided, in no event will any such Lender or Agent have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Lender's or Agent's or their respective Affiliates', Directors', employees', attorneys', agents' or sub-agents' activities arising out of, in connection with, as a result of or in any way related to this Agreement or any other Credit Document or any agreement or instrument contemplated hereby or thereby or referenced to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith. No other party hereto shall be liable for the obligations of any Defaulting Lender in failing to make any Loans or other extension of credit hereunder.

10.4. Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender and their respective Affiliates are each hereby authorized by each Credit Party at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) and any other obligations or Indebtedness at any time held or owing by such Lender or such Affiliate to or for the credit or the account of any Credit Party against and on account of the Obligations of any Credit Party to such Lender hereunder and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto or to any other Credit Document, irrespective of whether or not (a) such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured; provided, in the event that any Defaulting Lender shall exercise any such right of set off, (i) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of Sections 2.16 and 2.21 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent and the Lenders, and (ii) the Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section 10.4 are in addition to other rights and remedies (including other rights of set-off) that such Lender or their respective Affiliates may otherwise have.

10.5. Amendments and Waivers.

(a) Requisite Lenders' Consent. Subject to the additional requirements of Sections 10.5(b) and 10.5(c) and except as otherwise provided in Section 2.17(b), no amendment, modification, termination or waiver of any provision of any Credit Document (excluding the Fee Letter, which may be amended, modified or rights and privileges thereunder waived in a writing executed only by Credit Party Representative and GSSLG), or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of Administrative Agent and the Requisite Lenders.

(b) Affected Lenders' Consent. Subject to Section 10.5(d), without the written consent of each Lender that would be directly and adversely affected thereby, no amendment, modification, termination, waiver or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Loan or any promissory note issued pursuant to Section 2.6;

(ii) waive, reduce or postpone any scheduled repayment;

(iii) [Intentionally Reserved].

(iv) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.9) or any fee or premium payable under this Agreement; provided, (A) only the consent of the Requisite Lenders shall be necessary to amend the Default Rate in Section 2.9, to waive any prospective obligation of Companies to pay interest at the Default Rate, or to restore any right of Companies to convert or continue Loans as SOFR Loans that was revoked at the direction of the Requisite Lenders or automatically pursuant to any provision of this Agreement, and (B) only the consent of Administrative Agent shall be necessary to revoke any election by Administrative Agent to impose interest at the Default Rate or to restore any right of Companies to convert or continue Loans as SOFR Loans that was revoked by Administrative Agent;

(v) waive or extend the time for payment of any such interest, fees, or premiums;

(vi) reduce or forgive the principal amount of any Loan;

(vii) amend, modify, terminate or waive any provision of this Section 10.5(b) or 10.5(c) or any other provision of this Agreement that expressly provides that the consent of all Lenders or any specific Lenders is required;

(viii) amend the definition the terms "**Requisite Lenders**", "**Pro Rata Share**" (or any analogous provision of any of this Agreement or any other Credit Document, in a manner that would by its terms alter the pro rata sharing of payments required thereby or the relative priorities of such payments) or "**Voting Power Determinants**" (or any of them); provided, with the consent of Administrative Agent and the Requisite Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of "Requisite Lenders", "Pro Rata Share" or "**Voting Power Determinants**" on substantially the same basis as the Term Loan Commitments and the Term Loans are included on the Closing Date;

(ix) release a material portion of the Collateral (or subordinate the Liens in favor of the Collateral Agent on a material portion of the Collateral) or substantially all of the Guarantors from the Guaranty except (A) as expressly provided in the Credit Documents on the Closing Date (or pursuant to an amendment thereto that has been consented to by all Lenders), or (B) in connection with a "credit bid" undertaken by Collateral Agent with the consent or at the direction of Requisite Lenders pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or any other provision of the Bankruptcy Code or any other Debtor Relief Law; or

(x) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Credit Document, except as expressly provided in any Credit Document.

(c) Other Consents. Subject to Section 10.5(d), no amendment, modification, termination or waiver of any provision of the Credit Documents (excluding the Fee Letter), or consent to any departure by any Credit Party therefrom, shall:

(i) increase any Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any Commitment of any Lender;

(ii) [Intentionally Reserved];

(iii) amend, modify, terminate or waive any provision of Section 3.2(a) with regard to any Credit Extension consisting of a Term Loan without the consent of the Requisite Lenders;

(iv) [Intentionally Reserved];

(v) alter the required application of any repayments or prepayments as between Classes pursuant to Section 2.14 or 2.15(h) without the consent of the Requisite Lenders;

(vi) amend, modify or waive any provision of this Agreement or the Pledge and Security Agreement so as to alter the treatment of Obligations arising under the Credit Documents and Obligations arising under Secured Hedge Agreements or the definitions of the terms "**Lender Counterparty**", "**Secured Hedge Agreement**", or "**Obligations**" (or any of them and as each such term or any similar term is defined in any relevant Collateral Document), in each case, in a manner adverse to any Lender or any Lender Counterparty with Obligations then outstanding without the written consent of the Requisite Lenders; or

(vii) amend, modify, terminate or waive any provision of Section 9 as the same directly or indirectly applies to any Agent, or any other provision hereof as the same directly or indirectly applies to the rights or obligations of any Agent, in each case, in any manner adverse to such Agent without the consent of such Agent.

(d) Defaulting Lender Consent. Notwithstanding anything herein to the contrary, no Defaulting Lender shall have any right to approve or disapprove any amendment, modification, termination, waiver or consent hereunder, and any amendment, modification, termination, waiver or consent that by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders, except that (i) the Commitments of any Defaulting Lender may not be increased or extended, or the maturity of any of its Loans may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case, without the consent of such Defaulting Lender and (ii) any amendment, modification, termination, waiver or consent requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than the other affected Lenders shall require the consent of such Defaulting Lender.

(e) Execution of Amendments. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, terminations, waivers and consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender, each Credit Party and each future Credit Party.

(f) Compensation for Amendments. Notwithstanding anything to the contrary in any Credit Document, unless otherwise agreed to by Administrative Agent in its sole discretion, no Credit Party may, nor may it permit any of its Subsidiaries to, directly or indirectly (including by being complicit in or otherwise facilitating any such action by any direct or indirect holders or beneficial owners of any such Person's Capital Stock), pay or otherwise transfer any consideration, whether by way of interest, fee or otherwise, to or for the benefit of any current or prospective Lender or any of its Affiliates (other than any customary fees paid to Administrative Agent or any of its Affiliates as consideration for arranging, structuring, or providing other services in connection therewith and customary upfront fees to be received by any new Lender providing new loans or new commitments) for or as an inducement to any action or inaction by such Lender or any of its Affiliates, including any consent, waiver, approval, disapproval, or withholding of any of the foregoing in connection with any required or requested approval, amendment, waiver, consent, or other modification of or under any Credit Document or any provision thereof unless such consideration is first offered to all then existing Lenders in accordance with their respective Pro Rata Shares and is paid to any such Lenders that act in accordance with such offer.

(g) Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement pursuant to a cashless settlement mechanism approved by Credit Party Representative, Administrative Agent and such Lender.

10.6. Successors and Assigns; Participations.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of the Lenders. No Credit Party's rights or obligations hereunder or any other Credit Document nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Indemnitee Agent Parties, Affiliates of each of the Agents and the Lenders, and any other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. The Credit Parties, Administrative Agent and the Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans (including principal and stated interest) listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following Administrative Agent's acceptance of a fully executed Assignment Agreement, together with the forms and certificates regarding Tax matters required under Section 2.19(c) and any fees payable in connection with such assignment, in each case, as provided in Section 10.6(e). Each assignment shall be recorded in the Register promptly following acceptance by Administrative Agent of the fully executed Assignment Agreement and all other necessary documents and approvals, prompt notice thereof shall be provided to Credit Party Representative and a copy of such Assignment Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the "**Assignment Effective Date**". Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans. It is intended that the Register be maintained such that the Loans are in "registered form" for the purposes of the Internal Revenue Code.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitments or Loans owing to it or other Obligations (provided, pro rata assignment shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and any related Commitment):

(i) to any Person meeting the criteria of clause (i)(a) or clause (ii)(a) of the definition of the term of "**Eligible Assignee**" upon the giving of notice to Administrative Agent; and

(ii) to any Person otherwise constituting an Eligible Assignee (other than, so long as no Event of Default has occurred and is continuing, a Disqualified Institution) with the consent of (x) Credit Party Representative (so long as no Default or Event of Default has occurred and is continuing, it being understood that the Credit Parties shall be deemed to have approved such assignment if Credit Party Representative fails to either consent to or reject such assignment within five Business Days after any request

for such consent by Administrative Agent, and (y) Administrative Agent; provided, each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than $1,000,000 (or such lesser amount (A) as may be agreed to by Credit Party Representative and Administrative Agent, (B) as shall constitute the aggregate amount of the Term Loans and Term Loan Commitments of a particular Class of the assigning Lender or (C) as is assigned by an assigning Lender to an Affiliate or Related Fund of such Lender) with respect to the assignment of the Term Loans and the Term Loan Commitments.

(d) Mechanics.

(i) Assignments and assumptions of the Loans and the Commitments by the Lenders shall be effected by execution and delivery to Administrative Agent of an Assignment Agreement. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to Administrative Agent such forms, certificates or other evidence, if any, with respect to U.S. federal income Tax withholding matters as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.19(e), together with payment to Administrative Agent of a registration and processing fee of $3,500 (except that no such registration and processing fee shall be payable (A) in connection with an assignment by or to Goldman Sachs or any Affiliate or Related Fund thereof or (B) in the case of an assignee that is already a Lender or is an Affiliate or Related Fund of a Lender or a Person under common management with a Lender).

(ii) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations or other compensating actions, including funding, with the consent of Credit Party Representative and Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to each Agent and each Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full Pro Rata Share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this clause (d)(ii), then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(e) Notice of Assignment. Upon its receipt and acceptance of a duly executed and completed Assignment Agreement, and any forms, certificates or other evidence required by this Agreement in connection therewith, Administrative Agent shall record the information contained in such Assignment Agreement in the Register, shall give prompt notice thereof to Credit Party Representative and shall maintain a copy of such Assignment Agreement.

(f) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the applicable Commitments or Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course of its business and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control); (iv) it will not provide any information obtained by it in its capacity as a Lender to any Credit Party or any of its Affiliates; and (v) neither such Lender nor any of its Affiliates owns or controls any trade obligations or Indebtedness of any Credit Party (other than the Obligations) or any Capital Stock of any Credit Party.

(g) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the Assignment Effective Date, (i) the assignee thereunder shall have the rights and obligations of a "Lender" hereunder to the extent of its interest in the Loans and the Commitments as reflected in the Register and shall thereafter be a party hereto and a "Lender" for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights that survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect any Commitment of such assignee and any remaining Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any promissory note pursuant to Section 2.6, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable promissory notes to Administrative Agent for cancellation, and thereupon Companies shall issue and deliver new promissory notes in accordance with Section 2.6, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new or remaining Commitments and outstanding Loans of such assignee and/or such assigning Lender.

(h) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than Holdings, any of its Subsidiaries or any of its Affiliates, any Disqualified Institution or any Natural Person) in all or any part of such Lender's Commitments, Loans or in any other obligations and/or rights under this Agreement. Each Lender that sells a participation pursuant to this Section 10.6(h) shall, acting solely for U.S. federal income Tax purposes as a non-fiduciary agent of Companies, maintain a register on which it records the name and address of each participant and the principal amounts (and stated interest) of each participant's participation interest with respect to any Loan, Commitment or other obligation and/or rights of a Lender under this

Agreement (each, a "**Participant Register**"); provided, no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any Commitments, Loans or other obligations and/or rights under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Commitment, Loan or other obligation and/or right is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations, Section 1.163-5 of the proposed United States Treasury Regulations or any applicable temporary, final or other successor regulations. Unless otherwise required by the Internal Revenue Service, any disclosure required by the immediately preceding sentence shall be made by the relevant Lender directly and solely to the Internal Revenue Service. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of a participation with respect to any Loan or Commitment for all purposes under this Agreement, notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent shall have no responsibility for maintaining a Participant Register.

(ii) Unless otherwise agreed to by Administrative Agent, the holder of any such participation, other than an Affiliate of such Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) extend the final scheduled maturity of any Loan, any promissory note evidencing a Loan in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of such participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitments shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if such participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement, or (C) release all or substantially all of the Collateral under the Collateral Documents or all or substantially all of the Guarantors from the Guaranty (in each case, except as expressly provided in the Credit Documents) supporting the Loans hereunder in which such participant is participating.

(iii) Each Credit Party agrees that each participant shall be entitled to the benefits of Sections 2.17(d), 2.18 and 2.19 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.6(c); provided, (A) a participant shall not be entitled to receive any greater payment under Section 2.18 or 2.19 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after such participant acquired the participation or unless the sale of the participation to such participant is made with Credit Party Representative's prior written consent (not to be unreasonably withheld, delayed or conditioned), and (B) a participant shall not be entitled to the benefits of Section 2.19 unless such participant agrees, for the benefit of the Credit Parties, to comply with Section 2.19 as though it were a Lender (it being understood that any documentation required under Sections 2.19(c) and 2.19(d) shall be delivered to the participating Lender). To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.4 as though such participant were a Lender; provided, by accepting a participation hereunder, such participant shall be deemed to have agreed to be subject to Section 2.16 as though it were a Lender.

(i) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.6, any Lender may assign, pledge or grant a Lien in all or any portion of its Loans, the other Obligations owed to such Lender and its promissory notes issued pursuant to Section 2.6, if any, to secure obligations of such Lender, including to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided, no Lender, as between Companies and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge; provided, further, in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

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

10.8. Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.17(d), 2.18, 2.19, 10.2, 10.3, 10.4 and 10.10 and the agreements of the Lenders set forth in Sections 2.16, 9.3(b) and 9.6 shall survive the Payment in Full of the Obligations.

10.9. No Waiver; Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents or any of the Secured Hedge Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10. Marshalling; Payments Set Aside. No Agent or Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to any Agent or any Lender (or to Administrative Agent, for the benefit of any Lender), or any Agent or any Lender enforces any Liens or exercises any right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy

law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11. Severability. In case any provision in or obligation under this Agreement or any other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby (it being understood that the invalidity, illegality or unenforceability of a particular provision in a particular jurisdiction shall not in and of itself affect the validity, legality or enforceability of such provision in any other jurisdiction). The parties hereto shall endeavor in good faith negotiations to replace any invalid, illegal or unenforceable provisions with valid, legal and enforceable provisions the economic effect of which comes as close as reasonably possible to that of the invalid, illegal or unenforceable provisions.

10.12. Obligations Several; Actions in Concert. The obligations of the Lenders hereunder are several, and no Lender shall be responsible for the obligations or Commitments of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by the Lenders pursuant hereto or thereto, shall be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of entity. Anything in this Agreement or any other Credit Document to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or any promissory note issued pursuant to Section 2.6 or otherwise with respect to the Obligations without first obtaining the prior written consent of Administrative Agent or the Requisite Lenders (as applicable), it being the intent of the Lenders that any such action to protect or enforce rights under this Agreement or any other Credit Document with respect to the Obligations shall be taken in concert and at the direction or with the consent of Administrative Agent or the Requisite Lenders (as applicable).

10.13. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.14. Applicable Law. **THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK**.

10.15. Consent to Jurisdiction. **SUBJECT TO CLAUSE (V) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY FEDERAL COURT OF THE U.S. SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH CREDIT PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE (SUBJECT TO CLAUSE (V) BELOW) JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO SUCH CREDIT PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER SUCH CREDIT PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (V) AGREES THAT THE AGENTS AND THE LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY CREDIT DOCUMENT OR AGAINST ANY COLLATERAL OR THE ENFORCEMENT OF ANY JUDGMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF, AND CONSENTS TO VENUE IN, ANY SUCH COURT.**

10.16. Waiver of Jury Trial. **EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR TO ANY OF THE OTHER CREDIT**

DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.17. Confidentiality. Each Agent and each Lender shall hold all non-public information regarding Holdings and its Subsidiaries and their businesses identified as such by Credit Party Representative and obtained by such Agent or such Lender pursuant to the requirements hereof in accordance with such Agent's or such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by each Credit Party that, in any event, Administrative Agent may disclose any such information to the Lenders and the other Agents, and any Agent or any Lender may make (a) disclosures of such information to Affiliates and Related Funds of such Lender or such Agent and to their respective officers, Directors, partners, members, employees, legal counsel, independent auditors and other advisors, experts, or agents on a confidential basis (and to other Persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17), (b) disclosures of such information reasonably required by any potential or prospective assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or Commitments or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to any Credit Party and its obligations (provided, such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 10.17 or other substantially similar confidentiality restrictions), (c) disclosure to any rating agency, (d) disclosure on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, (e) disclosures in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (f) disclosures made pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case such Person agrees to inform Credit Party Representative promptly thereof to the extent not prohibited by law), (g) disclosures made upon the request or demand of any regulatory or quasi-regulatory authority (including the National Association of Insurance Commissioners, and any successor thereto) purporting to have jurisdiction over such Person or any of its Affiliates, (h) disclosures to any Lender's financing sources; provided, prior to any disclosure such financing source is informed of the confidential nature of the information, and (i) disclosures with the consent of the relevant Credit Party. Notwithstanding anything to the contrary set forth herein, each party (and each of their respective Directors, employees, representatives or other agents) may disclose to any and all Persons, without limitations of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other tax analyses) that are provided to any such party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto, their respective Affiliates and all of their respective Directors and employees to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the federal income tax treatment of the transactions contemplated by this Agreement but does not include information relating to the identity of any of the parties hereto or any of their respective Affiliates. Notwithstanding the foregoing, on or after the Closing Date, Administrative Agent may, at its own expense, issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media, which may include use of logos of one or more of the Credit Parties (collectively, "**Trade Announcements**"). No Lender or Credit Party shall (i) issue any Trade Announcement, (ii) use or reference in advertising, publicity or otherwise the name of Goldman Sachs, any Lender or any of their respective Affiliates, partners or employees, or (iii) represent that any product or any service provided has been approved or endorsed by Goldman Sachs, any Lender or any of their respective Affiliates, except (A) disclosures required by applicable law, regulation, legal process or the rules of the Securities and Exchange Commission or (B) with the prior approval of Administrative Agent.

10.18. Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged and paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law, shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the immediately preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest that would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Obligations are Paid in Full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest that would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then, to the extent permitted by law, the Credit Parties shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest that would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and the Credit Parties to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges or receives any consideration that constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to the Credit Parties. In determining whether the interest contracted for, charged or received by Administrative Agent or any Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations.

10.19. Effectiveness; Counterparts. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Credit Party Representative and Administrative Agent of written notification of such execution and authorization of delivery thereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

10.20. Entire Agreement. This Agreement, together with the other Credit Documents (including any such other Credit Document entered into prior to the date hereof), reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, made prior to the date hereof.

10.21. PATRIOT Act. Each Lender, Administrative Agent (for itself and not on behalf of any Lender) and MXN Collateral Agent (for itself and not on behalf of any Lender) hereby notifies each Credit Party that, pursuant to the requirements of the PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender or Administrative Agent, as applicable, to identify such Credit Party in accordance with the PATRIOT Act and the Beneficial Ownership Regulation.

10.22. Electronic Execution of Assignments and Credit Documents. The words "execution", "signed", "signature" and words of like import in any Assignment Agreement or any other Credit Document shall, in each case, be deemed to include electronic signatures, signatures exchanged by electronic transmission, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act; provided, Administrative Agent or Collateral Agent may request, and upon any such request the Credit Parties shall be obligated to provide, manually executed "wet ink" signatures to any Credit Document.

10.23. No Fiduciary Duty. Each Agent, each Lender and their respective Affiliates (collectively, solely for purposes of this Section 10.23, the "**Lender Parties**"), may have economic interests that conflict with those of the Credit Parties, their equity holders and/or their Affiliates. Each Credit Party agrees that nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender Party, on the one hand, and such Credit Party, its equity holders or its Affiliates, on the other. The Credit Parties acknowledge and agree that (a) the transactions contemplated by the Credit Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lender Parties, on the one hand, and the Credit Parties, on the other, and (b) in connection therewith and with the process leading thereto, (i) no Lender Party has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its equity holders or its Affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender Party has advised, is currently advising or will advise any Credit Party, its equity holders or its Affiliates on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Credit Documents and (ii) each Lender Party is acting solely as principal and not as the agent or fiduciary of any Credit Party, its management, stockholders, creditors or any other Person. Each Credit Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that any Lender Party has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, in connection with such transaction or the process leading thereto.

10.24. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit 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 Credit 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 that 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) 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 Credit 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.

10.25. Intercreditor Agreement. Each Lender hereunder (a) acknowledges that it has received a copy of the Intercreditor Agreement, (b) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and (c) authorizes and instructs the Collateral Agent to enter into the Intercreditor Agreement as Collateral Agent and on behalf of such Lender. Notwithstanding anything herein to the contrary, the priority of the Liens in the Collateral securing the Obligations, the exercise of any right or remedy with respect thereto and certain of the rights of the Secured Parties are subject to the provisions of the Intercreditor Agreement. In the event of any direct and irreconcilable conflict between the terms of the Intercreditor Agreement and those of this Agreement, the terms of the Intercreditor Agreement shall govern and control. Any reference in this Agreement to "first priority lien" or words of similar effect in describing the Liens created hereunder or under any other Credit Document shall be understood to refer to such priority as set forth in the Intercreditor Agreement. Nothing in this Section 10.25 shall be construed to provide that any Credit Party is a third party beneficiary of the provisions of the Intercreditor Agreement, and each Credit Party (a) agrees that, except as expressly otherwise provided in the Intercreditor Agreement, the terms of the Intercreditor Agreement shall not give any Credit Party any, nor modify any, substantive rights vis-à-vis any Agent or any Lender, or any obligations or liabilities owing to the Agents and/or the Lenders, under this Agreement or any other Credit Document and (b) if, with respect to any particular Collateral, any Agent shall enforce its rights or remedies in violation of the terms of the Intercreditor Agreement applicable thereto, agrees that it shall not use such violation as a defense to any enforcement of remedies otherwise made in accordance with the terms of this Agreement and the other Credit Documents by any Agent or

any Lender or assert such violation as a counterclaim or basis for set-off or recoupment against any Agent or any Lender and agrees to abide by the terms of this Agreement and the other Credit Documents and to keep, observe and perform the several matters and things herein intended to be kept, observed and performed by it; provided, no Default or Event of Default shall arise as a result of any Credit Party complying with the provisions of the Intercreditor Agreement.

10.26. Acknowledgement Regarding Any Supported QFCs. To the extent that the Credit 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 Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit 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 Credit 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.

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APPENDIX A TO
CREDIT AND GUARANTY AGREEMENT

Initial Term Loan Commitments

Lender	Initial Term Loan Commitment	Pro Rata Share
Goldman Sachs Specialty Lending Group, L.P.	$75,000,000	50.0%
Private Debt Investors Feeder, LLC	$73,544,117.65	49.029%
South Carolina Retirement Systems Group Trust	$1,455,882.35	0.971%
Total	$150,000,000.00	100.00%

APPENDIX B TO
CREDIT AND GUARANTY AGREEMENT

Multi-Draw Term Loan Commitments immediately prior to the Third Amendment Effective Date:

Lender	Multi-Draw Term Loan Commitment	Multi-Draw Term Loan Commitment Outstanding	Pro Rata Share
Goldman Sachs Specialty Lending Group, L.P.	$10,000,000.00	$0	50.00%
Private Debt Investors Feeder, LLC	$9,805,882.35	$0	49.029%
South Carolina Retirement Systems Group Trust	$194,117.65	$0	0.971%
Total	$20,000,000.00	$0	100.00%

Multi-Draw Term Loan Commitments as of the Third Amendment Effective Date:

Lender	Multi-Draw Term Loan Commitment	Pro Rata Share
Goldman Sachs Specialty Lending Group, L.P.	$10,000,000.00	50.00%
Private Debt Investors Feeder, LLC	$9,805,882.35	49.029%
South Carolina Retirement Systems Group Trust	$194,117.65	0.971%
Total	$20,000,000.00	100.00%

LIMITED WAIVER AND FOURTH AMENDMENT TO CREDIT AGREEMENT

This **LIMITED WAIVER AND FOURTH AMENDMENT TO CREDIT AGREEMENT**, dated as of January 9, 2023 (this "Amendment"), is entered into by and among **LIFECORE BIOMEDICAL, INC.** (f/k/a Landec Corporation), a Delaware corporation ("Holdings"), **CURATION FOODS, INC.**, a Delaware corporation ("Curation"), **LIFECORE BIOMEDICAL OPERATING COMPANY, INC.** (f/k/a Lifecore Biomedical, Inc.), a Delaware corporation (collectively with Holdings and Curation, the "Borrowers" and each a "Borrower"), each Guarantor party hereto, **BMO HARRIS BANK N.A.**, as Administrative Agent, and the Lenders party hereto.

RECITALS:

WHEREAS, reference is hereby made to that certain Credit Agreement, dated as of December 31, 2020 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the "Existing Credit Agreement", and as further amended by this Amendment, the "Credit Agreement"; capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement, as amended herein), by and among the Borrowers, the other Loan Parties party thereto from time to time, the Lenders party thereto from time to time, GLAS Americas LLC, as MXN Collateral Agent, and BMO Harris Bank N.A., as Administrative Agent;

WHEREAS, the Borrower Agent has informed the Administrative Agent that the Events of Default identified on Exhibit A hereto have occurred and are continuing (collectively, the "Specified Events"); and

WHEREAS, the Loan Parties have requested that the Administrative Agent and the Lenders waive the Specified Events and make certain amendments to the Credit Agreement, and the Administrative Agent and the Lenders have agreed to do so, but solely on the terms and conditions set forth herein.

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

1. Acknowledgements.

(a) Acknowledgement of Obligations. The Loan Parties hereby acknowledge, confirm and agree that all Loans under the Credit Agreement, together with interest accrued and accruing thereon, and all fees, costs, expenses and other charges now or hereafter payable by Borrowers to Administrative Agent or any Lender, are unconditionally owing by Borrowers to Administrative Agent or such Lender, without offset, defense or counterclaim of any kind, nature or description whatsoever.

(b) Acknowledgement of Loan Documents. The Loan Parties hereby acknowledge, confirm and agree that Administrative Agent has and shall continue to have a valid, enforceable and perfected first priority lien upon and security interest in the Collateral heretofore granted to Administrative Agent pursuant to the Loan Documents or otherwise granted to or held by Administrative Agent.

(c) Acknowledgment of Defaults. The Loan Parties hereby acknowledge and agree that the each of Specified Events have occurred and are continuing, constitutes an Event of Default, and entitles Administrative Agent and each Lender to exercise its rights and remedies under the Loan Documents, applicable law or otherwise, including, without limitation, by exercising the right to declare the Obligations to be immediately due and payable under the terms of the Loan Documents. The Loan Parties represent and warrant that as of the date hereof, no other Events of Default exist other than the Specified Events.

2. Limited Waiver of Specified Events; Default Rate Interest.

(a) Subject to satisfaction of the conditions precedent set forth in Section 5 below, the Administrative Agent and the Lenders party hereto (constituting Required Lenders) hereby waive, as of the date hereof, the Specified Events (collectively, the "Limited Waiver").

(b) Except as expressly set forth herein, the Limited Waiver shall not be deemed to constitute a consent to, or waiver or approval of, any other act, any other omission or any other failure by the Loan Parties to comply with the terms and provisions of the Existing Credit Agreement or any of the other Loan Documents.

(c) The Limited Waiver is a limited, one time waiver and, except as expressly set forth herein, shall not be deemed to: (i) constitute a waiver of any Default, Event of Default or any other breach by the Loan Parties of, or non-compliance by the Loan Parties with, the Existing Credit Agreement or any of the other Loan Documents, whether now existing or hereafter arising, (ii) constitute a waiver of any right or remedy of any Secured Party under the Existing Credit Agreement or any other Loan Documents which does not arise as a result of the Specified Events (in each case prior to giving effect to this Limited Waiver) or (iii) establish a custom or course of dealing or conduct between any Secured Party, on the one hand, and the Loan Parties, on the other hand.

(d) Each Secured Party expressly reserves the right to exercise all rights and remedies under the Existing Credit Agreement and all other Loan Documents and under applicable law with respect to the occurrence of any Event of Default other than the Specified Events.

(e) Each of the parties hereto acknowledges and agrees that as of December 1, 2022, all outstanding Loan Obligations began to bear interest at the Default Rate, and shall continue to bear interest at the Default Rate until January 31, 2023, after which, the Loan Obligations shall bear interest in accordance with Section 2.08 of the Credit Agreement.

3. **Amendments**. Subject to the terms and conditions set forth herein, including satisfaction of each condition set forth in Section 5 below, and in reliance on the representations, warranties, covenants and agreements of the Loan Parties set forth herein, as of the date hereof:

(a) the Existing Credit Agreement is hereby amended by (i) deleting the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~), (ii) adding the double-underlined text (indicated textually in the same manner as the following example: **double-underlined text**) as set forth in the pages of the Credit Agreement attached as Exhibit B hereto and (iii) amending and restating Schedule 2.01 to the Existing Credit Agreement as set forth on Exhibit C; and

(b) notwithstanding anything to the contrary contained in this Amendment, the Credit Agreement or in any other Loan Document, (A) all Loans outstanding as of the date hereof (immediately prior to giving effect to this Amendment) that are LIBOR Loans (as defined in the Existing Credit Agreement, the "**Existing LIBOR Loans**") shall continue to accrue interest based on the LIBOR Rate (as defined in the Existing Credit Agreement) (plus the Applicable Margin (as defined in the Existing Credit Agreement) applicable to such Existing LIBOR Loans as of the date hereof immediately prior to giving effect to this Amendment) and their applicable existing Interest Periods (as each such term is defined in the Existing Credit Agreement) until the last day of the Interest Period applicable to each such Existing LIBOR Loan (provided, that in no event shall an Existing LIBOR Loan be permitted to be continued as a LIBOR Loan after the termination or expiration of its applicable current Interest Period), and thereafter, all Existing LIBOR Loans shall either be SOFR Loans or Base Rate Loans as determined in accordance with the Credit Agreement, and (B) subject to any express limitations set forth in the immediately preceding clause (A), the terms of the Existing Credit Agreement in respect of the administration of LIBOR Loans (solely with respect to the Existing LIBOR Loans) shall remain in effect from and after the date hereof until the last day of the Interest Period applicable to each such Existing LIBOR Loan, in each case, solely for purposes of administering the Existing LIBOR Loans.

4. **Representations and Warranties**. To induce the Administrative Agent and the Lenders to enter into this Amendment, each Loan Party represents and warrants that:

(a) as of the date hereof, the representations and warranties of the Loan Parties contained in Article VI of the Credit Agreement or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct in all material respects, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date;

(b) as of the date hereof, no Default has occurred and is continuing under the Existing Credit Agreement or any other Loan Document or would result from the execution and delivery of this Amendment (other than the Specified Events);

(c) the execution and delivery of this Amendment and the performance by each Loan Party of this Amendment and the Credit Agreement have been duly authorized by all necessary corporate or other organizational action, and do not and will not (i) contravene the terms of the Organization Documents of any such Person; (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (A) any Contractual Obligation to which such Person is a party (other than the creation of Liens in favor of the Administrative Agent pursuant to any Loan Document and the creation of the Term Loan Liens) or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any Law applicable to such Person;

(d) no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (i) the execution and delivery of this Amendment or the performance by, or enforcement against, any Loan Party of this Amendment of the Credit Agreement, or (ii) the exercise by the Administrative Agent or any Lender of its rights under the Amendment or the Credit Agreement or the remedies in respect of the Collateral pursuant to the Loan Documents;

(e) this Amendment has been duly executed and delivered by each Loan Party that is party thereto; and

(f) this Amendment and the Credit Agreement constitute legal, valid and binding obligations of such Loan Party, enforceable against each Loan Party in accordance with its terms, except (a) as rights to indemnification hereunder may be limited by applicable Law and (b) as the enforcement hereof may be limited by any applicable Debtor Relief Laws or by general equitable principles.

5. **Conditions to Effectiveness**. The effectiveness of this Amendment is subject to the following conditions:

(a) Delivery of Documents. On or before the date hereof, the Administrative Agent shall have received sufficient copies of (i) this Amendment, (ii) a closing certificate signed by the an Authorized Officer of Borrower Agent dated as of the date hereof, stating that (A) all representations and warranties set forth in this Amendment and the other Loan Documents are true and correct on and as of such date (other than representations and warranties relating to a specific earlier date and in such case such representations and warranties are true and correct in all material respects as of such earlier date) and (B) on such date no Default or Event of Default has occurred or is continuing immediately after giving effect to the execution and delivery of this Amendment and the consummation of the transactions contemplated hereby, (iii) a certificate

signed by the chief financial officer or, chief accounting officer of the Borrower Agent certifying that, after giving effect to the entering into of the Amendment and the consummation of all of the transactions contemplated thereby, (A) each Borrower is Solvent and (B) the Loan Parties, taken as a whole, are Solvent, (iv) a "bring-down" secretary's certificate of each U.S. Loan Party (A) certifying that there have been no changes to such Loan Party's Organization Documents (or attaching any such changes); (B) attaching signature and incumbency certificates of the officers of such Person executing this Amendment; (C) resolutions of the Board of Directors of each Loan Party approving and authorizing the execution, delivery and performance of this Amendment, certified as of the Fourth Amendment Effective Date by an appropriate Authorized Officer as being in full force and effect without modification or amendment; and (D) attaching a good standing certificate from the applicable Governmental Authority of such Loan Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Fourth Amendment Effective Date, (v) a Borrowing Base Certificate as of the Fourth Amendment Effective Date, (vi) the Initial Cash Flow Report, in form and substance reasonably satisfactory to the Administrative Agent, (vii) the Series A Convertible Preferred Stock Documents, executed by the parties thereto and in form and substance reasonably satisfactory to the Required Lenders, (viii) a waiver and amendment under the Term Loan Agreement in form and substance satisfactory to the Administrative Agent, (ix) a consent and amendment to the Term Loan Intercreditor Agreement in form and substance satisfactory to the Administrative Agent, and (x) any other documents or agreements reasonably requested by the Administrative Agent in connection herewith, in each case, duly executed and delivered by each applicable Loan Party and each other Person party thereto.

(b) Accuracy of Representations and Warranties. All of the representations and warranties of the Loan Parties contained in Article VI of the Credit Agreement or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct in all material respects, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(c) Accrued Interest. The Administrative Agent shall have received payment from the Borrowers of all unpaid interest on the Loan Obligations (including, without limitation, interest accrued at the Default Rate pursuant to Section 2(e)) that has accrued through and including December 31, 2022.

(d) Expenses. The Loan Parties shall have paid, to the extent invoiced on or before the date hereof, to the Administrative Agent (or its advisors) all reasonable and documented costs and expenses of the Administrative Agent in connection with preparation, execution and delivery of this Amendment and all other related documents together with any other amounts, if any, in any case required to be paid under Section 11.04 of the Credit Agreement and unpaid on the date hereof, including, without limitation, legal fees and expenses due and owing to Sidley Austin LLP, counsel to the Administrative Agent which shall be paid pursuant to the wire transfer instructions set forth on Exhibit D.

6. Ratification; Reference to and Effect Upon the Existing Credit Agreement; No Impairment.

(a) Each Loan Party party hereto hereby consents to this Amendment and each of the transactions referenced herein, and hereby reaffirms its obligations under the Credit Agreement and each other Loan Document to which it is a party, as applicable.

(b) Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Existing Credit Agreement or instruments securing the same. Except as specifically amended above, the Existing Credit Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or any Lender under the Existing Credit Agreement or any other Loan Document, nor constitute a waiver of any provision of the Existing Credit Agreement or any other Loan Document. Upon the effectiveness of this Amendment, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of similar import shall mean and be a reference to the Credit Agreement.

(d) Each Obligor acknowledges that its Obligations and other liabilities and obligations under the Credit Agreement and the other Loan Documents are not impaired in any respect by this Agreement.

7. Release; Indemnification.

(a) In further consideration of the execution of this Amendment by the Administrative Agent and the Lenders, each Loan Party, individually and on behalf of its successors (including any trustees acting on behalf of such Loan Party and any debtor in possession with respect to such Loan Party), assigns, Subsidiaries and Affiliates (collectively, the "Releasors"), hereby forever releases each Agent and Lender and their respective successors, assigns, parents, Subsidiaries, Affiliates, officers, employees, directors, agents and attorneys (collectively, the "Releasees") from any and all debts, claims, demands, liabilities, responsibilities, disputes, causes, damages, actions and causes of actions (whether at law or in equity) and obligations of every nature whatsoever, whether liquidated or unliquidated, whether known or unknown, whether matured or unmatured, whether fixed or contingent that such Releasor has, had or may have against the Releasees, or any of them, which arise from or relate to any actions which the Releasees, or any of them, have or may have taken or omitted to take in connection with the Credit Agreement or the other Loan Documents prior to the date hereof, including with respect to the Obligations, any Collateral, the Credit Agreement, any other Loan Document and any third party liable in whole or in part for the Obligations. This provision shall survive and continue in full force and effect whether or not each Loan Party shall satisfy all other provisions of this Amendment or the other Loan Documents, including payment in full of all Obligations. Each Releasor understands, acknowledges and agrees that the foregoing release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(b) Each Loan Party hereby acknowledges and agrees that such Loan Party's obligations under this Amendment shall include an obligation to indemnify and hold the Releasees harmless with respect to any indemnified liabilities in any manner relating to or arising out of the negotiation, preparation, execution, delivery, performance, administration and enforcement of this Amendment to the extent required by Section 11.04(b) of the Credit Agreement.

8. **Relationship of Parties**. The relationship of the Administrative Agent, the MXN Collateral Agent and the Lenders, on the one hand, and the Loan Parties, on the other hand, has been and shall continue to be, at all times, that of creditor and debtor and not as joint venturers or partners. Nothing contained in this Amendment, any instrument, document or agreement delivered in connection herewith, the Credit Agreement or any of the other Loan Documents shall be deemed or construed to create a fiduciary relationship between or among the parties hereto or thereto.

9. **GOVERNING LAW**. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

10. **Headings**. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

11. **Counterparts; Electronic Execution**. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single agreement. Receipt of an executed signature page to this Amendment by facsimile or other electronic transmission shall constitute effective delivery thereof. The words "execution," "signed," "signature," and words of like import in this Amendment shall be deemed to include electronic signatures 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.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

LIFECORE BIOMEDICAL, INC. (f/k/a Landec Corporation)

By: /s/ John Morberg
Name: John Morberg
Title: Chief Financial Officer

CURATION FOODS, INC.

By: /s/ John D. Morberg
Name: John D. Morberg
Title: Chief Financial Officer

LIFECORE BIOMEDICAL OPERATING COMPANY, INC. (f/k/a Lifecore Biomedical, Inc.)

By: /s/ John D. Morberg
Name: John D. Morberg
Title: Vice President and Secretary

GREENLINE LOGISTICS, INC.

By: /s/ John D. Morberg
Name: John D. Morberg
Title: Vice President

YUCATAN FOODS, LLC

By: /s/ John D. Morberg
Name: John D. Morberg
Title: Vice President and Secretary

LIFECORE BIOMEDICAL, LLC

By: /s/ John D. Morberg
Name: John D. Morberg
Title: Vice President and Secretary

CAMDEN FRUIT CORP.

By: /s/ John D. Morberg
Name: John D. Morberg
Title: Vice President and Secretary

PROCESADORA TANOK, S. DE R.L. DE C.V.

By:_____/s/ Jeffery S. Kraetsch_____
Name: Jeffery S. Kraetsch
Title: Attorney-in-fact

TANOKATAN, S. DE R.L. DE C.V.

By:_____/s/ Jeffery S. Kraetsch_____
Name: Jeffery S. Kraetsch
Title: Attorney-in-fact

ADMINISTRATIVE AGENT:

BMO HARRIS BANK N.A., as Administrative Agent

By: /s/ Stephanie Bach
Name: Stephanie Bach
Title: Director

LENDER:

BMO HARRIS BANK N.A., as the Lender

By: /s/ Stephanie Bach
Name: Stephanie Bach
Title: Director

EXHIBIT A

Specified Events

EXHIBIT B

Credit Agreement

[Attached]

EXHIBIT B

MODIFIED COPY REFLECTING:
First Amendment to Credit Agreement dated April 16, 2021
Second Amendment to Credit Agreement dated December 22, 2021
Third Amendment to Credit Agreement dated February 22, 2022
Limited Waiver and Fourth Amendment to Credit Agreement dated January 9, 2023

CREDIT AGREEMENT

Dated as of December 31, 2020

among

LIFECORE BIOMEDICAL, INC. (f/k/a Landec Corporation), CURATION FOODS, INC. and LIFECORE BIOMEDICAL OPERATING COMPANY, INC. (f/k/a Lifecore Biomedical, Inc.),
each as a Borrower,

CERTAIN FINANCIAL INSTITUTIONS,
as Lenders,

and

BMO HARRIS BANK N.A.,
as Administrative Agent

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SCHEDULES

EXHIBITS

AGREEMENT

This **CREDIT AGREEMENT** (this "Agreement") is entered into as of December 31, 2020, by and among **LIFECORE BIOMEDICAL, INC.** (f/k/a Landec Corporation), a Delaware corporation ("Holdings"), **CURATION FOODS, INC.**, a Delaware corporation ("Curation"), **LIFECORE BIOMEDICAL OPERATING COMPANY, INC**. (f/k/a Lifecore Biomedical, Inc.), a Delaware corporation ("Lifecore Inc." and collectively with Holdings, Curation and each other party that executes a joinder to the Credit Agreement as a borrower, whether pursuant to Section 7.12, the "Borrowers" and each a "Borrower"), **EACH GUARANTOR FROM TIME TO TIME PARTY HERETO**, **EACH LENDER FROM TIME TO TIME PARTY HERETO** (collectively, the "Lenders" and individually, a "Lender"), **GLAS AMERICAS LLC**, a limited liability company organized and existing under the laws of the State of New York, as MXN Collateral Agent, and **BMO HARRIS BANK N.A.**, as Administrative Agent, Swing Line Lender and a Letter of Credit Issuer.

Preliminary Statements

A. The Borrowers have requested that the Administrative Agent, the Lenders, the Swing Line Lender and the Letter of Credit Issuer provide certain credit facilities to the Borrowers to finance their mutual and collective business enterprise.

B. The Administrative Agent, the Lenders, the Swing Line Lender and the Letter of Credit Issuer are willing to do so, but solely on the terms and conditions set forth in this Agreement.

C. In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"ABL Priority Collateral" means the "ABL Priority Collateral", as that term is defined in the Term Loan Intercreditor Agreement.

"Account" means "accounts" as defined in the UCC.

"Account Debtor" means any Person who is or may become obligated under or on account of any Account, Contractual Obligation, Chattel Paper or General Intangible.

"Accounts Formula Amount" means, at any time of calculation, (i) if prior to the occurrence of the Permanent Accounts Formula Amount Trigger, the Accounts Formula Amount (Deemed), and (ii) if after the occurrence of the Permanent Accounts Formula Amount Trigger, the Accounts Formula Amount (Permanent).

"Accounts Formula Amount (Deemed)" means, at any time of calculation, an amount equal to:

(a) the Value of Eligible Accounts of each of Holdings and Lifecore Inc. (other than, for avoidance of doubt, Eligible Credit Insured Foreign Accounts) multiplied by 85%; plus

(b) the Value of Eligible Developmental Service Accounts of Lifecore Inc. multiplied by 85%; plus

(c) the Value of Eligible Specified Foreign Account Debtor Accounts of Lifecore Inc. (other than, for avoidance of doubt, Eligible Credit Insured Foreign Accounts) multiplied by 85%; plus

(d) the Value of Eligible Credit Insured Foreign Accounts of each of Holdings and Lifecore Inc. multiplied by 90%; plus

(e) the Value of Eligible Accounts of Curation multiplied by 80%;

provided that the "Accounts Formula Amount (Deemed)" shall not include (i) any amounts in respect of the foregoing clause (b) in excess of $3,000,000 in the aggregate, or (ii) any amounts in respect of the foregoing clause (c) in excess of $3,500,000 in the aggregate.

"Accounts Formula Amount (Permanent)" means, at any time of calculation, an amount equal to:

(a) the Value of Eligible Accounts of Lifecore Inc. (other than, for avoidance of doubt, Eligible Credit Insured Foreign Accounts) multiplied by (i) for the period commencing on the Third Amendment Effective Date, and ending on January 31, 2023, 90%, and (ii) at all other times, 85%; plus

(b) the Value of Eligible Accounts of Curation (other than, for avoidance of doubt, Eligible Credit Insured Foreign Accounts) multiplied by (i) for the period commencing on the Third Amendment Effective Date, and ending upon the earlier of (a) January 31, 2023 or (b) the consummation of the Specified Yucatan Sale, 90%, and (ii) at all other times, 85%; plus

(c) the Value of Eligible Developmental Service Accounts of Lifecore Inc. multiplied by 85%; plus

(d) the Value of Eligible Specified Foreign Account Debtor Accounts (other than, for avoidance of doubt, Eligible Credit Insured Foreign Accounts) multiplied by 85%; plus

(e) the Value of Eligible Credit Insured Foreign Accounts multiplied by 90%;

provided that the "Accounts Formula Amount (Permanent)" shall not include (i) any amounts in respect of the foregoing clause (c) in excess of $5,000,000 in the aggregate, or (ii) any amounts in respect of the foregoing clause (d) in excess of (A) for the period commencing on the Third Amendment Effective Date, and ending on January 31, 2023, $5,000,000 in the aggregate (provided that not more than $2,000,000 of such amounts may be owing by Account Debtors other than the first and fourth Specified Foreign Account Debtors identified in the Fee Letter), and (B) at all other times, $3,500,000 in the aggregate.

"ACH" means automated clearing house transfers.

"Acquisition" means the acquisition of (a) a controlling Equity Interest or other ownership interest in another Person, whether by purchase of such Equity Interest or other ownership interest or upon exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, or (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a division of such Person or of a line or lines of business conducted by such Person, whether in one or a series of related transactions.

"Additional Commitment Lender" has the meaning specified in Section 2.18(b).

"Adjusted Term SOFR" mean with respect to any tenor, the per annum rate equal to the sum of (i) Term SOFR for such tenor *plus* (ii) in the case of Term SOFR (x) for a tenor of one-month, 0.11448% (11.448 basis points), (y) for a tenor of three-months, 0.26161% (26.161 basis points), and (x) for a tenor of six-months, 0.42826% (42.826 basis points) for six-months; provided, that if Adjusted Term SOFR determined as provided above shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

"Adjustment Date" has the meaning specified in the definition of "Applicable Margin."

"Administrative Agent" means BMO Harris Bank N.A., in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower Agent and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. For the purposes of Section 8.08 only, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

"Agent Indemnitee" has the meaning specified in Section 11.04(c).

"Agent Indemnitee Liabilities" has the meaning specified in Section 11.04(c).

"Aggregate Revolving Credit Commitments" means, as at any date of determination thereof, the sum of all Revolving Credit Commitments of all Lenders at such date. As of the Fourth Amendment Effective Date, the Aggregate Revolving Credit Commitments of all Lenders is $60,000,000.

"Agreement" means this Credit Agreement.

"Allocable Amount" has the meaning specified in Section 2.15(c)(ii).

"ALTA Survey" means a survey satisfactory to the Administrative Agent prepared in accordance with the standards adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 1997, known as the "Minimum Standard Detail Requirements of Land Title Surveys" and sufficient form to satisfy the requirements any applicable title insurance company to provide extended coverage over survey defects and shall also show the location of all easements, utilities, and covenants of record, dimensions of all improvements, encroachments from any adjoining property, and certify as to the location of any flood plain area affecting the subject Real Property.

"Anti-Corruption Laws" means all Laws of any jurisdiction applicable to a Loan Party or any of their Subsidiaries from time to time targeting or relating to bribery or corruption, including the FCPA and the UK Bribery Act 2010.

"Anti-Money Laundering Laws" means all Laws applicable to a Loan Party or its Subsidiaries related to terrorism financing or money laundering, including Executive Order No. 13224, the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act), the PATRIOT Act, and the Money Laundering Control Act of 1986.

"Applicable Margin" means with respect to any Type of Loan, the percentages per annum set forth below, as based upon the Average Availability for the immediately preceding Fiscal Quarter:

Level	Average Availability	SOFR Revolving Credit Loans	Base Rate Revolving Credit Loans
I	>66%	2.00%	1.00%
II	<=66% but >= 33%	2.25%	1.25%
III	< 33%	2.50%	1.50%

From the Closing Date until the first day of each Fiscal Quarter for which the Borrowing Base Certificate and any other materials required to be delivered pursuant to Section 7.02(a) (including any required financial information in support thereof) have been received by Administrative Agent, commencing with March 1, 2021 (the "Adjustment Date"), margins shall be determined as if Level II were applicable. Thereafter, any increase or decrease in the Applicable Margin resulting from a change in Average Availability shall become effective as of each Adjustment Date based upon Average Availability for the immediately preceding Fiscal Quarter. If either (a) an Event of Default has occurred and is continuing or (b) any Borrowing Base Certificate and any other materials required to be delivered pursuant to Section 7.02(a) (including any required financial information in support thereof) have not been received by Administrative Agent by the date required pursuant to Section 7.02(a), then the Applicable Margin shall be determined as if the Average Availability for the immediately preceding Fiscal Quarter is at Level III until (x) in the case of clause (a), the cure or waiver of such Event or Default or (y) in the case of clause (b), such time as such Borrowing Base Certificate and supporting information are received.

"Applicable Percentage" means, in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility, represented by the amount of the Revolving Credit Commitment of such Revolving Credit Lender at such time; provided that if the Aggregate Revolving Credit Commitments have been terminated at such time, then the Applicable Percentage of each Revolving Credit Lender shall be the Applicable Percentage of such Revolving Credit Lender immediately prior to such termination and after giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender with respect to the Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Revolving Credit Percentage" means with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender's Applicable Percentage in respect of the Revolving Credit Facility at such time.

"Appropriate Lender" means, at any time, (a) with respect to any Facility, a Lender that has a Commitment with respect to such Facility or holds a Loan under such Facility at such time, (b) with respect to the Letter of Credit Sublimit, (i) the Letter of Credit Issuer and (ii) if any Letters of Credit have been issued, the Revolving Credit Lenders and (c) with respect to the Swing Line Sublimit, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding, the Revolving Credit Lenders.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Approved Professional Advisor" means CR3 Partners, or another financial advisor reasonably acceptable to the Required Lenders.

"Approved Professional Advisor Toggle Date" means the earlier of (a) first date after the Fourth Amendment Effective Date that each of the following requirements are satisfied as of such date: (i) the Leverage Ratio (as defined in the Term Loan Agreement) is less than 6.00:1:00 as of the last day of the Fiscal Quarter most recently ended, (ii) Consolidated Liquidity (as defined in the Term Loan Agreement) is not less than $15,000,000 at all times for a consecutive period of at least one full Fiscal Quarter ending as of the end of the Fiscal Quarter as of which the criteria in subclause (a)(i) is satisfied, (iii) no Event of Default has occurred and is continuing as of such date of determination, and (iv) pursuant to one or more Permitted Curation Sales, either (A) 100% of the Equity Interests of Curation's Subsidiaries, or all or substantially all of the assets of Curation's Subsidiaries, have been sold, transferred or other disposed of, or (B) all or substantially all of the assets of Curation's Subsidiaries have been liquidated in a manner reasonably satisfactory to the Administrative Agent in its sole discretion, (b) the Elevated Reporting Toggle Date, and (c) such date consented to in writing by the Administrative Agent in its sole discretion.

"Asset Sale Expenditures" has the meaning specified in the definition of the term "Consolidated EBITDA".

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b) or the definition of "Eligible Assignee"), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

"Assumed Indebtedness" means unsecured Indebtedness of a Person that becomes a Subsidiary as a result of any Permitted Acquisition or other Investment permitted under Section 8.03 which (a) is in existence at the time such Person becomes a Subsidiary, (b) has not been incurred or created in connection with, or in anticipation or contemplation of, such Person becoming a Subsidiary, (c) in respect of which only such Person (or its Subsidiaries, if any, so acquired) are obligors with respect to such Indebtedness, and (d) is not a revolving loan facility; in each case, only so

long as at the time of consummation of any such Investment or Permitted Acquisition, (i) no Event of Default has occurred or is continuing or would result therefrom and (ii) the Loan Parties are in compliance with Section 8.12.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

"Audited Financial Statements" means the audited Consolidated balance sheet of the Consolidated Group for the most recent Fiscal Year ended, and the related Consolidated statements of income or operations, retained earnings and cash flows for such Fiscal Year of the Consolidated Group, including the notes thereto.

"Auditor" has the meaning specified in Section 7.01(a).

"Auto-Extension Letter of Credit" has the meaning specified in Section 2.03(b)(iii).

"Availability" means (a) the Maximum Borrowing Amount minus (b) Total Revolving Credit Outstandings.

In calculating Availability at any time and for any purpose under this Agreement, the Borrower Agent, on behalf of the Borrowers, shall certify to the Administrative Agent that all accounts payable and Taxes are being paid on a timely basis and consistent with past practices (absent which the Administrative Agent may establish a Reserve therefor).

"Availability Block" means, for the period commencing on the Fourth Amendment Effective Date and ending on January 31, 2023, an amount equal to $1,000,000, and at all times thereafter, $0.

"Availability Period" means, in respect of the Revolving Credit Facility, the period from the Closing Date to (and including) the Revolving Credit Termination Date.

"Availability Reserves" means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Administrative Agent may, in its Credit Judgment, deem proper and necessary from time to time, including, without limitation, reserves (a) to reflect the impediments to the Administrative Agent's ability to realize upon the Collateral, (b) to reflect sums that any Loan Party may be required to pay under any Section of this Agreement or any other Loan Document (including taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay, (c) to reflect amounts for which claims may be reasonably expected to be asserted against any of the Collateral, the Administrative Agent or the Lenders or (d) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party. Without limiting the generality of the foregoing, Availability Reserves may include (but are not limited to), without duplication of any other Reserves, reserves based on: (i) Rent and Charges Reserves; (ii) customs duties, and other costs to release Inventory which is being imported into the United States; (iii) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, and other Taxes which might have priority over the interests of the Administrative Agent in the Collateral; (iv) salaries, wages and benefits due to employees of any Loan Party (including amounts for employee wage claims for earned wages, vacation pay, health care reimbursements and other amounts due under Wisconsin wage lien law, Wis. Stat 109.01, *et seq.*, or any similar state or local law); (v) any liabilities that are or may become secured by Liens on the Collateral (including Permitted Liens) which might have priority over the Liens or interests of the Administrative Agent in the Collateral (other than, for avoidance of doubt, the Term Loan Liens on the Term Loan Priority Collateral subject to the Term Loan Intercreditor Agreement); (vi) Credit Product Reserves; (vii) [intentionally omitted]; (viii) payables to vendors entitled to the benefits of any trust or priority right to payment over the interests of the Administrative Agent in any Collateral under PACA or PASA, or any similar statute or regulation; (ix) reserves with respect to the salability of Eligible Inventory or which reflect such other factors as affect the market value of the Eligible Inventory, including obsolescence, seasonality, Shrink, vendor chargebacks, imbalance, change in Inventory character, composition or mix, markdowns and out of date and/or expired Inventory; and (x) the Dilution Reserve.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date.

"Average Availability" means for any period, the average daily amount of Availability during such period.

"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).

"Bankruptcy Code" means Title 11 of the United States Code, as amended.

"Base Rate" means, for any day, a fluctuating rate per annum equal to the highest of (a) the rate of interest announced by BMO from time to time as its prime rate for such day (with any change in such rate announced by BMO taking effect at the opening of business on the day specified in the public announcement of such change); (b) the Federal Funds Rate for such day, plus 0.50%; and (c) the sum of (i) Adjusted Term SOFR for a one-month tenor in effect on such day plus (ii) 1.00%. Any change in the Base Rate due to a change in the prime rate, the Federal Funds Rate or Term SOFR, as applicable, shall be effective from and including the effective date of the change in such rate. If the Base Rate is being used as an alternative rate of interest pursuant to Section 3.03, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above, provided that if Base Rate as determined above shall ever be less than the Floor *plus* 1.00%, then Base Rate shall be deemed to be the Floor *plus* 1.00%.

"Base Rate Loan" means a Base Rate Revolving Credit Loan.

"Base Rate Revolving Credit Loan" means a Revolving Credit Loan that bears interest based on the Base Rate.

"Benchmark" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.09.

"Benchmark Replacement" means the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date,

(a) the sum of Daily Simple SOFR plus (ii) 0.10% (10 basis points);

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower Agent 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 and (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor.

"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 Administrative Agent and the Borrower Agent giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body and (b) 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.

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

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

(b) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness or non-compliance will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

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

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

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

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for

such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component 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) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark in accordance with Section 3.09 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark in accordance with Section 3.09.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation, which certification shall be substantially similar in form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association.

"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 Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"BHC Act Affiliate" has the meaning specified in Section 11.21(b).

"Blocked Person" shall have the meaning specified in Section 6.21.

"BMO" means BMO Harris Bank N.A.

"Board of Directors" means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such board, (b) in the case of any limited liability company, the board of managers or board of directors or sole member or manager of such Person or any Person or any committee thereof duly authorized to act on behalf of such board, (c) in the case of any partnership, the Board of Directors of a general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

"Borrower Agent" has the meaning specified in Section 2.15(g).

"Borrower Materials" has the meaning specified in Section 7.02.

"Borrowers" has the meaning specified in the introductory paragraph hereto.

"Borrowing" means any of (a) a Revolving Credit Borrowing, or (b) a Swing Line Borrowing, as the context may require.

"Borrowing Base" means, at any time of calculation, an amount equal to:

(a) the Accounts Formula Amount; plus

(b) the Inventory Formula Amount; minus

(c) the amount of all Availability Reserves; minus

(d) the Availability Block.

The term "Borrowing Base" and the calculation thereof shall not include any assets or property acquired in an Acquisition or otherwise outside the ordinary course of business unless (x) if so required by the Administrative Agent, the Administrative Agent has conducted Field Exams and appraisals reasonably required by it (with results satisfactory to the Administrative Agent in its discretion) and (y) the Person owning such assets or property shall have become a Borrower in accordance with and pursuant to Section 7.12. Notwithstanding anything to the contrary set forth in this Agreement, (i) in no event shall the aggregate amount, as of any time of calculation, of the Specified Third Amendment Credit Availability

Improvements reflected in any calculation of the Borrowing Base or in any Borrowing Base Certificate exceed $3,750,000, and (ii) for the period commencing on the Third Amendment Effective Date, and ending on October 31, 2022, the Availability Reserves for purposes of calculating the Borrowing Base shall include, without limitation, a full Dilution Reserve in respect of the component of the Accounts Formula Amount (Permanent) set forth in clause (b) of the definition thereof.

"Borrowing Base Assets" means all assets of the Borrowers of the type included in the Borrowing Base, regardless of eligibility thereof.

"Borrowing Base Certificate" means a certificate, in the form of Exhibit D hereto and otherwise satisfactory to Administrative Agent in its discretion, by which Borrower Agent certifies the calculation of the Borrowing Base.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located.

"Canadian Dollars" means the lawful money of Canada.

"Capital Leases" means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

"Cash Flow Report" has the meaning specified in Section 7.24.

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, (a) for the benefit of one or more of the Letter of Credit Issuer or the Revolving Credit Lenders, as collateral for Letter of Credit Obligations or obligations of the Revolving Credit Lenders to fund participations in respect of Letter of Credit Obligations, cash or deposit account balances or, if the Administrative Agent and the Letter of Credit Issuer shall agree in their discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent in its discretion and the Letter of Credit Issuer in its discretion or (b) for the benefit of the Administrative Agent, as collateral for Protective Advances or Swing Line Loans that have not been refunded by the Revolving Credit Lenders, cash or deposit account balances or, if the Administrative Agent shall agree in its discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent in its discretion or (c) for the benefit of the Secured Parties during the continuance of an Event of Default or in connection with the Payment in Full, as collateral for any Obligations that are due or may reasonably be expected to become due, cash or deposit account balances or, if the Administrative Agent shall agree in its discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent in its discretion. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" means any of the following types of property, to the extent owned by any Borrower free and clear of all Liens (other than Liens of the Administrative Agent created under the Security Instruments and the Term Loan Liens subject to the Term Loan Intercreditor Agreement):

(a) cash, denominated in Dollars;

(b) readily marketable direct obligations of the government of the United States or any agency or instrumentality thereof, or obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by the government of the United States or any state or municipality thereof, in each case so long as such obligation has an investment grade rating by S&P and Moody's;

(c) commercial paper rated at least P-1 (or the then equivalent grade) by Moody's and A-1 (or the then equivalent grade) by S&P, or carrying an equivalent rating by a nationally recognized rating agency if at any time neither Moody's nor S&P shall be rating such obligations;

(d) insured certificates of deposit or bankers' acceptances of, or time deposits with any Lender or with any commercial bank that (i) is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in the first portion of clause (c) above, (iii) is organized under the laws of the United States or of any state thereof and (iv) has combined capital and surplus of at least $500,000,000;

(e) readily marketable general obligations of any corporation organized under the laws of any state of the United States of America, payable in the United States of America, expressed to mature not later than twelve months following the date of issuance thereof and rated A or better by S&P or A3 or better by Moody's; and

(f) readily marketable shares of investment companies or money market funds that, in each case, invest solely in the foregoing Investments described in clauses (a) through (e) above.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

"CERCLIS" means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

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

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

"Change of Control" means an event or series of events by which:

(f) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) (a) becomes the "beneficial owner" (as defined in Rules 13d 3 and 13d 5 under the Exchange Act) of 35% or more on a fully diluted basis of the voting interests in the Equity Interests of Holdings, or (b) shall have obtained the power (whether or not exercised) to elect a majority of the directors of Holdings; or

(g) Holdings shall cease to beneficially own and control, on a fully diluted basis, 100% of the economic and voting interests in the Equity Interests of each Loan Party (other than Curation or one or more of the Subsidiaries of Curation in connection with a Permitted Curation Sale); or

(h) any Loan Party shall cease to beneficially own and control 100% (directly or indirectly) on a fully diluted basis of the economic and voting interests in the Equity Interests of each of its Subsidiaries, except where such failure is the result of a transaction permitted under the Loan Documents (other than Curation or one or more of the Subsidiaries of Curation in connection with a Permitted Curation Sale); or

(i) during any period of twelve (12) consecutive months, a majority of the members of the Board of Directors of any Loan Party cease to be composed of individuals (x) who were members of that Board of Directors on the first day of such period, (y) whose election or nomination to that Board of Directors was approved by individuals referred to in clause (x) above constituting at the time of such election or nomination at least a majority of that Board of Directors or (z) whose election or nomination to that Board of Directors was approved by individuals referred to in clauses (x) and (y) above constituting at the time of such election or nomination at least a majority of that Board of Directors; or

(j) any "change of control" or similar event under the Term Loan Documents or any Subordinated Debt Documents shall have occurred.

"Closing Date" means the first date all the conditions precedent in Section 5.01 are satisfied or waived in accordance with Section 11.01 (or, in the case of Section 5.01(b), waived by the Person entitled to receive the applicable payment).

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

"Collateral" means, collectively, all of the real and personal property of the Loan Parties or any other Person in which the Administrative Agent or any Secured Party is granted a Lien under any Security Instrument as security for all or any portion of the Obligations or any other obligation arising under any Loan Document (other than, for avoidance of doubt, the Excluded Collateral).

"Commitment" means the Revolving Credit Commitment.

"Commitment Increase" has the meaning specified in Section 2.18(a).

"Committed Loan Notice" means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of SOFR Loans, in each case, described in Section 2.02.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Compliance Certificate" means a certificate substantially in the form of Exhibit B, which (i) provides a summary of Average Availability for the applicable period and calculates the Applicable Margin, and (ii) calculates the financial covenant set forth in Section 8.12, whether or not a Financial Covenant Trigger Period is then in effect (and, if in effect, certifies compliance therewith).

"Concentration Account" has the meaning specified in Section 4.04(b).

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

"Conforming Credit Product Obligations" means Credit Product Obligations (a) established pursuant to a Credit Product Notice delivered at a time no Event of Default shall be continuing and (b) up to a maximum amount (or, in the case of Credit Product Obligations arising under Swap Contracts, the Swap Termination Value thereunder) specified in such Credit Product Notice (whether delivered to establish or increase the amount thereof) to the extent that no Overadvance would exist if a Credit Product Reserve were established therefore on the date of such Credit Product Notice.

"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.

"Consensual Proceeding" means (a) the entry of an order for relief with respect to Curation or one or more of its direct or indirect Subsidiaries, (b) the commencement of a voluntary case with respect to Curation or one or more of its direct or indirect Subsidiaries under any Debtor Relief Law, (c) the provision of any consent by Holdings or any of its Subsidiaries to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of the property of Curation or one or more of its direct or indirect Subsidiaries or (d) an assignment by Curation or one or more of its direct or indirect Subsidiaries for the benefit of creditors, in each case of the foregoing clauses (a) through (d), that has been consented to in writing by the Administrative Agent.

"Consolidated" means the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

"Consolidated Capital Expenditures" means, determined on a Consolidated basis for the Consolidated Group for the applicable Measurement Period, the sum of (without duplication) all cash expenditures by the Consolidated Group during such period for items that would be classified as "property, plant or equipment" or comparable items on the Consolidated balance sheet of the Consolidated Group, including without limitation all transactional costs incurred in connection with such expenditures provided the same have been capitalized; provided that Consolidated Capital Expenditures shall exclude any capital expenditures (a) financed with Indebtedness permitted hereunder other than Revolving Credit Loans, (b) made with (i) Net Cash Proceeds from any Disposition described in Section 8.05(b) or (ii) proceeds of insurance arising from any casualty or other insured damage or from condemnation or similar awards with respect to any property or asset, in each case, to the extent such proceeds are reinvested within three hundred sixty-five (365) days (or five hundred forty five (545) days where such Loan Party or such Subsidiary has, on or before the expiration of such three hundred sixty-five (365) day period, entered into a definitive agreement for the reinvestment of such proceeds) of receipt thereof, and (c) constituting any portion of the purchase price of a Permitted Acquisition which is accounted for as a capital expenditure.

"Consolidated Cash Interest Expense" means, for any period, Consolidated Interest Charges for such period, excluding (i) any paid-in-kind interest, (ii) any amortization of deferred financing costs, (iii) any realized or unrealized gains or losses attributable to Swap Contracts, (iv) cash costs associated with incurring or terminating Swap Contracts and cash costs associated with breakage in respect of Swap Contracts and (v) penalties and interest relating to Taxes paid in cash.

"Consolidated EBITDA" means, determined on a Consolidated basis for the Consolidated Group for the applicable Measurement Period and subject to Pro Forma Adjustments, an amount equal to:

(a) Consolidated Net Income thereof for such period; plus,

(b) in each case, to the extent reducing Consolidated Net Income and constituting Valid Expense Items, the sum, without duplication, of the amounts for such period of:

(i) Consolidated Interest Charges, plus

(ii) provisions for taxes based on income, profits or capital, including federal, state, provincial, territorial, franchise, excise, property and similar taxes and foreign withholding taxes paid or accrued, including giving effect to any penalties and interest with respect thereto, and state taxes in lieu of business fees (including business license fees) and payroll tax credits, income tax credits and similar credits and including an amount equal to the amount of tax distributions actually made (for the actual payment of Taxes) to the holders of Equity Interests of Holdings or its Subsidiaries or any direct or indirect parent of Holdings or its Subsidiaries in respect of such period (in each case, to the extent attributable to the operations of Holdings and its Subsidiaries), which shall be included as though such amounts had been paid as income taxes directly by Holdings or its Subsidiaries, plus

(iii) total depreciation expense, plus

(iv) total amortization expense, plus

(v) to the extent not capitalized under GAAP, Transaction Costs not exceeding $1,500,000, plus

(vi) to the extent not capitalized under GAAP, Specified Compliance Costs not to exceed $5,000,000 in the aggregate for the twelve (12) month period following the Closing Date, plus

(vii) to the extent not capitalized under GAAP, (A) other non-cash charges, impairments or losses for such period (excluding (x) any non-cash compensation charge or expense arising from any grant of stock, stock options or other

equity based awards (including any long-term management equity incentive plans) and the payment of the exercise price and/or tax withholding obligations with respect to the vesting, settlement and/or exercise of such award described in this clause (x), and (y) any such non-cash charge to the extent that it represents an accrual or reserve for potential cash charges in any future period or amortization of a prepaid cash charge that was paid in a prior period (including, but not limited to, write-offs or impairment charges in respect of accounts receivable or inventory)) and (B) any Specified Inventory Charges for such period, plus

(viii) to the extent not capitalized under GAAP, one-time, unusual, non-recurring or extraordinary expenses, losses or charges actually incurred in such period (not including any revenue based losses or incremental margin) and, without duplication, other reasonable and documented fees, charges, costs and expenses (including third party legal, investigative and consulting expenses) actually incurred during such period in respect of restructuring, severance, relocation, integration, facilities opening, facilities closures, business optimization, signing, retention or completion bonuses, recruiting, transition, and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities), including any one-time expense relating to enhanced accounting function or other transaction costs; provided, that the aggregate amount of such losses, fees, charges, costs and expenses that may be added back to Consolidated Net Income in the calculation of Consolidated EBITDA pursuant to this clause (viii) in any trailing twelve (12) month period shall not exceed (A) for any such period ending prior to the consummation of a Permitted Curation Sale of the type described in (I) clauses (i) and (ii) of the definition thereof or (II) a sale of substantially all of Curation in a series of transactions in accordance with clause (iii) of the definition thereof, (1) with respect to the twelve (12) month period ending May 31, 2023, the greater of (x) $7,500,000 and (y) 10% of Consolidated EBITDA for such period, (2) with respect to the twelve (12) month period ending August 31, 2023, the greater of (x) $7,000,000 and (y) 10% of Consolidated EBITDA for such period, (3) with respect to the 12 month period ending November 30, 2023, the greater of (x) $6,000,000 and (y) 10% of Consolidated EBITDA for such period, and (4) with respect to any 12 month period ending on February 28, 2023, the last day of any Fiscal Quarter ending prior to such date, February 28, 2024, or the last day of any Fiscal Quarter ending after February 28, 2024, the greater of (x) $5,000,000 and (y) 10% of Consolidated EBITDA for such period (in each case determined prior to giving effect to any adjustments to Consolidated EBITDA pursuant to this clause (viii)) and (B) for any such period ending after the consummation of a Permitted Curation Sale of the type described in (I) clauses (i) and (ii) of the definition thereof or (II) a sale of substantially all of Curation in a series of transactions in accordance with clause (iii) of the definition thereof, the greater of (x) $2,500,000 and (y) 10% of Consolidated EBITDA for such period (determined prior to giving effect to any adjustments to Consolidated EBITDA pursuant to this clause (viii)); provided, the adjustments described under this clause (viii) shall be supported by reasonably detailed schedules and information with respect to such adjustments, plus

(ix) to the extent not capitalized under GAAP, any cash expenses, losses or charges actually incurred during such period in connection with any Disposition, whether or not such Disposition was successfully consummated (the "**Asset Sale Expenditures**"); provided, that the aggregate amount of any such Asset Sale Expenditures in respect of Dispositions that are not successfully consummated that may be added back to Consolidated Net Income in the calculation of Consolidated EBITDA pursuant to this clause (ix) shall not exceed (A) in the event such Asset Sale Expenditures are incurred prior to the consummation of a Permitted Curation Sale of the type described in (I) clauses (i) and (ii) of the definition thereof or (II) a sale of substantially all of Curation in a series of transactions in accordance with clause (iii) of the definition thereof, $5,000,000 and (B) in the event such Asset Sale Expenditures are incurred after the consummation of a Permitted Curation Sale of the type described in (I) clauses (i) and (ii) of the definition thereof or (II) a sale of substantially all of Curation in a series of transactions in accordance with clause (iii) of the definition thereof, $2,500,000; provided, the adjustments described under this clause (ix) shall be supported by reasonably detailed schedules and information with respect to such adjustments, plus

(x) to the extent not capitalized under GAAP, any reasonably documented and factually supportable (and, to the extent requested by the Administrative Agent, disclosed in reasonable itemization and detail to the Administrative Agent) out-of-pocket fees, costs and expenses payable by Holdings or any of its Subsidiaries to the extent paid or payable to non-Affiliates within 90 days of the Fourth Amendment Effective Date in connection with the expenses incurred by the Loan Parties in connection with the efforts by the Loan Parties to prepare for a potential proceeding under the applicable Debtor Relief Laws and other transactions (other than any Permitted Curation Sale) contemplated by the Fourth Amendment (which shall include, for the avoidance of doubt, fees, costs and expenses paid or payable (A) to Ernst & Young LLP in respect of overages incurred in connection with its Fiscal Year 2021 audit of Holdings and its Subsidiaries, (B) to the Approved Professional Advisor prior to the Fourth Amendment Effective Date, (C) to Pachulski Stang Ziehl & Jones LLP and (D) in connection with the IQVIA report); plus

(xi) to the extent not capitalized under GAAP, reasonably documented and factually supportable (and, to the extent requested by the Administrative Agent, disclosed in reasonable itemization and detail to the Administrative Agent) out-of-pocket fees, costs and expenses payable to any Approved Professional Advisor reasonably acceptable to the Administrative Agent, minus

(c) in each case, to the extent increasing Consolidated Net Income and constituting Valid Expense Items, the sum, without duplication, for such period of all non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent that it represents the reversal of an accrual or reserve for potential cash gains in any prior period, which such non-cash gains shall include any adjustment in the fair market value of the Windset Investment), plus, other non-ordinary course income (which non-ordinary course income, for the avoidance of doubt, shall (i) include (and result in a reduction of Consolidated EBITDA to the extent increasing Consolidated Net Income for) any cash amounts received in connection with a Disposition of the Windset Investment and (ii) not include (or result in a reduction of Consolidated EBITDA to the extent increasing Consolidated Net Income

following the Windset Pledge Event for) any cash dividends or other cash payments or distributions, other than the type described in the immediately preceding clause (i)); minus

(d) any cash gains in such period in respect of the sale or other disposition of any inventory which was previously the subject of Specified Inventory Charges.

Notwithstanding the foregoing or anything to the contrary in this Agreement, with respect to any fiscal month set forth on Schedule 1.01(a), Consolidated EBITDA for such fiscal month shall be the amount set forth opposite thereto on Schedule 1.01(a).

From and after the sixtieth day (60th) following the Closing Date, unless the conditions set forth in Section 7.12(f) have been satisfied, the Consolidated EBITDA attributable to any Mexican Subsidiary not then party to the Mexican Subsidiary Security Agreement shall be excluded from the calculation of Consolidated EBITDA (on both a current and historical basis) until such time as the requirements of Section 7.12(f) have been fulfilled with respect to such Mexican Subsidiary; provided, notwithstanding the foregoing, the provisions of this paragraph shall not be construed as a consent by Administrative Agent or any Lender to the failure of any Loan Party to perform its obligations set forth in Section 7.12(f).

"Consolidated Fixed Charge Coverage Ratio" means the ratio, determined on a Consolidated basis for the Consolidated Group for the applicable Measurement Period, of (a) (i) Consolidated EBITDA thereof during such period minus (ii) the aggregate amount of unfinanced Consolidated Capital Expenditures made during such period, to (b) Consolidated Fixed Charges thereof during such period.

"Consolidated Fixed Charges" means, determined on a Consolidated basis for the Consolidated Group for the applicable Measurement Period, the sum, without duplication, of (i) Consolidated Cash Interest Expense, (ii) scheduled payments of principal (or equivalent amounts) on Consolidated Funded Indebtedness, (iii) the aggregate amount of Restricted Payments made in cash to any Person other than a Loan Party, and (iv) an amount not less than zero equal to actual cash Taxes paid with respect to such period (net of any cash refunds in respect of Taxes received in such period). The Administrative Agent and the Borrowers acknowledge and agree that for the purpose of determining whether Payment Conditions have been satisfied in connection with any prepayment of Term Loan Debt made pursuant to Section 8.11(a)(ii)(B), Consolidated Fixed Charges shall include the aggregate amount of all voluntary prepayments made during such period, including the contemplated voluntary prepayment.

"Consolidated Funded Indebtedness" means, as of any date of determination, for the Consolidated Group on a Consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under standby and commercial letters of credit (excluding the undrawn amount thereof), bankers' acceptances, bank guaranties (excluding the amounts available thereunder as to which demand for payment has not yet been made), surety bonds (excluding the amounts available thereunder as to which demand for payment has not yet been made) and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the Ordinary Course of Business), (e) Attributable Indebtedness in respect of Capital Leases and Synthetic Lease Obligations, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which any Loan Party or Subsidiary thereof is a general partner or joint venturer, to the extent such Indebtedness is recourse to such Loan Party or such Subsidiary thereof.

"Consolidated Group" means Loan Parties and their Subsidiaries.

"Consolidated Interest Charges" means, with respect to the Consolidated Group for any period ending on the date of computation thereof, (i) total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Holdings and its Subsidiaries determined on a consolidated basis with respect to all outstanding Indebtedness, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Swap Contracts (other than in connection with the early termination thereof), but excluding, however, (x) any amounts referred to in the Fee Letter payable on or before the Closing Date and (y) annual agency fees paid to any administrative agents and collateral agents with respect to any secured or unsecured loans, debt facilities, debentures, bonds, commercial paper facilities or other forms of Indebtedness, in each case which shall be on market terms minus (ii) total interest income of Holdings and its Subsidiaries determined on a consolidated basis.

"Consolidated Net Income" means, determined on a Consolidated basis for the Consolidated Group for the applicable Measurement Period, the net income (or loss) of Holdings and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP; provided that, the following items shall be excluded or otherwise disregarded in the calculation of Consolidated Net Income, without duplication: (a) the income (or loss) of any Person that is not a Wholly-Owned Subsidiary; provided that notwithstanding the foregoing, in the case of income derived from the Windset Investment such income shall be included in Consolidated Net Income to the extent that (i) the Windset Pledge Event shall have occurred, (ii) any such income is actually received by Holdings or such Subsidiary in the form of dividends or distributions paid in cash and (iii) such dividends or distributions are paid in accordance with the Windset's Organization Documents, (b) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of a Loan Party or is merged into or consolidated with any Loan Party or any Subsidiary of any Loan Party or such Person's assets are acquired by any Loan Party or any Subsidiary of any Loan Party, (c) the income of any Subsidiary of Holdings to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of that income is not at the time permitted by operation of the terms of its Organization Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary, (d) any after-Tax gains or losses attributable to Dispositions or returned surplus assets of any Pension Plan, and (e) to the extent not included in clauses (a) through (d) above, any net extraordinary gains or net extraordinary losses.

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

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

"Control Agreement" means, with respect to any Deposit Account, Securities Account or Commodity Account, an agreement, in form and substance satisfactory to the Administrative Agent in its discretion, among the Administrative Agent, the financial institution or other Person at which such account is maintained and the Loan Party maintaining such account, effective to grant "control" (as defined under the applicable UCC) over such account to the Administrative Agent.

"Controlled Account Bank" means each bank with whom Deposit Accounts are maintained in which any funds of any of the Loan Parties are concentrated and with whom a Control Agreement has been, or is required to be, executed in accordance with the terms hereof.

"Controlled Deposit Account" means each Deposit Account (including all funds on deposit therein) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with a financial institution approved by the Administrative Agent.

"Controlled Persons" means, with respect to any Person, (a) its Subsidiaries and Affiliates, (b) its officers, directors, employees and agents, and (c) the officers, directors, employees and agents of such Subsidiaries and Affiliates.

"Copyright Security Agreement" means any copyright security agreement pursuant to which any Loan Party grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such Person's copyrights as security for the Obligations.

"Core Business" means any material line of business conducted by the Loan Parties as of the Closing Date and any business related thereto or any reasonable extensions thereof.

"Cost" means (a) with respect to Inventory, the lower of (i) cost (as reflected in the general ledger of such Person) and (ii) market value, in each case, determined in accordance with GAAP calculated in accordance with the Loan Parties' accounting practices as in effect on the Closing Date and (b) with respect to Equipment, Real Property and other property, the lower of (i) cost (as reflected in the general ledger of such Person) and (ii) market value, in each case, determined in accordance with GAAP.

"Covered Entity" has the meaning specified in Section 11.21(b).

"Credit Exposure" means, as to any Lender at any time, the aggregate amount of such Lender's Revolving Credit Exposure at such time.

"Credit Extension" means each of the following: (a) a Borrowing and (b) a Letter of Credit Extension.

"Credit Insured Foreign Accounts" means Accounts due from an Account Debtor located outside the United States and Canada, that (a) are fully backed by an irrevocable letter of credit on terms, and issued by a financial institution, acceptable to the Administrative Agent and such irrevocable letter of credit is in the possession of the Administrative Agent or (b) are supported by credit insurance acceptable to the Administrative Agent, naming the Administrative Agent as an additional insured and loss payee (calculated net of the amount of any premiums, deductibles, co-insurance, fees or similar costs of and amounts relating to such credit insurance payable by any Borrower).

"Credit Judgment" means, with reference to the Administrative Agent, a determination made in the exercise of its reasonable (from the perspective of a secured asset-based lender) credit judgment and in accordance with its regular business practices and policies in effect from time to time that are generally applicable to asset based credit facilities.

"Credit Product Arrangements" means, collectively, (a) Swap Contracts between a Loan Party and any Lender or Affiliate of a Lender (at the time the Swap Contract is entered into), and (b) Treasury Management and Other Services.

"Credit Product Indemnitee" has the meaning assigned to such term in Section 10.12(a).

"Credit Product Notice" means the written notice from a Credit Product Provider and the Borrower Agent to the Administrative Agent relating to Credit Product Arrangements in the form of Exhibit F hereto, or such other form as may be acceptable to the Administrative Agent.

"Credit Product Obligations" means Indebtedness and other obligations of any Loan Party (a) arising under Credit Product Arrangements, (b) owing to any Credit Product Provider and (c) only if owing to a Credit Product Provider other than BMO or its Affiliates, as to which a Credit Product Notice has been delivered to the Administrative Agent in which the Borrower Agent has expressly requested that such obligations be treated as Credit Product Obligations for purposes hereof; provided, however, Credit Product Obligations shall not include Excluded Swap Obligations.

"Credit Product Provider" means (a) BMO or any of its Affiliates, and (b) any other Lender or an Affiliate of a Lender (at the time the Credit Product Arrangement is entered into) that is a provider under a Credit Product Arrangement, so long as such provider and the Borrower Agent deliver a Credit Product Notice to the Administrative Agent by the later of the Closing Date or, if not outstanding on the Closing Date, 10 Business Days following the entering into of the applicable Credit Product Arrangement, (i) describing the Credit Product Arrangement and setting forth the maximum amount of Credit Product Obligations thereunder to be secured by the Collateral (and, if all or any portion of such Credit Product

Obligations arise under Swap Contracts, the Swap Termination Value of such Credit Product Obligations) and the methodology to be used in calculating such amount and (ii) agreeing to be bound by Section 10.12.

"Credit Product Reserve" means (a) reserves which shall be established by the Administrative Agent in an amount equal to not less than the last reported Swap Termination Value (as given in accordance with the definition of Credit Product Obligation) of the then outstanding Priority Swap Obligations for the account of the Loan Parties, and (b) reserves established by the Administrative Agent from time to time in its Credit Judgment (with respect to this clause (b) only) to reflect the reasonably anticipated liabilities in respect of the then outstanding Credit Product Obligations.

"Curation" has the meaning specified in the introductory paragraph hereto.

"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 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.

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

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would unless cured or waived be an Event of Default.

"Default Rate" means an interest rate equal to (a) the Base Rate plus (b) the Applicable Margin with respect to Base Rate Loans plus (c) 2% per annum; provided, however, that (i) with respect to a SOFR Loan, until the end of the Interest Period during which the Default Rate is first applicable, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such SOFR Loan plus 2% per annum, and thereafter as set forth in the portion of this sentence preceding this proviso, and (ii) with respect to Letter of Credit Fees, the Default Rate shall equal the Letter of Credit Fee, then in effect plus 2% per annum, in each case to the fullest extent permitted by applicable Laws.

"Default Right" has the meaning specified in Section 11.21(b).

"Defaulting Lender" means, subject to Section 2.17(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower Agent in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Letter of Credit Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including, in the case of any Revolving Credit Lender, in respect of its participations in Letters of Credit or Swing Line Loans) within two Business Days of the date when due, (b) has notified any Borrower, the Administrative Agent, the Letter of Credit Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower Agent, to confirm in writing to the Administrative Agent and the Borrower Agent that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower Agent), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) upon delivery of written notice of such determination by the Administrative Agent to the Borrower Agent, the Letter of Credit Issuer, the Swing Line Lender and each other Lender.

"Designated Jurisdiction" means, at any time, any country, region or territory which is itself the target of Sanctions broadly restricting or prohibiting dealings with such country, region or territory.

"Dilution Percent" means the percent, based on the most recently concluded Field Exam, equal to (a) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos and other dilutive items with respect to Accounts for such period (excluding non-cash items), divided by (b) gross sales for such period.

"Dilution Reserve" means, at any date of determination, an amount equal to the product of (a) the positive result, if any, of the Dilution Percent minus five percent (5%) multiplied by (b) the amount of Eligible Accounts of the Loan Parties.

"Disposition" or "Dispose" means the sale, transfer, license, lease, liquidation or other disposition (including any sale and leaseback transaction and any casualty or condemnation) of any property (including any Equity Interest), or part thereof, by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Disqualified Equity Interest" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 180 days after the Maturity Date, (b) is convertible into or exchangeable for debt securities (unless only occurring at the sole option of the issuer thereof), (c) (i) contains any repurchase obligation that may come into effect prior to, (ii) requires cash dividend payments (other than taxes) prior to, or (iii) provides the holders thereof with any rights to receive any cash upon the occurrence of a change of control or sale of assets prior to, in each case, the date that is 180 days after the Maturity Date; provided, however, that (i) with respect to any Equity Interests issued to any employee, director or individual independent contractor or to any plan for the benefit of employees of any Loan Party or its Subsidiaries or by any such plan to such individuals, such Equity Interest shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by any Loan Party or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such individual's termination, resignation, death or disability and (ii) any class of Equity Interest of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of an Equity Interest that is not a Disqualified Equity Interest, such Equity Interests shall not be deemed to be Disqualified Equity Interests and (iii) only the portion of such Equity Interests which so matures or is so mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Equity Interests.

"Disqualified Institution" means, on any date, any Person that is a competitor of the Loan Parties, which Person has been designated by the Borrowers as a "Disqualified Institution" by written notice to the Administrative Agent not less than three (3) Business Days prior to such date; provided that (i) "Disqualified Institutions" shall exclude any Person that the Borrowers have designated as no longer being a "Disqualified Institution" by written notice delivered to the Administrative Agent from time to time, and (ii) no written notice delivered pursuant to this definition shall apply retroactively to disqualify any Person that has previously acquired an assignment, participation or allocation in respect of any Loans. Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that the Administrative Agent shall not have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution and the Administrative Agent shall have no liability with respect to any assignment made to a Disqualified Institution (provided that any such assignment shall be subject to the terms of Section 11.06).

"Division" means the creation of one or more new limited liability companies by means of any statutory division of a limited liability company pursuant to any applicable limited liability company act or similar statue of any jurisdiction. "Divide" shall have the corresponding meaning.

"Dollar" and "$" mean lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of any political subdivision of the United States (but excluding any territory or possession thereof).

"Dominion Trigger Period" means any period (a) commencing after the Fourth Amendment Effective Date on the day that (i) an Event of Default occurs and is continuing, or (ii) for a period of three (3) consecutive Business Days, Availability is less than the greater of (x) 12.5% of the Maximum Borrowing Amount at such time and (y) $7,500,000, and (b) continuing until the date that (i) in the case of clause (a)(i), no Event of Default exists, and (ii) in the case of clause (a)(ii), during the previous thirty (30) consecutive days, Availability has been equal to or greater than the greater of (x) 12.5% of the Maximum Borrowing Amount at such time and (y) $7,500,000.

"Earn-Out Obligations" means contingent payment obligations of the Loan Parties and their Subsidiaries approved by the Administrative Agent in its discretion, in respect of and in accordance with any one or more Permitted Acquisitions consummated after the Closing Date.

"Earn-Out Subordination Agreement" means any subordination agreement executed by a holder of Earn-Out Obligations in favor of the Administrative Agent from time to time after the Closing Date, in form and substance and on terms and conditions satisfactory to the Administrative Agent in its discretion.

"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.

"Effective Date" means the first date all the conditions precedent in Section 5.01 are satisfied or waived in accordance with Section 11.01.

"Elevated Reporting Toggle Date" means the earlier of (a) the first date after the Fourth Amendment Effective Date that each of the following requirements are satisfied as of such date: (i) the Leverage Ratio (as defined in the Term Loan Agreement) is less than 5.00:1:00 as of the last day of the Fiscal Quarter most recently ended, (ii) Consolidated Liquidity (as defined in the Term Loan Agreement) is not less than $15,000,000 at all times for a consecutive period of at least one full Fiscal Quarter ending as of the end of the Fiscal Quarter as of which the criteria in subclause (a)(i) is satisfied, and (iii) no Event of Default has occurred and is continuing as of such date of determination, and (b) such date consented to in writing by the Administrative Agent in its sole discretion.

"Eligible Accounts" means all Accounts (for avoidance of doubt, other than any Credit Insured Foreign Accounts) that are due to a Borrower that are determined by the Administrative Agent, in its Credit Judgment, to be Eligible Accounts. Except as otherwise agreed by the Administrative Agent, none of the following shall be deemed to be Eligible Accounts:

(a) Accounts that are not fully earned by performance (or otherwise represent a progress billing or pre-billing) or not evidenced by an invoice which has been delivered to the applicable Account Debtor;

(b) Accounts that have been outstanding for more than ninety (90) days from the invoice date or more than sixty (60) days past the original due date, whichever comes first;

(c) Accounts due from any Account Debtor, fifty percent (50%) of whose Accounts are otherwise ineligible under the terms clause (b) above;

(d) Accounts (i) with respect to which any representation or warranty set for in any Loan Document with respect thereto is not true and correct in all material respects, (ii) with respect to which a Borrower does not have good, valid and or marketable title, (iii) that are not subject to a perfected first priority Lien in favor of the Administrative Agent, (iv) that are not free and clear of any Lien (other than (x) the Liens of the Administrative Agent, (y) the Term Loan Liens subject to the Term Loan Intercreditor Agreement, or (z) other Permitted Liens, in the case of this clause (z) solely to the extent such Liens are junior to those of the Administrative Agent or the subject of a Reserve, or (v) with respect to which the applicable Account Debtor has not been instructed to (or does not in fact) remit payment to a Controlled Deposit Account;

(e) Accounts which are disputed or with respect to which a claim, counterclaim, offset or chargeback has been asserted, but only to the extent of such dispute, counterclaim, rebate, bonus credit, offset or chargeback;

(f) Accounts which (i) do not arise out of a sale of goods or rendition of services in the ordinary course of business, (ii) do not arise upon credit terms usual to the business of the Borrowers, (iii) are not payable in Dollars or Canadian Dollars, or (iv) arise out of a rendition of developmental services;

(g) Accounts (i) upon which a Borrower's right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever, including cash on delivery and cash in advance transactions or (ii) as to which a Borrower is not able to bring suit or otherwise enforce its remedies against the related Account Debtor through judicial process;

(h) Accounts which are owed by (i) any other Borrower, or (ii) any Affiliate which is not a Borrower;

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

(j) Accounts due from an Account Debtor which is the subject of any bankruptcy, insolvency or similar proceeding under any Debtor Relief Laws, has had a trustee or receiver appointed for all or a substantial part of its property, has made an assignment for the benefit of creditors or has suspended its business;

(k) Accounts due from any Governmental Authority, except to the extent that the subject Account Debtor is the federal government of the United States of America and has complied with the Federal Assignment of Claims Act of 1940 and any similar state legislation;

(l) Accounts (i) owing from any Account Debtor that is also a supplier to or creditor of a Borrower unless such Person has waived any right of setoff in a manner reasonably acceptable to the Administrative Agent but only to the extent of the aggregate amount of such Borrower's liability to such Account Debtor, (ii) without duplication, to the extent representing any manufacturer's or supplier's allowances, credits, discounts, rebates, rebate accruals, or bonus credits, incentive plans or similar arrangements entitling such Borrower to discounts on future purchase therefrom, (iii) with respect to which any Loan Party or Subsidiary thereof has received a loan or advance payment, to the extent of such loan or payment, or (iv) to the extent relating to payment of interest, fees or late charges;

(m) Accounts (i) arising out of sales on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval or consignment basis, or (ii) subject to any right of return, setoff or charge back (but only to the extent of such right of return, setoff or charge back);

(n) Accounts arising out of sales to Account Debtors outside the United States and Canada;

(o) Accounts that are evidenced by a judgment, Instrument or Chattel Paper;

(p) Accounts due from an Account Debtor and its Affiliates, the aggregate of which Accounts due from such Account Debtor represents more than twenty-five percent (25%) of all then outstanding Accounts owed to the Borrowers, but only to the extent of such excess;

(q) Accounts that remain open after the applicable Account Debtor has made a partial payment in respect of the applicable invoice (whether or not the applicable Account Debtor has provided an explanation for such partial payment);

(r) Accounts where the applicable Account Debtor tendered a check or other item of payment in full or partial satisfaction and such check or other item of payment has been returned by the financial institution on which it is drawn;

(s) Accounts for which payment has been received by the applicable Borrower but such payment has not been applied to the applicable Account; or

(t) Accounts with respect to which the Administrative Agent believes, in its Credit Judgment, that collection of such Account is insecure or that such Account may not be paid by reason of the Account Debtor's inability to pay.

"Eligible Assignee" means (a) a Lender or any of its Affiliates; (b) an Approved Fund; and (c) any other Person (other than a natural person) approved by (i) the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender (each such approval not to be unreasonably withheld or delayed), and (ii) unless an Event of Default has occurred and is continuing, the Borrower Agent (such approval not to be unreasonably withheld or delayed); provided that, notwithstanding the foregoing, "Eligible Assignee" shall not include a Loan Party, any of the Loan Parties' Affiliates or any Disqualified Institution.

"Eligible Credit Insured Foreign Accounts" means, without duplication of any Eligible Account, any Credit Insured Foreign Accounts that meet all of the criteria set forth in the definition of "Eligible Accounts," other than the criteria set forth in clause (n) thereof.

"Eligible Developmental Service Accounts" means, any Accounts that meet all of the criteria set forth in the definition of "Eligible Accounts," other than the criteria set forth in clause (f)(iv) thereof.

"Eligible In-Transit Inventory" means, as of any date of determination thereof and without duplication of any Eligible Inventory, Inventory of a Borrower that is determined by the Administrative Agent, in its Credit Judgment, to be Eligible In-Transit Inventory, so long as:

(a) such Inventory has been shipped from a vendor within the continental United States or Canada for receipt by a Borrower within sixty (60) days of the date of determination, but which has not yet been delivered to a Borrower;

(b) the purchase order for such Inventory is in the name of a Borrower and title has passed to such Borrower;

(c) (i) such Inventory is subject to an imported goods agreement, customs broker agreement or similar agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which, among other things, the customs broker, logistics provider or other applicable third party having control over the Inventory agrees to act as agent and bailee for the benefit of the Administrative Agent and act solely upon the instructions of the Administrative Agent upon notice by the Administrative Agent, and (ii) the vendor has delivered a compliance letter reasonably satisfactory to the Administrative Agent with respect to such Inventory;

(d) such Inventory is evidenced by a negotiable document of title, all originals of which have been delivered to the Administrative Agent or the applicable customs broker as agent for the Administrative Agent that reflects a Borrower as consignee or, if requested by the Administrative Agent after the occurrence of an Event of Default, names the Administrative Agent as consignee;

(e) no vendor has asserted any right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against such Inventory, and no Borrower is in default of any obligations with respect to such Inventory;

(f) such Inventory is shipped by a common carrier that is not affiliated with the vendor;

(g) such Inventory is insured to the reasonable satisfaction of the Administrative Agent; and

(h) such Inventory otherwise would constitute Eligible Inventory under the definition thereof, other than under clauses (f) or (h) thereof.

"Eligible Inventory" means, as of any date of determination thereof and without duplication of any Eligible In-Transit Inventory, Inventory of a Borrower that is determined by the Administrative Agent, in its Credit Judgment, to be Eligible Inventory. Notwithstanding the foregoing, except as otherwise agreed by the Administrative Agent, the following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto;

(b) Inventory that (i) does not consist of finished goods or raw materials or (ii) is not readily saleable in the Ordinary Course of Business, in each case unless approved by the Administrative Agent in its Credit Judgment;

(c) Inventory that does not comply with each of the covenants, representations and warranties respecting Inventory made by the Borrowers in the Loan Documents;

(d) Inventory that is leased by or is on consignment to a Borrower;

(e) Inventory that is not located in the United States of America or Canada (excluding territories or possessions of the United States or Canada); provided, however, that for the period commencing on the Third Amendment Effective Date, and ending upon the earlier of (i) January 31, 2023 or (ii) the consummation of the Specified Yucatan Sale, up to $3,000,000 of Inventory located in Mexico (excluding territories or possessions of Mexico) shall not be excluded from Eligible Inventory under this clause (e);

(f) Inventory that is not at a location that is owned by a Borrower, provided, however, that such Inventory that is located on leased premises or in the possession of a warehouseman, bailee, processor, repairman, mechanic or similar other Person in the ordinary course of business shall not be excluded from Eligible Inventory under this clause (f) so long as the lessor or such Person possessing such Inventory has delivered a Lien Waiver to the Administrative Agent or, if elected by the Administrative Agent, an appropriate Rent and Charges Reserve has been established;

(g) Inventory held at any location (owned or a third-party location) with an aggregate Cost of Inventory at such location of less than $100,000 notwithstanding receipt of a Lien Waiver or implementation of a Rent and Charge Reserve as provided under clause (f) above;

(h) Inventory that is in transit, except between locations of Borrowers (or between locations of Borrowers and processors or vendors in the Ordinary Course of Business);

(i) Inventory that is comprised of goods which (i) are damaged, defective, "seconds" or otherwise unmerchantable, (ii) spoiled or are otherwise past the stated expiration sell by or use by date applicable thereto, (iii) have been returned or are to be returned to the vendor, (iv) are subject to recall or similar notice, or (v) are discontinued products, obsolete or slow moving;

(j) Inventory consisting of work-in-process; provided that, up to $3,000,000 of Inventory of Lifecore Inc. consisting of work-in-process that is the subject of an appraisal and approved by the Administrative Agent in its discretion shall not be excluded from Eligible Inventory under this clause (j);

(k) Inventory consisting of promotional, marketing, samples, specific packaging and shipping materials or supplies used or consumed in the Borrowers' business and other similar non-merchandise categories;

(l) Inventory that is not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale;

(m) Inventory that is subject to any warehouse receipt, bill of lading or negotiable Document that has not been issued to or in the name of the Administrative Agent;

(n) Inventory consisting of or containing Hazardous Materials;

(o) Inventory that is not subject to a perfected first priority Lien in favor of the Administrative Agent (subject only to Permitted Liens set forth in clauses (c), (d) or (n) of Section 8.02 hereof);

(p) Inventory that is not insured in compliance with the provisions of this Agreement and the other Loan Documents;

(q) Inventory not on a perpetual schedule;

(r) Inventory that consists of bill and hold goods or goods that have been sold but not yet delivered; or

(s) Inventory that is subject to any License or other arrangement that restricts such Borrowers' or the Administrative Agent's right to dispose of such Inventory, unless (i) Administrative Agent has received an appropriate Lien Waiver; and (ii) such Borrowers have not received notice of a dispute in respect of any such License or other arrangement.

"Eligible Specified Foreign Account Debtor Accounts" means, without duplication of any Eligible Credit Insured Foreign Account, any Accounts arising out of sales to Specified Foreign Account Debtors that meet all of the criteria set forth in the definition of "Eligible Accounts," other than the criteria set forth in clause (n) thereof.

"Environmental Laws" means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection

of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

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

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of or partnership or membership interest in (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of or partnership or membership interest in (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of or partnership or membership interest in (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares, interests or units (or such other interests), and all of the other ownership or profit interests in such Person, whether voting or nonvoting, and whether or not such shares, units, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with any Loan Party within the meaning of Section 4001 of ERISA or Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(3) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization (within the meaning of Section 4245 of ERISA) ; (d) the filing of a notice of intent to terminate or, the treatment of an Pension Plan amendment as a termination of a Pension Plan under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate.

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

"Event of Default" has the meaning specified in Section 9.01.

"Excess Term Obligations" means the "Excess Term Loan Claim", as that term is defined in the Term Loan Intercreditor Agreement.

"Exchange Act" means the Securities Exchange Act of 1934 and the regulations promulgated thereunder.

"Excluded Collateral" has the meaning specified in the Security Agreement.

"Excluded Deposit Account" means, collectively, all (a) Trust Accounts, (b) zero balance disbursement accounts, (c) any other Deposit Accounts maintained in the Ordinary Course of Business, in all cases containing cash amounts that do not exceed at any time $100,000 for any such account and $250,000 in the aggregate for all such accounts under this clause (c) and (d) accounts of the Mexican Subsidiaries maintained in the ordinary course of business, in all cases containing cash amounts that do not exceed at any time $2,000,000 in the aggregate for all such accounts under this clause (d) (so long as, from and after the Mexican Subsidiary Joinder Date, such cash is subject to a first priority Lien in favor of the Administrative Agent (subject to the Term Loan Intercreditor Agreement) pursuant to the Mexican Subsidiary Security Agreement).

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, or the grant by such Loan Party of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Loan Party or the grant of such Lien becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or Lien is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection

Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower Agent under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or Section 3.01(c), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any Taxes imposed pursuant to FATCA.

"Existing Credit Facility" means that certain Credit Agreement, dated as of September 23, 2016, by and among Holdings, as borrower, the other persons party thereto as loan parties, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent, as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof.

"Existing Financial Statements" means the audited and unaudited financial statements for the periods ending on or prior to August 31, 2022, in each case in the form previously delivered to the Administrative Agent and the Lenders in accordance with Sections 7.01(a) and 7.01(b).

"Extraordinary Expenses" means all costs, expenses, liabilities or advances that Administrative Agent may incur or make during a Default or Event of Default, or during the pendency of an proceeding of any Loan Party or Subsidiary thereof under any Debtor Relief Laws, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Administrative Agent, any Lender, any Loan Party or Subsidiary thereof, any representative of creditors of a Loan Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Administrative Agent's Liens with respect to any Collateral), Loan Documents, Letters of Credit or Obligations, including any lender liability or other claims; (c) the exercise, protection or enforcement of any rights or remedies of Administrative Agent in, or the monitoring of, any proceeding applicable to any Loan Party or Subsidiary thereof under any Debtor Relief Laws; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any enforcement action; (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations; and (g) Protective Advances. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Loan Party or Subsidiary thereof or independent contractors in liquidating any Collateral, and travel expenses.

"Extraordinary Receipts" means an amount equal to any cash received by or paid for the account of Holdings or any of its Subsidiaries outside of the Ordinary Course of Business, including any such payments in respect of purchase price adjustments (excluding working capital adjustments), Tax refunds, judgments, settlements for actual or potential litigation or similar claims, pension plan reversions, proceeds of insurance and indemnity payments, in each case, determined net of any bona fide direct costs incurred in connection with obtaining such cash receipts to the extent paid or payable to non-Affiliates (including reasonable, out-of-pocket fees, costs and expenses associated therewith, whether as a result of settlement or otherwise); provided, the term "Extraordinary Receipts" shall not include (i) proceeds of any indemnity payment to the extent that no Event of Default exists at the time of receipt of such proceeds and such proceeds are promptly (and in any event within five Business Days) used to pay related third party claims and expenses or (ii) proceeds of the type otherwise subject to clauses (i), (ii) or (iii) of Section 2.06(b).

"Facility" means the Revolving Credit Facility.

"Facility Termination Date" means the date as of which Payment in Full has occurred.

"Fair Market Value" means, with respect to any asset or any group of assets, as of any date of determination, the value of the consideration obtainable in a sale of such assets at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time giving regard to the nature and characteristics of such asset.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

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

"FCPA" means the U.S. Foreign Corrupt Practices Act.

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

"Fee Letter" means the letter agreement, dated as of Closing Date, among the Borrowers, and BMO.

"Field Exam" means any visit and inspection of the properties, assets and records of any Loan Party or Subsidiary thereof, which shall include access to such properties, assets and records sufficient to permit the Administrative Agent or its representatives to examine, audit and make

extracts from any books and records of any Loan Party or Subsidiary thereof, make examinations and audits of any other financial matters and Collateral of any Loan Party or Subsidiary thereof as Administrative Agent deems appropriate in its Credit Judgment, and discussions with its officers, employees, agents, advisors and independent accountants regarding such Loan Party's or Subsidiary's business, financial condition, assets, prospects and results of operations.

"Financial Covenant Trigger Period" means any period (a) commencing after the Fourth Amendment Effective Date on the day that (i) an Event of Default occurs and is continuing, or (ii) Availability is less than the greater of (x) 10% of the Maximum Borrowing Amount at such time and (y) $6,750,000, and (b) continuing until the date that (i) in the case of clause (a)(i), no Event of Default exists, and (ii) in the case of clause (a)(ii), during the previous thirty (30) consecutive days, Availability has been equal to or greater than the greater of (x) 10% of the Maximum Borrowing Amount at such time and (y) $6,750,000.

"FIRREA" means The Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"Fiscal Quarter" means a fiscal quarter of any Fiscal Year of the Consolidated Group.

"Fiscal Year" means the fiscal year of the Consolidated Group for accounting and tax purposes, ending on the last Sunday of May of each calendar year.

"Flood Documentation" means, with respect to any Mortgaged Property, (a) a life-of-loan flood hazard determination acceptable to the Administrative Agent in its discretion, (b) if such Real Property is located in a flood plain, an acknowledged notice to Borrowers and flood insurance in an amount, with endorsements and by an insurer acceptable to the Administrative Agent in its discretion, and (c) all Real Property items as required by FIRREA, in form and substance acceptable to the Administrative Agent in its discretion.

"Floor" means the rate per annum of interest equal to zero percent (0.00%).

"FLSA" means the Fair Labor Standards Act of 1938.

"Foreign Benefit Law" means any law or regulation, other than United States law, governing or applicable to any employee benefit plan, program, scheme or arrangement that is not subject to United States law.

"Foreign Government Scheme or Arrangement" has the meaning specified in Section 6.12(e).

"Foreign Lender" means (a) if the applicable Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the applicable Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

"Foreign Plan" has the meaning specified in Section 6.12(e).

"Fourth Amendment" means that certain Limited Waiver and Fourth Amendment to Credit Agreement dated as of the Fourth Amendment Effective Date, by and among the Loan Parties, the Administrative Agent and the Lenders party thereto.

"Fourth Amendment Effective Date" means January 9, 2023.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fronting Exposure" means, at any time there is a Defaulting Lender that is a Revolving Credit Lender, (a) with respect to the Letter of Credit Issuer, such Defaulting Lender's Applicable Percentage of the outstanding Letter of Credit Obligations other than Letter of Credit Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Credit Lenders or Cash Collateralized in accordance with the terms hereof, (b) with respect to the Swing Line Lender, such Defaulting Lender's Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Credit Lenders and (c) with respect to the Administrative Agent, such Defaulting Lender's Applicable Percentage of Protective Advances other than Protective Advances as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Credit Lenders.

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

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"GLAS" means GLAS Americas LLC, a limited liability company organized and existing under the laws of the State of New York, together with any successor thereto from time to time.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive,

legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" means each Person who becomes a party to this Agreement as a guarantor pursuant to Section 7.12 or otherwise executes and delivers a guaranty agreement acceptable to the Administrative Agent guaranteeing any of the Obligations. For avoidance of doubt, as of the Closing Date, (i) Holdings, (ii) Curation, (iii) Camden Fruit Corp., a California corporation, (iv) Yucatan Foods, LLC, a Delaware limited liability company, (v) Greenline Logistics, Inc., an Ohio corporation, (vi) Lifecore Inc. and (vii) Lifecore LLC are the sole Guarantors.

"Guarantor Payment" has the meaning specified in Section 2.15(c).

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Honor Date" has the meaning specified in Section 2.03(c)(i).

"Immaterial Fee-Owned Property" means, as of any date of determination, any (i) individual fee-owned Real Property having a fair market value less than $2,000,000 and (ii) fee-owned Real Property having a fair market value less than $4,000,000 in the aggregate; provided, notwithstanding the foregoing, any fee-owned Real Property designated as a Material Real Property pursuant to clause (iii) of the definition thereof and any fee-owned Real Property set forth on Schedule 1.01(b) shall not constitute "Immaterial Fee-Owned Properties".

"Increase Effective Date" has the meaning specified in Section 2.18(d).

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

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments or upon which interest is customarily paid;

(b) all direct or contingent obligations of such Person arising under or in respect of letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and other financial products and services (including treasury management and commercial credit card, merchant card and purchase or procurement card services);

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the Ordinary Course of Business) and any accrued and unpaid obligations with respect to any earn-out or similar payments under any Acquisition documents;

(e) indebtedness secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) obligations under Capital Leases and Synthetic Lease Obligations of such Person;

(g) all obligations of such Person with respect to the redemption, repayment or other repurchase or payment in respect of any Disqualified Equity Interest; and

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

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, to the extent such Indebtedness is recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. For avoidance of doubt, all obligations owing under the Term Loan Documents shall constitute Indebtedness.

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

"Indemnitees" has the meaning specified in Section 11.04(b).

"Information" has the meaning specified in Section 11.07.

"Initial Cash Flow Report" has the meaning specified in Section 7.24.

"Insolvency Event" means, with respect to any Person:

(a) the commencement of: (i) a voluntary case by such Person under the Bankruptcy Code or (ii) the seeking of relief by such Person under other Debtor Relief Laws;

(b) the commencement of an involuntary case or proceeding against such Person under the Bankruptcy Code or other Debtor Relief Laws and the petition or other filing is not controverted or dismissed within sixty (60) days after commencement of the case or proceeding;

(c) a custodian (as defined in the Bankruptcy Code or equal term under any other Debtor Relief Law, including a receiver, interim receiver, receiver manager, trustee or monitor) is appointed for, or takes charge of, all or substantially all of the property of such Person;

(d) such Person commences (including by way of applying for or consenting to the appointment of, or the taking charge by, a rehabilitator, receiver, interim receiver, custodian, trustee, monitor, conservator or liquidator (or any equal term under any other Debtor Relief Laws) (collectively, a "conservator") of such Person or all or any substantial portion of its property) any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, liquidation, rehabilitation, conservatorship or similar law of any jurisdiction whether now or hereafter in effect relating to such Person;

(e) such Person is adjudicated by a court of competent jurisdiction to be insolvent or bankrupt;

(f) any order of relief or other order approving any such case or proceeding referred to in clauses (a) or (b) above is entered;

(g) such Person suffers any appointment of any conservator or the like for it or any substantial part of its property that continues undischarged or unstayed for a period of sixty (60) days; or

(h) such Person makes a compromise, arrangement or assignment for the benefit of creditors or generally does not pay its debts as such debts become due.

"Intellectual Property" means all past, present and future: trade secrets, know-how and other proprietary information; trademarks, uniform resource locations (URLs), internet domain names, service marks, sound marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights (including copyrights for computer programs) and copyright registrations or applications for registrations which have heretofore been or may hereafter be issued throughout the world and all tangible property embodying the copyrights, unpatented inventions (whether or not patentable); patent applications and patents; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

"Interest Payment Date" means, (a) as to any SOFR Loan, (i) the last day of each Interest Period applicable to such SOFR Loan; provided that if any Interest Period for a SOFR Loan is greater than three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; (ii) any date that such Loan is prepaid or converted, in whole or in part, and (iii) the Maturity Date; and (b) as to any Base Rate Loan (including a Swing Line Loan), (i) the first day of each Fiscal Quarter with respect to interest accrued through the last day of the immediately preceding Fiscal Quarter, (ii) any date that such Loan is prepaid or converted, in whole or in part, and (iii) the Maturity Date; provided, further, that interest accruing at the Default Rate shall be payable from time to time upon demand of the Administrative Agent.

"Interest Period" means, as to each SOFR Loan, the period commencing on the date such SOFR Loan is disbursed or converted to or continued as a SOFR Loan and ending, in each case, on the date one, three or six months thereafter, as selected by the Borrower Agent in its Committed Loan Notice; provided that:

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

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(c) no Interest Period shall extend beyond the Maturity Date; and

(d) no tenor that has been removed from this definition pursuant to Section 3.09 below shall be available for specification in a Committed Loan Notice.

"Inventory Formula Amount" means, at any time of calculation, an amount equal to:

(a) the lesser of (i) the NOLV of Eligible Inventory of Lifecore Inc. multiplied by (A) for the period commencing on the Third Amendment Effective Date, and ending on January 31, 2023, 90%, and (B) at all other times, 85%, and (ii) the Cost of Eligible Inventory of Lifecore Inc. (other than, for avoidance of doubt, Prepaid Inventory), multiplied by 75%; plus

(b) the lesser of (i) the NOLV of Eligible Inventory of Curation multiplied by 85%, and (ii) the Cost of Eligible Inventory of Curation (other than, for avoidance of doubt, Prepaid Inventory), multiplied by 75%; plus

(c) the lesser of (i) the NOLV of Eligible In-Transit Inventory, multiplied by 85%, and (ii) the Cost of Eligible In-Transit Inventory, multiplied by 70%.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) an Acquisition with respect to another Person or (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person. For purposes of compliance with Section 8.03, the amount of any Investment shall be (i) the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, less all returns of principal or equity thereon (and without adjustment by reason of the financial condition of such other Person), (ii) if made by the transfer or exchange of property other than cash, shall be deemed to have been made in an original principal or capital amount equal to the Fair Market Value of such property at the time of such transfer or exchange and (iii) if made in the form of a Guaranty or acquisition or assumption of Indebtedness, shall be deemed made in the maximum principal amount of such Indebtedness or maximum value of the obligation Guaranteed, as applicable.

"IP Rights" rights of any Person to use any Intellectual Property.

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

"Issuer Documents" means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the Letter of Credit Issuer and any Borrower (or any Subsidiary) or in favor the Letter of Credit Issuer and relating to any such Letter of Credit.

"Laws" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lender" and "Lenders" have the meaning specified in the introductory paragraph hereto and, as the context requires, include the Letter of Credit Issuer and the Swing Line Lender.

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

"Letter of Credit" means (a) any standby or documentary letter of credit issued by a Letter of Credit Issuer or (b) any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support, in any case, issued by the Administrative Agent or a Letter of Credit Issuer pursuant to this Agreement for the benefit of a Borrower.

"Letter of Credit Advance" means each Revolving Credit Lender's funding of its participation in any Letter of Credit Borrowing in accordance with its Applicable Revolving Credit Percentage. All Letter of Credit Advances shall be denominated in Dollars.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Letter of Credit Issuer.

"Letter of Credit Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

"Letter of Credit Expiration Date" means the day that is thirty (30) days prior to the Maturity Date (or, if such day is not a Business Day, the preceding Business Day).

"Letter of Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

"Letter of Credit Fees" means, collectively or individually as the context may indicate, the fees with respect to Letters of Credit described in Section 2.09(b).

"Letter of Credit Issuer" means BMO and/or any Affiliate thereof, in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder. At any time there is more than one Letter of Credit Issuer, all singular references to the Letter of Credit Issuer shall mean any Letter of Credit Issuer, either Letter of Credit Issuer, each Letter of Credit Issuer, the Letter of Credit Issuer that has issued the applicable Letter of Credit, or both Letter of Credit Issuers, as the context may require.

"Letter of Credit Obligations" means, as at any date of determination, (a) the aggregate undrawn amount of all outstanding Letters of Credit, plus (b) the aggregate of all Unreimbursed Amounts, including all Letter of Credit Borrowings, plus (c) the aggregate amount of all accrued and unpaid Letter of Credit Fees. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Letter of Credit Sublimit" means an amount equal to the lesser of (a) $10,000,000 and (b) the Aggregate Revolving Credit Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Credit Commitments.

"License" means any license or agreement under which a Loan Party is granted IP Rights in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of assets or property or any other conduct of its business.

"Licensor" means any Person from whom a Loan Party obtains IP Rights.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest, or any preference, priority or other security agreement or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Lien Waiver" means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, by which (a) for any material Collateral located on leased premises or owned premises subject to a mortgage, the lessor or mortgagee, as applicable, agrees to, among other things, waive or subordinate any Lien it may have on the Collateral and permit the Administrative Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for the Administrative Agent, and agrees to deliver the Collateral to the Administrative Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges the Administrative Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Administrative Agent upon request; and (d) for any Collateral subject to a Licensor's IP Rights, the Licensor grants to the Administrative Agent the right, vis-à-vis such Licensor, to enforce the Administrative Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

"Lifecore" means, collectively, Lifecore Inc. and Lifecore LLC.

"Lifecore Inc." has the meaning specified in the introductory paragraph hereto.

"Lifecore LLC" means Lifecore Biomedical, LLC, a Minnesota limited liability company.

"Line Reserve" means the sum of (a) the Rent and Charges Reserve; (b) the Credit Product Reserve; (c) the aggregate amount of liabilities at any time secured by Liens upon Collateral that are senior to the Administrative Agent's Liens (other than, for avoidance of doubt, the Term Loan Liens on the Term Loan Priority Collateral subject to the Term Loan Intercreditor Agreement); (d) sums that any Loan Party may be required to pay under any Section of this Agreement or any other Loan Document (including taxes, assessments, insurance premiums, or, in the

case of leased assets, rents or other amounts payable under such leases) and has failed to pay; and (e) amounts for which claims may be reasonably expected to be asserted against the Collateral, the Administrative Agent or the Lenders**.**

"Loan" means an extension of credit under Article II in the form of a Revolving Credit Loan, a Protective Advance or a Swing Line Loan.

"Loan Account" has the meaning assigned to such term in Section 2.11(a).

"Loan Documents" means this Agreement, each Note, each Security Instrument, each Committed Loan Notice, Swing Line Loan Notice, each Issuer Document, each Borrowing Base Certificate, each Compliance Certificate, the Term Loan Intercreditor Agreement, each Subordination Agreement, the Fee Letter, any agreement creating or perfecting rights in Cash Collateral securing any Obligation hereunder and all other instruments and documents heretofore or hereafter executed or delivered to or in favor of any Lender or the Administrative Agent in connection with the Loans made and transactions contemplated by this Agreement, excluding, for the avoidance of doubt, Credit Product Arrangements.

"Loan Obligations" means all Obligations other than amounts (including fees) owing by any Loan Party pursuant to any Credit Product Arrangements.

"Loan Parties" means, collectively: (a) the Borrowers; (b) the Guarantors; and (c) each other Person that (i) executes a joinder to this agreement as a Borrower, Guarantor, and/or Loan Party; (ii) is liable for payment of any of the Obligations; and (iii) has granted a Lien in favor of Administrative Agent on its assets to secure any of the Obligations.

"Master Intercompany Note" means that certain Master Intercompany Note by and among the Loan Parties and their Subsidiaries of even date herewith.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, or financial condition of the Loan Parties and their Subsidiaries, taken as a whole; (b) a material impairment of the ability of the Loan Parties, taken as a whole, to perform their obligations under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party or on the ability of the Administrative Agent to collect any Obligation or realize upon any material portion of the Collateral.

"Material Contract" means any agreement or arrangement to which a Loan Party or Subsidiary thereof is party (other than the Loan Documents) (a) that is deemed to be a material contract under any securities laws applicable to such Loan Party, including the Securities Act of 1933; (b) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (c) that involves aggregate consideration in excess of $3,250,000 per year.

"Material License" has the meaning assigned to such term in Section 7.15.

"Material Real Property" means any and all of the following: (i) all fee-owned Real Property other than any Immaterial Fee-Owned Properties (ii) any Real Property at which Lifecore or any of its Subsidiaries is manufacturing pharmaceutical products, (iii) any Real Property which serves as a chief executive office for any Loan Party and (iv) any Real Property listed on Schedule 1.01(b).

"Material Third-Party Agreement" has the meaning assigned to such term in Section 7.17(a).

"Maturity Date" means the earliest to occur of (a) to the extent any Term Loan Debt is outstanding on such date, ninety (90) days prior to the "Term Loan Maturity Date" (as defined in the Term Loan Agreement), and (b) December 31, 2025.

"Maximum Borrowing Amount" means the lesser of (A) (i) the Aggregate Revolving Credit Commitments minus (ii) the Credit Product Reserve, and (B) the Borrowing Base.

"Measurement Period" means, at any date of determination, the most recently completed trailing twelve month period of the Consolidated Group for which financial statements have or should have been delivered in accordance with Section 7.01(a) or 7.01(b).

"Mexican Collateral Documents" means (i) the Mexican Subsidiary Security Agreement, (ii) each counterpart agreement pursuant to which each Mexican Subsidiary becomes a "Guarantor" under the Credit Agreement, and (iii) any other collateral or security documents executed in connection herewith from time to time and governed by the laws of Mexico, in each case, as amended, restated, supplemented or otherwise modified from time to time in accordance therewith and with this Agreement.

"Mexican Subsidiaries" means (a) Tanok and (b) Tanokatan.

"Mexican Subsidiary Joinder Date" shall mean the date that the conditions set forth in Section 7.12(f) are satisfied.

"Mexican Subsidiary Reorganization Activities" means (a) the conversion of Tanok into a Mexican maquiladora and (b) the conversion of Tanokatan into a Mexican operating entity.

"Mexican Subsidiary Security Agreement" shall mean a floating lien pledge (*prenda sin transmisión de posesión*) executed by each Mexican Subsidiary order to provide a first priority Lien (subject to the Term Loan Intercreditor Agreement) in favor of Administrative Agent on the assets of such Mexican Subsidiaries (other than customary excluded assets to be agreed).

"Mexico" means the United Mexican States.

"Minimum Collateral Amount" means, at any time, (a) with respect to Cash Collateral consisting of cash or Deposit Account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 105% of the Fronting Exposure of the Letter of Credit Issuer with respect to Letters of Credit issued and outstanding at such time plus 105% of the Fronting Exposure of the Administrative Agent with respect to Protective Advances outstanding at such time, (b) with respect to Cash Collateral consisting of cash or Deposit Account balances provided in accordance with the provisions of Section 2.16(a)(i) or 2.16(a)(ii), an amount equal to 105% of the Outstanding Amount of all Letter of Credit Obligations, and (c) otherwise, an amount determined by the Administrative Agent and the Letter of Credit Issuer in their sole discretion.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage Related Documents" means, with respect to each fee-owned Real Property that is required to be subject to a Mortgage pursuant to this Agreement:

(i) one or more fully executed and notarized Mortgages encumbering such Real Property, in each case, in proper form for recording in all appropriate places in all applicable jurisdictions;

(ii) (a) ALTA mortgagee title insurance policies or, solely to the extent that Administrative Agent in its sole discretion waives the requirement for a policy to be issued, unconditional commitments therefor, in each case, issued by one or more title companies reasonably satisfactory to Administrative Agent with respect to such Real Property (each, a "Title Policy"), each Title Policy to be in amounts not less than the fair market value of such Real Property as reasonably determined by Borrower, together with a title report with respect thereto issued by such title companies and dated not more than 60 days prior to the date of the applicable Mortgage, (b) copies of all documents listed as exceptions to title or otherwise referred to therein, and (c) evidence satisfactory to Administrative Agent that such Loan Party has paid to such title companies or to the appropriate Governmental Authorities all expenses and premiums of such title companies and all other sums required in connection with the issuance of each Title Policy and all recording and stamp Taxes (including mortgage recording and intangible Taxes) payable in connection with recording the Mortgages for such Real Property in the appropriate real estate records;

(iii) the Flood Documentation with respect thereto;

(iv) ALTA surveys of such Real Property, either (A) certified to Administrative Agent and dated not more than 30 days prior to the date of the applicable Mortgage and otherwise in form and substance reasonably satisfactory to Administrative Agent or (B) confirmed by the Borrower Agent or the owner of such Real Property by a survey affidavit satisfactory to the title company providing the Title Policy insuring the Mortgage on such Real Property to be an accurate representation of the current status of such Real Property such that the title company may delete the standard survey exceptions from the Title Policy;

(v) an opinion of counsel (which counsel shall be reasonably satisfactory to Administrative Agent) in the state in which such Real Property is located with respect to the enforceability of the Mortgage(s) to be recorded in such state and such other matters as Administrative Agent may reasonably request, in form and substance reasonably satisfactory to Administrative Agent; and

(vi) reports and other information, in each case, in form, scope and substance reasonably satisfactory to Administrative Agent, regarding environmental matters relating to such Real Property, including any Phase I Report requested by Administrative Agent with respect to such Real Property.

"Mortgaged Property" means each fee-owned Real Property of the Loan Parties that is or is required to become subject to a Mortgage pursuant to Section 4.03(c) or the requirements of the Post-Closing Agreement.

"Mortgages" means a mortgage, deed of trust, or similar instrument in form and substance reasonably acceptable to Administrative Agent.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(4) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"MXN Collateral Agent" means GLAS, not in its individual capacity, but solely in its capacity as collateral agent for the Lenders pursuant to Section 10.5 in respect of the Mexican Collateral (as defined in the Term Loan Intercreditor Agreement), and any successor collateral agent appointed in accordance with Section 10.05.

"Net Cash Proceeds" means

(a) with respect to the Disposition of any asset of any Loan Party or any Subsidiary thereof, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such Disposition (including any cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by such asset and that is required to be repaid in connection with the Disposition thereof (other than Indebtedness under the Loan Documents and Indebtedness owing to any Loan Party or Subsidiary thereof), (B) the reasonable out-of-pocket expenses incurred by such Loan Party or any Subsidiary in connection with such Disposition, including any brokerage commissions, underwriting fees and discount, legal fees, finder's fees and other similar fees and commissions, (C) taxes paid or reasonably estimated to be payable by the Loan Party or any Subsidiary thereof in connection with the relevant Disposition, (D) the amount of any reasonable reserve required to be established in accordance with GAAP against liabilities (other than taxes deducted pursuant to clause (C) above) to the extent such reserves are (x) associated with the assets that are the object of such Disposition and (y) retained by such Loan Party or applicable Subsidiary thereof, and (E) the amount of any reasonable reserve for purchase price adjustments and retained fixed liabilities reasonably expected to be payable by such Loan Party or applicable Subsidiary thereof in connection therewith to the extent such reserves are (1) associated with the assets that are the object of such Disposition and (2) retained by such Loan Party or applicable Subsidiary thereof; provided that the amount of any subsequent reduction of any reserve provided for in clause (D) or (E) above (other than in connection with a payment in respect of such liability) shall (X) be deemed to be Net Cash Proceeds of such Disposition occurring on the date of such reduction, and (Y) immediately be applied to the prepayment of Loans in accordance, and to the extent required by, with Section 2.06(c);

(b) with respect to any issuance of Indebtedness or Equity Interests by any Loan Party or any Subsidiary thereof, the excess, if any, of (i) the sum of the cash and cash equivalents received in connection with such issuance over (ii) the sum of (A) the reasonable out-of-pocket expenses incurred by such Loan Party or any Subsidiary thereof in connection with such issuance, including any brokerage commissions, underwriting fees and discount, legal fees, and other similar fees and commissions and (B) taxes paid or payable to the applicable taxing authorities by the Loan Party or any Subsidiary thereof in connection with and at the time of such issuance; and

(c) with respect to any insurance proceeds and condemnation and similar awards received on account of casualty or condemnation events, the sum of (i) all cash and Cash Equivalents received in connection with such casualty or condemnation event minus (ii) all reasonable out-of-pocket expenses incurred by the Loan Parties or any Subsidiary thereof and other amounts required to be paid in connection therewith.

"NOLV" means with respect to the Borrowers' Inventory, the net orderly liquidation value of such Inventory (a percentage of the Cost of such Inventory) that might be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from time to time by reference to the most recent appraisal received by the Administrative Agent conducted by an independent appraiser engaged by the Administrative Agent.

"Non-Consenting Lender" has the meaning assigned to such term in Section 11.01.

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

"Non-Extension Notice Date" has the meaning specified in Section 2.03(b)(iii).

"Note" means the Revolving Credit Loan Notes.

"NPL" means the National Priorities List pursuant to CERCLA, as updated from time to time.

"Obligations" means (a) all amounts owing by any Loan Party to the Administrative Agent, any Lender or any other Secured Party pursuant to or in connection with this Agreement or any other Loan Document or otherwise with respect to any Loan or Letter of Credit, including, without limitation, all Letter of Credit Obligations, and including all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any proceeding under any Debtor Relief Law relating to any Loan Party, or would accrue but for such filing or commencement, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), reimbursement obligations, indemnification and reimbursement payments, fees, costs and expenses (including all fees, costs and expenses of counsel to the Administrative Agent) incurred in connection with this Agreement or any other Loan Document, whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, together with all renewals, extensions, modifications or refinancings thereof and (b) Credit Product Obligations; provided, that Obligations of a Loan Party shall not include its Excluded Swap Obligations.

"OFAC" means the United States Department of Treasury Office of Foreign Assets Control.

"OFAC SDN List" means the list of the Specially Designated Nationals and Blocked Persons maintained by OFAC.

"Ordinary Course of Business" means the ordinary course of business of the Borrowers and their Subsidiaries, consistent with past practices and undertaken in good faith.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument,

filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment or grant of a participation (other than an assignment made pursuant to Section 11.13).

"Outstanding Amount" means (a) with respect to Revolving Credit Loans, Protective Advances and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and any prepayments or repayments of Revolving Credit Loans, Protective Advances or Swing Line Loans occurring on such date; and (b) with respect to any Letter of Credit Obligations on any date, the aggregate outstanding amount of such Letter of Credit Obligations on such date after giving effect to any Letter of Credit Extension occurring on such date plus and any other changes in the aggregate amount of the Letter of Credit Obligations as of such date, including as a result of any reimbursements by the Borrowers of Unreimbursed Amounts and all Letter of Credit Borrowings on such date.

"Overadvance" has the meaning given to such term in Section 2.01(c)(i)(A).

"Overadvance Loan" means a Base Rate Revolving Credit Loan made when an Overadvance exists or is caused by the funding thereof.

"Overnight Rate" means, for any day and from time to time as in effect, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent, the Letter of Credit Issuer, or the Swing Line Lender, as the case may be, in accordance with banking industry rules on interbank compensation.

"PACA" means the Perishable Agriculture Commodities Act, 1930.

"Participant" has the meaning assigned to such term in clause (d) of Section 11.06.

"Participant Register" has the meaning assigned to such term in clause (d) of Section 11.06.

"PASA" means the Packers and Stockyard Act, 1921.

"Patent Security Agreement" means any patent security agreement pursuant to which a Loan Party grants to Administrative Agent, for the benefit of the Secured Parties, a security interest in Person's patents, as security for the Obligations.

"PATRIOT Act" means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"Payment Conditions" means, with respect to any Specified Transaction, the satisfaction of the following conditions:

(a) as of the date of any such Specified Transaction and immediately after giving effect thereto, no Default or Event of Default has occurred and is continuing;

(b) if such Specified Transaction is a Specified Restricted Payment or a Specified Debt Payment, either (i) Average Availability (after giving Pro Forma Effect to such Specified Transaction) during the thirty (30) consecutive day period ending on and including the date of such Specified Transaction shall not be less than the greater of (x) 20% of the Maximum Borrowing Amount and (y) $15,000,000, in each case, as of such date; or (ii) (x) Average Availability (after giving Pro Forma Effect to such Specified Transaction) during the thirty (30) consecutive day period ending on and including the date of such Specified Transaction shall not be less than the greater of (A) 15% of the Maximum Borrowing Amount and (B) $11,250,000, in each case, as of such date, and (y) the Consolidated Fixed Charge Coverage Ratio of the Consolidated Group as of the end of the most recently ended Measurement Period prior to the making of such Specified Transaction, calculated on a Pro Forma Basis, shall be equal to or greater than 1.00:1.00;

(c) if such Specified Transaction is a Permitted Acquisition or a Specified Investment, either (i) Average Availability (after giving Pro Forma Effect to such Specified Transaction) during the thirty (30) consecutive day period ending on and including the date of such Specified Transaction shall not be less than the greater of (x) 17.5% of the Maximum Borrowing Amount and (y) $13,000,000, in each case, as of such date; or (ii) (x) Average Availability (after giving Pro Forma Effect to such Specified Transaction) during the thirty (30) consecutive day period ending on and including the date of such Specified Transaction shall not be less than the greater of (A) 12.5% of the Maximum Borrowing Amount and (B) $9,250,000, in each case, as of such date, and (y) the Consolidated Fixed Charge Coverage Ratio of the Consolidated Group as of the end of the most recently ended Measurement Period prior to the making of such Specified Transaction, calculated on a Pro Forma Basis, shall be equal to or greater than 1.00:1.00;

(d) the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower Agent certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby; and

(e) such Specified Transaction is permitted under the Term Loan Debt Documents.

"Payment in Full" means (a) the indefeasible payment in full in cash of all Obligations, together with all accrued and unpaid interest and fees thereon, other than Letter of Credit Obligations that have been fully Cash Collateralized in an amount equal to 105% of the amount thereof or as to which other arrangements with respect thereto satisfactory to the Administrative Agent and the Letter of Credit Issuer shall have been made, (b) the Commitments shall have terminated or expired, (c) without duplication, the obligations and liabilities of each Loan Party and its Affiliates under all Credit Product Arrangements shall have been fully, finally and irrevocably paid and satisfied in full and the Credit Product Arrangements shall have expired or been terminated, or other arrangements satisfactory to the applicable Credit Product Providers shall have been made with respect thereto, and (d) all claims of the Loan Parties against any Secured Party arising on or before the payment date in connection with the Loan Documents or any Credit Product Arrangements, as applicable, shall have been released on terms acceptable to the Administrative Agent or the applicable Credit Product Providers; provided that notwithstanding full payment or Cash Collateralization of the Obligations as provided herein, the Administrative Agent shall not be required to terminate its Liens in any Collateral unless, with respect to any damages the Administrative Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, Administrative Agent receives (i) a written agreement, executed by Borrowers and any Person whose advances are used in whole or in part to satisfy the Obligations, indemnifying Agent and Lenders from any such damages; or (ii) such Cash Collateral as the Administrative Agent, in its discretion, deems necessary to protect against any such damages.

"Payment Item" means each check, draft or other item of payment payable to a Borrower, including those constituting proceeds of any Collateral.

"PBGC" means the Pension Benefit Guaranty Corporation.

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

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA, or, for any Pension Plan subject to the Cooperative and Small Employer Charity Pension Flexibility Act, Section 306 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiemployer Plan) that is, or within the prior six (6) years was, maintained or is contributed to by any Loan Party and any ERISA Affiliate and is (or was) either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code or Section 302 of ERISA.

"Permanent Accounts Formula Amount Trigger" means completion of a Field Exam with respect to the Accounts of Curation (with results satisfactory to the Administrative Agent in its discretion), and receipt of a Borrowing Base Certificate using the Accounts Formula Amount (Permanent) calculation and including any applicable Availability Reserves.

"Permitted Acquisition" means any Acquisition by a Borrower so long as:

(a) the Person to be (or whose assets are to be) acquired does not oppose such Acquisition and the division, or line or lines of business, of the Person to be acquired constitute Core Businesses;

(b) the cost of such Acquisition (including cash and other property given as consideration, any Indebtedness incurred (without duplication of cash given as consideration to the extent proceeds of Indebtedness incurred), assumed or acquired by any Loan Party or any Subsidiary in connection with such Acquisition, and all additional purchase price amounts in the form of earnouts and other contingent obligations calculated at the maximum amount thereof) does not exceed $2,000,000 individually and $5,000,000 when aggregated with all other Acquisitions consummated during the term of this Agreement;

(c) prior to or simultaneously with the closing of such Acquisition, the provisions of Sections 7.12 and 7.14 have been satisfied;

(d) after giving effect to such Acquisition on a Pro Forma Basis and the costs related thereto (including cash and other property (other than Equity Interests or options to acquire Equity Interests of any Loan Party) given as consideration, any Indebtedness incurred, assumed or acquired by any Loan Party or any Subsidiary thereof in connection with such Acquisition, all additional purchase price amounts in the form of earnouts and other contingent obligations calculated at the maximum amount thereof, and all fees expenses and transaction costs incurred in connection therewith), the Payment Conditions shall have been met with respect thereto;

(e) the Borrower Agent shall have furnished to the Administrative Agent at least five (5) Business Days prior to the date on which any such Acquisition is to be consummated or such shorter time as Administrative Agent may allow, a certificate of a Responsible Officer of the Borrower Agent, in form and substance reasonably satisfactory to the Administrative Agent, (i) certifying that all of the requirements set forth in this definition will be satisfied on or prior to the consummation of such Acquisition and (ii) a reasonably detailed calculation of item (c) above (and such certificate shall be updated as necessary to make it accurate as of the date the Acquisition is consummated);

(f) the Person to be (or whose assets are to be) acquired (i) is organized under the laws of, and substantially all its assets (or the assets of such division or line of business, as the case may be) are located in, the United States of America, any State thereof, the District of Columbia or Canada and (ii) for the four-Fiscal Quarter period most recently ended prior to the date of such Acquisition, shall have generated earnings before income Taxes, depreciation and amortization during such period that shall be great than $0.00 during such period (calculated in a manner substantially consistent as "Consolidated EBITDA"); and

(g) the Borrower Agent shall have furnished the Administrative Agent with ten (10) days' prior written notice of such intended Acquisition and shall have furnished the Administrative Agent with a current draft of the applicable acquisition documents (and final copies thereof as and when executed), and to the extent available, appropriate financial statements and quality of earnings report of the Person which is the subject of such Acquisition, pro forma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month for the acquired Person, individually, and on a Consolidated basis with all Loan Parties), and, to the extent available, such other information as the Administrative Agent may reasonably request.

"Permitted Curation Investment" has the meaning specified in Section 8.03.

"Permitted Curation Sale" means, without duplication:

(a) the sale, transfer, liquidation or other disposition, in one transaction or a series of transactions, in each case to a non-Affiliate, of (i) 100% of the Equity Interests of Curation and/or one or more of its Subsidiaries, (ii) all or substantially all of the assets of Curation and/or one or more of its Subsidiaries or (iii) one or more divisions, lines of business or business units of Curation and/or one or more of its Subsidiaries, whether as a going concern sale, a liquidation of the assets thereof or otherwise, so long as:

(A) in the case of clause (iii), at least 90% of the consideration for such sale, transfer or other disposition is payable at the closing of such transaction or as a result of customary post-closing purchase price adjustments shall consist of cash paid upon the closing of such transaction or at such later date when such purchase price adjustment is due, as the case may be;

(B) the Borrower Agent notifies Administrative Agent in writing of such proposed sale, transfer, liquidation or other disposition at least ten (10) Business Days prior to the proposed closing date of such sale, transfer, liquidation or disposition;

(C) the Net Cash Proceeds thereof are applied in accordance with Sections 2.06(b)(i) and 2.06(d); and

(D) after giving effect to any such sale, transfer or other disposition, (x) there shall be no Overadvance, and (y) the Loan Parties shall have no remaining liabilities with respect to the obligations or operations of Curation and its Subsidiaries, including any contingent obligations in respect of the Subsidiaries, lines of business or business units, or assets sold, transferred or otherwise disposed of; and

(b) subject, in each case, to the satisfaction (or waiver by the Administrative Agent) of any additional conditions that may be set forth in the applicable consent of the Administrative Agent applicable thereto, any Consensual Proceeding.

"Permitted Liens" has the meaning specified in Section 8.02.

"Permitted Series A Convertible Preferred Stock" means the issuance by Holdings on or before the Fourth Amendment Effective Date of certain Equity Interests (other than Disqualified Equity Interests) constituting paid in kind preferred equity evidenced by the Series A Convertible Preferred Stock Documents; provided, that (i) the Net Cash Proceeds thereof are not less than $30,000,000, and (ii) such Net Cash Proceeds are used solely in accordance with Section 7.22.

"Permitted Tax Distributions" for any taxable period in which Subsidiaries of Holdings are members of a consolidated, combined or similar income tax group of which Holdings is the common parent (a "Tax Group"), distributions by any such Subsidiary to Holdings to pay federal, foreign, state and local income Taxes of such Tax Group that are attributable to the taxable income of Subsidiaries of Holdings; provided that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that the Subsidiaries of Holdings would have been required to pay as a stand-alone Tax Group, reduced by any portion of such income Taxes directly paid by the Subsidiaries of Holdings.

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

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including any Pension Plan), maintained for employees of any Loan Party or any such Plan to which any Loan Party is required to contribute on behalf of any of its employees.

"Platform" has the meaning specified in Section 7.02.

"Post-Closing Agreement" means that certain Post-Closing Agreement by and between the Borrower Agent and the Administrative Agent dated as of the Closing Date with respect to the satisfaction after the Closing Date of certain collateral matters.

"Priority Swap Obligations" means Credit Product Obligations under Swap Contracts (a) owing to BMO or its Affiliates (so long as BMO (in its Credit Judgment) shall have established a Credit Product Reserve with respect thereto) or (b) owing to any other Credit Product Provider and expressly identified as "Priority Swap Obligations" in a Credit Product Notice from the Borrower Agent and such Credit Product Provider to the Administrative Agent (which at all times shall be subject to a Credit Product Reserve).

"Pro Forma Adjustment" means, for the purposes of calculating Consolidated EBITDA for any Measurement Period, if at any time during such Measurement Period, any Loan Party or any of its Subsidiaries shall have made a Permitted Acquisition or a Disposition permitted under Section 8.05 (or, with respect to Curation and/or one or more of its direct or indirect Subsidiaries, the commencement of the liquidation of the assets thereof or the commencement of a Consensual Proceeding with respect thereto), Consolidated EBITDA for such Measurement Period shall be calculated after giving pro forma effect thereto as if any such Permitted Acquisition or Disposition occurred on the first day of such Measurement Period, including (a) with respect to an any Permitted Acquisition, inclusion of (i) the actual historical results of operation of such acquired Person or line of business during such Measurement Period and (ii) pro forma adjustments arising out of events which are directly attributable to such Permitted Acquisition, are factually supportable, and are expected to have a continuing impact, in each case, that are either (x) to be mutually and reasonably agreed upon by the Borrower Agent and the Administrative Agent or (y) determined on a basis consistent with Article 11 of Regulation S-X of the Securities Act of 1933, as amended and interpreted by the SEC, as certified by a Responsible Officer of the Borrower Agent to the Administrative Agent in writing, and (b) with respect to any Disposition permitted under Section 8.05 (or, with respect to Curation and/or one or more of its direct or indirect Subsidiaries, the commencement of the liquidation of the assets thereof or the commencement of a Consensual Proceeding with respect thereto), exclusion of the actual historical results of operations of the disposed of Person or line of business or assets during such Measurement Period.

"Pro Forma Basis," "Pro Forma Compliance" and "Pro Forma Effect" means, with respect to compliance with any test, financial ratio or covenant hereunder required by the terms of this Agreement to be made on a pro forma basis, that (a) to the extent applicable, the Pro Forma Adjustment shall have been made and, without duplication, (b) all Specified Pro Forma Transactions that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made (the period beginning on the first day of such period and continuing until the date of the consummation of such event, the "Reference Period") shall be deemed to have occurred as of the first day of the applicable Reference Period; provided that (i) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Pro Forma Transaction, (A) shall be excluded in the case of a Disposition of all or substantially all Equity Interests in or assets of any Loan Party or its Subsidiaries or any division, product line, or facility used for operations of the Loan Parties or their Subsidiaries, and (B) shall be included in the case of a Permitted Acquisition or Investment described in the definition of Specified Pro Forma Transaction, and (ii) all Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transactions (other than Indebtedness under the Loan Documents) or permanently repaid in connection with the relevant transaction during the Reference Period shall be deemed to have been issued, incurred, assumed or permanently repaid at the beginning of such Reference Period (with interest expense of such person attributable to any Indebtedness for which pro forma effect is being given as provided in preceding clause (ii) that has a floating or formula rate, shall have an implied rate of interest for the applicable Reference Period determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination); provided, that, the foregoing pro forma adjustments may be applied to any such test, financial ratio or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and the definition of Pro Forma Adjustment.

"Properly Contested" means with respect to any obligation of a Loan Party or Subsidiary thereof, (a) the obligation is subject to a bona fide dispute regarding amount or such Loan Party's or Subsidiary's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not have a Material Adverse Effect, nor result in forfeiture or sale of any assets of any Loan Party or Subsidiary thereof; (e) no Lien is imposed on assets of any Loan Party or Subsidiary thereof, unless bonded and stayed to the satisfaction of the Administrative Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

"Protective Advance" has the meaning specified in Section 2.01(c)(ii)(A).

"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 specified in Section 7.02.

"QFC" has the meaning specified in Section 11.21(b).

"QFC Credit Support" has the meaning specified in Section 11.21(b).

"Qualified ECP" means any Loan Party with total assets exceeding $10,000,000, or that constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Ratable Share" has the meaning specified in Section 2.01(c)(ii)(C).

"Real Property" means all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Person, including all easements, rights-of-way, and similar rights appurtenant thereto and all leases, tenancies, and occupancies thereof.

"Recipient" means the Administrative Agent, any Lender, any Letter of Credit Issuer or any other recipient of any payment to be made by or on account of any Obligation of a Borrower hereunder.

"Refinancing Conditions" means the following conditions for Refinancing Indebtedness: (a) it is in an aggregate principal amount that does not exceed the principal amount of the Indebtedness being extended, renewed or refinanced plus accrued interest, and reasonable fees and expenses incurred in connection with such refinancing, refunding, renewal or extension; (b) the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the greater of (i) the interest rate for the Indebtedness being refinanced, refunded, renewed, or extended and (ii) the lesser of (A) the interest rate for the Indebtedness being refinanced, refunded, renewed, or extended plus 2.0% and (B) the otherwise market rate of interest for such Indebtedness; (c) it has a final maturity no sooner than and a weighted average life no less than the Indebtedness being extended, renewed or refinanced; (d) it is subordinated to the Obligations at least to the same extent as the Indebtedness being extended, renewed or refinanced; (e) no additional Liens, if any, are granted with respect to such Refinancing Indebtedness; (f) no additional Person is obligated, primarily or contingently, on such Refinancing Indebtedness; and (g) such Refinancing Indebtedness shall be on terms no less favorable to the Administrative Agent and the Lenders, and no more restrictive to the Loan Parties (taken as a whole), than the Indebtedness being extended, renewed or refinanced.

"Refinancing Indebtedness" means Indebtedness that is the result of an extension, renewal or refinancing of Indebtedness permitted under Section 8.01 (d), (h), (i), and (j) and as to which the Refinancing Conditions are satisfied; provided that the incurrence of any such Refinancing Indebtedness will be deemed to utilize permitted amounts of Indebtedness, if any, under each clause thereof.

"Register" has the meaning specified in Section 11.06(c).

"Registered Public Accounting Firm" has the meaning specified in the Securities Laws and shall be independent of the Loan Parties and their Affiliates as prescribed in the Securities Laws.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or any successor thereto.

"Rent and Charges Reserve" means the aggregate of (a) all past due rent and other amounts owing by a Loan Party to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any Collateral or could assert a Lien on any Collateral; and (b) following the expiration of any applicable post-closing period set forth in the Post-Closing Agreement with respect thereto, a reserve equal to up to three months' rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

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

"Reporting Trigger Period" means any period (a) commencing on the day that (i) an Event of Default occurs and is continuing, or (ii) for a period of three (3) consecutive Business Days, Availability is less than the greater of (x) 12.5% of the Maximum Borrowing Amount at such time and (y) $9,250,000, and (b) continuing until the date that (i) in the case of clause (a)(i), no Event of Default exists, and (ii) in the case of clause (a)(ii), during the previous thirty (30) consecutive days, Availability has been equal to or greater than the greater of (x) 12.5% of the Maximum Borrowing Amount at such time and (y) $9,250,000.

"Request for Credit Extension" means (a) with respect to a Borrowing, conversion or continuation of Loans, a Committed Loan Notice, (b) with respect to a Letter of Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"Required Lenders" means, as of any date of determination, at least two non-Affiliate Lenders holding at least sixty-six and two-thirds percent (66⅔%) of the Total Credit Exposure of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"Rescindable Amount" has the meaning specified in Section 2.12(b)(ii).

"Reserve" means any reserve constituting all or any portion of the Availability Reserve or the Line Reserve.

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

"Responsible Officer" means, with respect to each Loan Party, the chief executive officer, president, chief financial officer, treasurer, controller or assistant treasurer or any vice president of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means (i) any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Loan Party or any Subsidiary thereof, (ii) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Loan Party's or any Subsidiary thereof's stockholders, partners or members (or the equivalent Person thereof) or (iii) any distribution, advance or repayment of Indebtedness to or for the account of a holder of Equity Interests of any Loan Party or its Affiliates.

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

"Revolving Credit Commitment" means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrowers pursuant to Section 2.01(a), (b) purchase participations in Letter of Credit Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving Credit Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Revolving Credit Exposure" means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Lender's participation in Letter of Credit Obligations, Swing Line Loans and Protective Advances at such time.

"Revolving Credit Facility" means the facility described in Sections 2.01(a), 2.03 and 2.04 providing for Revolving Credit Loans, Letters of Credit and Swing Line Loans to or for the benefit of the Borrowers by the Revolving Credit Lenders, Letter of Credit Issuer and Swing Line Lender, as the case may be, in the maximum aggregate principal amount at any time outstanding of $60,000,000, as adjusted from time to time pursuant to the terms of this Agreement, including, without limitation, under Sections 2.07 and 2.18 hereof.

"Revolving Credit Lender" means each Lender that has a Revolving Credit Commitment or, following termination of the Revolving Credit Commitments, has any Revolving Credit Exposure.

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

"Revolving Credit Loan Note" means a promissory note made by the Borrowers in favor of a Revolving Credit Lender evidencing Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form of Exhibit A.

"Revolving Credit Termination Date" means the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Credit Commitments pursuant to Section 2.07(a), and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the Letter of Credit Issuer to make Letter of Credit Extensions pursuant to Section 9.02.

"Royalties" means all royalties, fees, expense reimbursement and other amounts payable by a Loan Party under a License.

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc. and any successor thereto.

"Same Day Funds" means immediately available funds.

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including the OFAC SDN List), the United States Department of State, the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom, or any other relevant sanctions authority, (b) any Person located, organized or resident in a Designated Jurisdiction or (c) any Person 50% or more owned by any Person described in clauses (a) or (b) above.

"Sanctions" means all economic or financial sanctions, sectoral sanctions, secondary sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the United States government (including those administered by OFAC or the United States Department of State), or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom, or any other relevant sanctions authority with jurisdiction over any Loan Party or any of their respective Subsidiaries or Affiliates.

"Sarbanes-Oxley" means the Sarbanes-Oxley Act of 2002.

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

"Second Amendment Effective Date" means December 22, 2021.

"Secured Party" means (a) each Lender, (b) each Credit Product Provider, (c) the Administrative Agent, (d) the Letter of Credit Issuer, and (e) the successors and permitted assigns of each of the foregoing.

"Secured Party Expenses" has the meaning specified in Section 11.04(a).

"Securities Laws" means the Securities Act of 1933, the Exchange Act, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

"Security Agreement" means the Pledge and Security Agreement dated as of the date hereof by the Loan Parties and the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit C.

"Security Instruments" means, collectively or individually as the context may indicate, the Security Agreement, the Mexican Subsidiary Security Agreement (from and after the Mexican Subsidiary Joinder Date), the Control Agreements, the Mortgages, any UCC financing statements covering fixtures located at the Mortgaged Property filed in conjunction with any Mortgage, any Copyright Security Agreement, any Patent Security Agreement, any Trademark Security Agreement, each Lien Waiver and all other agreements (including securities account control agreements), instruments and other documents, whether now existing or hereafter in effect, pursuant to which any Loan Party, any Subsidiary thereof, or any other Person shall grant or convey to the Administrative Agent or the Lenders a Lien in property as security for all or any portion of the Obligations.

"Series A Convertible Preferred Stock Documents" means each of the following documents: (i) that certain Securities Purchase Agreement, dated as of January 9, 2023, by and among Holdings and certain investors listed on Annex A attached thereto, (ii) that certain Registration Rights Agreement, dated as of January 9, 2023, by and among Holdings and certain investors listed on Annex A attached thereto, and (iii) that certain Certificate of Designations, Preferences And Rights Of Series A Convertible Preferred Stock Of Lifecore Biomedical, Inc., dated as of January 9, 2023.

"Settlement Date" has the meaning provided in Section 2.14.

"Shrink" means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York) or a successor administrator of the secured overnight financing rate).

"SOFR Loan" means a Loan bearing interest based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of "Base Rate."

"Solvent" means, as to any Person and its Subsidiaries, such Person and its Subsidiaries, on a consolidated basis, (a) own property or assets whose Fair Salable Value is greater than the amount required to pay all of their debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) own property or assets whose present Fair Salable Value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Persons as they become absolute and matured; (c) are able to pay all of their debts as they mature; (d) have capital that is not unreasonably small for their business and is sufficient to carry on their business and transactions and all business and transactions in which they are about to engage; (e) are not "insolvent" within the meaning of Section 101(32) of the Bankruptcy Code; and (f) have not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Persons or any of their Affiliates. "Fair Salable Value" means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase. For purposes hereof, the amount of all contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability.

"Specified Compliance Costs" means, with respect to any period on or prior to the first anniversary of the Closing Date, the reasonably documented and actually incurred fees, costs and expenses payable by Holdings or any of its Subsidiaries in connection with the environmental and FCPA compliance matters associated with regulatory permitting at the Tanok facility in Mexico during such period, net of any amounts in respect thereof from any indemnification rights actually received during such period.

"Specified Debt Payment" means any prepayment of Indebtedness made pursuant to Section 8.11(a)(ii) or (iii).

"Specified Extraordinary Receipts" means any Extraordinary Receipts actually received by one or more Loan Parties (i) consisting of a tax refund in an amount equal to $4,100,000 in respect of carry-back amounts related to the three Fiscal Year period ending with Fiscal Year 2021 for which amended returns were filed prior to the Closing Date and/or (ii) in respect of recovery of damages, expenses, or other consideration in connection with the matter described on page 13 of Holdings's Form 10-Q for the period ending August 30, 2020 in the section entitled "Compliance Matters and Related Litigation" under the heading "Legal Contingencies," including but not limited to (a) recovery, indemnification, or reimbursement of expenses or other consideration received from any insurance carrier, (b) recovery from the Indemnification Escrow created in the December 1, 2018 acquisition of Yucatan Foods (whether that recovery comes in the form of stock or cash), and (c) any proceeds from or related to the litigation entitled Haerizadeh v. Holdings, et al, Superior Court for the State of California, County of Los Angeles, Case Number 20SMCV01202, including any proceeds from the Cross-Complaint filed by Holdings and Curation in that action or settlements with parties to that action.

"Specified Foreign Account Debtor" has the meaning specified in the Fee Letter.

"Specified Inventory Charges" means, to the extent not duplicative of other amounts added back to Consolidated EBITDA, non-cash write offs and/or impairment charges associated with the discontinuation of a product line or stock-keeping unit associated with inventory acquired

prior to the Closing Date (including those identified on Schedule 1.01(c)), not to exceed $2,000,000 for the most recently ended four Fiscal Quarter period for which financial statements have previously been or were required to be delivered hereunder.

"Specified Investment" means any Investment made pursuant to Section 8.03(h).

"Specified Loan Party" means a Loan Party that is not then an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to Section 2.15(c)).

"Specified PACA Payables Report" has the meaning specified in Section 7.02(b)(vii).

"Specified Pro Forma Transaction" means, with respect to any period, any Investment, Disposition, incurrence or repayment of Indebtedness, Restricted Payment, subsidiary designation or other event that by the terms of the Loan Documents requires "Pro Forma Compliance" with a test or covenant hereunder or requires such test or covenant to be calculated on a "Pro Forma Basis."

"Specified Restricted Payment" means any Restricted Payment pursuant to Section 8.06(e).

"Specified Third Amendment Credit Availability Improvements" means, at any date of determination, the aggregate amount of additional credit made available to the Loan Parties and their Subsidiaries pursuant to the amendments to this Agreement set forth in the Third Amendment.

"Specified Transaction" means each Specified Debt Payment, Specified Investment, Specified Restricted Payment, and Permitted Acquisition.

"Specified Yucatan Sale" means the sale, transfer or disposition of certain assets and 100% of the Equity Interests of each of Procesdora Tanok, S. de R. L. de C. V. and Tanokatan, S. de R. L. de C. V., as contemplated by any agreement permitted hereunder or otherwise consented to by the Administrative Agent.

"Subordinated Debt" means Indebtedness of any Loan Party or Subsidiary thereof which is expressly subordinated in right of payment to Payment in Full and which is in form and on terms satisfactory to, and approved in writing by, the Administrative Agent (including, without limitation, the obligations under the Master Intercompany Note). For avoidance of doubt, the Term Loan Debt shall not constitute Subordinated Debt.

"Subordinated Debt Documents" means any documents evidencing, or otherwise relating to, any Subordinated Debt, including, without limitation, the Master Intercompany Note, and any other subordination agreement entered into with respect to Subordinated Debt.

"Subordination Agreement" means each of (a) the Master Intercompany Note, and (b) any other written subordination agreement with respect to Subordinated Debt by and among Administrative Agent, the holder(s) of such Subordinated Debt, the issuer(s) of such Subordinated Debt and the other parties thereto, which agreement subordinates all of such Subordinated Debt to Payment in Full of all Obligations and is otherwise on subordination terms satisfactory to Administrative Agent, in its discretion. For avoidance of doubt, the Term Loan Intercreditor Agreement shall not constitute a Subordination Agreement.

"Subordination Provisions" means any provision relating to payment or lien subordination applicable to or contained in any documents (including, without limitation, any such provisions contained in the Master Intercompany Note or the Term Loan Intercreditor Agreement).

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (but not a representative office of such Person) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of a Loan Party.

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

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

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender); provided, however that it is understood and agreed that such amounts provided by the applicable Credit Product Provider with respect to Credit Product Obligations under Swap Contracts may include a commercially reasonable level of "cushion" to account for normal short-term market fluctuations.

"Swing Line" means the revolving credit facility made available by the Swing Line Lender pursuant to Section 2.04.

"Swing Line Borrowing" means a borrowing of a Swing Line Loan pursuant to Section 2.04.

"Swing Line Lender" means BMO in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

"Swing Line Loan" has the meaning specified in Section 2.04(a).

"Swing Line Loan Notice" means a notice of a Swing Line Borrowing pursuant to Section 2.04(b).

"Swing Line Sublimit" means an amount equal to $0. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Revolving Credit Commitments.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Tanok" means Procesdora Tanok, S. de R. L. de C. V., a Mexican limited liability company.

"Tanok Obligation" has the meaning specified in Section 7.08(e).

"Tanokatan" means Tanokatan, S. de R. L. de C. V., a Mexican limited liability company.

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

"Term Loan Agent" means the "Administrative Agent" under the Term Loan Agreement from time to time in accordance therewith.

"Term Loan Agreement" means that certain Term Loan Agreement, dated as of the date hereof, by and among the Loan Parties, the Term Loan Agent, and the Term Loan Lenders, as may be amended, modified, restated, supplemented, refinanced or replaced and in effect from time to time in accordance with the terms and conditions of the Term Loan Intercreditor Agreement**.**

"Term Loan Debt" means all Indebtedness under the Term Loan Documents.

"Term Loan Documents" means, collectively (a) the Term Loan Agreement, and (b) each of the other "Loan Documents," as that term is defined in the Term Loan Agreement, entered into by and among the Loan Parties, the Term Loan Agent, and the Term Loan Lenders with respect to the Term Loan Debt, all as in effect on the date hereof or as may be amended, modified, restated, supplemented, refinanced or replaced and in effect from time to time in accordance with the terms and conditions of the Term Loan Intercreditor Agreement.

"Term Loan Intercreditor Agreement" means the Intercreditor Agreement of even date herewith between Administrative Agent and Term Loan Agent, as may be amended, modified, restated, or supplemented from time to time in accordance therewith, which provides that: (a) the Liens of the Administrative Agent on the ABL Priority Collateral shall be senior in priority to the Term Loan Liens on the ABL Priority Collateral, and (b) the Term Loan Liens on the Term Loan Priority Collateral shall be senior in priority to the Liens of the Administrative Agent on the Term Loan Priority Collateral.

"Term Loan Lenders" means the "Lenders" from time to time party to the Term Loan Agreement, as such term is defined therein.

"Term Loan Liens" means the Liens and security interests granted by the Loan Parties to Term Loan Agent to secure the Term Loan Debt under the Term Loan Documents.

"Term Loan Priority Collateral" means the "Term Loan Priority Collateral", as that term is defined in the Term Loan Intercreditor Agreement.

"Term SOFR" means, for the applicable tenor, the Term SOFR Reference Rate on the day (such day, the "Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to (a) in the case of SOFR Loans, the first day of such applicable Interest Period, or (b) with respect to Base Rate, such day of determination of the Base Rate, in each case as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any 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.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

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

"Third Amendment" means that certain Third Amendment to Credit Agreement dated as of the Third Amendment Effective Date, by and among the Borrowers, the other Loan Parties party thereto, the Administrative Agent and the Lenders party thereto.

"Third Amendment Effective Date" means February 22, 2022.

"Total Credit Exposure" means, as to any Lender at any time, the unused outstanding Commitments of such Lender and the Credit Exposure of such Lender at such time.

"Total Revolving Credit Outstandings" means, without duplication, the aggregate Outstanding Amount of all Revolving Credit Loans, Protective Advances, Swing Line Loans and Letter of Credit Obligations.

"Trademark Security Agreement" means any trademark security agreement pursuant to which any Loan Party grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest such Person's trademarks as security for the Obligations.

"Transaction" means the entering by the Loan Parties of the Loan Documents to which they are a party, the funding of the Revolving Credit Facility, the entering by the Loan Parties of the Term Loan Documents to which they are a party, and the funding of the Term Loan Debt.

"Transaction Costs" means the reasonable and documented out-of-pocket fees, costs and expenses payable by Holdings or any of its Subsidiaries to the extent paid or payable to non-Affiliates on or before the Closing Date in connection with the transactions contemplated by the Loan Documents and the Term Loan Documents.

"Treasury Management and Other Services" means (a) all arrangements for the delivery of treasury and cash management services, including controlled disbursements, accounts or services and ACH transactions, (b) all commercial credit card, purchase card, p-card, debit cards, credit card processing services and merchant card services; and (c) all other banking products or services, including trade and supply chain finance services and leases and foreign currency exchange, other than Letters of Credit, in each case, to or for the benefit of any Loan Party or an Affiliate of any Loan Party which are entered into or maintained with an entity that is a Lender or an Affiliate of a Lender at the time such agreement or other arrangement in connection with such Treasury Management and Other Services is entered into and which are not prohibited by the express terms of the Loan Documents.

"Trust Accounts" means Deposit Accounts or Securities Accounts containing cash, cash equivalents or Securities (a) held exclusively for payroll and payroll taxes, (b) held exclusively for employee benefit payments and expenses related to a Loan Party's employees, (c) required to be collected, remitted or withheld exclusively to pay taxes (including, without limitation, federal and state withholding taxes (including the employer's share thereof)) or (d) held by any Loan Party expressly in trust or as an escrow or fiduciary for another person which is not a Loan Party.

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

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that if, with respect to any financing statement or by reason of any mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to the Administrative Agent pursuant to any applicable Loan Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, the term "UCC" shall also include the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of this Agreement, each Loan Document and any financing statement relating to such perfection or effect of perfection or non-perfection.

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

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

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning specified in Section 2.03(c)(i).

"Unused Facility Amount" means the daily amount by which (a) the Aggregate Revolving Credit Commitments exceeds (b) the sum of (i) Outstanding Amount of all Revolving Credit Loans other than Swing Line Loans and (ii) the Outstanding Amount of all Letter of Credit Obligations, subject to adjustment as provided in Section 2.17. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be considered usage for purposes of determining the Unused Facility Amount.

"Unused Fee" has the meaning specified in Section 2.09(a).

"Unused Fee Rate" means a per annum rate equal to 0.375%.

"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.

"U.S. Person" means any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.

"Valid Expense Item" means any charge, compensation, cost, expense, reserve, accrual, fee or loss, as applicable, that is reasonably documented, factually supportable, actually incurred, set, established or accrued (in each case, as determined in accordance with GAAP) and, except for non-cash items, paid or payable to Persons who are not Affiliates of Holdings and its Subsidiaries, unless otherwise expressly permitted hereunder.

"Value" means, for an Eligible Account, the face amount of such Eligible Account, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could reasonably be expected to be claimed by the Account Debtor or any other Person.

"Voting Equity Interests" means Equity Interests with respect to which the holders thereof are ordinarily, in the absence of contingencies, entitled to vote for the election of members of the Board of Directors of the issuer thereof, even if the right so to vote has been suspended by the happening of such a contingency.

"Windset" means Windset Holdings 2010 Ltd., a corporation governed by the laws of Canada.

"Windset Investment" means the Investment by Curation in the Equity Interests of Windset as more particularly described in the Holdings Form 10-Q for the period ending August 30, 2020.

"Windset Pledge Event" means the date, if any, that the Loan Parties and their Subsidiaries (a) shall have obtained the necessary consents in order to grant a first priority Lien on and in the Windset Investment in favor of the Administrative Agent, for the benefit of the Secured Parties, and (b) subject to the Term Loan Intercreditor Agreement, shall have delivered, all such documents, instruments, agreements and certificates as are reasonably requested by the Administrative Agent in order to grant and to perfect a first priority Lien in favor of the Administrative Agent, for the benefit of the Secured Parties, in 100% of the Windset Investment.

"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 U.K. Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of 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.

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

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

amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) 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 thereof, (iv) the phrase "in its discretion" shall be construed to mean in its sole and absolute discretion, (v) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (vi) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (vii) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (viii) all covenants in Article VIII shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant (other than specific cross references permitting actions or conditions under other covenants) shall not avoid the occurrence of an Event of Default or Default if such action is taken or condition exists.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

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

(d) A reference to Loan Parties' "knowledge" or similar concept means actual knowledge of a Responsible Officer, or knowledge that a Responsible Officer would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter. "Actually known", "knowingly" and "knowing" shall have correlative meanings.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect on the Closing Date, except (i) with respect to any reports or financial information required to be delivered pursuant to Section 7.01, which shall be prepared in accordance with GAAP as in effect and applicable to that accounting period in respect of which reference to GAAP is being made and (ii) as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of each Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower Agent or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower Agent shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower Agent shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding anything to the contrary contained in this Section 1.03 or the definition of "Capital Lease Obligations", in the event of a change in GAAP requiring all leases to be capitalized, only those leases that would have constituted Capital Leases on the Closing Date (assuming for purposes hereof that such leases were in existence on the Closing Date) shall be considered Capital Leases, and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith (provided that all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of such change in GAAP shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such change).

(c) Consolidation of Variable Interest Entities. Except as expressly provided otherwise herein, all references herein to Consolidated financial statements of the Consolidated Group or to the determination of any amount for the Consolidated Group on a Consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Consolidated Group is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

(d) Calculations. In computing financial ratios and other financial calculations of the Consolidated Group required to be submitted pursuant to this Agreement, all Indebtedness of the Consolidated Group shall be calculated at par value irrespective if the Consolidated Group has elected the fair value option pursuant to FASB Interpretation No. 159 – The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115 (February 2007).

1.04 Uniform Commercial Code. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: "Chattel Paper," "Commodity Account," "Commodity Contracts," "Deposit Account," "Documents," "Equipment", "General Intangibles," "Instrument," "Inventory," "Record," and "Securities Account."

1.05 Rounding. Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

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

1.07 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.08 Interest Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Benchmark, any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to any Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Benchmark or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to any 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 II
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Loan Commitments.

(a) Revolving Credit Commitments. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "Revolving Credit Loan") to the Borrowers from time to time during the Availability Period, in an aggregate amount not to exceed at any time outstanding the lesser of (i) the amount of such Lender's Revolving Credit Commitment, or (ii) such Lender's Applicable Revolving Credit Percentage of the Borrowing Base; provided however, that after giving effect to any Revolving Credit Borrowing, (A) the Total Revolving Outstandings shall not exceed the Maximum Borrowing Amount, and (B) the Revolving Credit Exposure of each Lender shall not exceed such Lender's Revolving Credit Commitment.

Within such limits and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01(a), prepay under Section 2.06(a), and reborrow under this Section 2.01(a). The Administrative Agent shall have the right, at any time and from time to time on and after the Closing Date in good faith and in the exercise of Credit Judgment to establish, modify or eliminate Reserves.

(b) [Intentionally Omitted].

(c) Overadvances and Protective Advances.

(i) Overadvances.

(A) If at any time the aggregate principal balance of all Loans exceeds the Borrowing Base (an "Overadvance"), the excess amount shall be payable by the Borrowers on demand by the Administrative Agent. All Overadvance Loans shall constitute Obligations secured by the Collateral and shall be entitled to all benefits of the Loan Documents.

(B) The Administrative Agent may, in its discretion (but shall have absolutely no obligation to), require Lenders to honor requests for Overadvance Loans and to forbear from requiring the applicable Borrower(s) to cure an Overadvance as long as (a) such Overadvance does not continue for more than 30 consecutive days and (b) the aggregate amount of the Overadvances existing at any time, together with the Protective Advances outstanding at any time, do not exceed ten percent (10.0%) of the Commitments then in effect. Overadvance Loans may be required even if the conditions set forth in Section 5.02 have not been satisfied. In no event shall Overadvance Loans be required that would cause the Total Revolving Credit Outstandings to exceed the Aggregate Revolving Credit Commitments. Required Lenders may at any time revoke the Administrative Agent's authority to make further Overadvance Loans to any or all Borrowers by written notice to the Administrative Agent. Any funding of an Overadvance Loan or sufferance of an Overadvance shall not constitute a waiver by the Administrative Agent or Lenders of the Event of Default caused thereby. In no event shall any Borrower or other Loan Party be deemed a beneficiary of this Section 2.01(c) nor authorized to enforce any of its terms.

(ii) Protective Advances.

(A) The Administrative Agent shall be authorized by each Borrower and the Lenders from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation to), to make Base Rate Loans to the

Borrowers on behalf of the Lenders (any of such Loans are herein referred to as "Protective Advances") which the Administrative Agent deems necessary or desirable to (a) preserve or protect Collateral or any portion thereof or (b) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Credit Exposure; provided that no Protective Advance shall cause the aggregate amount of the Total Revolving Credit Outstandings at such time to exceed the Aggregate Revolving Credit Commitments then in effect. All Protective Advances made by the Administrative Agent constitute Obligations, secured by the Collateral and shall be treated for all purposes as Base Rate Loans.

(B) The aggregate amount of Protective Advances outstanding at any time shall not exceed ten percent (10.0% percent) of the Aggregate Revolving Credit Commitments then in effect, and such Protective Advances, together with the aggregate amount of Overadvances existing at any time, shall not exceed ten percent (10.0%) of the Aggregate Revolving Credit Commitments then in effect. Protective Advances may be made even if the conditions set forth in Section 5.02 have not been satisfied. Each Lender shall participate in each Protective Advance on a ratable basis. Required Lenders may at any time revoke the Administrative Agent's authority to make further Protective Advances to any or all Borrowers by written notice to the Administrative Agent. Absent such revocation, the Administrative Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. At any time that there is sufficient Availability and the conditions precedent set forth in Section 5.02 have been satisfied, the Administrative Agent may request the Lenders to make a Loan to repay a Protective Advance. At any other time, the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.01(c)(ii)(C).

(C) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default or Event of Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent without recourse or warranty, an undivided interest and participation in such Protective Advance equal to the proportion of the Total Credit Exposure of such Lender to the Total Credit Exposure of all Lenders (its "Ratable Share") of such Protective Advance. Each Lender shall transfer (a "Transfer") the amount of such Lender's purchased interest and participation promptly when requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, but in any case not later than 3:00 P.M. on the Business Day notified (if notice is provided by the Administrative Agent prior to 12:00 P.M. and otherwise on the immediately following Business Day (the "Transfer Date")). Transfers may occur during the existence of a Default or Event of Default and whether or not the applicable conditions precedent set forth in Section 5.02 have then been satisfied. Such amounts transferred to the Administrative Agent shall be applied against the amount of the applicable Protective Advance and shall constitute Loans of such Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Lender on such Transfer Date, the Administrative Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Overnight Rate for three (3) Business Days and thereafter at the Base Rate. From and after the date, if any, on which any Lender is required to fund, and funds, its interest and participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Ratable Share of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

(d) Determination of the Borrowing Base. The Borrowing Base shall be established and adjusted from time to time as follows:

(i) The amount of the Borrowing Base shall initially be established in each Borrowing Base Certificate delivered to the Administrative Agent by the Borrower Agent pursuant to Section 7.02(a). The Administrative Agent shall have the right, at any time and from time to time on and after the Closing Date in good faith and in the exercise of it Credit Judgment to establish, modify or eliminate Reserves. The Borrowing Base shall also be subject to adjustment by the Administrative Agent in its Credit Judgment (A) to reflect any determination that the amount of the Borrowing Base set forth in a Borrowing Base Certificate differs materially from the actual Borrowing Base determined by the Administrative Agent; (B) to reflect Administrative Agent's reasonable estimate of declines in value of Borrowing Base Assets due to collections received in the Concentration Account or otherwise; (C) to reflect changes in advance rates as a result of changes in dilution, quality, mix and other factors affecting the Borrowing Base Assets; (D) to the extent any information or calculation does not comply with this Agreement; and (E) to reflect other adjustments in accordance with the terms of this Agreement.

(ii) In connection with any adjustment by the Administrative Agent to the Borrowing Base (as described in the foregoing clause (i) or otherwise), the Administrative Agent shall (A) promptly notify the Borrower Agent in writing (including via e-mail) (the "Borrowing Base Notice") and (B) discuss with Borrower Agent (1) the basis for any such difference and (2) any changes made or proposed to be made to the amount of the Borrowing Base, including the reasons for any imposition of or changes in Reserves or any change in advance rates or eligibility criteria with respect to Borrowing Base Assets. The determination of the Borrowing Base by the Administrative Agent shall be presumptively correct and shall constitute the Borrowing Base for all purposes hereunder.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of SOFR Loans shall be made upon the Borrowers' irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 12:00 P.M. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of SOFR Loans or of any conversion of SOFR Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Borrowers pursuant to this Section 2.02(a) must be promptly confirmed in writing by a Responsible Officer of the Borrower Agent. Each Borrowing of, conversion to or continuation of SOFR Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Except as provided in Sections 2.02(f), 2.03(c) and 2.04(c), each Borrowing of or conversion to

Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. During a Dominion Trigger Period, there shall be no minimum borrowing amounts for Base Rate Loans. Each such notice (whether telephonic or written) shall specify (i) [intentionally omitted], (ii) the principal amount of Loans to be borrowed, converted or continued, (iii) the Type of Loans to be borrowed or to which existing Loans are to be converted, (iv) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day) and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrowers fail to specify a Type of Loan or if the Borrowers fail to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable SOFR Loans. If the Borrowers request a Borrowing of, conversion to, or continuation of SOFR Loans in any such Committed Loan Notice, but fail to specify an Interest Period, they will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice for a Facility, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under such Facility of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrowers, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of a Revolving Credit Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 P.M. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 5.02 (and, if such Borrowing is the initial Credit Extension, Section 5.01), the Administrative Agent shall make all funds so received available to the Borrowers in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrowers on the books of BMO with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrowers; provided, however, that if, on the date a Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrowers, there are Letter of Credit Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such Letter of Credit Borrowings, and second, shall be made available to the Borrowers as provided above.

(c) Except as otherwise provided herein, a SOFR Loan may be continued or converted only on the last day of an Interest Period for such SOFR Loan. During the existence of an Event of Default, no Loans may be requested as, converted to or continued as SOFR Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower Agent and the Lenders of the interest rate applicable to any Interest Period for SOFR Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower Agent and the Lenders of any change in BMO's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than five (5) Interest Periods in effect in respect of the Revolving Credit Facility.

(f) Borrowers and each Lender hereby irrevocably authorize the Administrative Agent, in the Administrative Agent's sole discretion, to advance to Borrowers, and/or to pay and charge to Borrowers' Loan Account hereunder, all sums necessary to pay (i) any interest accrued on the Obligations when due and to pay all fees, costs and expenses and other Obligations at any time owed by any Loan Party to the Administrative Agent or any Lender hereunder and (ii) any service charge or expenses due pursuant to Section 11.04 when due. The Administrative Agent shall advise the Borrower Agent of any such advance or charge promptly after the making thereof. Such action on the part of the Administrative Agent shall not constitute a waiver of the Administrative Agent's rights and the Borrowers' obligations under this Agreement. Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02(f) shall constitute Revolving Credit Loans (notwithstanding the failure of the Borrowers to satisfy any of the conditions to Credit Extensions in Section 5.02) and Obligations hereunder and shall bear interest at the interest rate then and thereafter applicable to Base Rate Loans.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the Letter of Credit Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the earlier to occur of the Letter of Credit Expiration Date or the termination of the Availability Period, to issue Letters of Credit at the request of the Borrower Agent for the account of a Borrower (or any other Loan Party or Subsidiary thereof as to which all "know your customer" or other similar requirements have been satisfied) so long as such Borrower is a joint and several co-applicant; references to a "Borrower" in this Section 2.03 shall be deemed to include reference to such other Loan Party and any applicable Subsidiary, as the case may be, and to amend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drafts under the Letters of Credit; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of a Borrower and any drawings thereunder; provided that the Letter of Credit Issuer shall not be obligated to make any Letter of Credit Extension with respect to any Letter of Credit, and no Revolving Credit Lender shall be obligated to participate in any Letter of Credit not then outstanding, if as of the date of such Letter of Credit Extension, (A) the Total Revolving Credit Outstandings would exceed the Maximum Borrowing Amount, (B) the Revolving Credit Exposure of any Revolving Credit Lender would exceed such Revolving Credit Lender's Revolving Credit Commitment, or (C) the Outstanding Amount of all Letter of Credit Obligations would exceed the Letter of Credit Sublimit. Each request by the Borrower Agent for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower Agent that the Letter of Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) The Letter of Credit Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless in each case the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless Cash Collateralized or all the Lenders have approved such expiry date.

(iii) The Letter of Credit Issuer shall not be under any obligation to issue any Letter of Credit if:

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

(B) the issuance of such Letter of Credit would violate one or more policies of the Letter of Credit Issuer;

(C) such Letter of Credit is in an initial amount less than $10,000;

(D) any Lender is at that time a Defaulting Lender, unless the Letter of Credit Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the Letter of Credit Issuer (in its sole discretion) with the Borrowers or such Lender to eliminate the Letter of Credit Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other Letter of Credit Obligations as to which the Letter of Credit Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iv) The Letter of Credit Issuer shall not amend any Letter of Credit if the Letter of Credit Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The Letter of Credit Issuer shall be under no obligation to amend any Letter of Credit if (A) the Letter of Credit Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The Letter of Credit Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the Letter of Credit Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article X with respect to any acts taken or omissions suffered by the Letter of Credit Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article X included the Letter of Credit Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Letter of Credit Issuer.

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

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower Agent delivered to the Letter of Credit Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower Agent and, if applicable, of the applicable Borrower. Such Letter of Credit Application must be received by the Letter of Credit Issuer and the Administrative Agent not later than 11:00 A.M. at least two Business Days (or such later date and time as the Administrative Agent and the Letter of Credit Issuer may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Letter of Credit Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing or presentation thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing or presentation thereunder; and (G) such other matters as the Letter of Credit Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Letter of Credit Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the Letter of Credit Issuer may require. Additionally, the Borrower Agent shall furnish to the Letter of Credit Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the Letter of Credit Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the Letter of Credit Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the applicable Borrower and, if not, the Letter of Credit Issuer will provide the Administrative Agent with a copy thereof. Unless the Letter of Credit Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Borrower, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article V shall not then be satisfied, then, subject to the terms and conditions hereof, the Letter of Credit Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the Letter of Credit Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Letter of Credit Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) If the Borrower Agent so requests in any applicable Letter of Credit Application, the Letter of Credit Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit other than a commercial Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the Letter of Credit Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Letter of Credit Issuer, the Borrower Agent shall not be required to make a specific request to the Letter of Credit Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the Letter of Credit Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the Letter of Credit Issuer shall not permit any such extension if (A) the Letter of Credit Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or the Borrower Agent that one or more of the applicable conditions specified in Section 5.02 is not then satisfied, and in each such case directing the Letter of Credit Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Letter of Credit Issuer will also deliver to the Borrower Agent and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing or presentation of documents under such Letter of Credit, the Letter of Credit Issuer shall notify the Borrower Agent and the Administrative Agent thereof. Not later than 1:00 P.M. on the date of any payment by the Letter of Credit Issuer under a Letter of Credit (each such date, an "Honor Date"), the Borrowers shall reimburse the Letter of Credit Issuer through the Administrative Agent in Dollars and in an amount equal to the amount of such drawing. If the Borrowers fail to reimburse the Letter of Credit Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing or payment (the "Unreimbursed Amount"), and the amount of such Revolving Credit Lender's Applicable Percentage thereof. In such event, the Borrower Agent shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.03 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Revolving Credit Commitments and the conditions set forth in Section 5.02 (other than the delivery of a Committed Loan Notice). Any notice given by the Letter of Credit Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) to the Administrative Agent for the account of the Letter of Credit Issuer, in Dollars, at the Administrative Agent's Office for Dollar denominated payments an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 3:00 P.M. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Revolving Credit Loan to the Borrower Agent in such amount. The Administrative Agent shall remit the funds so received to the Letter of Credit Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 5.02 cannot be satisfied or for any other reason, the Borrowers shall be deemed to have incurred from the Letter of Credit Issuer a Letter of Credit Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which Letter of Credit Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender's payment to the Administrative Agent for the account of the Letter of Credit Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such Letter of Credit Borrowing and shall constitute a Letter of Credit Advance from such Revolving Credit Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Credit Lender funds its Revolving Credit Loan or Letter of Credit Advance pursuant to this Section 2.03(c) to reimburse the Letter of Credit Issuer for any amount drawn under any Letter of Credit, interest in respect of such Revolving Credit Lender's Applicable Percentage of such amount shall be solely for the account of the Letter of Credit Issuer.

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or Letter of Credit Advances to reimburse the Letter of Credit Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against the Letter of Credit Issuer, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing. No such making of a Letter of Credit Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the Letter of Credit Issuer for the amount of any payment made by the Letter of Credit Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Letter of Credit Issuer any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the Letter of Credit Issuer shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Letter of Credit Issuer at a rate per annum equal to the applicable Overnight Rate for three (3) Business Days and thereafter at the Base Rate, plus any administrative, processing or similar fees customarily charged by the Letter of Credit Issuer in connection with the foregoing. A certificate of the Letter of Credit Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations. At any time after the Letter of Credit Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Revolving Credit Lender's Letter of Credit Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the Letter of Credit Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Revolving Credit Lender its Applicable Revolving Credit Percentage thereof in Dollars (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Credit Lender's Letter of Credit Advance was outstanding) and in the same funds as those received by the Administrative Agent.

(e) Obligations Absolute. The obligation of the Borrowers to reimburse the Letter of Credit Issuer for each drawing under each Letter of Credit, and to repay each Letter of Credit Borrowing shall be joint and several and absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that any Loan Party or any Subsidiary thereof may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Letter of Credit Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document or endorsement presented under or in connection with such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the Letter of Credit Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit, or any payment made by the Letter of Credit Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any Subsidiary thereof.

(f) Role of Letter of Credit Issuer. Each Revolving Credit Lender and the Borrowers agree that, in paying any drawing under a Letter of Credit, the Letter of Credit Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Letter of Credit Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the Letter of Credit Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Each Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit. The Letter of Credit Issuer may accept documents that appear on

their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Letter of Credit Issuer shall not be responsible for the validity or sufficiency of any instrument endorsing, transferring or assigning or purporting to endorse, transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

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

(h) Fronting Fee and Documentary and Processing Charges Payable to Letter of Credit Issuer. The Borrowers shall pay directly to the Letter of Credit Issuer for its own account a fronting fee with respect to each Letter of Credit, at a rate equal to one-eighth of one percent (0.125%) per annum, computed on the amount of such Letter of Credit (a "Fronting Fee"), and payable upon the issuance or renewal (automatic or otherwise) thereof or upon any amendment increasing the amount thereof. In addition, the Borrowers shall pay directly to the Letter of Credit Issuer for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the Letter of Credit Issuer relating to letters of credit issued by it as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(i) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(j) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, or any other Borrower, each Borrower shall be obligated to reimburse the Letter of Credit Issuer hereunder for any and all drawings under such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries, or any other Borrower inures to the benefit of such Borrower, and that such Borrower's business derives substantial benefits from the businesses of such Subsidiaries, or other Borrower.

2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender may, but shall not be obligated to, make loans in reliance upon the agreements of the other Lenders set forth in this Section 2.04 in Dollars (each such loan, a "Swing Line Loan") to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Credit Loans and Letter of Credit Obligations of the Revolving Credit Lender acting as Swing Line Lender, may exceed the amount of such Revolving Credit Lender's Revolving Credit Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Revolving Credit Outstandings shall not exceed the Maximum Borrowing Amount, and (ii) the Revolving Credit Exposure of any Revolving Credit Lender shall not exceed such Revolving Credit Lender's Revolving Credit Commitment, and provided, further, that the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits and subject to the discretion of the Swing Line Lender to make Swing Line Loans, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.06(a)(ii), and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Revolving Credit Loan. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Credit Lender's Applicable Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrower Agent's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 12:00 noon on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $100,000 and integral multiples of $50,000 in excess thereof, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower Agent. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will (i) deliver notice to the Borrower Agent and the Administrative Agent as to whether it will or will not make such Swing Line Loan available to the Borrowers and, if agreeing to make such Swing Line Loan, (ii) confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 1:00 P.M. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article V is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender may, not later than 3:00 P.M. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower Agent at its office by crediting the account of the Borrower Agent on the books of the Swing Line Lender in Same Day Funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its discretion, but no less frequently than weekly, may request, on behalf of the Borrowers (which hereby irrevocably authorize the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Revolving Credit Loan in an amount equal to such Revolving Credit Lender's Applicable Revolving Credit Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be

deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02 without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Revolving Credit Commitments and the conditions set forth in Section 5.02. The Swing Line Lender shall furnish the Borrower Agent with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office not later than 2:00 P.M. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Revolving Credit Loan to the Borrowers in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Revolving Credit Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Overnight Rate for three (3) Business Days and thereafter at the Base Rate, plus any administrative processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. A certificate of the Swing Line Lender submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 5.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Loans, together with interest as provided herein.

(v) All refinancings and fundings under this Section 2.04(c) shall be in addition to and without duplication of the settlement procedures and obligations under Section 2.14.

(d) Repayment of Participations. At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Credit Lender its Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Credit Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrowers for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate Revolving Credit Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Credit Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05 Repayment of Loans.

(a) [Intentionally Omitted].

(b) Revolving Credit Loans. The Borrowers shall repay to the Administrative Agent for the account of each the Revolving Credit Lenders on the Maturity Date the aggregate principal amount of and all accrued and unpaid interest on all Revolving Credit Loans outstanding on such date.

(c) Swing Line Loans. The Borrowers shall repay each Swing Line Loan on the earlier to occur of (i) each refinancing date arising under Section 2.04(c), and (ii) the Maturity Date.

(d) Protective Advances. The Borrowers shall repay all Protective Advances on the earlier to occur of (i) demand by the Administrative Agent and (ii) the Maturity Date.

(e) Other Obligations. Obligations other than principal and interest on the Loans, including Letter of Credit Obligations and Extraordinary Expenses, shall be paid by Borrowers as specifically provided herein and in any other applicable Loan Documents or, if no payment date is specified, on demand.

2.06 Prepayments.

(a) Optional.

(i) The Borrowers may, upon notice to the Administrative Agent from the Borrower Agent, at any time or from time to time voluntarily prepay Revolving Credit Loans in whole or in part without premium or penalty; provided that except with respect to prepayments in accordance with Section 4.04(c), (A) such notice must be received by the Administrative Agent not later than 12:00 P.M. (1) three Business Days prior to any date of prepayment of SOFR Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of SOFR Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof, and shall be accompanied by payment of all amounts due under Section 3.05; and (C) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. During a Dominion Trigger Period, there shall be no minimum repayment amount for Base Rate Loans. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if SOFR Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower Agent, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a SOFR Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.17, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(ii) The Borrowers may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent) from the Borrower Agent, at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 P.M. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of $100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower Agent, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory.

(i) Asset Dispositions. If any Disposition occurs with respect to (A) any Borrowing Base Assets, (B) subject to the Term Loan Intercreditor Agreement, any ABL Priority Collateral that does not constitute Borrowing Base Assets or (C) from and after the "Payment in Full of Term Loan Claims" (as defined in the Term Loan Intercreditor Agreement) (other than any "Excess Term Loan Claims" (as defined in the Term Loan Intercreditor Agreement)), any property of any Loan Party or Subsidiary thereof (other than any Disposition of property permitted by Sections 8.05(a), 8.05(c), 8.05(d), 8.05(e), 8.05(f), 8.05(g), 8.05(h) and 8.05(k)), the Borrowers shall prepay an aggregate principal amount of Loans (and Cash Collateralize Letter of Credit Obligations, if applicable) equal to 100% of such Net Cash Proceeds not later than three (3) Business Days following receipt thereof by such Loan Party or such Subsidiary; provided that clauses (B) and (C) of this Section 2.06(b)(i) shall not apply in any fiscal year until such time as the aggregate Net Cash Proceeds from all such Dispositions in such fiscal year exceeds $2,000,000 (and then only in respect of amounts in excess thereof).

(ii) Debt Incurrence. From and after the "Payment in Full of Term Loan Claims" (as defined in the Term Loan Intercreditor Agreement) (other than any "Excess Term Loan Claims" (as defined in the Term Loan Intercreditor Agreement)), if any Loan Party or Subsidiary thereof incurs or issues any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 8.01), the Borrowers shall prepay an aggregate principal amount of Loans (and Cash Collateralize Letter of Credit Obligations, if applicable) equal to 100% of all Net Cash Proceeds received therefrom not later than three (3) Business Days following receipt thereof by such Loan Party or such Subsidiary.

(iii) Equity Issuance. From and after the "Payment in Full of Term Loan Claims" (as defined in the Term Loan Intercreditor Agreement) (other than any "Excess Term Loan Claims" (as defined in the Term Loan Intercreditor Agreement)), if any Loan Party or Subsidiary thereof issues any Equity Interests, the Borrowers shall prepay an aggregate principal amount of Loans (and Cash Collateralize Letter of Credit Obligations, if applicable) equal to 100% of all Net Cash Proceeds received therefrom not later than three (3) Business Days following receipt thereof by such Loan Party or such Subsidiary; provided that the prepayment requirement set forth in this Section 2.06(b)(iii) shall not apply to the Net Cash Proceeds received by Holdings and its Subsidiaries in respect of the Permitted Series A Convertible Preferred Stock.

(iv) Extraordinary Receipts. If any Loan Party or Subsidiary thereof receives any Extraordinary Receipts in respect of (A) subject to the Term Loan Intercreditor Agreement, any "ABL Extraordinary Receipts" (as defined in the Term Loan Intercreditor Agreement), (B) Specified Extraordinary Receipts or (C) from and after the "Payment in Full of Term Loan Claims" (as defined in the Term Loan Intercreditor Agreement) (other than any "Excess Term Loan Claims" (as defined in the Term Loan Intercreditor Agreement)) any other such cash proceeds, the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of such cash proceeds not later than three (3) Business Days following receipt thereof by such Loan Party or such Subsidiary; provided that this clause (iv) shall not apply to the events (and the proceeds thereof) specified in clauses (i), (ii) or (iii) of this Section 2.06(b).

(v) Overadvances. If for any reason the Total Revolving Credit Outstandings at any time exceed the Maximum Borrowing Amount at such time, the Borrowers shall not later than three (3) Business Days following demand therefor prepay Revolving Credit Loans, Swing Line Loans and Letter of Credit Borrowings and/or Cash Collateralize the Letter of Credit Obligations in an aggregate amount equal to such excess; provided that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, during such three (3) Business Day period, no Loans or Letters of Credit may be requested without the prior consent of the Administrative Agent in its discretion.

(c) Application of Mandatory Prepayments. Subject to Section 9.03:

(i) Each prepayment of Loans pursuant to the provisions of Section 2.06(b) shall be applied to the Revolving Credit Facility in the manner set forth in clause (ii) below. Subject to Section 2.17, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentage in respect of the relevant Facilities. For avoidance of doubt, no such prepayment of Loans (including, for avoidance of doubt, any prepayment of Net Cash Proceeds realized pursuant to the provisions of Section 2.06(b)) shall, without Borrowers' consent, permanently reduce the Aggregate Revolving Credit Commitments.

(ii) Except as otherwise provided in Section 2.17, prepayments of the Revolving Credit Facility made pursuant to Section 2.06(b), first, shall be applied ratably to the Letter of Credit Borrowings and the Swing Line Loans, second, shall be applied ratably to the outstanding Revolving Credit Loans, third, shall be used to Cash Collateralize the remaining Letter of Credit Obligations in the Minimum Collateral Amount and, fourth, the amount remaining, if any, after the prepayment in full of all outstanding Obligations (other than Credit Product Obligations) and the Cash Collateralization of the remaining Letter of Credit Obligations in the Minimum Collateral Amount may be retained by the Borrowers for use in the Ordinary Course of Business of the Borrowers. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party or any Defaulting Lender that has provided Cash Collateral) to reimburse the Letter of Credit Issuer or the Revolving Credit Lenders, as applicable.

(d) Reinvestment. Notwithstanding the foregoing, with respect to Net Cash Proceeds received by any Loan Party or Subsidiary thereof in connection with a Disposition described in Section 2.06(b)(i) (other than a Disposition of Borrowing Base Assets) or consisting of Net Cash Proceeds of insurance or condemnation amounts received by such Loan Party or Subsidiary, at the election of the Borrowers (as set forth in a notice by the Borrower Agent to the Administrative Agent no later than three (3) Business Days following receipt of such Net Cash Proceeds) and so long as no Default or Event of Default shall have occurred and be continuing, the Loan Parties and their Subsidiaries may reinvest all or any portion of such Net Cash Proceeds in operating assets of the Loan Parties within three hundred sixty-five (365) days (or five hundred forty five (545) days where such Loan Party or such Subsidiary has, on or before the expiration of such three hundred sixty-five (365) day period, entered into a definitive agreement for the reinvestment of such proceeds) after the receipt of such Net Cash Proceeds (the consummation of such reinvestment to be certified by the Borrowers in writing to the Administrative Agent within such period); provided, however, that any Net Cash Proceeds not so reinvested on a timely basis shall be immediately applied to the prepayment of the Loans as set forth in Section 2.06(c).

2.07 Termination or Reduction of Commitments.

(a) Revolving Credit Commitment. The Borrowers may, upon notice to the Administrative Agent from the Borrower Agent, terminate the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit, or from time to time permanently reduce the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 A.M. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $5,000,000 or any whole multiple of $5,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce (A) the Aggregate Revolving Credit Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Aggregate Revolving Credit Commitments, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of Letter of Credit Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Swing Line Sublimit and (iv) if, after giving effect to any reduction or termination of the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Revolving Credit Commitments, such Sublimit shall be automatically reduced by the amount of such excess. The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit. Any reduction of the Aggregate Revolving Credit Commitments shall be applied to the Revolving Credit Commitment of each Revolving Credit Lender according to its Applicable Revolving Credit Percentage. All fees accrued until the effective date of any termination of the Aggregate Revolving Credit Commitments shall be paid on the effective date of such termination.

(b) Specified Yucatan Sale. Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, immediately upon the consummation of the Specified Yucatan Sale, and without further action of any Person, the Aggregate Revolving Credit Commitments shall be reduced to $50,000,000, and (i) the Administrative Agent will promptly notify the Lenders of any such reduction of the Aggregate Revolving Credit Commitments, (ii) any such reduction shall be applied to the Revolving Credit Commitment of each Revolving Credit Lender according to its Applicable Revolving Credit Percentage, and (iii) if, after giving effect to any such reduction, the Total Revolving Credit Outstandings exceed the Maximum Borrowing Amount, the Borrowers shall, on such day, prepay Revolving Credit Loans, Swing Line Loans and Letter of Credit Borrowings and/or Cash Collateralize the Letter of Credit Obligations in an aggregate amount equal to such excess.

2.08 Interest.

(a) Subject to the provisions of subsection (b) below and Sections 3.03 and 3.09, (i) each SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted Term SOFR for such Interest Period plus

the Applicable Margin; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin; (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin; and (iv) each other Obligation (including, to the extent not prohibited by applicable Law, interest not paid when due) shall bear interest on the unpaid amount thereof at a rate per annum equal to the Base Rate plus the Applicable Margin.

(b) (i) If any amount payable by the Borrowers under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any other Event of Default exists, then the Administrative Agent may, and upon the request of the Required Lenders shall, require (and notify the Borrowers thereof) that all outstanding Loan Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) If, for any reason (including inaccurate reporting in any Compliance Certificate, Borrowing Base Certificate or other Borrower Materials), it is determined that a higher Applicable Margin should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and the Borrowers shall immediately pay to the Administrative Agent, for the ratable benefit of Lenders, an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid.

2.09 Fees.

(a) Unused Fee. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, a fee (the "Unused Fee") equal to the Unused Fee Rate times the Unused Facility Amount. The Unused Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article V is not met, and shall be due and payable quarterly in arrears on the first Business Day after each Fiscal Quarter, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. If there is any change in the Unused Fee Rate during any quarter, the actual daily amount shall be computed and multiplied by the Unused Fee Rate separately for each period during such quarter that such Unused Fee Rate was in effect.

(b) Letter of Credit Fees. Subject to the provisions of the last sentence of this clause (b), the Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender (including the Letter of Credit Issuer in its capacity as a Revolving Credit Lender) in accordance with its Applicable Percentage, in Dollars, a Letter of Credit fee ("Letter of Credit Fee") for each Letter of Credit equal to the Applicable Margin for SOFR Loans times the daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit); provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the Letter of Credit Issuer shall be payable, to the maximum extent permitted by applicable Law, to the other Revolving Credit Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.17(a)(iv), with the balance of such fee, if any, payable to the Letter of Credit Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. The Letter of Credit Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article V is not met, and shall be due and payable quarterly in arrears on the first Business Day after each Fiscal Quarter, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. If there is any change in the Applicable Margin for SOFR Loans during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Margin for SOFR Loans separately for each period during such quarter that such Applicable Margin was in effect. At all times that the Default Rate shall be applicable to any Loans pursuant to Section 2.08(b), the Letter of Credit Fees payable under this clause (b) shall accrue and be payable at the Default Rate.

(c) Fee Letter. The Borrowers agree to pay to the Administrative Agent, for its own account, the fees payable in the amounts and at the times set forth in the Fee Letter.

(d) Generally. All fees payable hereunder shall be paid on the dates due, in immediately available funds, to (i) the Administrative Agent for distribution, in the case of commitment fees and participation fees, to the Revolving Credit Lenders, and otherwise, to the Lenders entitled thereto or (ii) the Letter of Credit Issuer, in the case of fees payable to it. Fees paid shall not be refundable under any circumstances.

2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to Term SOFR) and the Unused Fee shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan or other Loan Obligation not paid when due for the day on which the Loan is made or such Loan Obligation is due and unpaid, and shall not accrue on a Loan, or any portion thereof, or such Loan Obligation for the day on which the Loan, or such portion thereof, or Loan Obligation is paid, provided that any

Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error. In connection with the use or administration of Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower Agent and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

2.11 Evidence of Debt.

(a) Loan Account. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by the Administrative Agent (the "Loan Account") in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Loan Obligations due to such Lender. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Loan Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) Account Records. In addition to the accounts and records referred to in (a) above, each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; the Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 P.M. on the date specified herein. Subject to Section 2.14, Section 9.03, and payments made during a Dominion Trigger Period from the Concentration Account, the Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 P.M. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) Presumptions by Administrative Agent.

(i) Funding by Lenders. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of SOFR Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers. Unless the Administrative Agent shall have received notice from the Borrower Agent prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders, the Letter of Credit Issuer or the Swing Line Lender hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may (but shall not be required to) in reliance upon such assumption, distribute to the Appropriate Lenders the amount due. With respect to any payment that the Administrative Agent makes

to any Lender, the Letter of Credit Issuer, the Swing Line Lender or any other Secured Party as to which the Administrative Agent determines (in its sole and absolute discretion) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made the corresponding payment to the Administrative Agent; (2) the Administrative Agent has made a payment in excess of the amount(s) received by it from Borrowers either individually or in the aggregate (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Secured Parties severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Secured Party, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or any Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article V are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Revolving Credit Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, Letter of Credit Borrowings, interest and fees then due hereunder, such funds shall be applied as provided in Section 2.06(c).

2.13 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) the Loan Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Loan Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Loan Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Loan Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) the Loan Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Loan Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Loan Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Loan Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans and subparticipations in Letter of Credit Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Loan Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of any Loan Party pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in Section 2.16, or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in Letter of Credit Obligations or Swing Line Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Settlement Among Lenders.

(a) The amount of each Revolving Credit Lender's Applicable Revolving Credit Percentage of outstanding Revolving Credit Loans shall be computed weekly (or more frequently in the Administrative Agent's discretion) and such amount shall be adjusted upward or

downward based on all Revolving Credit Loans and repayments of Revolving Credit Loans received by the Administrative Agent as of 3:00 P.M. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Administrative Agent.

(b) The Administrative Agent shall deliver to each of the Revolving Credit Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Credit Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Administrative Agent shall transfer to each Revolving Credit Lender its Applicable Percentage of repayments, and (ii) each Revolving Credit Lender shall transfer to the Administrative Agent (as provided below) or the Administrative Agent shall transfer to each Revolving Credit Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the Revolving Credit Exposure of each Revolving Credit Lender shall be equal to such Revolving Credit Lender's Applicable Percentage of the Total Revolving Credit Outstandings as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Revolving Credit Lenders and is received prior to 1:00 P.M. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 P.M. that day; and, if received after 1:00 P.M., then no later than 3:00 P.M. on the next Business Day. The obligation of each Revolving Credit Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Revolving Credit Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation plus any reasonable administrative, processing, or similar fees customarily charged by the Administrative Agent in connection with the foregoing.

2.15 Nature and Extent of Liability.

(a) Joint and Several Liability. Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to the Administrative Agent and Lenders, all Obligations, except Excluded Swap Obligations, and all agreements under the Loan Documents. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until the Facility Termination Date, and that such obligations are absolute and unconditional, irrespective of (i) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Loan Party or Subsidiary thereof is or may become a party or be bound; (ii) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by the Administrative Agent or any Lender with respect thereto; (iii) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by the Administrative Agent or any Lender in respect thereof (including the release of any security or guaranty); (iv) the insolvency of any Loan Party or Subsidiary thereof; (v) any election by the Administrative Agent or any Lender in proceeding under Debtor Relief Laws for the application of Section 1111(b)(2) of the Bankruptcy Code; (vi) any borrowing or grant of a Lien by any other Loan Party or Subsidiary thereof, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of the Administrative Agent or any Lender against any Loan Party or Subsidiary thereof for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (viii) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Payment in Full on the Facility Termination Date.

(b) Waivers.

(i) Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel the Administrative Agent or Lenders to marshal assets or to proceed against any Loan Party, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor or accommodation co-obligor other than Payment in Full. It is agreed among each Loan Party, the Administrative Agent and Lenders that the provisions of this Section 2.15 are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, the Administrative Agent and Lenders would decline to make Loans and issue Letters of Credit. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(ii) The Administrative Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this Section 2.15. If, in taking any action in connection with the exercise of any rights or remedies, the Administrative Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Loan Party or other Person, whether because of any applicable Laws pertaining to "election of remedies" or otherwise, each Borrower consents to such action and waives any claim of forfeiture of such rights or remedies based upon it, even if the action may result in loss of any rights of subrogation that such Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of the Administrative Agent or any Lender to seek a deficiency judgment against any Loan Party shall not impair any Borrower's obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Borrower's rights of subrogation against any other Person. The Administrative Agent may bid all or a portion of the Obligations at any foreclosure or trustee's sale or at any private sale, and the amount of such bid need not be paid by the Administrative Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether the Administrative Agent or any other Person is the successful bidder, shall be conclusively deemed to be the Fair Market Value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section 2.15, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which the Administrative Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution.

(i) Notwithstanding anything herein to the contrary, each Borrower's liability under this Section 2.15 shall be limited to the greater of (i) all amounts for which such Borrower is primarily liable, as described below, and (ii) such Borrower's Allocable Amount.

(ii) If any Borrower makes a payment under this Section 2.15 of any Obligations (other than amounts for which such Borrower is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower's Allocable Amount bore to the total Allocable Amounts of all Borrowers, then such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The "Allocable Amount" for any Borrower shall be the maximum amount that could then be recovered from such Borrower under this Section 2.15 without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

(iii) Each Loan Party that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this Section 2.15 voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Payment in Full. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Loan Party for all purposes of the Commodity Exchange Act.

(d) Direct Liability; Separate Borrowing Availability. Nothing contained in this Section 2.15 shall limit the liability of any Borrower to pay Loans made directly or indirectly to that Borrower (including Loans advanced to any other Borrower and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower), Letter of Credit Obligations relating to Letters of Credit issued to support such Borrower's business, and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder.

(e) Joint Enterprise. Each Loan Party has requested that the Administrative Agent and Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Borrowers' business most efficiently and economically. The Loan Parties' business is a mutual and collective enterprise, and the successful operation of each Loan Party is dependent upon the successful performance of the integrated group. The Loan Parties believe that consolidation of their credit facility will enhance the borrowing power of each Loan Party and ease administration of the Facility, all to their mutual advantage. The Loan Parties acknowledge that the Administrative Agent's and Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Loan Parties and at Loan Parties' request.

(f) Subordination. Each Loan Party hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Loan Party, howsoever arising, to the Payment in Full on the Facility Termination Date.

(g) Borrower Agent.

(i) Each Loan Party hereby irrevocably appoints and designates (or, if not a party hereto, by execution and delivery of a guaranty agreement acceptable to Administrative Agent or otherwise becoming a Guarantor hereunder shall be deemed to have irrevocably appointed and designated) Holdings ("Borrower Agent") as its representative and agent and attorney-in-fact for all purposes under the Loan Documents, including, as applicable, requests for Credit Extensions, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrowing Base and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with the Administrative Agent, the Letter of Credit Issuers, Swing Line Lender or any Lender.

(ii) Any notice, election, representation, warranty, agreement or undertaking by or on behalf of any Loan Party by the Borrower Agent shall be deemed for all purposes to have been made by such Loan Party and shall be binding upon and enforceable against such Loan Party to the same extent as if made directly by such Loan Party.

(iii) The Borrower Agent hereby accepts the appointment by each Loan Party hereunder to act as its agent and attorney-in-fact.

(iv) The Administrative Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower or other Loan Party. The Administrative Agent and Lenders may give any notice to or communication with a Loan Party hereunder to the Borrower Agent on behalf of such Loan Party. Each of the Administrative Agent, the Letter of Credit Issuers and the Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for any or all purposes under the Loan Documents. Each Loan Party agrees (or, if not a party hereto, by execution and delivery of a guaranty agreement acceptable to Administrative Agent or otherwise

becoming a Guarantor hereunder shall be deemed to have agreed) that any notice, election, communication, representation, agreement or undertaking made on its behalf by Borrower Agent shall be binding upon and enforceable against it.

2.16 Cash Collateral.

(a) Certain Credit Support Events. If (i) the Letter of Credit Issuer has honored any full or partial drawing request under any Letter of Credit upon presentation and such drawing has resulted in a Letter of Credit Borrowing, (ii) as of the Letter of Credit Expiration Date, any Letter of Credit Obligation for any reason remains outstanding, (iii) any Protective Advance shall not have been funded by the Lenders upon demand by the Administrative Agent, (iv) the Borrowers shall be required to provide Cash Collateral pursuant to Section 9.02 or (v) there shall exist a Defaulting Lender, the Borrowers shall immediately (in the case of clause (iv) above) or within one Business Day (in all other cases) following any request by the Administrative Agent or the Letter of Credit Issuer, provide Cash Collateral in an amount not less than the Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (v) above, after giving effect to Section 2.17(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. The Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grant to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Letter of Credit Issuer and the Lenders, and agree to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.16(c). If at any time the Administrative Agent determines that Cash Collateral is less than the Minimum Collateral Amount or otherwise deficient for any reason, the Borrowers will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more blocked, non-interest bearing deposit accounts at BMO.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided in respect of Letters of Credit, Swing Line Loans or Protective Advances shall be held and applied to the specific Letter of Credit Obligations, Swing Line Loans or Protective Advances (including any the Defaulting Lender's obligation to fund participations in respect thereof) for which the Cash Collateral was so provided (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Credit Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi)) or (ii) the determination by the Administrative Agent and the Letter of Credit Issuer that there exists excess Cash Collateral.

2.17 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, if such Defaulting Lender is a Revolving Credit Lender, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the Letter of Credit Issuer or Swing Line Lender hereunder; third, if such Defaulting Lender is a Revolving Credit Lender, to Cash Collateralize the Letter of Credit Issuer's and the Administrative Agent's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.16; fourth, as the Borrower Agent may request (so long as no Default or Event of Default exists) to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower Agent, to be held in a deposit account and released in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) if such Defaulting Lender is a Revolving Credit Lender, Cash Collateralize the Letter of Credit Issuer's and the Administrative Agent's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit and Protective Advances; sixth, in the case of a Defaulting Lender under any Facility, to the payment of any obligations owing to the other Lenders under such Facility (in the case of the Revolving Credit Facility, including the Letter of Credit Issuer or Swing Line Lender) as a result of any judgment of a court of competent jurisdiction obtained by any Lender under such Facility (in the case of the Revolving Credit Facility, including the Letter of Credit Issuer or Swing Line Lender) against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or Letter of Credit Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made or the

related Letters of Credit were issued at a time when the conditions set forth in Section 5.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and Letter of Credit Obligations owed to, all Non-Defaulting Lenders under the applicable Facility on a pro rata basis (and ratably among all applicable Facilities computed in accordance with the Defaulting Lenders' respective funding deficiencies) prior to being applied to the payment of any Loans of, or Letter of Credit Obligations owed to, such Defaulting Lender under the applicable Facility until such time as all Loans and funded and unfunded participations in Letter of Credit Obligations, Swing Line Loans and Protective Advances are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.17(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. No Defaulting Lender shall be entitled to receive any Unused Fee payable pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender). Each Defaulting Lender which is a Revolving Credit Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.16. With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to this clause (iii), the Borrowers shall (A) pay to each Non-Defaulting Lender which is a Revolving Credit Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Letter of Credit Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Letter of Credit Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letter of Credit Obligations, Swing Line Loans and Protective Advances shall be reallocated among the Non-Defaulting Lenders which are Revolving Credit Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that (x) the conditions set forth in Section 5.02 are satisfied at the time of such reallocation (and, unless the Borrower Agent shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. Subject to Section 11.20, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(b) Defaulting Lender Cure. If the Borrower Agent, the Administrative Agent and, in the case that a Defaulting Lender is a Revolving Credit Lender, the Swing Line Lender and the Letter of Credit Issuer, agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Credit Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.17(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.18 Increase in Revolving Credit Commitments.

(a) Request for Increase. Subject to the Administrative Agent's consent in its sole discretion, and provided there exists no Default or Event of Default, upon notice to the Administrative Agent (which shall promptly notify the Revolving Credit Lenders), the Borrower Agent may from time to time request an increase in the Aggregate Revolving Credit Commitments by an amount (for all such requests) not exceeding $15,000,000 (each such increase, a "Commitment Increase"); provided that (i) any such request for an increase shall be in a minimum amount of $5,000,000 in the aggregate or, if less, the entire unutilized amount of the maximum amount of all such requests set forth above and (ii) no more than three (3) such requests shall be made during the term of this Agreement. At the time of sending such notice, the Borrower Agent (in consultation with the Administrative Agent) shall specify the time period within which each applicable Revolving Credit Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the applicable Revolving Credit Lenders).

(b) Revolving Credit Lender Elections to Increase. Each Revolving Credit Lender shall notify the Administrative Agent within such time period whether or not it agrees to commit to a portion of the requested increase of the Revolving Credit Facility and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage. Any Revolving Credit Lender not responding within such time period shall be deemed to have declined to commit to any portion of the requested increase.

(c) Notification by Administrative Agent; Additional Revolving Credit Lenders. The Administrative Agent shall notify the Borrower Agent of the Revolving Credit Lenders' responses to each request made hereunder. In the event that Revolving Credit Lenders do not timely issue commitments for the full amount of any requested increase, to achieve the full amount of such requested increase and subject to the approval of the Administrative Agent in its discretion, the Borrower Agent may also invite additional Eligible Assignees to become Revolving Credit Lenders pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel (each such Eligible Assignee issuing a commitment, executing and delivering such joinder agreement and becoming a Revolving Credit Lender, an "Additional

Commitment Lender"); provided, however, that without the consent of the Administrative Agent, at no time shall the Commitment of any Additional Commitment Lender be less than $5,000,000.

(d) Effective Date and Allocations. If the Aggregate Revolving Credit Commitments are increased in accordance with this Section 2.18, the Administrative Agent and the Borrower Agent shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrower Agent and the Revolving Credit Lenders of the final allocation of such increase and the Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, (i) the Borrower Agent shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) certifying that, before and after giving effect to such increase, the representations and warranties contained in Article VI and in the other Loan Documents, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.18, the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 7.01; (ii) the Loan Parties, the Administrative Agent, and any Additional Commitment Lender shall have executed and delivered a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel; (iii) the Borrowers shall have paid such fees and other compensation to the Revolving Credit Lenders increasing their Revolving Credit Commitments and to the Additional Commitment Lenders as the Borrowers and such Lenders and Additional Commitment Lenders shall agree; (iv) the Borrowers shall have paid such arrangement fees, if any, to the Administrative Agent as the Borrowers and the Administrative Agent may agree; (v) other than the fees and compensation referred to in clauses (iii) and (iv) above, the Commitment Increase shall be on the same terms and pursuant to the same documentation applicable to the existing Revolving Credit Commitments; (vi) the Loan Parties shall deliver to the Administrative Agent (A) an opinion or opinions, in form and substance reasonably satisfactory to the Administrative Agent, from counsel to the Loan Parties reasonably satisfactory to the Administrative Agent and dated such date and (B) a certification from the Borrower Agent, or other evidence satisfactory to the Administrative Agent, that such increase is permitted under the documents governing the Term Loan Debt, any Subordinated Debt and any other Indebtedness incurred pursuant to a Material Contract; (viii) the Loan Parties, the Lenders increasing their Commitments and each Additional Commitment Lender shall have delivered such other instruments, documents and agreements as the Administrative Agent may reasonably have requested; (ix) the definition of Required Lenders shall have been revised in a manner acceptable to Administrative Agent in its discretion; (x) no Default or Event of Default exists or shall result therefrom and (xi) after giving effect to such increase, the Aggregate Revolving Credit Commitments does not exceed the Maximum ABL Amount (as defined in the Term Loan Intercreditor Agreement as in effect at such time) other than the component of the Maximum ABL Amount (as defined in the Term Loan Intercreditor Agreement as in effect at such time) in respect of the ABL DIP Amount (as defined in the Term Loan Intercreditor Agreement as in effect at such time). The Revolving Credit Loans outstanding on the Increase Effective Date shall be reallocated and adjusted between and among the applicable Lenders, and the Borrowers shall pay any additional amounts required pursuant to Section 3.05 resulting therefrom, to the extent necessary to keep the outstanding applicable Revolving Credit Loans ratable among the applicable Lenders with any revised Applicable Percentages, as applicable, arising from any non-ratable increase in the applicable Revolving Credit Loans under this Section 2.18.

(f) Conflicting Provisions. This Section 2.18 shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require the Loan Parties or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by the Borrower Agent or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Loan Parties shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or Letter of Credit Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent, timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnification.

(i) Without limitation or duplication of the provisions of subsection (a) or (b) above, each Loan Party shall, and does hereby, indemnify the Administrative Agent, each Lender and the Letter of Credit Issuer, and shall make payment in respect thereof within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Loan Parties or the Administrative Agent or paid by the Administrative Agent, such Lender or the Letter of Credit Issuer, as the case may be, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to the Borrower Agent by a Lender or the Letter of Credit Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the Letter of Credit Issuer, shall be conclusive absent manifest error.

(ii) Without limitation or duplication of subsection (a) or (b) above, each Lender and the Letter of Credit Issuer shall, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by any Governmental Authority as a result of the failure by such Lender or the Letter of Credit Issuer, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or the Letter of Credit Issuer, as the case may be, to the Administrative Agent pursuant to subsection (e). Each Lender and the Letter of Credit Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the Letter of Credit Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or the Letter of Credit Issuer and the occurrence of the Facility Termination Date.

(d) Evidence of Payments. Upon request by the Borrower Agent or the Administrative Agent, as the case may be, after any payment of Taxes by the Loan Parties or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower Agent shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower Agent, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower Agent or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Lender shall deliver to the Borrower Agent and to the Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower Agent or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower Agent or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Loan Parties pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction.

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

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower Agent and the Administrative Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower Agent or the Administrative Agent as will enable the Borrower Agent or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower Agent and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower Agent or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) executed originals of Internal Revenue Service Form W-8BEN-E (or, if applicable W-8BEN) claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) executed originals of Internal Revenue Service Form W-8ECI,

(III) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(IV) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of any Borrower within the

meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN, or

(V) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower Agent or the Administrative Agent to determine the withholding or deduction required to be made; and

(C) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower Agent and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by any Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by any Borrower or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (C), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of this Section 3.01, "Laws" shall include FATCA

(iii) Each Lender shall promptly (A) notify the Borrower Agent and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Loan Parties or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the Letter of Credit Issuer, or have any obligation to pay to any Lender or the Letter of Credit Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the Letter of Credit Issuer, as the case may be. If the Administrative Agent, any Lender or the Letter of Credit Issuer determines, in its discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by any Loan Party under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses incurred by the Administrative Agent, such Lender or the Letter of Credit Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Administrative Agent, such Lender or the Letter of Credit Issuer, agrees to repay the amount paid over to any Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the Letter of Credit Issuer in the event the Administrative Agent, such Lender or the Letter of Credit Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or the Letter of Credit Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Term SOFR, or to determine or charge interest rates based upon Term SOFR, then, on notice thereof by such Lender to the Borrower Agent through the Administrative Agent, (i) any obligation of such Lender to make or continue SOFR Loans or to convert Base Rate Loans to SOFR Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower Agent that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Loan Parties shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans and (y) 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 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 Term SOFR. Upon any such prepayment or conversion, the Loan Parties shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. Subject to Section 3.09, if, on or prior to the first day of any Interest Period for any SOFR Loan:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Term SOFR cannot be determined, or

(ii) the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent,

then the Administrative Agent will promptly so notify the Borrower and each Lender. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make or continue SOFR Loans shall be suspended (to the extent of the affected SOFR Loans and, in the case of a SOFR Loan, the affected Interest Periods) until the Administrative Agent revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans and, in the case of a SOFR Loans, the affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans immediately or, in the case of SOFR Loans, at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay any additional amounts required pursuant to this Agreement.

3.04 Increased Costs.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or the Letter of Credit Issuer;

(ii) subject any Lender or the Letter of Credit Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit, or any SOFR Loan made by it, or change the basis of taxation of payments to such Lender or the Letter of Credit Issuer in respect thereof (except for (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes); or

(iii) impose on any Lender or the Letter of Credit Issuer or the SOFR market any other condition, cost or expense (other than Taxes) affecting this Agreement or SOFR Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to the Term SOFR (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the Letter of Credit Issuer issuing or maintaining any Letter of Credit (or of maintaining its obligation to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the Letter of Credit Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the Letter of Credit Issuer, the Loan Parties will pay to such Lender or the Letter of Credit Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the Letter of Credit Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the Letter of Credit Issuer determines that any Change in Law affecting such Lender or the Letter of Credit Issuer or any Lending Office of such Lender or such Lender's or the Letter of Credit Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Letter of Credit Issuer's capital or on the capital of such Lender's or the Letter of Credit Issuer's holding company, if any, as a consequence of this Agreement, the Revolving Credit Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Letter of Credit Issuer, to a level below that which such Lender or the Letter of Credit Issuer or such Lender's or the Letter of Credit Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Letter of Credit Issuer's policies and the policies of such Lender's or the Letter of Credit Issuer's holding company with respect to capital adequacy), then from time to time pursuant to subsection (c) below the Loan Parties will pay to such Lender or the Letter of Credit Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the Letter of Credit Issuer or such Lender's or the Letter of Credit Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the Letter of Credit Issuer setting forth the amount or amounts necessary to compensate such Lender or the Letter of Credit Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower Agent shall be conclusive absent manifest error. The Loan Parties shall pay such Lender or the Letter of Credit Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the Letter of Credit Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the Letter of Credit Issuer's right to demand such compensation, provided that the Loan Parties shall not be required to compensate a Lender or the Letter of Credit Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the Letter of Credit Issuer, as the case may be, notifies the Loan Parties of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Letter of Credit Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof)..

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

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower Agent; or

(c) any assignment of a SOFR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower Agent pursuant to Section 11.13;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each SOFR Loan made by it at Term SOFR for such Loan by a matching deposit or other borrowing in the SOFR market for a comparable amount and for a comparable period, whether or not such SOFR Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender, the Letter of Credit Issuer or any Governmental Authority for the account of any Lender or the Letter of Credit Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender or the Letter of Credit Issuer, as applicable, shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the Letter of Credit Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the Letter of Credit Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the Letter of Credit Issuer, as the case may be. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or the Letter of Credit Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 11.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive the resignation of the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender, the replacement of any Lender and the occurrence of the Facility Termination Date.

3.08 [Intentionally Omitted].

3.09 Effect of Benchmark Transition Event.

Notwithstanding anything to the contrary herein or in any other Loan Document:

(a) Benchmark Replacement. If a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (A) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (B) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as 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 Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notice; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.09 Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.09 including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.09

(d) Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement) (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the administration 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 not or will not be representative, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) ceases to be not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may 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.

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a SOFR Loan, or conversion to or continuation of 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 Base Rate Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

ARTICLE IV
SECURITY AND ADMINISTRATION OF COLLATERAL

4.01 Security.

(a) Generally. As security for the full and timely payment and performance of all Obligations, Borrower Agent shall, and shall cause each other Loan Party to, on or before the Closing Date, do or cause to be done all things necessary in the opinion of the Administrative Agent and its counsel to grant to the Administrative Agent for the benefit of the Secured Parties a duly perfected first priority security interest in all Collateral (subject to no prior Lien or other encumbrance or restriction on transfer, other than the Term Loan Liens expressly permitted to have priority with respect to the Term Loan Priority Collateral under and in accordance with this Agreement and the Term Loan Intercreditor Agreement). Without limiting the foregoing, on the Closing Date Borrower Agent shall deliver, and shall cause each other Borrower to deliver, to the Administrative Agent, in form and substance reasonably acceptable to the Administrative Agent, (a) the Security Agreement, which shall pledge to the Administrative Agent for the benefit of the Secured Parties certain personal property of the Borrowers and the other Loan Parties more particularly described therein, and (b) Uniform Commercial Code financing statements in form, substance and number as requested by the Administrative Agent, reflecting the Lien in favor of the Secured Parties on the Collateral, and shall take such further action and deliver or cause to be delivered such further documents as required by the Security Instruments or otherwise as the Administrative Agent may request to effect the transactions contemplated by this Article IV; provided, however, that the Administrative Agent shall not be required to accept a Lien or Mortgage on any Real Property prior to the receipt of all Flood Documentation with respect thereto.

4.02 Collateral Administration.

(a) Administration of Accounts.

(i) Records and Schedules of Accounts. Each Borrower shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall upon request submit to the Administrative Agent sales, collection, reconciliation and other reports in form reasonably satisfactory to the Administrative Agent, on such periodic basis as the Administrative Agent may request.

(ii) Taxes. If an Account of any Loan Party includes a charge for any Taxes, Administrative Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Borrower and to charge Borrowers therefor; provided, however, that neither the Administrative Agent nor Lenders shall be liable for any Taxes that may be due from Borrowers or with respect to any Collateral.

(iii) Account Verification. Upon the occurrence and during the continuance of an Event of Default, and in connection with any Field Exam in consultation with the Borrowers (whether or not a Default or an Event of Default exists), the Administrative Agent shall have the right, in the name of the Administrative Agent, any designee of the Administrative Agent or (during the continuance of any Event of Default) any Borrower, to verify the validity, amount or any other matter relating to any Accounts of Borrowers by mail, telephone or otherwise. Borrowers shall cooperate fully with the Administrative Agent in an effort to facilitate and promptly conclude any such verification process.

(iv) Proceeds of Collateral. Borrowers shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Controlled Deposit Account. If any Borrower or Subsidiary receives cash or Payment Items with respect to any Collateral, it shall hold same in trust for the Administrative Agent and promptly (not later than the next Business Day) deposit same into a Controlled Deposit Account.

(v) Extensions of Time for Payment. In addition, upon the occurrence and during the continuance of an Event of Default, other than in the Ordinary Course of Business and in amounts which are not material to such Borrower, each Borrower will not (i) grant any extension of the time for payment of any Account, (ii) compromise or settle any Account for less than the full amount

thereof, (iii) release, wholly or partially, any Person liable for the payment of any Account, (iv) allow any credit or discount whatsoever on any Account or (v) amend, supplement or modify any Account in any manner that could adversely affect the value thereof.

(b) Administration of Inventory.

(i) Records and Reports of Inventory. Each Borrower shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and shall submit to Agent inventory and reconciliation reports in form satisfactory to the Administrative Agent, on such periodic basis as the Administrative Agent may request. Each Borrower shall conduct a physical inventory at least once per calendar year (and on a more frequent basis if requested by the Administrative Agent when an Event of Default exists) and periodic cycle counts consistent with historical practices, and shall provide to the Administrative Agent a report based on each such inventory and count promptly upon completion thereof, together with such supporting information as the Administrative Agent may request. The Administrative Agent may participate in and observe each physical count.

The Administrative Agent, in its reasonable discretion, if any Event of Default is continuing, may cause additional inventories to be taken as the Administrative Agent determines (each, at the expense of the Loan Parties).

(ii) Returns of Inventory. No Borrower shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default, Event of Default or Overadvance exists or would result therefrom; (c) the Administrative Agent is promptly notified if the aggregate value of all Inventory returned in any month exceeds $250,000; and (d) any payment received by a Borrower for a return is promptly remitted to the Administrative Agent for application to the Obligations in accordance with Section 2.06(c).

(iii) [Intentionally Omitted].

(iv) Acquisition, Sale and Maintenance. No Borrower shall acquire or accept any Inventory on consignment or approval if the aggregate value of all Inventory on consignment or approval exceeds $250,000 at any time, and shall take all steps to assure that all Inventory is produced in accordance with applicable Law, including the FLSA. No Borrower shall sell any Inventory on consignment or approval or any other basis under which the customer may return or require a Borrower to repurchase such Inventory. The Borrowers shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all applicable Laws, and shall make current rent payments (within applicable grace periods provided for in leases) at all locations where any Collateral is located.

(c) Collateral at Locations Subject to a Material Third-Party Agreement. With respect to any location of Collateral subject to a Material Third-Party Agreement entered into after the Closing Date, each Loan Party shall use commercially reasonable efforts to provide the Administrative Agent with Lien Waivers with respect to the premises subject to such Material Third-Party Agreements. Loan Parties acknowledge that if such Lien Waivers are not delivered, then, at the election of the Administrative Agent, all or a portion of the Collateral at such locations may be deemed ineligible for inclusion in the Borrowing Base or in its Credit Judgment the Administrative Agent may establish a Rent and Charges Reserve for such location.

4.03 After Acquired Property; Further Assurances.

(a) New Deposit Accounts and Securities Accounts. Concurrently with or prior to the opening of any Deposit Account, Securities Account or Commodity Account by any Loan Party, other than any Excluded Deposit Account, such Loan Party shall deliver to the Administrative Agent a Control Agreement covering such Deposit Account, Securities Account or Commodity Account, duly executed by such Loan Party, the Administrative Agent and the applicable Controlled Account Bank, securities intermediary or financial institution at which such account is maintained.

(b) Future Leases. Prior to entering into any new lease of Real Property or renewing any existing lease of Real Property following the Closing Date, each Borrower shall, and shall cause each Loan Party to, deliver to the Administrative Agent a Lien Waiver, in form and substance reasonably satisfactory to the Administrative Agent, executed by the lessor of any Real Property, to the extent the value of any personal property of the Borrowers held or to be held at such leased property exceeds (or it is anticipated that the value of such personal property will exceed at any point in time during the term of such leasehold term) $500,000 at any time.

(c) Real Property. If any Loan Party acquires any Real Property on or after the Closing Date, such Loan Party shall promptly notify the Administrative Agent thereof. With respect to all fee-owned Material Real Property acquired on or after the Closing Date, but solely upon written request from the Administrative Agent in its discretion, the Loan Parties shall be required to provide, within 90 days of any such request (or such longer period as Administrative Agent may in its discretion agree) a Mortgage and all Mortgage Related Documents with respect to such Real Property. For avoidance of doubt, the Administrative Agent shall not be required to accept a Lien or Mortgage on any Real Property (whether existing or acquired on or after the Closing Date) if, in its discretion, it chooses not to accept such Lien or Mortgage for any reason, including, without limitation, the failure to receive the Flood Documentation with respect thereto.

(d) UCC Authorization. The Administrative Agent is hereby irrevocably authorized to execute (if necessary) and file or cause to be filed, with or if permitted by applicable Law without the signature of any Borrower appearing thereon, all UCC financing statements reflecting any Borrower as "debtor" and the Administrative Agent as "secured party", and continuations thereof and amendments thereto, as the Administrative Agent reasonably deems necessary or advisable to give effect to the transactions contemplated hereby and by the other Loan Documents.

4.04 Cash Management.

(a) Controlled Deposit Accounts. On or prior to the Closing Date (but subject to any time period or other exceptions with respect thereto set forth in the Post-Closing Agreement), each Loan Party shall enter into a Control Agreement with respect to each Deposit Account listed on Schedule 6.19, other than Excluded Deposit Accounts. Each Loan Party agrees that all invoices rendered and other requests made by any Loan Party for payment in respect of Accounts shall contain a written statement directing payment in respect of such Accounts to be paid to a Controlled Deposit Account in its name. Upon request of the Administrative Agent, the Borrower Agent shall cause bank statements and/or other reports from the Controlled Account Banks to be delivered to the Administrative Agent not less often than monthly, accurately setting forth all amounts deposited in each Controlled Deposit Account to ensure the proper transfer of funds as set forth above. All remittances received by any Loan Party on account of Accounts, together with the proceeds of any other Collateral, shall be held as the Administrative Agent's property, for its benefit and the benefit of Lenders, by such Loan Party as trustee of an express trust for Administrative Agent's benefit and such Loan Party shall immediately deposit same in kind in a Controlled Deposit Account. The Administrative Agent retains the right at all times after the occurrence and during the continuance of a Default or an Event of Default to notify Account Debtors that a Loan Party's Accounts have been assigned to the Administrative Agent and to collect such Loan Party's Accounts directly in its own name, or in the name of the Administrative Agent's agent, and to charge the collection costs and expenses, including reasonable attorneys' fees, to the Loan Account.

(b) Concentration Account. Each Control Agreement with respect to a Controlled Deposit Account shall require that, during a Dominion Trigger Period, the Controlled Account Bank transfer all cash receipts and other collections by ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the concentration account maintained by the Administrative Agent at BMO (the "Concentration Account"). The Concentration Account shall at all times be under the sole dominion and control of the Administrative Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Concentration Account, (ii) the funds on deposit in the Concentration Account shall at all times be collateral security for all of the Obligations and (iii) the funds on deposit in the Concentration Account shall be applied as provided in Section 4.04(c) below. In the event that, notwithstanding the provisions of this Section 4.04, any Loan Party receives or otherwise has dominion and control of any such proceeds or collections described above, such proceeds and collections shall be held in trust by such Loan Party for the Administrative Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into a Controlled Deposit Account, or during a Dominion Trigger Period, the Concentration Account, or dealt with in such other fashion as such Loan Party may be instructed by the Administrative Agent.

(c) Application of Funds in the Concentration Account. All funds received in the Concentration Account in immediately available funds shall, subject to Section 9.03, be applied on a daily basis first, to the Letter of Credit Borrowings and the Swing Line Loans, second, to the outstanding Revolving Credit Loans and third, to any fees, expenses, costs or reimbursement obligations due and owing to the Administrative Agent or the Lenders. All funds received in the Concentration Account that are not immediately available funds (checks, drafts and similar forms of payment) shall be deemed applied by Administrative Agent on account of the Obligations (subject to final payment of such items) in accordance with the foregoing sentence on the first Business Day after receipt by Administrative Agent of such items in Administrative Agent's account located in Chicago, Illinois. If as the result of such application of funds a credit balance exists in the Loan Account, such credit balance shall not accrue interest in favor of Borrowers but shall, so long as no Default or Event of Default then exists, be disbursed to Borrowers or otherwise at Borrower Agent's direction, upon Borrower Agent's request. Upon and during the continuance of any Event of Default, the Administrative Agent may, at its option, offset such credit balance against any of the Obligations or hold such credit balance as Collateral for the Obligations.

(d) Controlled Securities Accounts. On or prior to the Closing Date (but subject to any time period with respect thereto set forth in the Post-Closing Agreement), each Loan Party shall enter into a Control Agreement with respect to each Securities Account and Commodity Account listed on part (b) of Schedule 6.19. The Borrower Agent shall cause account statements and/or other reports from the applicable broker, financial institution or other financial intermediary to be delivered to the Administrative Agent not less often than monthly, accurately setting forth all assets, including securities entitlements, financial assets or other amounts, held in each Securities Account or Commodity Account.

4.05 Information Regarding Collateral. Each Borrower represents, warrants and covenants that Schedule 4.05 sets forth as of the Closing Date, (a) the exact legal name, jurisdiction of formation, organizational identification number, chief executive office and any trade name or other trade style of each Loan Party and each of its Subsidiaries, (b) each Person that has effected any merger or consolidation with a Loan Party or sold, contributed or transferred to a Loan Party any property constituting Collateral at any time since, in each case, December 1, 2015 (excluding Persons making sales in the ordinary course of their businesses to a Loan Party of property constituting Inventory in the hands of such seller), (c) any prior legal name, jurisdiction of formation, organizational identification number, trade name or location of the chief executive office of each Loan Party at any time since December 1, 2015, and (d) each location within the United States in which goods constituting Collateral in the aggregate for any one location in excess of $100,000 are located as of the Closing Date (together with the name of each owner of the property located at such address and, if the owner of the property is not a Loan Party, a summary description of (i) the relationship between the applicable Loan Party and such Person and (ii) the maximum approximate book or market value of the Collateral held at such location as of November 30, 2020). No Loan Party shall change, or permit any other Loan Party or Subsidiary thereof to change, its name, jurisdiction of formation (whether by reincorporation, merger or otherwise), the location of its chief executive office or any location specified in clause (d) of the immediately preceding sentence, or use or permit any other Loan Party to use, any additional trade name or other trade style, except upon giving not less than thirty (30) days' prior written notice to the Administrative Agent (or such shorter period as the Administrative Agent may agree) and taking or causing to be taken all such action at Borrowers' or such other Loan Parties' expense as may be reasonably requested by the Administrative Agent to perfect or maintain the perfection and priority of the Lien of the Administrative Agent in the Collateral.

ARTICLE V
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

5.01 Conditions of Initial Credit Extensions. The obligation of each Lender and the Letter of Credit Issuer to make any initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following items (except those items that are expressly permitted to be delivered after the Closing Date pursuant to the Post-Closing Agreement), each properly executed by a Responsible Officer of the applicable Loan Party, each dated as of the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent in its discretion:

(i) executed counterparts of this Agreement, each of the Security Instruments and the Master Intercompany Note;

(ii) executed counterparts of the Term Loan Intercreditor Agreement, the Term Loan Agreement, and the other Term Loan Documents;

(iii) Notes executed by the Borrowers in favor of each Lender requesting a Note;

(iv) such certificates of resolutions or other action, incumbency certificates (including specimen signatures), and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(v) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in its jurisdiction of organization and in any other jurisdiction in which the failure to be so qualified could reasonably be expected to have a Material Adverse Effect, including certified copies of such Loan Party's Organization Documents, agreements among holders of Equity Interests, certificates of good standing and qualification to engage in business in each applicable jurisdiction;

(vi) a favorable opinion of Latham and Watkins LLP, New York, California and Delaware counsel to the Loan Parties, Taft Stettinius & Hollister LLP, Ohio counsel to the Loan Parties, and Ballard Spahr LLP, Minnesota counsel to the Loan Parties, in each case, addressed to the Administrative Agent and each Lender and their successors and assigns, as to the matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(vii) a certificate signed by a Responsible Officer of the Borrower Agent certifying as to the matters described in Section 5.01(d), 5.01(i), 5.01(j), 5.01(k) and 5.02(b);

(viii) (A) audited financial statements of the Consolidated Group for the Fiscal Year ending May 31, 2020, and (B) financial projections of the Consolidated Group for the next five (5) Fiscal Years;

(ix) a certificate signed by the chief financial officer or, chief accounting officer of the Borrower Agent certifying that, after giving effect to the entering into of the Loan Documents and the consummation of all of the Transactions, (A) each Borrower is Solvent and (B) the Loan Parties, taken as a whole, are Solvent;

(x) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect (including, without limitation, the related insurance policy endorsements in favor of the Administrative Agent);

(xi) an initial Borrowing Base Certificate;

(xii) initial written notice of Borrowing;

(xiii) delivery of Uniform Commercial Code financing statements, suitable in form and substance for filing in all places required by applicable law to perfect the Liens of the Administrative Agent under the Security Instruments as a first priority Lien as to items of Collateral in which a security interest may be perfected by the filing of financing statements, and such other documents and/or evidence of other actions as may be reasonably necessary under applicable law to perfect the Liens of the Administrative Agent under such Security Instruments as a first priority Lien (or in and to such other Collateral as the Administrative Agent may require);

(xiv) Uniform Commercial Code search results showing only those Liens as are acceptable to the Administrative Agent and Lenders;

(xv) evidence of the payment in full and cancellation of the Existing Credit Facility, including terminations of Uniform Commercial Code financing statements filed in connection with the Existing Credit Facility and other evidence of lien releases and other related matters on terms acceptable to the Administrative Agent;

(xvi) evidence satisfactory to the Administrative Agent of the consummation (in compliance with all applicable laws and regulations, with the receipt of all material governmental, shareholder and third party consents and approvals relating thereto) of the Transactions; and

(xvii) executed counterparts of the Post-Closing Agreement.

(b) Any fees required to be paid on or before the Closing Date shall have been paid.

(c) Unless waived by the Administrative Agent, the Borrowers shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such reasonable fees, charges and disbursements as shall constitute its reasonable estimate of such reasonable fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent).

(d) The Administrative Agent shall be satisfied, in its reasonable discretion, that after giving effect to (i) the initial Credit Extension hereunder, (ii) consummation of the Transactions and payment of all fees and expenses in connection therewith and (iii) any payables stretched beyond their customary historical levels, Availability shall be at least $15,000,000 and Total Revolving Credit Outstandings shall not exceed $45,000,000.

(e) On the Closing Date, after giving effect to the Transaction, the capital structure, corporate structure, and management of the Loan Parties and their Subsidiaries is satisfactory to the Administrative Agent in its discretion and each of the Lenders, in its discretion.

(f) (i) At least five (5) days prior to the Closing Date, to the extent a Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation and requested by any Lender, each such requesting Lender(s) shall have received a Beneficial Ownership Certification in relation to such Borrower, in form and substance reasonably satisfactory to each such requesting Lender and (ii) each of the Lenders shall have received all requested disclosures and information related to "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

(g) The Administrative Agent shall have completed all due diligence with respect to the Loan Parties, including a review of historical and projected financial statements and the Consolidated Group's financial model, insurance review, management background checks and other confirmatory third party due diligence (including, without limitation, a collateral field audit and an inventory appraisal), in each case, as applicable, conducted by third parties acceptable to the Administrative Agent in its discretion, and the results of which shall be satisfactory to the Administrative Agent in its discretion.

(h) The Administrative Agent shall be satisfied, in its discretion, with the resolution of all legal, tax and regulatory matters relating to this Agreement and the Transactions.

(i) No event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect, shall have occurred since the date of the audited financial statements referenced in Section 5.01(a)(viii)(A).

(j) The representations and warranties of the Loan Parties which are contained in Article VI or any other Loan Document, or which are contained in any document furnished at any time prior to or on the Closing Date, shall be true and correct in all respects on and as of the Closing Date**.**

(k) All consents, licenses and approvals, if any, required in connection with the execution, delivery and performance by each Borrower and the validity against each such Loan Party of the Loan Documents to which it is a party, shall be in full force and effect**.**

Without limiting the generality of the provisions of Section 10.04, for purposes of determining compliance with the conditions specified in this Section 5.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

5.02 Conditions to all Credit Extensions. The obligation of each Lender or Letter of Credit Issuer to honor any Request for Credit Extension (other than one requesting only a conversion of Loans to the other Type or a continuation of SOFR Loans) or make the initial Credit Extension hereunder is subject to the following conditions precedent:

(a) The representations and warranties of the Loan Parties contained in Article VI or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 5.02(a), the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 7.01.

(b) No Default shall have occurred and be continuing or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the Letter of Credit Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) After giving effect to each Credit Extension, Total Revolving Credit Outstandings do not exceed the Maximum Borrowing Amount.

Each Request for Credit Extension (other than one requesting only a conversion of Loans to the other Type or a continuation of SOFR Loans) submitted by the Borrower Agent shall be deemed to be a representation and warranty that the conditions specified in Sections 5.02(a), 5.02(b) and 5.02(d) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES

To induce the Secured Parties to enter into this Agreement and to make Loans and to issue Letters of Credit hereunder, each Loan Party represents and warrants to the Administrative Agent and the Lenders, subject to the limitation set forth in Section 5.02(a), that:

6.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary thereof (a) is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business as is now being conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and to consummate the Transactions to which it is a party, and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i), or (c), to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Loan Party is (a) an Affected Financial Institution or (b) a Covered Entity (as defined in Section 11.21(b)).

6.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, and the consummation of the Transactions, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of the Organization Documents of any such Person; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under (i) any Contractual Obligation to which such Person is a party (other than the creation of Liens in favor of the Administrative Agent pursuant to any Loan Document and the creation of the Term Loan Liens) or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law applicable to such Person.

6.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document or the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Loan Documents, (c) the perfection or maintenance of the Liens created under the Loan Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Loan Documents, except for the authorizations, approvals, actions, notices and filings listed on Schedule 6.03, all of which have been duly obtained, taken, given or made on or prior to the date hereof and are in full force and effect.

6.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except (a) as rights to indemnification hereunder may be limited by applicable Law and (b) as the enforcement hereof may be limited by any applicable Debtor Relief Laws or by general equitable principles.

6.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present, in all material respects, the financial condition of the Consolidated Group as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material Indebtedness and other liabilities, direct or contingent, of the Consolidated Group as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited Consolidated and consolidating balance sheet of the Consolidated Group and the related Consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for the month then ended (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present, in all material respects, the financial condition of the Consolidated Group as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) Each Borrower is Solvent and the Loan Parties and their Subsidiaries, on a Consolidated basis, are Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party or Subsidiary thereof.

(e) Holdings and its Subsidiaries have not made as of the Fourth Amendment Effective Date, and as of the Fourth Amendment Effective Date do not expect to make, any accounting adjustments, restatements or other modifications to the Existing Financial Statements, other than those which have been disclosed in writing to the Administrative Agent and the Lenders prior to the Fourth Amendment Effective Date.

6.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Loan Party after due investigation, threatened in writing or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of their properties or revenues, that (a) purport to affect or pertain to this Agreement or any other Loan Document (including the grant and perfection of any Lien under any Security Instrument) or any of the Transactions or (b) except as specifically disclosed in Schedule 6.06, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There has been no material adverse change in the status, or material financial effect on any Loan Party or any Subsidiary thereof, of the matters described on Schedule 6.06.

6.07 No Default. No Loan Party nor any Subsidiary thereof is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the Transactions or any other transactions contemplated by this Agreement or any other Loan Document.

6.08 Ownership of Property; Liens.

(a) Each Loan Party and each Subsidiary thereof has good title to, or valid leasehold interests in, all its real and personal property material to its business, if any (including the Mortgaged Properties), free and clear of all Liens, claims, and interests, except for Permitted Liens.

(b) Schedule 6.08 sets forth the address (including street address, county and state) of all Real Property that is owned or subject to a ground lease by the Loan Parties and their Subsidiaries as of the Closing Date and identifies the owner thereof. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the Real Property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Liens. Each ground lease of the Loan Parties is in full force and effect and the Loan Parties are not in default of any material terms thereof.

6.09 Environmental Compliance.

(a) Except as disclosed in Schedule 6.09, no Loan Party or any Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law with respect to such Loan Party's or such Subsidiary's operations, (ii) has become subject to a pending claim with respect to any Environmental Liability or (iii) has received written notice of any claim with respect to any Environmental Liability except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in Schedule 6.09 or as would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, (i) none of the properties currently owned or operated by any Loan Party or any Subsidiary thereof is listed or, to the knowledge of the Loan Parties, proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no and, to the knowledge of the Loan Parties, never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any Subsidiary thereof; (iii) to the knowledge of the Loan Parties, there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Subsidiary thereof; and (iv) Hazardous Materials have not been released, discharged or disposed of by any Loan Party or Subsidiary thereof in violation of Environmental Laws or, to the knowledge of the Loan Parties, by any other Person in violation of Environmental Laws on any property currently owned or operated by any Loan Party or any Subsidiary thereof.

(c) Except as otherwise set forth on Schedule 6.09 or as would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, (i) no Loan Party nor any Subsidiary thereof is undertaking, and no Loan Party nor any Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law, and (ii) all Hazardous Materials generated, used, treated, handled or stored by any Loan Party or any Subsidiary thereof at, or transported to or from by or on behalf of any Loan Party or any Subsidiary thereof, any property currently owned or operated by any Loan Party or any Subsidiary thereof have, to the knowledge of the Loan Parties, been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any Subsidiary thereof.

(d) Each Loan Party and Subsidiary thereof conducts in the Ordinary Course of Business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof each Loan Party has reasonably concluded that, except as set forth on Schedule 6.09, such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.10 Insurance. The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption, and property damage insurance) as the Loan Parties reasonably believe are adequate and customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 6.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Closing Date. Each insurance policy listed on Schedule 6.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

6.11 Taxes. Each Loan Party and its Subsidiaries have filed all federal, state and other material tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being Properly Contested, or except where the failure to file such returns or reports could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no proposed tax assessment against any Loan Party or Subsidiary thereof that would, if made, have a Material Adverse Effect.

6.12 ERISA Compliance.

(a) Except as could not reasonably be expected to result in a Material Adverse Effect, each (i) Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws and (ii) Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the knowledge of each Loan Party, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) no ERISA Event has occurred, and no Loan Party is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event, with respect to any Pension Plan; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and no Loan Party knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; and (v) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA.

(d) No Loan Party nor any ERISA Affiliate maintains or contributes to, or has, or could reasonably be expected to have, any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than on the Closing Date, those listed on Schedule 6.12 hereto.

(e) As of the Closing Date none of the Borrowers is or will be a Benefit Plan.

6.13 Subsidiaries and Equity Interests. No Loan Party (a) has any Subsidiaries other than those specifically disclosed in part (a) of Schedule 4.05 or created or acquired after the Closing Date in compliance with Section 7.12, and (b) owns any Equity Interests in any other Person other than those specifically disclosed on Schedule 6.13, except, in each case, Subsidiaries acquired or created and equity investments made on or after the Closing Date in compliance with this Agreement and the other Loan Documents. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Schedule 6.13 free and clear of all Liens except for those created under the Security Instruments. All of the outstanding Equity Interests in the Loan Parties and their Subsidiaries have been validly issued, are fully paid and non-assessable, and are owned in the amounts specified on Schedule 6.13 free and clear of all Liens except for those created under the Security Instruments.

6.14 Margin Regulations; Investment Company Act. No Loan Party nor Subsidiary thereof is engaged nor will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the Loan Parties, any Person Controlling any Loan Party, nor any Subsidiary of any Loan Party or such Person is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

6.15 Disclosure. Each Loan Party has disclosed or caused the Borrower Agent to disclose to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate (including the Borrowing Base Certificates) or other information furnished (whether in writing or orally) by or on behalf of any Loan Party or any Subsidiary thereof to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

6.16 Compliance with Laws. Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) in which such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted

or (b) as disclosed in Schedule 6.09 or other instances in which the failure to comply, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.17 Intellectual Property; Licenses, Etc. Each Loan Party and its Subsidiaries own, or possess the right to use, all of the Intellectual Property (including IP Rights) that are reasonably necessary for the operation of their respective businesses, without known conflict with the IP Rights of any other Person, except to the extent any failure so to own or possess the right to use could not reasonably be expected to have a Material Adverse Effect. To the knowledge of each Loan Party, the operation by each Loan Party and its Subsidiaries of their respective businesses does not infringe upon any IP Rights held by any other Person, except, in each case, for any such infringement which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

6.18 Labor Matters. Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or as set forth on Schedule 6.18, there are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties comply with the FLSA and any other applicable federal, state, local or foreign Law dealing with such matters. No Loan Party nor any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state Law. All payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 6.18 no Loan Party nor any Subsidiary is a party to or bound by any collective bargaining agreement, management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. There are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition. Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, there are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

6.19 Deposit Accounts and Securities Accounts.

(a) Part (a) of Schedule 6.19 sets forth a list of all Deposit Accounts (including Excluded Deposit Accounts) maintained by the Loan Parties and their Subsidiaries as of the Closing Date, which Schedule includes, with respect to each Deposit Account (i) the name of the depository, (ii) the name and account number of such Deposit Account and (iii) the type or use of such Deposit Account.

(b) Part (b) of Schedule 6.19 sets forth a list of all Securities Accounts and Commodity Accounts maintained by the Loan Parties and their Subsidiaries as of the Closing Date, if any, which Schedule includes with respect to each Securities Account and Commodity Account (i) the name and address of the securities intermediary or institution holding such account, (ii) the name and account number of such account, (iii) a contact person at such securities intermediary or institution and (iv) the average value of assets held in such account over the prior twelve month period.

6.20 Accounts. The Administrative Agent may rely, in determining which Accounts are Eligible Accounts, on all statements and representations made by the Loan Parties with respect thereto. Each Borrower warrants, with respect to each Account at the time it is shown as an Eligible Account in a Borrowing Base Certificate, that:

(a) it is genuine and in all respects what it purports to be, and is not evidenced by a judgment;

(b) it arises out of a completed, *bona fide* sale and delivery of goods in the Ordinary Course of Business, and substantially in accordance with any purchase order, contract or other document relating thereto;

(c) it is for a sum certain, maturing as stated in the invoice covering such sale, a copy of which has been furnished or is available to the Administrative Agent on request;

(d) it is not subject to any offset, Lien (other than the Administrative Agent's Lien), deduction, defense, dispute, counterclaim or other adverse condition except as arising in the Ordinary Course of Business and disclosed to the Administrative Agent; and it is absolutely owing by the Account Debtor, without contingency in any respect;

(e) no purchase order, agreement, document or applicable Laws restricts assignment of the Account to the Administrative Agent (regardless of whether, under the UCC, the restriction is ineffective), and the applicable Borrower is the sole payee or remittance party shown on the invoice;

(f) no extension, compromise, settlement, modification, credit, deduction or return has been authorized with respect to the Account, except discounts or allowances granted in the Ordinary Course of Business for prompt payment that are reflected on the face of the invoice related thereto and in the reports submitted to Administrative Agent hereunder; and

(g) to each Borrower's knowledge, (i) there are no facts or circumstances that are reasonably likely to impair the enforceability or collectability of such Account; (ii) the Account Debtor had the capacity to contract when the Account arose, continues to meet the applicable Borrower's customary credit standards, is Solvent, is not contemplating or subject to any proceeding under any Debtor Relief Laws, and has not failed, or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against any Account Debtor that could reasonably be expected to have a material adverse effect on the Account Debtor's financial condition.

6.21 Anti-Terrorism Laws and Foreign Asset Control Regulations.

(a) None of the Loan Parties nor any of their Controlled Persons nor, to the knowledge of Borrower, any agent, affiliate or representative of any Loan Party or any of their Subsidiaries, is, or is controlled by a Person that is, a Sanctioned Person or currently the subject or target of any Sanctions.

(b) The Loan Parties and each of their Subsidiaries and, to the knowledge of Borrower, each of the Loan Parties' and their Subsidiaries' respective agents, affiliates and representatives, is in compliance with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(c) The Loan Parties and their Subsidiaries have instituted and maintain in effect policies and procedures reasonably designed to ensure compliance by the Loan Parties, their Subsidiaries, and their Controlled Persons with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(d) As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

6.22 Brokers. No broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith, except as set forth on Schedule 6.22.

6.23 Customer and Trade Relations. There exists no actual or, to the knowledge of any Loan Party, threatened in writing, termination or cancellation of, or any modification or change in the business relationship of any Loan Party or Subsidiary thereof with any customers or suppliers which are, individually or in the aggregate, material to its operations, to the extent that such cancellation, modification or change would reasonably be expected to result in a Material Adverse Effect.

6.24 Material Contracts. Schedule 6.24 sets forth all Material Contracts to which any Loan Party or Subsidiary thereof is a party or is bound as of the Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Administrative Agent on or before the date hereof.

6.25 Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

6.26 Senior Indebtedness. All Obligations including those to pay principal of and interest (including post-petition interest, whether or not allowed as a claim under Debtor Relief Laws) on the Loans and other Obligations, and fees and expenses in connection therewith, are entitled to the benefits of any Subordination Provisions applicable to all Indebtedness (including, without limitation, any contained in the Term Loan Intercreditor Agreement and any Master Intercompany Note). Each Loan Party acknowledges that the Administrative Agent and each Lender is entering into this Agreement and each Lender is extending its Commitments in reliance upon the Subordination Provisions (including, without limitation, any contained in Term Loan Intercreditor Agreement and any Master Intercompany Note).

6.27 Term Loan Documents.

(a) Delivery. The Loan Parties have delivered to Administrative Agent complete and correct copies of, (i) the Term Loan Documents and of all exhibits and schedules thereto as of the Closing Date, any agreement required to be delivered in connection with any Term Loan Document at or prior to the closing of the transactions contemplated by such Term Loan Documents (including any side letter executed or otherwise required by any of the parties thereto), and (ii) copies of any amendment, restatement, supplement or other modification to or waiver under each Term Loan Document entered into after the date hereof (including any such modification accomplished via a side letter or any other document).

(b) Loan Parties. Each Person that is a guarantor or a borrower under the Term Loan Documents is a Loan Party hereunder.

6.28 PACA and PASA Representations.

(a) No Loan Party has, at any time within the preceding twelve (12) fiscal months, except as disclosed in writing to the Administrative Agent, received notice under PACA or PASA with respect to past due payables delivered in order to preserve the benefits of any trust under PACA or PASA applicable to assets of a Loan Party or a Subsidiary (in each case other than the alternative customary invoice or other

billing statement notice provisions afforded to PACA licensees in the ordinary course of business regarding a supplier reserving rights under PACA).

(b) Except for disputed payables or payables subject to set off or deduction in the ordinary course of business in an aggregate amount less than $100,000, all payables owing to Persons who may claim the benefit of any trust under PACA or PASA have been paid or will be paid consistent with ordinary course historical and/or industry practice (and in any event no later than forty five (45) days after the trade terms applicable to such payables).

(c) Each Loan Party has taken all actions required (including delivery of any required notices and maintaining sales on statutorily required terms) to establish, obtain and preserve the rights and benefits (including under any trust or similar arrangement under PACA or PASA) available to it under PACA and PASA.

ARTICLE VII
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Obligation hereunder shall remain unpaid or unsatisfied, each Loan Party shall, and shall cause each of its Subsidiaries to:

7.01 Financial Statements. Deliver to the Administrative Agent and each Lender:

(a) as soon as available, but in any event within 90 days after the end of each Fiscal Year of the Consolidated Group, a Consolidated and consolidating balance sheet of the Consolidated Group as at the end of such Fiscal Year, and the related Consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, (i) such Consolidated statements to be audited and accompanied by a report and opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Administrative Agent (the "Auditor"), which report and opinion shall be prepared in accordance with audit standards of the Public Company Accounting Oversight Board and applicable Securities Laws and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (other than as a result of the impending maturity of the Obligations or the Term Loan Debt), and (ii) such consolidating statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of the Consolidated Group to the effect that such statements are fairly stated in all material respects when considered in relation to the Consolidated financial statements of Consolidated Group.

(b) monthly, as soon as available, but in any event within 30 days after the end of each calendar month, unaudited Consolidated and consolidating balance sheets of the Consolidated Group as of the end of such month and the related statements of income and cash flow for such month and for the portion of the Fiscal Year then elapsed, on a Consolidated basis for the Consolidated Group, setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by a Responsible Officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting the financial condition, results of operations, shareholders equity and cash flows for such month and period, subject to normal year-end adjustments and the absence of footnotes; and

(c) as soon as available but not later than 30 days following the start of any Fiscal Year, annual financial projections of Consolidated Group on a Consolidated basis, in form satisfactory to the Administrative Agent, consisting of (i) Consolidated balance sheets and statements of income or operations and cash flows (in each case, on a monthly basis), and (ii) monthly Availability for Borrowers, in the case of clauses (i) and (ii) for such Fiscal Year.

7.02 Borrowing Base Certificate; Other Information. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent:

(a) on or before the 20th day of each calendar month from and after the date hereof, Borrower Agent shall deliver to the Administrative Agent, in form acceptable to the Administrative Agent in its Credit Judgment, a Borrowing Base Certificate as of the last day of the immediately preceding calendar month, with such supporting materials as the Administrative Agent shall reasonably request (including monthly reporting of rolling forward accounts receivable data by reporting monthly sales, cash collections and credits and monthly reporting of gross inventory, inventory ineligibles and accounts receivable ineligibles). If a Reporting Trigger Period exists, Borrower Agent shall execute and deliver to Administrative Agent Borrowing Base Certificates and all such supporting materials weekly within three (3) Business Days of each week then ended and current as of the close of the prior week; for the avoidance of doubt, such Borrowing Base Certificates and supporting materials shall include, without limitation, an updated calculation of the Borrowing Base and the components thereof (including, without limitation, an updated calculation of the Availability Reserve taking into account the updated Specified PACA Payables Report delivered in connection with such Borrowing Base Certificate and supporting materials), an updated version of the Specified PACA Payables Report, weekly reporting of rolling forward accounts receivable data by reporting weekly sales, cash collections and credits and weekly reporting of gross inventory, inventory ineligibles and accounts receivable ineligibles. All calculations of Availability in any Borrowing Base Certificate shall originally be made by Borrowers and certified by a Responsible Officer, provided that the Administrative Agent may from time to time review and in its Credit Judgment adjust any such calculation (a) to reflect its reasonable estimate of declines in value of any Collateral, due to collections received in the Concentration Account or otherwise; and (b) to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Availability Reserve, the Line Reserve, other Reserves, or the Borrowing Base;

(b) on or before the 20th day of each calendar month from and after the date hereof, Borrower Agent shall deliver to the Administrative Agent, in the form reasonably acceptable to the Administrative Agent in its Credit Judgment, (i) reconciliations of all Borrowers' Accounts as shown on the month-end Borrowing Base Certificate for the immediately preceding month to Borrowers' accounts receivable agings,

to Borrowers' general ledger and to Borrowers' most recent financial statements, (ii) a detailed aged trial balance of all Accounts as of the end of the preceding calendar month, specifying each Account's Account Debtor name and address, amount, invoice date and due date, showing any discount, allowance, credit, authorized return or dispute, and including such proof of delivery, copies of invoices and invoice registers, copies of related documents, repayment histories, status reports and other information as the Administrative Agent may reasonably request, (iii) accounts payable agings, (iv) accounts receivable agings, (v) reconciliations of Borrowers' Inventory as shown on Borrowers' inventory systems, to Borrowers' general ledger and to Borrowers' financial statements, (vi) Inventory status, in the case of clauses (i) through (vi) with supporting materials as the Administrative Agent shall reasonably request and (vii) a report (the "Specified PACA Payables Report") as of the end of the immediately preceding month showing all payables owing by the Loan Parties to (A) any Person who has provided written notice under PACA or PASA with respect to past due payables delivered in order to preserve the benefits of any trust under PACA or PASA applicable to assets of a Loan Party or a Subsidiary (in each case other than customary invoice or other billing statement notice provisions afforded to PACA licensees in the ordinary course of business regarding a supplier reserving rights under PACA) or (B) any producers or sellers of commodities subject to a PACA or PASA trust or Lien (in each case of (A) and (B), including sufficient detail to identify those payables owing to producers or sellers that are PACA licensees whose invoices include customary approved language preserving a PACA claim) and except for disputed payables or payables subject to set off or deduction in the ordinary course of business, certifying in form and substance reasonably satisfactory to the Administrative Agent that all such material payables have been paid or will be paid within the trade terms applicable to such payables;

(c) concurrently with the delivery of financial statements under Section 7.01(a) or (b) (and, if a Default or an Event of Default exists, upon Administrative Agent's request at any time), a Compliance Certificate executed by the chief financial officer of Borrower Agent, which (i) provides a summary of Availability for the applicable period and calculates the Applicable Margin, and (ii) calculates the financial covenant set forth in Section 8.12, whether or not a Financial Covenant Trigger Period is then in effect (and, if in effect, certifies compliance therewith);

(d) promptly after the same are available, copies of each annual report, proxy or financial statement sent to the stockholders of any Loan Party or Subsidiary thereof and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party or Subsidiary thereof may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) at the Administrative Agent's request (but not more frequently than monthly unless a Default or an Event of Default has occurred and is continuing), a listing of each Borrower's trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging, all in form and scope satisfactory to the Administrative Agent in its Credit Judgment;

(f) promptly following any request therefor, provide information and documentation reasonably requested by Administrative Agent for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable Anti-Money Laundering Laws; and

(g) promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request, all in form and scope reasonably acceptable to the Administrative Agent.

Documents required to be delivered pursuant to Section 7.01(a) or 7.01(b) (to the extent any such documents are included in materials otherwise filed with the SEC) or Section 7.02(c) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower Agent posts such documents, or provides a link thereto on the Borrower Agent's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Borrower Agent's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (x) the Borrower Agent shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower Agent to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (y) the Borrower Agent shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Lender of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Each Loan Party hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the Letter of Credit Issuer materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on SyndTrak or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Loan Parties or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Loan Party hereby agrees that, so long as any Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities, (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC", each Loan Party shall be deemed to have authorized the Administrative Agent, the Arrangers, the Letter of Credit Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to any Loan Party or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor". Notwithstanding the foregoing, the Borrowers shall be under no obligation to mark any Borrower Materials "PUBLIC."

7.03 **Notices**. Promptly notify the Administrative Agent and each Lender:

(a) of the occurrence of any Default or Event of Default (including, for avoidance of doubt, the occurrence of any Change of Control);

(b) of (i) breach or non-performance of, or any default under, a Contractual Obligation of any Loan Party or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary and any Governmental Authority; and (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary, including pursuant to any applicable Environmental Laws, or any violation or asserted violation of any applicable Law, in the case of each of (i), (ii) and (iii), if any such matter has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) of the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties and their Subsidiaries in an aggregate amount exceeding $500,000 or there is a failure to meet the Pension Funding Rules in respect of a Pension Plan (whether or not waived);

(d) promptly following receipt, copies of (i) any material notices (including notices of default or acceleration) received with respect to the Term Loan Documents or any Subordinated Debt and (ii) all monthly, quarterly and annual financial statements delivered in connection with or pursuant to the Term Loan Documents to the extent not delivered to the Administrative Agent pursuant to Section 7.01, and each Compliance Certificate (as defined in the Term Loan Agreement) delivered in connection with or pursuant to the Term Loan Documents;

(e) the creation (by Division or otherwise) or acquisition of any Subsidiary;

(f) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;

(g) of the discharge by any Loan Party or Subsidiary thereof of its present Auditors or any withdrawal or resignation by such Auditors;

(h) of any collective bargaining agreement or other labor contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;

(i) of the filing of any Lien for unpaid Taxes against any Loan Party in excess of $500,000;

(j) of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed;

(k) the receipt of any notice from a supplier, seller, or agent pursuant to either PACA or PASA with respect to any aggregate liability of $500,000 or more;

(l) (i) of Accounts in an aggregate face amount of $500,000 or more ceasing to be Eligible Accounts and (ii) of Inventory in an aggregate face amount of $500,000 or more ceasing to be Eligible Inventory;

(m) as soon as practicable following receipt thereof, notify the Administrative Agent and each Lender of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification;

(n) any notice received with respect to any Collateral that materially and adversely affects the interests of the Secured Parties; and

(o) of any failure by any Loan Party or Subsidiary thereof to pay rent at any of such Loan Party's or Subsidiary's locations if such failure continues for more than fifteen (15) days following the day on which such rent first came due.

Each notice pursuant to this Section 7.03 shall be accompanied by a statement of a Responsible Officer of the Borrower Agent setting forth details of the occurrence referred to therein and stating what action the Borrowers have taken and proposes to take with respect thereto. Each notice pursuant to Section 7.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

7.04 **Payment of Obligations**. Pay and discharge as the same shall become due and payable, all its material obligations and liabilities, unless such obligations and liabilities are being Properly Contested.

7.05 **Preservation of Existence, Etc**. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 8.04 or 8.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary in the normal conduct of its business, except to the

extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered Intellectual Property, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

7.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its properties (other than insignificant properties) and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

7.07 Maintenance of Insurance; Condemnation Proceeds.

(a) Maintain with (i) companies having an A.M. Best Rating of at least "A-" or (ii) financially sound and reputable insurance companies reasonably acceptable to the Administrative Agent and not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Administrative Agent;

(b) Maintain flood insurance with respect to any Mortgaged Property located in any area identified by FEMA (or any successor agency) as a Special Flood Zone with such providers, on such terms and in such amounts as required pursuant to the Flood Disaster Protection Act and the National Flood Insurance Act of 1968, and all applicable rules and regulations promulgated thereunder, or as otherwise required by the Administrative Agent or any Lender (but no less coverage than required by applicable flood laws and regulations).

(c) Cause all casualty policies, including fire and extended coverage policies, maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgagee clause (regarding improvements to Real Property) and lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Administrative Agent in its discretion, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Administrative Agent, (ii) a provision to the effect that none of the Loan Parties, Secured Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Administrative Agent may reasonably require from time to time to protect the interests of the Secured Parties, in each case, unless otherwise agreed to by the Administrative Agent in its sole discretion.

(d) Cause commercial general liability policies to be endorsed to name the Administrative Agent as an additional insured; and cause business interruption policies to name the Administrative Agent as a loss payee and to be endorsed or amended to include (i) a provision that, from and after the Closing Date, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Administrative Agent, (ii) a provision to the effect that none of the Loan Parties, the Administrative Agent or any other party shall be a co-insurer and (iii) such other provisions as the Administrative Agent may reasonably require from time to time to protect the interests of the Secured Parties, in each case, unless otherwise agreed to by the Administrative Agent in its sole discretion.

(e) Cause each such policy referred to in this Section 7.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Administrative Agent (giving the Administrative Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Administrative Agent, in each case, unless otherwise agreed to by the Administrative Agent in its sole discretion.

(f) Deliver to the Administrative Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy or insurance certificate (or other evidence of renewal of a policy previously delivered to the Administrative Agent, including an insurance binder) together with evidence reasonably satisfactory to the Administrative Agent of payment of the premium therefor.

(g) Permit any representatives that are designated by the Administrative Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby. The Loan Parties shall pay the reasonable fees and expenses of any representatives retained by the Administrative Agent to conduct any such inspection.

(h) None of the Secured Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 7.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Secured Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Secured Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Secured Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Secured Party under this Section 7.07 shall in no event be deemed a representation, warranty or advice by such Secured Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

(i) Notwithstanding anything to the contrary contained herein, if any Loan Party or any Subsidiary thereof at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required above or to pay all premiums relating thereto, Administrative Agent may at any time or times thereafter obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto that Administrative Agent deems advisable. Administrative Agent shall have no obligation to obtain insurance for any Loan Party or any such Subsidiary or pay any premiums therefor. By doing so, Administrative Agent shall not be deemed to have waived any Default or Event of Default arising from the failure of such Loan Party or Subsidiary to maintain such insurance or pay any premiums therefor. All sums so disbursed,

including reasonable attorneys' fees, court costs and other charges related thereto, shall be payable on demand by Borrower to Administrative Agent and shall be additional Obligations hereunder secured by the Collateral.

7.08 Compliance with Laws; Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(a) Comply in all material respects with the requirements of all Laws (including without limitation all applicable Environmental Laws) and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being Properly Contested; or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(b) Notwithstanding the general applicability of Section 7.08(a) above, comply with the requirements of all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions applicable to the Borrowers and shall cause each other Loan Party and each of its and their respective Subsidiaries to comply with the requirements of all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions applicable to such Persons.

(c) Provide Administrative Agent, the Letter of Credit Issuer, and the Lenders (i) any information regarding Borrower, each other Loan Party, and each of their respective owners, Affiliates, and Subsidiaries necessary for Administrative Agent, the Letter of Credit Issuer, and the Lenders to comply with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions; subject however, in the case of Affiliates, to the Borrowers' ability to provide information applicable to them and (ii) without limiting the foregoing, notification of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein.

(d) The Borrowers will maintain in effect and enforce policies and procedures reasonably designed to ensure compliance by the Loan Parties and each of their Subsidiaries with applicable Anti-Corruption Laws, Anti Money-Laundering Laws and Sanctions.

(e) Comply in all respects with any obligations or requirements imposed by any Governmental Authority arising from or concerning the ongoing litigation, proceedings and investigations disclosed in due diligence pursuant to Sections 5.01(g), 6.06 and 6.09 that relate to the Tanok facility (including, but not limited to, compliance with any orders, judgments, settlement agreements, or other negotiated resolutions, as well as payment of any fines, taxes, penalties, disgorgement, fees, or other costs) (individually a **"Tanok Obligation"** and collectively the **"Tanok Obligations"**), in each case, on or before the respective date specified for satisfaction of each such Tanok Obligation.

For the avoidance of doubt, nothing in this Section 7.08 is intended to restrict or impair any rights of subrogation, reimbursement, indemnification or contribution that any Loan Party may have against any other Person with respect to satisfaction of the Tanok Obligations.

7.09 Books and Records. (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary thereof, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over any Loan Party or such Subsidiary thereof, as the case may be.

7.10 Inspection Rights and Appraisals; Meetings with the Administrative Agent.

(a) Permit the Administrative Agent or its designees or representatives from time to time, subject to reasonable notice and normal business hours (except, in each case, when a Default or Event of Default exists), to conduct Field Exams, and/or appraisals of Inventory and to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers and Auditors; provided that representatives of the Borrower Agent shall be given the opportunity to participate in any discussions with the Auditors. The Administrative Agent shall not have any duty to any Loan Party to share any results of any Field Exam with any Loan Party. Appraisals shall be shared with the Borrower Agent upon request. The Loan Parties acknowledge that all Field Exams, appraisals and reports are prepared by or for the Administrative Agent and Lenders for their purposes, and Loan Parties shall not be entitled to rely upon them.

(b) Reimburse the Administrative Agent for all reasonable and documented out-of-pocket charges, costs and expenses of the Administrative Agent in connection with (i) one Field Exam and one appraisal of Inventory during any twelve (12) month period during which no Increased Collateral Monitoring Period has arisen, and (ii) up to two Field Exams and two appraisals of Inventory in any twelve (12) month period during which an Increased Collateral Monitoring Period has arisen (it being understood and agreed that any such Field Exam or appraisal initiated during an Increased Collateral Monitoring Period shall be permitted under this clause (ii) even if completed after the end of such Increased Collateral Monitoring Period); provided, that, following the occurrence and during the continuance of any Event of Default, all charges, costs and expenses therefor shall be reimbursed by the Loan Parties without regard to such limits (so long as such Field Exam or appraisal was commenced while such Event of Default existed).

(c) Without limiting the foregoing, participate and will cause their key management personnel to participate in meetings with the Administrative Agent and Lenders periodically during each year, which meetings shall be held at such times and such places as may be reasonably requested by the Administrative Agent.

(d) To the extent received by any Loan Party or any of their Subsidiaries, provide the Administrative Agent with copies of any appraisals conducted by or on behalf of the Term Loan Agent pursuant to the Term Loan Agreement, in each case, solely to the extent such Loan Party or such Subsidiary is not restricted from providing any such copy to the Administrative Agent.

7.11 Use of Proceeds. Use the proceeds of the Revolving Credit Facility (including, without limitation, any Incremental Facility incurred pursuant to Section 2.18) (a) to repay the Existing Credit Facility, (b) to pay fees and expenses in connection with the Transactions, and (c) for working capital, Permitted Acquisitions, capital expenditures, Restricted Payments, Investments and other general corporate purposes not in contravention of any Law or of any Loan Document. None of the proceeds of the Credit Extensions will be used, directly or indirectly, (x) to finance or refinance dealings or transactions by or with any Person that is described or designated in the Specially Designated Nationals and Blocked Persons List (the "SDN List") of the Office of Foreign Assets Control, United States Department of the Treasury ("OFAC") or is otherwise a Person officially sanctioned by the United States of America pursuant to the OFAC Sanctions Program or (y) for any purpose that is otherwise in violation of the Trading with the Enemy Act, the OFAC Sanctions Program, the PATRIOT Act or CISADA (collectively, the "Foreign Activities Laws").

7.12 New Subsidiaries. As soon as practicable but in any event within 30 Business Days (or such longer period as the Administrative Agent shall agree, in its discretion) following the acquisition or creation of any Domestic Subsidiary, cause to be delivered to the Administrative Agent each of the following, as applicable:

(a) a joinder agreement acceptable to the Administrative Agent duly executed by such Subsidiary sufficient to cause such Domestic Subsidiary to become a Borrower (or, at Administrative Agent's discretion, a Guarantor), together with executed counterparts of each other Loan Document reasonably requested by the Administrative Agent, including all Security Instruments and other documents reasonably requested to establish and preserve the Lien of the Administrative Agent in all Collateral of such Domestic Subsidiary;

(b) (i) Uniform Commercial Code financing statements naming such Person as "Debtor" and naming the Administrative Agent for the benefit of the Secured Parties as "Secured Party," in form, substance and number sufficient in the reasonable opinion of the Administrative Agent and its special counsel to be filed in all Uniform Commercial Code filing offices and in all jurisdictions in which filing is necessary to perfect in favor of the Administrative Agent for the benefit of the Secured Parties the Lien on the Collateral conferred under such Security Instrument to the extent such Lien may be perfected by Uniform Commercial Code filing, and (ii) pledge agreements, control agreements, Documents and original collateral (including pledged Equity Interests, Securities and Instruments) and such other documents and agreements as may be reasonably required by the Administrative Agent, all as necessary to establish and maintain a valid, perfected security interest in all Collateral in which such Domestic Subsidiary has an interest consistent with the terms of the Loan Documents;

(c) upon the request of the Administrative Agent, an opinion of counsel to the Loan Parties and their Subsidiaries (including, without limitation, such Domestic Subsidiary) and addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent, each of which opinions may be in form and substance, including assumptions and qualifications contained therein, substantially similar to those opinions of counsel delivered pursuant to Section 5.01(a);

(d) current copies of the Organization Documents of each such Domestic Subsidiary, together with minutes of duly called and conducted meetings (or duly effected consent actions) of the Board of Directors, partners, or appropriate committees thereof (and, if required by such Organization Documents or applicable law, of the shareholders, members or partners) of such Person authorizing the actions and the execution and delivery of documents described in this Section 7.12, all certified by the applicable Governmental Authority or appropriate officer, as applicable; and

(e) with respect to any Domestic Subsidiary to become a Borrower or Guarantor hereunder, within three (3) Business Days prior to becoming a Borrower or Guarantor, all "know-your-customer" and customer due diligence documentation satisfactory to the Lenders to the extent such information is requested by the Administrative Agent or the Lenders reasonably promptly after written notice to the Administrative Agent of the proposed joinder of a Borrower or Guarantor.

(f) No later than the date that is sixty (60) days after the Closing Date (or such later date as Administrative Agent shall agree in its sole discretion), the Loan Parties shall cause each of the Mexican Subsidiaries to become a "Guarantor" hereunder by delivering to the Administrative Agent a duly executed Counterpart Agreement and a Mexican Subsidiary Security Agreement, and take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements and certificates as are reasonably requested by the Administrative Agent in connection therewith.

7.13 [Intentionally Omitted].

7.14 Further Assurances. At the Borrowers' cost and expense, upon request of the Administrative Agent, duly execute and deliver or cause to be duly executed and delivered, to the Administrative Agent such further information, instruments, documents, certificates, financing and continuation statements, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Administrative Agent to carry out more effectively the provisions and purposes of this Agreement, the Security Instruments and the other Loan Document, including, to create, continue or preserve the liens and security interests in Collateral (and the perfection and priority thereof) of the Administrative Agent contemplated hereby and by the other Loan Documents and specifically including all Collateral acquired by the Borrowers after the Closing Date.

7.15 Licenses. (a) Keep in full force and effect each License (i) the expiration or termination of which could reasonably be expected to materially adversely affect the realizable value in the use or sale of a material amount of Inventory or (ii) the expiration or termination of which could reasonably be expected to have a Material Adverse Effect (each a "Material License"); (b) promptly notify the Administrative Agent of (i) any material modification to any such Material License that could reasonably be expected to be materially adverse to any Loan Party or the Administrative Agent or any Lender and (ii) entering into any new Material License; (c) pay all Royalties (other than immaterial Royalties or Royalties being Properly Contested) arising under such Material Licenses when due (subject to any cure or grace period applicable thereto); and (d) notify the Administrative Agent of any material default or material breach asserted in writing by any Person to have occurred under any such Material License.

7.16 Environmental Laws. (a) Conduct its operations and keep and maintain its Real Property in material compliance with all Environmental Laws, other than any such non-compliance (including those specifically disclosed in Schedule 6.09) which would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; (b) obtain and renew all environmental permits necessary for its operations and properties, other than any environmental permits the failure of which to obtain would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; and (c) implement any and all investigation, remediation, removal and response actions that are required to comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under or about any of its Real Property other than any such non-compliance which would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; provided, however, that, neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP. As soon as practicable following receipt thereof, deliver to the Administrative Agent, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Holdings or any of its Subsidiaries or by independent consultants, Governmental Authorities or any other Persons, with respect to significant environmental matters at any Real Property of the Loan Parties or their Subsidiaries or with respect to any Environmental Liability or claims that, in any such case, could reasonably be expected to result in liabilities that exceed $25,000 individually or $100,000 in the aggregate for all such Environmental Liabilities and claims.

7.17 Leases, Mortgages and Third-Party Agreements.

(a) Upon request, provide Administrative Agent with copies of all existing and future agreements (including any mortgage, deed of trust or similar security document) entered into between a Loan Party and any landlord, warehouseman, processor, shipper, bailee or other Person that owns, or has a mortgage or similar lien on, any premises at which any Collateral with an aggregate value of $100,000 or greater may be kept or that otherwise may possess any Collateral with an aggregate value of $100,000 or greater (each a "Material Third-Party Agreement").

(b) Except as otherwise expressly permitted hereunder, (i) make all payments and otherwise perform all obligations in respect of all leases and all mortgages, deeds of trust or similar security documents constituting Material Third Party Agreements and not allow such leases to lapse or be terminated (or any rights to renew such leases to be forfeited or cancelled), (ii) notify the Administrative Agent of any default by the applicable Loan Party or Subsidiary thereof with respect to such leases or mortgages, deeds of trust or similar security documents, and (iii) promptly cure any such default by the applicable Loan Party or Subsidiary thereof. If any such default is not so cured, each Loan Party hereby authorizes the Administrative Agent (as its non-fiduciary agent and on its behalf) to, if elected by the Administrative Agent in its sole discretion, make such payments and/or take such other actions as the Administrative Agent may elect in order to cure any such default (whether or not an Event of Default under this Agreement exists at such time). Any payment made by the Administrative Agent pursuant to this Section 7.17(b) shall be deemed a Protective Advance hereunder. Each Loan Party agrees that the Administrative Agent shall have no obligation to exercise any right to cure hereunder, whether or not such right is exercised on any one or more occasions.

7.18 Material Contracts. Perform and observe all the payment terms and other material terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time reasonably requested by the Administrative Agent and, upon reasonable request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do any of the foregoing, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

7.19 Treasury Management Services. Commencing with the Closing Date, each Loan Party agrees to diligently pursue the transition of all of its lockbox deposit accounts and Deposit Accounts to BMO Harris Bank N.A., and commencing with the date which is 120 days after the Closing Date (or such later date as the Administrative Agent may agree), each Loan Party shall maintain all of its lockbox deposit accounts and Deposit Accounts exclusively with BMO Harris Bank N.A. and shall utilize BMO Harris Bank N.A. for its primary disbursement account and other Treasury Management and Other Services.

7.20 PACA and PASA Compliance. Each Loan Party shall take all actions required (including delivery of any required notices and maintaining sales on statutorily required terms) to establish, obtain and preserve the rights and benefits (including under any trust or similar arrangement under PACA or PASA) available to it under PACA and PASA.

7.21 Credit Enhancements. If the Term Loan Agent or any holder of Term Loan Debt receives any additional guaranty, letter of credit, collateral or any other credit enhancement after the Closing Date from any Loan Party or any of their Subsidiaries, each Loan Party shall, and shall cause each of its Subsidiaries to, cause the same to be granted to the Administrative Agent, for the benefit of the Secured Parties, subject to the terms of the Term Loan Intercreditor Agreement. If any Person is included (or added) as a guarantor or borrower under the Term Loan Documents or any assets are included (or added) as collateral under the Term Loan Documents, each Loan Party shall, and shall cause each of its Subsidiaries to, cause such Person or assets, as applicable, to be included (or added) substantially concurrently with such inclusion (addition) under the Term Loan Documents as a Loan Party or Collateral, as applicable, under the Loan Documents in accordance with this Agreement.

7.22 Use of Proceeds of Permitted Series A Convertible Preferred Stock. Notwithstanding anything to the contrary in this Agreement, the Net Cash Proceeds in respect of the Permitted Series A Convertible Preferred Stock shall be retained by Holdings and its Subsidiaries for capital expenditures, working capital purposes and other general corporate purposes of Holdings and its Subsidiaries (other than, and in no event shall any proceeds in respect of the Permitted Series A Convertible Preferred Stock be used for, making Restricted Payments, repayment of Indebtedness for borrowed money (other than repayment of any outstanding Obligations which shall be a permitted use) or any other payments in respect of the Term Loan Debt).

7.23 **IQVIA Report**. On or before February 28, 2023, the Loan Parties shall have delivered to the Administrative Agent and each Lender the final IQVIA report.

7.24 **Retention of Professional Advisor**. Until the Approved Professional Advisor Toggle Date, the Loan Parties shall continue to retain an Approved Professional Advisor as an ongoing consultant to: (A) analyze potential corporate cost savings and assist with optimization of FP&A functions, (B) assist with liquidity management, financial reporting and forecasting, and (C) assist with such other matters as may be reasonably required by the Requisite Lenders with respect to the foregoing items set forth in this Section 7.24.

7.25 **Elevated Reporting; Lender Meetings**. Until the Elevated Reporting Toggle Date:

(a) The Borrowers shall provide to the Administrative Agent and the Lenders, not later than 11:00 a.m. (New York City time) on (i) the first Thursday after the Fourth Amendment Effective Date and (ii) subsequent thereto, the second and fourth Thursday of each month occurring after the Fourth Amendment Effective Date, a 13-week budget and cash flow forecast, which report shall include, among other things, forecasts of revenues/receipts, expenses by category, income and cash position, and financing activities and loan balances, availability, corporate overheads and breakdowns of the foregoing by line of business and otherwise be in form and substance reasonably satisfactory to the Administrative Agent and the Lenders (each a "**Cash Flow Report**" and, the Cash Flow Report delivered on or about the Fourth Amendment Effective Date, the "**Initial Cash Flow Report**") for the Holdings and its Subsidiaries covering the 13-week period that commences with the calendar week ending on the Friday occurring the day after the date on which each Cash Flow Report is delivered and includes the subsequent twelve (12) calendar weeks, in form substantially similar to the Initial Cash Flow Report.

(b) Upon the request of Administrative Agent or the Required Lenders, the Loan Parties shall promptly host a conference call at such time as may be mutually agreed as between the Borrower Agent and the Administrative Agent, to discuss, without limitation, financial statements and other reports delivered pursuant to this Section 7.24, including Cash Flow Reports and variance reports, with relevant members of the Loan Parties' management, the Loan Parties' Approved Advisor, the Administrative Agent and the Lenders; provided that such meetings shall occur not more than once in any given month unless an Event of Default shall have occurred and be continuing.

ARTICLE VIII
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Obligation hereunder shall remain unpaid or unsatisfied, no Loan Party shall, nor shall it permit any Subsidiary thereof to, directly or indirectly:

8.01 **Indebtedness**. Create, incur, assume or suffer to exist any Indebtedness or issue any Disqualified Equity Interest, except:

(a) Indebtedness under the Loan Documents (including, for avoidance of doubt, Indebtedness arising pursuant to Section 2.18 of this Agreement);

(b) the Term Loan Debt, so long as all such Indebtedness is subject to the Term Loan Intercreditor Agreement; provided, however, that the aggregate amount of all Term Loan Debt of all Loan Parties and their Subsidiaries at any one time outstanding shall not exceed $150,000,000 (or, solely in the event the Loan Parties elect, and as of the date thereof satisfy the applicable conditions thereto set forth in the Term Loan Agreement, to draw on the "Multi-Draw Term Loan" (as such term is defined in the Term Loan Agreement), $170,000,000);

(c) any Subordinated Debt, so long as such Subordinated Debt is (i) unsecured and subject to a Subordination Agreement, and (ii) not owed to any Loan Party or Subsidiary or Affiliate thereof;

(d) any other Indebtedness outstanding on the Closing Date and listed on Schedule 8.01;

(e) Guarantees of any Loan Party in respect of Indebtedness otherwise permitted hereunder of any other Loan Party or any of their Subsidiaries; provided that (x) any Guarantee of Indebtedness permitted hereunder that is subordinated to the Obligations shall be subordinated to the Obligations on substantially the same terms as such guaranteed Indebtedness and (y) any Guarantee by a Loan Party of Indebtedness of a Mexican Subsidiary shall only be permitted hereunder to the extent such Guarantee is permitted pursuant to Section 8.01(p);

(f) Credit Product Obligations consisting of obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the Ordinary Course of Business for the purpose of directly mitigating risks reasonably anticipated by such Person associated with liabilities, commitments, investments, assets, cash flows of or property held by, or changes in the value of securities issued by, such Person, and not for purposes of speculation or taking a "market view", and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(g) Indebtedness arising in the Ordinary Course of Business in connection with treasury management and commercial credit card, merchant card and purchase or procurement card services including Treasury Management and Other Services;

(h) Indebtedness in respect of Capital Leases, Synthetic Lease Obligations and purchase money obligations for Equipment within the limitations set forth in Section 8.02(j); provided, however, that the aggregate amount of all such Indebtedness of all Loan Parties and their Subsidiaries at any one time outstanding shall not exceed $10,000,000;

(i) Assumed Indebtedness; provided, however, that the aggregate amount of all such Indebtedness of all Loan Parties and their Subsidiaries at any one time outstanding shall not exceed $2,500,000;

(j) Indebtedness incurred to finance or as part of the consideration for any Permitted Acquisition; provided, that, (i) no Event of Default exists at the time of or would be caused by the incurrence of such Indebtedness and (ii) such Indebtedness (u) does not exceed, in the aggregate for all Loan Parties and their Subsidiaries, for all Permitted Acquisitions on or after the Closing Date, $5,000,000, (v) is unsecured, (w) bears interest (and provides for fees) at a rate (or amount) no greater than the then current arm's length market rate (or amount) for similar Indebtedness, (x) does not require the payment in cash of principal (other than in respect of working capital adjustments) prior to the Maturity Date, (y) has a maturity at least 91 days after the Maturity Date, and (z) is subordinated to the Obligations pursuant to a Subordination Agreement;

(k) the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(l) Indebtedness in respect of any bankers' acceptance, bank guarantees, letters of credit, warehouse receipt or similar facilities entered into in the ordinary course of business in respect of workers' compensation and other casualty claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation and other casualty claims);

(m) Indebtedness incurred or arising in the Ordinary Course of Business (and not in connection with the borrowing of money) in respect of (i) obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms; (ii) performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees and similar instruments or obligations; and (iii) obligations to pay insurance premiums;

(n) Indebtedness representing deferred compensation to employees, consultants or independent contractors incurred in the ordinary course of business;

(o) surety bonds, deposits and similar obligations permitted under Section 8.02(e) or (f);

(p) (i) unsecured Indebtedness of any Loan Party (except for, in each case, any Mexican Subsidiary) owing to any other Loan Party, (ii) unsecured Indebtedness of any Loan Party owing to any Mexican Subsidiary and (iii) unsecured Indebtedness of any Mexican Subsidiary owing to any Loan Party or any other Mexican Subsidiary, so long as (x) in each case of the foregoing clauses (i), (ii) and (iii) such Indebtedness (other than (A) any Indebtedness owing by any Mexican Subsidiary to any Mexican Subsidiary and (B) prior to the Mexican Subsidiary Joinder Date, any Indebtedness of a Mexican Subsidiary owing to a Loan Party) is subordinated pursuant to, and otherwise subject to, the Master Intercompany Note and (y) in the case of clause (iii), the aggregate outstanding principal amount of Indebtedness of a Mexican Subsidiary owing to any Loan Party does not exceed $15,000,000 at any time;

(q) [intentionally omitted];

(r) Earn-Out Obligations, so long as subject to an Earn-Out Subordination Agreement;

(s) Refinancing Indebtedness, so long as the Refinancing Conditions are met with respect thereto;

(t) other unsecured Indebtedness (other than any Indebtedness of the type described in Sections 8.01(a) through (r)) that (x) is not otherwise permitted by Sections 8.01(a) through (r), and (y) does not exceed in outstanding amount, for all Loan Parties and their Subsidiaries, $1,000,000 outstanding at any time); and

(u) unsecured Indebtedness in an aggregate principal amount not to exceed $4,000,000 (plus paid in kind interest to the extent added to such aggregate principal amount); provided that such Indebtedness (i) shall be subordinated in right of payment to the Payment in Full of all Obligations pursuant to the terms of a subordination agreement satisfactory to the Administrative Agent in its sole discretion, (ii) shall not be permitted be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom, (iii) shall only provide for interest, if any, that is paid in kind and not paid in cash, (iv) shall mature not less than 90 days after the Maturity Date, and (v) shall have terms otherwise reasonably satisfactory to the Administrative Agent in its sole discretion.

8.02 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following (the "Permitted Liens"):

(a) Liens in favor of the Administrative Agent pursuant to any Loan Document;

(b) the Term Loan Liens securing the Term Loan Debt permitted under Section 8.01(b), so long as all such Term Loan Liens are subject to the Term Loan Intercreditor Agreement;

(c) Liens existing on the date hereof as described on Schedule 8.02 (setting forth, as of the Closing Date, the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary thereof subject thereto);

(d) Liens for taxes, assessments or other governmental charges, not yet due or which are being Properly Contested, and which in all cases are junior to the Lien of the Administrative Agent;

(e) Liens of carriers, warehousemen, mechanics, materialmen, repairmen, landlords or other like Liens imposed by Law or arising in the Ordinary Course of Business which are not overdue for a period of more than 30 days or which are being Properly Contested;

(f) Liens, pledges or deposits in the Ordinary Course of Business in connection with (i) insurance, workers compensation, unemployment insurance and social security legislation, (ii) contracts, bids, government contracts, and surety, appeal, customs, performance and return-of-money bonds and (iii) other similar obligations (exclusive of obligations in respect of the payment for borrowed money), whether pursuant to contracts, statutory requirements, common law or consensual arrangements, other than any Lien imposed by ERISA or a Foreign Benefit Law;

(g) Liens arising in the Ordinary Course of Business consisting of deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature, in each case, incurred in the Ordinary Course of Business;

(h) Liens with respect to minor imperfections of title and easements, rights-of-way, covenants, consents, reservations, encroachments, variations and zoning and other similar restrictions, charges, encumbrances or title defects affecting Real Property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person and do not materially detract from the value of or materially impair the use by the Loan Parties in the Ordinary Course of Business of the property subject to or to be subject to such encumbrance;

(i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 9.01 or securing appeal or other surety bonds related to such judgments, and which in all cases are junior to the Lien of the Administrative Agent;

(j) Liens securing Indebtedness in respect of Capital Leases, Synthetic Lease Obligations and purchase money obligations for Equipment permitted under Section 8.01(h); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or Fair Market Value, whichever is lower, of the property being acquired on the date of acquisition;

(k) operating leases or subleases granted by the Loan Parties to any other Person in the Ordinary Course of Business;

(l) Liens (i) of a collection bank arising under Section 4-210 of the UCC or any comparable or successor provision on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business and (iii) in favor of banking institutions accepting deposits in the ordinary course of business, in the case of clauses (i) through (iii) to the extent such Liens (x) arise as a matter of law encumbering deposits (including the right of set-off) and (y) are within the general parameters customary in the banking industry;

(m) Liens in favor of customs and revenue authorities imposed by Law to secure payment of customs duties in connection with the importation of goods and arising in the Ordinary Course of Business which are not overdue for a period of more than 30 days or which are being Properly Contested;

(n) Liens securing any Indebtedness incurred pursuant to Section 8.01(s), so long as the Refinancing Conditions are satisfied with respect thereto; and

(o) Liens securing obligations under any Sale and Leaseback Transactions permitted by Section 8.15 and Liens on assets subject to any Sale and Leaseback Transaction.

8.03 **Investments**. Make or maintain any Investments, other than the following:

(a) Investments held by the Loan Parties in the form of Cash Equivalents that are in a Controlled Deposit Account;

(b) loans and advances to officers, directors and employees of the Loan Parties and their Subsidiaries made in the Ordinary Course of Business in an aggregate amount at any one time outstanding not to exceed $250,000;

(c) intercompany loans to the extent permitted under Section 8.01(p);

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the Ordinary Course of Business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled Account Debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by Section 8.01;

(f) [intentionally omitted];

(g) Permitted Acquisitions;

(h) any Loan Party may make any other Investment (other than any Investment in or to a Mexican Subsidiary) that is not an Acquisition solely if, as of the date of any such Investment and after giving Pro Forma Effect thereto, the Payment Conditions are satisfied with respect thereto;

(i) loans, investments, advances or prepayments made to growers, and prepayments on purchase contracts with growers, in each case (A) made or entered into in the ordinary course of business and (B) to the extent such loans, investments, advances and prepayments, as applicable, are reflected in the projections furnished to the Administrative Agent pursuant to Section 7.01(c), not to exceed $15,000,000 in the aggregate for all such loans, investments, advances and prepayments permitted pursuant to this clause (i) at any one time outstanding; and

(j) the Windset Investment in existence and in effect on the Closing Date.

Notwithstanding anything in this Section 8.03 to the contrary, in no event shall Holdings, Lifecore or any of their direct or indirect Subsidiaries (other than Curation or any of its direct or indirect Subsidiaries) make any Investment in Curation or any of its direct or indirect Subsidiaries on or after the Fourth Amendment Effective Date without the written consent of the Administrative Agent other than Investments in Curation or any of its direct or indirect Subsidiaries in the ordinary course of business consistent with the past practices of Holdings and its Subsidiaries in an aggregate amount not to exceed $6,000,000 during the term of this Agreement (collectively, "Permitted Curation Investments").

8.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, except that, so long as no Event of Default shall have occurred or be continuing, or would result therefrom:

(a) any Subsidiary of a Loan Party may merge or consolidate with or liquidate or dissolve into such Loan Party; provided, that (i) if such Loan Party is a Borrower, a Borrower shall be the continuing or surviving Person, (ii) if such Loan Party is not a Mexican Subsidiary, a Loan Party that is not a Mexican Subsidiary shall be the continuing or surviving Person, and (iii) in any other case, a Loan Party shall be the continuing or surviving Person;

(b) in connection with a Permitted Acquisition, any Subsidiary of a Loan Party may merge with or into or consolidate with any other Person or permit any other Person to merge with or into or consolidate with it; provided, that (i) if such Loan Party is a Borrower, the Person surviving such merger shall be a Borrower, (ii) if such Loan Party is not a Mexican Subsidiary, the Person surviving such merger shall be a Loan Party that is not a Mexican Subsidiary, and (iii) in any other case, the Person surviving such merger shall be a Loan Party; and

(c) any Subsidiary that is not a Loan Party may merge into any other Subsidiary that is not a Loan Party; provided that, when any wholly-owned Subsidiary is merging with another Subsidiary that is not wholly-owned, the wholly-owned Subsidiary shall be the continuing or surviving Person.

8.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions to non-Affiliates (i) of Inventory in the Ordinary Course of Business, (ii) that consist of the sale or discount in the Ordinary Course of Business of overdue accounts receivable that are not Eligible Accounts in connection with the compromise or collection thereof in the Ordinary Course of Business, and (iii) so long as no Event of Default exists or is created thereby, of Cash Equivalents in the Ordinary Course of Business (provided that, in each of cases of clauses (i), (ii), and (iii), the Net Cash Proceeds from such Disposition shall be deposited in a Controlled Deposit Account);

(b) Dispositions in the Ordinary Course of Business of Equipment or fixed assets that are obsolete and worn out for so long as (i) no Event of Default has occurred and is continuing at the time of such Disposition and (ii) all proceeds thereof are applied in accordance with Section 2.06(b);

(c) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other Intellectual Property rights in the Ordinary Course of Business;

(d) (i) the lapse of immaterial registered patents, trademarks, copyrights and other Intellectual Property to the extent maintaining such registered Intellectual Property is not economically desirable in the conduct of its business or (ii) the abandonment of patents, trademarks, copyrights, or other intellectual property rights in the Ordinary Course of Business so long as in each case under clauses (i) and (ii), such lapse or abandonment is not adverse to the interests of the Secured Parties;

(e) (i) Dispositions among the Loan Parties (other than Mexican Subsidiaries), (ii) Dispositions by any Subsidiary of a Loan Party to any Loan Party (other than Mexican Subsidiaries), and (iii) Dispositions by any Mexican Subsidiary to any other Mexican Subsidiary;

(f) the leasing or subleasing of assets (other than sale and leaseback transactions prohibited under Section 8.15) in the Ordinary Course of Business;

(g) Dispositions that constitute (i) an Investment permitted under Section 8.03, (ii) a Lien permitted under Section 8.02, (iii) a merger, dissolution, consolidation or liquidation permitted under Section 8.04(a), or (iv) a Restricted Payment permitted under Section 8.06;

(h) Dispositions that result from a casualty or condemnation in respect of such property or assets and is not otherwise an Event of Default, so long as the Net Cash Proceeds thereof are applied in accordance with Sections 2.06(b) and 2.06(c) or reinvested in accordance with Section 2.06(d);

(i) Dispositions (other than Dispositions of Accounts, Inventory or any other ABL Priority Collateral) not permitted by any other clause of this Section 8.05, so long as (i) at the time of any such Disposition, no Event of Default shall have occurred or be continuing, or would result therefrom, (ii) the aggregate Fair Market Value of all assets Disposed in reliance upon this paragraph (i) shall not exceed $500,000 during any Fiscal Year and $2,000,000 during the term of this Agreement, and (iii) the Net Cash Proceeds thereof are applied in accordance with Sections 2.06(b) and 2.06(c) or reinvested in accordance with Section 2.06(d);

(j) (i) Dispositions (other than Dispositions of Accounts, Inventory or any other ABL Priority Collateral) for Fair Market Value, so long as (A) at the time of any such Disposition, no Event of Default shall exist or shall result therefrom, (B) at least 75% of the consideration for such Disposition shall consist of Cash or Cash Equivalents paid upon the closing of such Disposition, (C) the Net Cash Proceeds thereof are applied in accordance with Sections 2.06(b) and 2.06(c) or reinvested in accordance with Section 2.06(d) and (D) the aggregate Fair Market Value of all assets Disposed in reliance upon this paragraph (j(i)) shall not exceed $250,000 in any Fiscal Year; and (ii) Dispositions for Fair Market Value, so long as (A) at the time of any such Disposition, no Event of Default shall exist or shall result therefrom, (B) with respect to any such Disposition with a purchase price in excess of $2,000,000, (I) at least 90% of the consideration for such Disposition at or above $2,000,000 shall consist of Cash or Cash Equivalents paid upon the closing of such Disposition or at such later date as a result of customary post-closing purchase price adjustments when such purchase price adjustment is due, as the case may be, and (II) at least 75% of the consideration for such Disposition at or under $2,000,000 shall consist of Cash or Cash Equivalents paid upon the closing of such Disposition or at such later date as a result of customary post-closing purchase price adjustments when such purchase price adjustment is due, as the case may be; (C) the Net Cash Proceeds thereof are applied in accordance with Sections 2.06(b) and 2.06(c) or reinvested in accordance with Section 2.06(d) and (D) the aggregate Fair Market Value of all assets Disposed in reliance upon this paragraph (j)(ii) shall not exceed $5,000,000 during the term of this Agreement;

(k) Dispositions of the Windset Investment; and

(l) the Permitted Curation Sale.

Notwithstanding anything to the contrary set forth in this Section 8.05 or in Sections 8.03, 8.04, 8.06 or 8.08, in no event shall any Loan Party or any Subsidiary sell, lease, convey, assign, transfer or otherwise dispose of Intellectual Property of the Loan Parties or any Subsidiary to any person who is, (a) in the case of a disposition by any Loan Party, not a Loan Party, or (b) in the case of a non-Loan Party, not Holdings or a Subsidiary, in each case of (a) and (b), other than non-exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles in the Ordinary Course of Business.

Notwithstanding anything in this Section 8.05 to the contrary, in no event shall Holdings, Lifecore or any of their direct or indirect Subsidiaries (other than Curation or any of its direct or indirect Subsidiaries) enter into any Disposition with Curation or any of its direct or indirect Subsidiaries on or after the Fourth Amendment Effective Date without the written consent of the Administrative Agent other than Permitted Curation Investments, in each case, to the extent constituting Dispositions.

8.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary of a Loan Party may make Restricted Payments, directly or indirectly, to such Loan Party (including in respect of Permitted Tax Distributions);

(b) each Borrower may declare and make dividend payments or other distributions (other than to any Mexican Subsidiary), in each case payable solely in the common stock or other common Equity Interests of such Person;

(c) Holdings may issue stock options, equity grants or similar instruments in the Equity Interests of Holdings to the directors, officers and/or employees of Holdings or one or more of its Subsidiaries in anticipation of a spin-off of Lifecore so long as no such issuance thereof would result in an Event of Default;

(d) Holdings may purchase, redeem or otherwise acquire shares of its common stock or other common Equity Interests or warrants or options to acquire any such shares in connection with customary employee or management agreements, plans or arrangements, (i) all in an aggregate amount not to exceed $250,000 during the term of this Agreement or (ii) in connection with (x) the forfeiture of such Equity Interests or warrants or options, or (y) the payment of exercise price and/or tax withholding obligations with respect to the vesting, settlement and/or exercise of such Equity Interest or warrants or options; and

(e) any Borrower may make any other Restricted Payment (other than to any Mexican Subsidiary) if, as of the date of any such Restricted Payment and after giving Pro Forma Effect thereto, the Payment Conditions are satisfied with respect thereto.

Notwithstanding anything in this Section 8.06 to the contrary, in no event shall Holdings, Lifecore or any of their respective direct or indirect Subsidiaries (other than Curation or any of its direct or indirect Subsidiaries) make any Restricted Payment to Curation or any of its direct or indirect Subsidiaries on or after the Fourth Amendment Effective Date without the written consent of the Administrative Agent other than Permitted Curation Investments, in each case, to the extent constituting Restricted Payments.

8.07 Change in Nature of Business. Engage in any material line of business, other than the Core Business.

8.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of any Loan Party, whether or not in the Ordinary Course of Business, other than:

(a) transactions on fair and reasonable terms substantially as favorable to such Loan Party or Subsidiary thereof as would be obtainable by such Loan Party or such Subsidiary thereof at the time in a comparable arm's length transaction with a non-Affiliate;

(b) transactions between or among the Loan Parties, so long as not otherwise prohibited under this Agreement;

(c) transactions pursuant to agreements in existence or contemplated on the Closing Date as set forth on Schedule 8.08; and

(d) the payment of reasonable and customary fees paid to members of the Board of Directors of Holdings and its Subsidiaries, and compensation arrangements for officers and other employees of Holdings and its Subsidiaries entered into in the Ordinary Course of Business; and

(e) (i) Restricted Payments permitted by Section 8.06, (ii) Investments permitted by Sections 8.03(b), (c), and (f), (iii) Indebtedness permitted by Section 8.01(p) and (iv) Dispositions permitted by Section 8.05.

8.09 Burdensome Agreements. Enter into any Contractual Obligation (other than this Agreement, any other Loan Document or any Term Loan Document) that:

(a) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; or

(b) limits the ability (i) of any Subsidiary to make Restricted Payments to any Loan Party or to otherwise transfer property to any Loan Party, (ii) of any Subsidiary of a Loan Party to Guarantee the Indebtedness of the Borrowers or become a direct Borrower hereunder, or (iii) of any Borrower or any Subsidiary thereof to create, incur, assume or suffer to exist Liens on property of such Person;

provided that (i) clause (a) of the foregoing shall not apply to customary provisions in leases restricting the assignment thereof and (ii) clause (b) of the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder.

8.10 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, including through or by any Controlled Person, and whether immediately, incidentally or ultimately, (a) in any manner that might cause the Credit Extension or the application of such proceeds to violate Regulations T, U or X of the FRB, in each case as in effect on the date or dates of such Credit Extension and such use of proceeds, or (b) (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) to fund, finance or facilitate any activities, business or transaction of or with any Sanctioned Person or in any Designated Jurisdiction, or (iii) in any other manner that would result in the violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws applicable to any party hereto.

8.11 Prepayment of Indebtedness; Amendment to Material Agreements.

(a) Make or pay, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Consolidated Funded Indebtedness or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Indebtedness), except:

(i) payments when due of regularly scheduled interest, principal payments and mandatory prepayments (other than in respect of "excess cash flow") on the Term Loan Debt and any other Indebtedness (other than Subordinated Debt);

(ii) (A) "excess cash flow" mandatory prepayments in respect of Term Loan Debt under the Term Loan Agreement, and (B) voluntary prepayments of the Term Loan Debt under the Term Loan Agreement, in each case, to the extent not prohibited by the Term Loan Intercreditor Agreement;

(iii) payments when due of regularly scheduled interest and principal payments on any Subordinated Debt, solely (x) if, as of the date of any such payment and after giving Pro Forma Effect thereto, the Payment Conditions are satisfied with respect thereto, and (y) to the extent such payments are permitted pursuant to (A) the Subordination Agreement entered into with respect to such Subordinated Debt and (B) the Term Loan Documents;

(iv) any Restricted Payments, solely to the extent expressly permitted by Section 8.06;

(v) the incurrence of Refinancing Indebtedness, solely to the extent expressly permitted by Section 8.01(r); and

(vi) payments of secured Indebtedness that becomes due as a result of a voluntary sale or transfer permitted hereunder of the property securing such Indebtedness.

(b) Amend, modify or change in any manner (i) any term or condition of the Term Loan Debt Documents, except to the extent permitted by the Term Loan Intercreditor Agreement, or (ii) any term or condition of any Subordinated Debt Documents, except to the extent permitted by the applicable Subordination Agreement.

(c) Amend, modify or change in any manner any term or condition of any Indebtedness permitted under Section 8.01 outstanding on the Closing Date (other than the Term Loan Debt which is subject to the immediately preceding clause (b)), in each case so that the terms and conditions thereof are less favorable in any material respect to the Administrative Agent and the Lenders than the terms of such Indebtedness as of the Closing Date.

8.12 Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio, determined on a Pro Forma Basis as of (i) the last day of the Measurement Period most recently ended before the commencement of a Financial Covenant Trigger Period and (ii) the last day of each Measurement Period thereafter ending during any Financial Covenant Trigger Period to be less than 1.00 to 1.00 for such Measurement Period.

8.13 Creation of New Subsidiaries. Create or acquire any new Subsidiary after the Closing Date, other than Domestic Subsidiaries to the extent the Loan Parties have satisfied Section 7.12 with respect to the creation or acquisition thereof.

8.14 Securities of Subsidiaries. Permit any Subsidiary thereof to issue any Equity Interests (whether for value or otherwise) to any Person other than a Loan Party.

8.15 Sale and Leaseback. Enter into any agreement or arrangement with any other Person providing for the leasing by any Loan Party or any Subsidiary thereof of real or personal property which has been or is to be sold or transferred by any Loan Party or any Subsidiary thereof to such other Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of a Loan Party or any Subsidiary (a "Sale and Leaseback Transaction"), except for any such sale of any fixed or capital assets by the Loan Parties or any Subsidiary that is made for cash consideration in an amount not less than the fair value of such fixed or capital asset and is consummated within 90 days after such Loan Party or such Subsidiary acquires or completes the construction of such fixed or capital asset.

8.16 Organization Documents; Fiscal Year. (a) Amend, modify or otherwise change any of its Organization Documents in any manner that could have a material adverse effect on the interests of the Secured Parties (provided that this Section 8.16 shall not prohibit the Mexican Subsidiary Reorganization Activities prior to the Mexican Subsidiary Joinder Date), or (b) change its Fiscal Year.

8.17 Economic Sanctions Laws and Regulations. Permit any Loan Party, Subsidiary thereof, or other Controlled Persons or any authorized agent of such Loan Party or their respective Subsidiaries or any other Controlled Persons to conduct, transact, engage in, or facilitate, any business or activity on behalf of such Loan Party or its Subsidiaries in violation of the Foreign Activities Laws.

ARTICLE IX
EVENTS OF DEFAULT AND REMEDIES

9.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. Any Borrower fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any Letter of Credit Obligation, or (ii) within three (3) days after the same becomes due, any interest on any Loan or on any Letter of Credit Obligation, or any commitment or other fee due hereunder, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained (i) in any of Sections 7.01(a), 7.01(b), 7.03, 7.05(a), 7.07, 7.08(a), 7.08(e), 7.10, 7.11, 7.12, 7.19, 7.21, 7.22, 7.23, 7.24, 7.25 or Article VIII, or (ii) in any of Sections 4.04, 7.02(a), 7.02(b), 7.02(c), or 7.04 and such failure continues for three (3) or more Business Days; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the earlier of (x) receipt of notice of such default by a Responsible Officer of the Borrower Agent from the Administrative Agent, or (y) any Responsible Officer of any Loan Party becomes aware of such default; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party or its Subsidiaries herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading when made or deemed made in any material respect; or

(e) Cross-Default. (i) With respect to (x) the Term Loan Debt or any Subordinated Debt, (y) any other Indebtedness or guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $2,500,000, or (z) any Subordinated Debt, in the case of (x) (y), or (z) any Loan Party or its Subsidiaries (A) fails to make any payment when due (whether by

scheduled maturity, required prepayment, acceleration, demand, or otherwise, and after passage of any grace period) in respect of any such Indebtedness or guarantee, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, and such default continues for more than the grace or cure period, if any, therein specified, the effect of which default or other event is to cause, or to permit the holder of such Indebtedness or beneficiary of such guarantee (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as defined in such Swap Contract) under such Swap Contract as to which any Loan Party or any Subsidiary is an Affected Party (as defined in such Swap Contract) and, in either event, the Swap Termination Value owed by a Loan Party or any Subsidiary as a result thereof is greater than $2,500,000 and such amount remains unpaid; or

(f) Insolvency Events. Any Insolvency Event shall occur with respect to any Loan Party, in each case of the foregoing, other than a Consensual Proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any Loan Party and is not released, vacated or fully bonded within 60 days after its issue or levy; (iii) any Loan Party is enjoined, restrained or in any way prevented by any Governmental Authority from conducting any material part of its business; (iv) any Loan Party suffers the loss, revocation or termination of any material license, permit, lease or agreement necessary to its business; (v) there is a cessation of any material part of any Loan Party's business for a material period of time; or (vi) any material Collateral or property or assets of a Loan Party is taken or impaired through condemnation; or

(h) Judgments. (i) There is entered against any Loan Party one or more final judgments, orders or any court approved settlement or other settlement for the payment of money in an aggregate amount exceeding $3,000,000 (to the extent not covered by insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments or orders (including for injunctive relief), court approved settlements or other settlements that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in the case of a judgment or order, such judgment or order remains unvacated and unpaid and there is a period of 60 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan or the PBGC and which would reasonably be expected to result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan and which would reasonably be expected to result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. Any Loan Document, or any Lien granted thereunder, at any time after its execution and delivery and for any reason, other than as expressly permitted hereunder or upon Payment in Full, ceases to be in full force and effect (except with respect to immaterial assets); or any Borrower or any other Person contests in any manner the validity or enforceability of any Loan Document or any Lien granted to the Administrative Agent pursuant to the Security Instruments; or any Borrower denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or any party to the Intercreditor Agreement or any Subordination Agreement contests in any manner the validity or enforceability of the Intercreditor Agreement or any Subordination Agreement or denies that it has any liability or obligation thereunder or purports to revoke, terminate or rescind any Subordination Agreement; or

(k) Breach of Contractual Obligation. Any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any contract to which it is party or fails to observe or perform any other agreement or condition relating to any such contract to which it is party or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such contract to terminate such contract, (i) if such contract is a Material Contract or (ii) in each case, which would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; or

(l) Subordination Provisions. (i) Any Subordination Provisions shall fail to be enforceable by the Lenders (which have not effectively waived the benefits thereof) in accordance with the terms thereof; or (ii) the principal or interest on any Loan, any Letter of Credit Obligation or other Loan Obligations shall fail to constitute "designated senior debt" (or any other similar term) under any document, instrument or agreement evidencing Subordinated Debt; or (iii) any Loan Party or any of its Subsidiaries shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, or (B) that any of such Subordination Provisions exist for the benefit of any Secured Party; or (iv) any Loan Party or any Subsidiary thereof or any other Person fails to observe or perform any of the Subordination Provisions; or

(m) Uninsured Loss. A loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance exceeds $4,000,000; or

(n) Change of Control. There occurs any Change of Control; or

(o) Criminal Adverse Proceeding. Notwithstanding the provisions of Section 7.08, the initiation of any criminal proceeding against any Loan Party, their Subsidiaries, or any of their current directors or officers as evidenced by the filing of charges or presentation of

allegations by a regulatory authority (but excluding any deferred prosecution proceedings so long as the applicable Loan Parties, Subsidiaries, directors or officers are in compliance with the terms of such deferred prosecution agreement) arising from or concerning the investigations disclosed in due diligence pursuant to Sections 5.01(g), 6.06 and 6.09.

9.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may, and at the direction of the Required Lenders shall, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the Letter of Credit Issuer to make Letter of Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Loan Obligations owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;

(c) require that the Borrowers Cash Collateralize the Letter of Credit Obligations (in an amount equal to the then Outstanding Amount thereof) or any other Loan Obligations that are contingent or not yet due and payable in amount determined by the Administrative Agent in accordance with this Agreement; and

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

provided, however, that upon the occurrence of an Event of Default under Section 9.01(f), the obligation of each Lender to make Loans and any obligation of the Letter of Credit Issuer to make Letter of Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize the Letter of Credit Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

9.03 Application of Funds.

(a) Subject to Section 9.03(b) below, all payments made by Loan Parties in respect of the Obligations shall be applied (a) first, as specifically required in the Loan Documents; (b) second, to Obligations then due and owing; (b) third, to other Obligations specified by Borrower Agent; and (c) fourth, as determined by the Administrative Agent in its discretion.

(b) Notwithstanding any provision to the contrary contained herein, after the exercise of remedies provided for in Section 9.02 (or after the Loans have automatically become immediately due and payable and the Letter of Credit Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 9.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.16 and 2.17, be applied by the Administrative Agent in the following order:

First, to all fees, indemnities, expenses and other amounts (including reasonable fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article IV) due to the Administrative Agent in its capacity as such, until paid in full;

Second, to all Protective Advances and unreimbursed Overadvances payable to the Administrative Agent until paid in full;

Third, to all amounts owing to the Swing Line Lender for outstanding Swing Line Loans until paid in full;

Fourth, to that portion of the Loan Obligations constituting fees, indemnities and other amounts (other than principal, interest, Letter of Credit Fees and other Obligations expressly described in clauses Fifth through Eighth below) payable to the Lenders and the Letter of Credit Issuer (including reasonable fees, charges and disbursements of counsel to the respective Lenders and the Letter of Credit Issuer and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Fourth payable to them until paid in full;

Fifth, to that portion of the Loan Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, Letter of Credit Borrowings and other Loan Obligations, ratably among the Lenders and the Letter of Credit Issuer in proportion to the respective amounts described in this clause Fifth payable to them until paid in full;

Sixth, to (i) that portion of the Obligations constituting unpaid principal of the Loans and Letter of Credit Borrowings and to Cash Collateralize that portion of Letter of Credit Obligations comprising the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrowers and (ii) the payment of Priority Swap Obligations to the extent a Credit Product Reserve has been established therefor, ratably among the Lenders, Letter of Credit Issuer and the applicable Credit Product Providers in proportion to the respective amounts described in this clause Sixth payable to them until paid in full;

Seventh, to payment of Conforming Credit Product Obligations (other than Priority Swap Obligations to the extent paid under clause Sixth above) ratably to the Credit Product Providers in proportion to the respective amounts described in this clause Seventh payable to them until paid in full;

Eighth, to all other Obligations (including Credit Product Obligations to the extent not paid under clauses Sixth or Seventh above) that are due and payable to the Administrative Agent and the other Secured Parties, or any of them, on such date, ratably based on the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date until paid in full; and

Last, the balance, if any, after Payment in Full, to the Borrowers or as otherwise required by Law.

(c) Subject to Sections 2.03(c) and 2.17, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Sixth above shall be applied to satisfy drawings under such Letters of Credit as they occur. Amounts distributed with respect to any Credit Product Obligations shall be the lesser of (i) the maximum Credit Product Obligations last reported to the Administrative Agent or (ii) the actual Credit Product Obligations as calculated by the methodology reported to the Administrative Agent for determining the amount due. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Credit Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Credit Product Provider. The allocations set forth in this Section are solely to determine the rights and priorities of Administrative Agent and Secured Parties as among themselves, and may be changed by agreement among them without the consent of any Borrower. This Section is not for the benefit of or enforceable by any Loan Party.

(d) For purposes of Section 9.03(b), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Event, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any proceeding under Debtor Relief Laws.

(e) Administrative Agent shall not be liable for any application of amounts made by it in good faith under this Section 9.03, notwithstanding the fact that any such application is subsequently determined to have been made in error.

ARTICLE X
ADMINISTRATIVE AGENT

10.01 Appointment and Authority. Each of the Lenders and the Letter of Credit Issuer hereby irrevocably appoints BMO to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Letter of Credit Issuer, and no Loan Party shall have rights as a third party beneficiary of any of such provisions. The Administrative Agent alone shall be authorized to determine whether any Accounts or Inventory constitute Eligible Accounts or Eligible Inventory, or whether to impose or release any Reserve, or whether any conditions to funding any Loan or to issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Administrative Agent from liability to any Lender or other Person for any error in judgment or mistake.

10.02 Rights as a Lender. The Person serving as the 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 or unless the context otherwise requires, include the Person serving as the 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 the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

10.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

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

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), 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 Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable to any other Secured Party for any action taken or not taken by it under or in connection with the Loan Documents, except for direct (as opposed to consequential) losses directly and solely caused by the Administrative Agent's gross negligence or willful misconduct. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the

request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 9.02). The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower Agent, a Lender or the Letter of Credit Issuer.

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 this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.04 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit that by its terms must be fulfilled to the satisfaction of a Lender or the Letter of Credit Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Letter of Credit Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the Letter of Credit Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), 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.

10.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective 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.

The Administrative Agent and the Lenders hereby appoint, authorize and designate GLAS as MXN Collateral Agent: (i) to act as collateral agent for the benefit of the Secured Parties in respect of any Collateral located or registered in Mexico from time to time, (ii) as an agent (*comisionista*) under the terms of Articles 273 and 274 of the Mexican Commerce Code (*Código de Comercio*) and (iii) to take such action on its behalf under the provisions of the Mexican Collateral Documents and the Term Loan Intercreditor Agreement and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of the MXN Collateral Agent by the terms thereof and such other powers as are reasonably incidental hereto and thereto. The duties of the MXN Collateral Agent under the Mexican Collateral Documents and the Term Loan Intercreditor Agreement are solely mechanical and administrative in nature. The MXN Collateral Agent may perform any of its duties under the Mexican Collateral Documents and the Term Loan Intercreditor Agreement by or through any appointed sub-agents and any of their respective affiliates, officers, directors, agents or employees. Each party to this Agreement acknowledges and consents to the undertaking of the MXN Collateral Agent set forth in this Section 10.05.

The MXN Collateral Agent hereby agrees to act in its capacity subject to the express conditions contained herein and in the other Loan Documents, as applicable. This paragraph is solely for the benefit of the Administrative Agent and the Lenders and no Loan Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under the Mexican Collateral Documents and the Term Loan Intercreditor Agreement, the MXN Collateral Agent shall act solely at the written direction of the Administrative Agent and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Loan Party or any of their respective Subsidiaries, or any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. The MXN Collateral Agent shall have no responsibility for or liability with respect to monitoring compliance of any other party to this Agreement, any other Loan Document or any other document related hereto or thereto.

GLAS, in its capacity as the MXN Collateral Agent hereby agrees to act solely upon the instruction and at the written direction of the Administrative Agent with respect to all acts, omissions or matters taken or not take by GLAS under this Agreement and/or any other Loan Document to which it is a party. It is understood that the MXN Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement if it shall not have received such written instruction, advice or concurrence of the Administrative Agent. This provision is intended solely for the benefit of the MXN Collateral Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

For the avoidance of doubt and notwithstanding anything to the contrary in any Loan Document with respect to the responsibilities of the MXN Collateral Agent, in the event of inconsistency between the terms of this Agreement and any other Loan Document, the terms of this Agreement shall prevail.

Notwithstanding anything in the Loan Documents to the contrary, in no event shall the MXN Collateral Agent be responsible or held liable for any defect, irregularity, omission or error in any instrument, document or financing statement evidencing a security interest nor shall it be responsible for any preparation, filing, recording, perfection, re-recording, re-filing or maintenance of any financing statement, perfection statement, continuation statement or other instrument in any public office or otherwise ensuring the perfection or maintenance of any security interest granted hereunder or pursuant to any Loan Document. The MXN Collateral Agent will have no additional duty as to any Collateral in its

possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto.

None of the provisions in any Loan Document shall require the MXN Collateral Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties under any Loan Document, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing the repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it, for which the MXN Collateral Agent may decline to act unless it received indemnity reasonably satisfactory to it.

The MXN Collateral Agent shall not be required to exercise any of the rights or powers vested in it by any Loan Documents or to institute, conduct or defend any litigation under any Loan Document or in relation to any Loan Document, but shall be required to act or refrain from acting (and shall be fully protected in acting or refraining from acting) upon the request, order or direction of the Administrative Agent, subject, with respect to Term Loan Priority Collateral, to the provisions of the Term Loan Intercreditor Agreement; provided, that the MXN Collateral Agent shall not be required to take any action hereunder at the request, order or discretion of the Administrative Agent or otherwise if the taking of such action, in the reasonable determination of the MXN Collateral Agent, (i) shall be in violation of any applicable law or contrary to any provision of this Agreement, (ii) shall expose the MXN Collateral Agent to liability hereunder or otherwise (unless it has received indemnity which it reasonably deems to be satisfactory with respect thereto), (iii) would subject the MXN Collateral Agent to a tax in any jurisdiction where it is not then subject to a tax or (iv) would require the MXN Collateral Agent to qualify to do business in any jurisdiction where it is not then so qualified.

Except as expressly provided herein, the MXN Collateral Agent shall not be under any duty or obligation to take any affirmative action to exercise or enforce any power, right or remedy available to it under the Mexican Collateral Documents and the Term Loan Intercreditor Agreement unless and until (and to the extent) expressly so directed by the Administrative Agent. The MXN Collateral Agent shall not be deemed to have notice or knowledge of any matter hereunder, including an Event of Default, unless a responsible officer of the MXN Collateral Agent has received written notice of default thereof.

If, in performing its duties under the Mexican Collateral Documents and the Term Loan Intercreditor Agreement, the MXN Collateral Agent is required to decide between alternative courses of action, the MXN Collateral Agent may request written instructions from the Administrative Agent as to the course of action desired by it. If the MXN Collateral Agent does not receive such instructions within one (1) Business Day prior to when action is required to be taken or not taken, then the MXN Collateral Agent shall refrain from taking any such courses of action. The MXN Collateral Agent shall be entitled to rely on the advice of legal counsel in performing its duties hereunder and shall be deemed to have acted in good faith if it acts in accordance with such advice. The MXN Collateral Agent shall be fully protected in acting or refraining from any such courses of action in accordance with the terms herein.

All of the rights, protections, immunities and indemnities granted to the MXN Collateral Agent in this Agreement shall apply in each Loan Document to which it is a party as if the same were set forth therein.

Notwithstanding anything to the contrary in this Agreement, the Administrative Agent may, in its sole discretion at any time, remove and/or replace the MXN Collateral Agent upon written notice to the MXN Collateral Agent.

It is expressly understood and agreed by the parties hereto that GLAS is party to this Agreement, not individually or personally but solely as the MXN Collateral Agent under the Loan Documents, and solely for the purpose of exercising the powers and authority conferred and vested in it under this Agreement and the Term Loan Intercreditor Agreement. The MXN Collateral Agent assumes no responsibility for the correctness of the recitals contained herein and shall not be responsible or accountable in any way whatsoever for or with respect to the validity, execution or sufficiency of the Loan Documents and makes no representation with respect thereto. In connection with the MXN Collateral Agent entering into and in the performance of its duties under any of the Loan Documents, to the extent not already provided for herein or therein, the MXN Collateral Agent shall be entitled to the benefit of every provision of this Agreement limiting the liability of or affording rights, privileges, protections, exculpations, immunities, indemnities or benefits to the MXN Collateral Agent as if they were expressly set forth therein mutatis mutandis. The MXN Collateral Agent shall not be in any way liable or responsible to any other party hereto for any loss or damage arising from any act, default omission or misconduct on the part of any delegate provided the MXN Collateral Agent has acted with due care in selecting such delegate.

10.06 Resignation of the Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the Letter of Credit Issuer and the Borrower Agent. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower Agent, to appoint a successor Administrative Agent, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the Letter of Credit Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower Agent and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Administrative Agent on behalf of the Lenders or the Letter of Credit Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Letter of Credit Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as the Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same

as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as the Administrative Agent.

Any resignation by BMO as the Administrative Agent pursuant to this Section shall also constitute its resignation as Letter of Credit Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as the Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Letter of Credit Issuer and Swing Line Lender, (b) the retiring Letter of Credit Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor Letter of Credit Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Letter of Credit Issuer to effectively assume the obligations of the retiring Letter of Credit Issuer with respect to such Letters of Credit.

10.07 Non-Reliance on the Administrative Agent and Other Lenders. Each Lender and the Letter of Credit Issuer 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 and the Letter of Credit Issuer also acknowledges that it will, 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 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 any related agreement or any document furnished hereunder or thereunder.

10.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, or Documentation Agents listed on the cover page hereof shall have any rights, powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Letter of Credit Issuer hereunder.

10.09 The Administrative Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letter of Credit Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Letter of Credit Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Letter of Credit Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Letter of Credit Issuer and the Administrative Agent under Sections 2.03(h), 2.09 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Letter of Credit Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Letter of Credit Issuer, 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 2.09 and 10.04.

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

The Loan Parties and the Secured Parties hereby irrevocably authorize the Administrative Agent, based upon the instruction of the Required Lenders, to (a) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Section 363 of the Bankruptcy Code of the United States or any similar Laws in any other jurisdictions to which a Loan Party is subject, or (b) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of the Administrative Agent to credit bid and purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of the Administrative Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Secured Parties whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase). Upon request by the Administrative Agent or the Borrower Agent at any time, the Secured Parties will confirm in writing the Administrative Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 10.09.

10.10 [Intentionally Omitted].

10.11 **Collateral Matters**. The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion:

(a) to release any Lien on any Collateral (i) upon the occurrence of the Facility Termination Date, (ii) that is Disposed or to be Disposed as part of or in connection with any Disposition permitted hereunder or under any other Loan Document, or (iii) subject to Section 11.01, if approved, authorized or ratified in writing by the Required Lenders;

(b) to release or subordinate any Lien (and any Indebtedness secured thereby) on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property (i) that is permitted by Section 8.02(i), so long as the Borrower Agent shall have delivered to the Administrative Agent on or prior to the date of release or subordination, as the case may be, a certificate of a Responsible Officer certifying that such Lien (and the Indebtedness secured thereby) is permitted by Section 8.02(i) (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), or (ii) if such release or subordination is required under the Term Loan Intercreditor Agreement; and

(c) to release any Subsidiary from its obligations under the Loan Documents, and release any Lien granted by such Subsidiary thereunder, if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder, so long as the Borrower Agent shall have delivered to the Administrative Agent on or prior to the date of release a certificate of a Responsible Officer certifying that such transaction is permitted by this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry).

Upon request by 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 Documents pursuant to this Section 10.11.

10.12 **Other Collateral Matters**.

(a) Care of Collateral. The Administrative Agent shall have no obligation to assure that any Collateral exists or is owned by a Borrower, or is cared for, protected or insured, nor to assure that the Administrative Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

(b) Lenders as Agent For Perfection by Possession or Control. The Administrative Agent and Secured Parties appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control. If any Lender obtains possession or control of any Collateral, it shall notify the Administrative Agent thereof and, promptly upon the Administrative Agent's request, deliver such Collateral to the Administrative Agent or otherwise deal with it in accordance with the Administrative Agent's instructions.

(c) Reports. The Administrative Agent shall promptly forward to each Lender, when complete, copies of any Field Exam or appraisal report prepared by or for the Administrative Agent with respect to any Borrower or Collateral ("Report"). Each Lender agrees (a) that neither BMO nor the Administrative Agent makes any representation or warranty as to the accuracy or completeness of any Report, and shall not be liable for any information contained in or omitted from any Report; (b) that the Reports are not intended to be comprehensive audits or examinations, and that the Administrative Agent or any other Person performing any audit or examination will inspect only specific information regarding Obligations or the Collateral and will rely significantly upon Borrowers' books and records as well as upon representations of Borrowers' officers and employees; and (c) to keep all Reports confidential in accordance with Section 11.07, and strictly for such Lender's internal use, and not to distribute any Report (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants) or use any Report in any manner other than administration of the Loans and other Obligations. Each Lender shall indemnify and hold harmless the Administrative Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Report, as well as from any claims arising as a direct or indirect result of the Administrative Agent furnishing a Report to such Lender.

10.13 **Credit Product Arrangement Provisions**.

(a) No Credit Product Provider that is party to any Credit Product Arrangement permitted hereunder that obtains the benefits of Section 9.03 or any Collateral by virtue of the provisions hereof or of any Security Instrument shall have (i) any right to notice of any action, (ii) any right to consent to, direct or object to any action or inaction hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral), or (iii) any right to require or receive any financial information or Borrowing Base Certificates or reports or similar certificates or information under the Loan Documents, other than in its capacity as a Lender, if applicable, and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article X to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Credit Product Obligations unless the Administrative Agent has received written notice of such Credit Product Obligations, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Credit Product Provider. The Lenders irrevocably authorize the Administrative Agent to secure all Credit Product Obligations with the Collateral to the same extent as other Obligations, all to the extent contemplated hereunder as determined by the Administrative in it reasonable judgment.

(b) By delivery of a Credit Product Notice, each Credit Product Provider that is not a Lender (a "Non-Lender Credit Product Provider") shall be deemed to have joined this Agreement and be bound by Section 9.03, this Article X and Section 11.04(c) as if it were a Lender hereunder holding a "Loan" in the amount of its applicable Credit Product Obligations. No Non-Lender Credit Product Provider shall have any right or claim against any Loan Party under the Loan Documents other than as a Secured Party under the Security Instruments, nor shall any of

them be a third party beneficiary of any provisions of this Agreement by which the Loan Parties are bound other than provisions relating to the granting of the Lien of the Administrative Agent on the Collateral and the application of proceeds thereof pursuant to Section 9.03.

10.14 ERISA Related Provisions.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that:

(i) none of the Administrative Agent, the Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least $50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent, the Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

(c) Each of the Administrative Agent and the Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the

Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

10.15 Recovery of Erroneous Payments. Notwithstanding anything to the contrary in this Agreement, if at any time the Administrative Agent determines (in its sole and absolute discretion) that it has made a payment hereunder in error to any Lender, the Letter of Credit Issuer, the Swing Line Lender or any other Secured Party, whether or not in respect of an Obligation due and owing by any Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each such Person receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Person in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender, the Letter of Credit Issuer, the Swing Line Lender and each other Secured Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another), "good consideration", "change of position" or similar defenses (whether at law or in equity) to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender, the Letter of Credit Issuer the Swing Line Lender and each other Secured Party that received a Rescindable Amount promptly upon determining that any payment made to such Person comprised, in whole or in part, a Rescindable Amount. Each Person's obligations, agreements and waivers under this Section 10.15 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the Letter of Credit Issuer or the Swing Line Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE XI
MISCELLANEOUS

11.01 Amendments, Etc.

(a) Subject to Section 3.09, No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrowers or any Borrower therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrowers or the applicable Borrower, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(i) waive any condition set forth in Section 5.01(a) with respect to any funding under the Revolving Credit Facility without the written consent of the Required Lenders;

(ii) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.02) without the written consent of such Lender;

(iii) postpone any date fixed by this Agreement or any other Loan Document for any payment (but excluding the delay or waiver of any mandatory prepayment) of principal, interest, fees or other amounts due to the Lenders (or any of them), including the Maturity Date, or any scheduled reduction of the Commitments hereunder or under any other Loan Document, in each case without the written consent of each Lender directly affected thereby;

(iv) reduce the principal of, or the rate of interest specified herein on, any Loan or Letter of Credit Borrowing, or reduce any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate" (so long as such amendment does not result in the Default Rate being lower than the interest rate then applicable to Base Rate Loans or SOFR Loans, as applicable) or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein);

(v) change Section 2.13 or Section 9.03 in a manner that would alter the order, priority, or *pro rata* sharing of payments required thereby without the written consent of each Lender directly affected thereby;

(vi) change (i) any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (ii) the definition of "Required Lenders" without the written consent of each Lender, or (iii) the provisions of Section 4.01 or 4.03(c) with respect to Flood Documentation, in each case without the written consent of each Lender.

(vii) except as provided in Section 2.18, increase the Aggregate Revolving Credit Commitments without the written consent of each Revolving Credit Lender;

(viii) release any material Borrower from this Agreement or any material Security Instrument to which it is a party without the written consent of each Lender, except to the extent such Borrower is the subject of a Disposition permitted by Section 8.05 (in which case such release may be made by the Administrative Agent acting alone);

(ix) release all or a material part of the Collateral without the written consent of each Lender except (A) with respect to Dispositions and releases of Collateral permitted or required hereunder (including pursuant to Section 8.05) or under the Security Agreement (in which case such release may be made by the Administrative Agent acting alone) or (B) to the extent required pursuant to the terms of the Term Loan Intercreditor Agreement or any Subordination Agreement;

(x) without the prior written consent of each Lender, other than as expressly permitted under this Agreement, subordinate any of the Obligations or any Lien granted to the Administrative Agent under the Loan Documents;

(xi) without the prior written consent of the Required Lenders, amend the definition of "Borrowing Base" or any defined term used therein in a manner that would increase availability; provided, that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves or the Availability Block or to determine eligibility of Accounts or Inventory or other assets of the type available to be included in the Borrowing Bases in accordance with such terms; or

(xii) without the prior written consent of each Lender, impose any materially greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder.

(b) In addition to the foregoing, (i) no amendment, waiver or consent shall, unless in writing and signed by the Letter of Credit Issuer in addition to the Lenders required above, affect the rights or duties of the Letter of Credit Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the respective parties thereto; (v) no amendment, waiver or consent which has the effect of enabling the Borrowers to satisfy any condition to a Borrowing contained in Section 5.02 hereof which, but for such amendment, waiver or consent would not be satisfied, shall be effective to require the Revolving Credit Lenders, the Swing Line Lender or the Letter of Credit Issuer to make any additional Revolving Credit Loan or Swing Line Loan, or to issue any additional or renew any existing Letter of Credit, unless and until the Required Lenders (or, if applicable, all Revolving Credit Lenders) shall have approved such amendment, waiver or consent and (vi) the Administrative Agent and the Borrowers shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature in any such provision. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Credit Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

(c) [Intentionally Omitted].

(d) If any Lender does not consent (a "Non-Consenting Lender") to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrowers may replace such Non-Consenting Lender in accordance with Section 11.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrowers to be made pursuant to this paragraph).

(e) No Loan Party will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender or its Affiliates as consideration for agreement by such Lender to any amendment, waiver, consent or release with respect to any Loan Document, unless such remuneration or value is concurrently paid, on the same terms, on a ratable basis to all Lenders providing their agreement. Notwithstanding the terms of this Agreement or any amendment, waiver, consent or release with respect to any Loan Document, Non-Consenting Lenders shall not be entitled to receive any fees or other compensation paid to the Lenders in connection with any amendment, waiver, consent or release approved in accordance with the terms of this Agreement by the Required Lenders.

(f) IN NO EVENT SHALL THE REQUIRED LENDERS, WITHOUT THE PRIOR WRITTEN CONSENT OF EACH LENDER, DIRECT THE ADMINISTRATIVE AGENT TO ACCELERATE AND DEMAND PAYMENT OF THE LOANS HELD BY ONE LENDER WITHOUT ACCELERATING AND DEMANDING PAYMENT OF ALL OTHER LOANS OR TO TERMINATE THE COMMITMENTS OF ONE OR MORE LENDERS WITHOUT TERMINATING THE COMMITMENTS OF ALL LENDERS. EACH LENDER AGREES THAT, EXCEPT AS OTHERWISE PROVIDED IN ANY OF THE LOAN DOCUMENTS AND WITHOUT THE PRIOR WRITTEN CONSENT OF THE REQUIRED LENDERS, IT WILL NOT TAKE ANY LEGAL ACTION OR INSTITUTE ANY ACTION OR PROCEEDING AGAINST ANY LOAN PARTY WITH RESPECT TO ANY OF THE OBLIGATIONS OR COLLATERAL, OR ACCELERATE OR OTHERWISE ENFORCE ITS PORTION OF THE OBLIGATIONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO LENDER MAY EXERCISE ANY RIGHT THAT IT MIGHT OTHERWISE HAVE UNDER APPLICABLE LAW TO CREDIT BID AT FORECLOSURE SALES, UNIFORM COMMERCIAL CODE SALES OR OTHER SIMILAR SALES OR DISPOSITIONS OF ANY OF THE COLLATERAL EXCEPT AS AUTHORIZED BY THE REQUIRED LENDERS. NOTWITHSTANDING ANYTHING TO THE CONTRARY

SET FORTH IN THIS SECTION OR ELSEWHERE HEREIN, EACH LENDER SHALL BE AUTHORIZED TO TAKE SUCH ACTION TO PRESERVE OR ENFORCE ITS RIGHTS AGAINST ANY LOAN PARTY WHERE A DEADLINE OR LIMITATION PERIOD IS OTHERWISE APPLICABLE AND WOULD, ABSENT THE TAKING OF SPECIFIED ACTION, BAR THE ENFORCEMENT OF OBLIGATIONS HELD BY SUCH LENDER AGAINST SUCH LOAN PARTY, INCLUDING THE FILING OF PROOFS OF CLAIM IN ANY INSOLVENCY PROCEEDING.

11.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone or in the case of notices otherwise expressly provided herein (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to a Loan Party, the Administrative Agent, the Letter of Credit Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person below, as changed pursuant to subsection (d) below:

(A)	If to Administrative Agent, Swing Line Lender or Letter of Credit Issuer:	BMO Harris Bank N.A. 320 S. Canal Street, 16th Floor Chicago, Illinois 60606 Attention: Stephanie Bach Facsimile No.: (312) 293-8532 E-Mail Address: stephanie.bach@bmo.com
	With a copy to:	Sidley Austin LLP 1 South Dearborn St. Chicago, IL, 60603 Attention: Andrew R. Cardonick Facsimile No.: (312) 853-7036 E-Mail Address: acardonick@sidley.com
(B)	If to a Loan Party:	Lifecore Biomedical, Inc. as Borrower Agent 3515 Lyman Boulevard Chaska, Minnesota 55318 Attention: John Morberg E-Mail Address: John.Morberg@lifecore.com
	With a copy to:	Latham & Watkins LLP 650 Town Center Drive, 20th Floor Costa Mesa, CA. 92626-1925 Attention: Darren Guttenberg Jason Bosworth E-Mail Addresses: darren.guttenberg@lw.com jason.bosworth@lw.com
(C)	If to the MXN Collateral Agent:	GLAS Americas LLC 3 Second Street, Suite 206 Jersey City, NJ 07311 Attention: Administrator – Lifecore Facsimile No.: (212) 202-6246 E-Mail Address: clientservices.americas@glas.agency

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire, as changed pursuant to subsection (d) below (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Letter of Credit Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Letter of Credit Issuer pursuant to Article II

if such Lender or the Letter of Credit Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrowers may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Borrower, any Lender, the Letter of Credit Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of a Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Borrower, any Lender, the Letter of Credit Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrowers, the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower Agent, the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent, Letter of Credit Issuer and Lenders. The Administrative Agent, the Letter of Credit Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Borrowers even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify the Administrative Agent, the Letter of Credit Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrowers. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies. No failure by any Lender, the Letter of Credit Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrowers or any other Loan Party or any of them (including enforcement action with respect to any Collateral) shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 9.02 for the benefit of all the Secured Parties; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the Letter of Credit Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as Letter of Credit Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.14), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Borrower under any Debtor Relief Law but only to the extent the Administrative Agent shall have failed to do so within a reasonable time after notice; and provided further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.14, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay (i) all reasonable out-of-pocket expenses (including any Extraordinary Expenses) incurred by the Administrative Agent and its Affiliates, (A) in connection with this Agreement and the other Loan Documents, including without limitation the reasonable fees, charges and disbursements of (1) outside counsel for the Administrative Agent and the Secured Parties, (2) outside consultants for the Administrative Agent, (3) appraisers, (4) Field Exams, and (5) environmental site assessments, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (B) in connection with (1) the syndication of the credit facilities provided for herein, (2) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (3) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral, or (4) any workout, restructuring or negotiations in respect of any Obligations, and (ii) with respect to the Letter of Credit Issuer, and its Affiliates, all reasonable out-of-pocket expenses incurred in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder (the foregoing, collectively being referred to as "Secured Party Expenses").

(b) Indemnification by the Borrowers. Each Loan Party shall indemnify the Administrative Agent (and any sub-agent thereof), each other Secured Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold harmless each Indemnitee from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrowers or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Letter of Credit Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Secured Party to, a Controlled Account Bank or other Person which has entered into a control agreement with any Secured Party hereunder or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrowers or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. This Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Indemnification of Administrative Agent by Lenders. To the extent that (i) the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, or (ii) any liabilities, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever are be imposed on, incurred by, or asserted against, any Agent, the Letter of Credit Issuer, or a Related Party (an "Agent Indemnitee") in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by any Agent Indemnitee in connection therewith (collectively, "Agent Indemnitee Liabilities"), then each Lender severally agrees to pay to the Administrative Agent for the benefit of such Agent Indemnitee, such Lender's Ratable Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such Agent Indemnitee Liabilities, so long as the Agent Indemnitee Liabilities were incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Letter of Credit Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or Letter of Credit Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d). In no event shall any Lender have any obligation hereunder to indemnify or hold harmless an Agent Indemnitee with respect to any Agent Indemnitee Liabilities that are determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Agent Indemnitee. In the Administrative Agent's discretion, it may reserve for any Agent Indemnitee Liabilities of an Agent Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to the Secured Parties. If the Administrative Agent is sued by any creditor representative, debtor-in-possession or other Person for any alleged preference or fraudulent transfer, then any monies paid by the Administrative Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to the Administrative Agent by each Lender to the extent of its Ratable Share thereof.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waives, any claim against any Indemnitee, 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, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender, the replacement of any Lender and the occurrence of the Facility Termination Date.

11.05 Marshalling; Payments Set Aside. None of the Administrative Agent or Lenders shall be under any obligation to marshal any assets in favor of any Loan Party or against any Obligations. To the extent that any payment by or on behalf of any Loan Party is made to a Secured Party, or a Secured Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently

invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Secured Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the Letter of Credit Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate, in the applicable currency of such recovery or payment. The obligations of the Lenders and the Letter of Credit Issuer under clause (b) of the preceding sentence shall survive the occurrence of the Facility Termination Date.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Secured Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 11.06(b), participations in Letter of Credit Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts. Except in the case of (A) an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility or (B) an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the aggregate principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000, in the case of any assignment in respect of the Revolving Credit Facility, unless each of (x) the Administrative Agent, (y) the Letter of Credit Issuer, if such assignment increases the obligations of the assignee to participate in the exposure to one or more Letters of Credit (such consent not to be unreasonably withheld or delayed), and (z) so long as no Event of Default has occurred and is continuing, the Borrower Agent otherwise consents (such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an assignee group and concurrent assignments from members of an assignee group to a single Eligible Assignee (or to an Eligible Assignee and members of its assignee group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans.

(iii) Required Consents. No consent shall be required for any assignment to an Eligible Assignee except to the extent required by subsection (b)(i)(B) of this Section; provided that the Borrower Agent shall be deemed to have given the consent required in the definition of "Eligible Assignee" to such assignment if Borrower Agent has not, on behalf of all Borrowers, responded in writing within ten (10) Business Days of a request for consent.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to any Loan Party or Subsidiary or Affiliate thereof, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) to any Disqualified Institution or (D) to a natural person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata

share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers (and such agency being solely for tax purposes) (in such capacity, subject to Section 11.17), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and Loan Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, 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. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower Agent and any Lender at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender, any Disqualified Institution or any Loan Party or Subsidiary or Affiliate thereof) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and/or the Loans (including such Lender's participations in Letter of Credit Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Lenders and the Letter of Credit Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

If any Lender (or any assignee thereof) sells a participation, such Lender (or such assignee) shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender (nor any assignee thereof) shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) and proposed Section 1.163-5(b) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender (or such assignee) shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower Agent's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower Agent is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures 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.

(h) Resignation as Letter of Credit Issuer and/or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time BMO assigns all of its Revolving Credit Commitment, Revolving Credit Loans, pursuant to subsection (b) above, it may, (i) upon 30 days' notice to the Borrower Agent and the Lenders, resign as Letter of Credit Issuer and/or (ii) upon 30 days' notice to the Borrower Agent, resign as Swing Line Lender. In the event of any such resignation as Letter of Credit Issuer, or Swing Line Lender, the Borrower Agent shall be entitled to appoint from among the Lenders willing to serve in such capacity a successor Letter of Credit Issuer or Swing Line Lender hereunder, as the case may be; provided, however, that no failure by the Borrower Agent to appoint any such successor shall affect the resignation of such Person as Letter of Credit Issuer or Swing Line Lender, as the case may be. If BMO resigns as Letter of Credit Issuer, it shall retain all the rights, powers, privileges and duties of the Letter of Credit Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Letter of Credit Issuer and all Letter of Credit Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If BMO resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor Letter of Credit Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Letter of Credit Issuer or Swing Line Lender, as the case may be, and (b) the successor Letter of Credit Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such successor or make other arrangements satisfactory to the retiring Letter of Credit Issuer to effectively assume the obligations of such Letter of Credit Issuer with respect to such Letters of Credit.

11.07 Treatment of Certain Information; Confidentiality. Each of the Secured Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, trustees, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrowers and their obligations, (g) with the consent of the Borrower Agent or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Secured Parties or any of their respective Affiliates on a nonconfidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all information received from any Loan Party or any Subsidiary relating to a Loan Party or any Subsidiary or any of their respective businesses, other than any such information that is available to any Secured Party on a nonconfidential basis prior to disclosure by a Loan Party or any Subsidiary, provided that, in the case of information received from a Loan Party or any Subsidiary after the date hereof, any information not marked "PUBLIC" at the time of delivery will be deemed to be confidential; provided that any information marked "PUBLIC" may also be marked "Confidential". Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Secured Parties acknowledges that (a) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including federal and state securities Laws.

Each of the Loan Parties hereby authorizes the Administrative Agent to publish the name of any Loan Party and the amount of the credit facility provided hereunder in any "tombstone" or comparable advertisement which the Administrative Agent elects to publish. The Administrative Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements. In addition to the foregoing, the Administrative Agent shall be permitted to issue press releases and other announcements, subject to the prior review and approval of the Borrower Agent (such approval not to be unreasonably withheld or delayed).

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Letter of Credit Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, only after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the Letter of Credit Issuer or any such Affiliate to or for the credit or the account of the Borrowers against any and all of the obligations of the Borrowers now or hereafter existing under this Agreement or any other Loan Document to such Lender or the Letter of Credit Issuer, irrespective of whether or not such Lender or the Letter of Credit Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers may be contingent or unmatured or are owed to a branch or office of such Lender or the Letter of Credit Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender or any Affiliate thereof shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender or its Affiliate (as applicable) from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the

Defaulting Lender or its Affiliate shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or its Affiliates as to which such right of setoff was exercised. The rights of each Lender, the Letter of Credit Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Letter of Credit Issuer or their respective Affiliates may have. Each Lender and the Letter of Credit Issuer agrees to notify the Borrower Agent and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Loan Obligations hereunder.

11.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01 and this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

11.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Secured Parties, regardless of any investigation made by any Secured Party or on their behalf and notwithstanding that any Secured Party may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Loan Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Further, the provisions of Sections 3.01, 3.04, 3.05 and 11.04 and Article X shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Administrative Agent may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Secured Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, and (y) any obligations that may thereafter arise with respect to Credit Product Obligations.

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the Letter of Credit Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender is a Defaulting Lender, or if any Lender fails to approve any amendment, waiver or consent requested by Borrower Agent pursuant to Section 11.01 that has received the written approval of not less than the Required Lenders but also requires the approval of such Lender, then in each such case the Borrower Agent may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower Agent shall have paid to the Administrative Agent the assignment fee specified in Section 11.06(b);

(b) such Lender shall have received the following, as applicable:

(i) if such Lender is not a Defaulting Lender, both (A) payment of an amount equal to the outstanding principal of its Loans and Letter of Credit Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower Agent (in the case of all other amounts) and (B) evidence that the obligations and liabilities of each Loan Party or their Affiliates under all Credit Product Arrangements shall have been fully, finally and irrevocably paid and satisfied in full and the Credit Product Arrangements shall have expired or been terminated, or other arrangements satisfactory to the counterparties shall have been made with respect thereto; or

(ii) if such Lender is a Defaulting Lender, payment of an amount equal to the outstanding principal of its Loans and Letter of Credit Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower Agent (in the case of all other amounts).

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) in the case of any such assignment resulting from the refusal of a Lender to approve a requested amendment, waiver or consent, the Person to whom such assignment is being made has agreed to approve such requested amendment, waiver or consent; and

(e) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

11.14 Governing Law; Jurisdiction; Etc.

(a) **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

(b) **EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE LETTER OF CREDIT ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWERS OR THEIR PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

(c) **EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THAT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LEGAL ACTION OR PROCEEDING REFERRED TO IN THIS SECTION 11.14 ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.**

(d) **EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.**

11.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in this Agreement, any Loan Document or in any amendment or other modification hereof or thereof (including waivers and consents) shall be deemed to include electronic signatures 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.

11.17 USA PATRIOT Act Notice. Each Lender that is subject to the PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of the Borrowers and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrowers in accordance with the PATRIOT Act.

11.18 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Secured Parties are arm's-length commercial transactions between each Loan Party, on the one hand, and the Secured Parties, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Secured Party is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Loan Party or any of its Affiliates or any other Person and (B) no Secured Party has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iii) the Secured Parties may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their Affiliates, and no Secured Party has any obligation to disclose any of such interests to any Loan Party or its Affiliates and (iv) the Secured Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against any Secured Party with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.19 Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein; except, that, in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

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

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

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

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

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

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

11.21 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Obligation or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) 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.

(b) As used in this Section 11.21, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

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

"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.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

11.22 Intercreditor Agreement. The Loan Parties, the Administrative Agent, the Lenders and the other Secured Parties agree and acknowledge that the exercise of certain of the Administrative Agent's rights and remedies hereunder shall, upon the effectiveness of the Term Loan Intercreditor Agreement, be subject to, and restricted by, the provisions of the Term Loan Intercreditor Agreement. Each of the Loan Parties, the Administrative Agent, the Lenders and the other Secured Parties agree that, upon the effectiveness of the Term Loan Intercreditor Agreement (a) in the event of any conflict between the terms of this Agreement and the Term Loan Intercreditor Agreement, the terms of the Term Loan Intercreditor Agreement shall govern and control and (b) it shall be bound by the terms and conditions of the Term Loan Intercreditor Agreement.

ARTICLE XII
CONTINUING GUARANTY

12.01 Guaranty. Each Guarantor hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations (other than Excluded Swap Obligations), whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Loan Parties to the Secured Parties, arising hereunder or under any other Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof) (the "Guarantied Obligations"). The Administrative Agent's books and records showing the amount of the Guarantied Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive for the purpose of establishing the amount of the Guarantied Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guarantied Obligations or any instrument or agreement evidencing any Guarantied Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Guarantied Obligations which might otherwise constitute a defense to the obligations of any Guarantor under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing other than Payment in Full.

12.02 Rights of Lenders. Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Guarantied Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Guarantied Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the Letter of Credit Issuer and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Guarantied Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of any Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of any Guarantor.

12.03 Certain Waivers.

(a) General Waivers. Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrowers or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrowers; (b) any defense based on any claim that any Guarantor's obligations exceed or are more burdensome than those of the Borrowers; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Borrowers, proceed against or exhaust any security for the Guarantied Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Guarantied Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Guarantied Obligations.

(b) California-Specific Waivers. Without limiting the generality of the foregoing waivers, each Guarantor hereby:

(i) expressly waives any and all benefits which might otherwise be available to such Guarantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845 through 2847, 2849, 2850, 2899 and 3433, and California Code of Civil Procedure Sections 580a, 580b, 580d and 726;

(ii) acknowledges its understanding that: (A) Section 580d of the California Code of Civil Procedure generally prohibits a deficiency judgment against a borrower after a non-judicial foreclosure; (B) such Guarantor's subrogation rights may be destroyed by a non-judicial foreclosure under any mortgage (because such Guarantor may not be able to pursue any other Loan Party for a deficiency judgment by reason of the application of Section 580d of the California Code of Civil Procedure); and (C) under Union Bank v. Gradsky, 265 Cal. App. 2nd 40 (1968) and Cathay Bank v. Lee, 14 Cal.App.4th 1533 (1993), a lender may be estopped from pursuing a guarantor for a deficiency judgment after a non-judicial foreclosure (on the theory that a guarantor should be exonerated if a lender materially alters the original obligation of the principal without the consent of the guarantor or elects remedies for default which impair the subrogation, reimbursement or contribution rights of a "surety" or other co-obligor) absent an explicit waiver;

(iii) expressly waives all rights and defenses arising out of an election of remedies by the Administrative Agent or the Secured Parties, including any defense that might otherwise be available under Gradsky and Cathay Bank, supra, or Section 580d of the California Code of Civil Procedure (or any similar judicial decision or statute), even though that election of remedies, such as a nonjudicial foreclosure with respect to the security for the Obligations, has destroyed such Guarantor's rights of subrogation and reimbursement against such any other Loan Party by the operation of Section 580d of the California Code of Civil Procedure or otherwise; and

(iv) acknowledges that the provisions in this Section 12.03(b) which refer to certain sections of the California Civil Code and the California Code of Civil Procedure are included in this Agreement solely out of an abundance of caution and shall not be construed to mean that any of the above referenced provisions of California law are in any way applicable to this Agreement; notwithstanding such provisions, this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, as provided in Section 11.14.

12.04 Obligations Independent. The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Guarantied Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not any Borrower or any other person or entity is joined as a party.

12.05 Subrogation. No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until the Facility Termination Date. If any amounts are paid to any Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

12.06 Termination; Reinstatement. This Guaranty is a continuing and irrevocable guaranty of all Guarantied Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or any Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Guarantied Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this paragraph shall survive termination of this Guaranty.

12.07 Subordination. Each Guarantor hereby subordinates the payment of all obligations and indebtedness of the Borrowers owing to each Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of the Borrowers to any Guarantor as subrogee of the Secured Parties or resulting from any Guarantor' performance under this Guaranty, to the Payment in Full. If the Secured Parties so request, any such obligation or indebtedness of the Borrowers to any Guarantor shall be enforced and performance received by any Guarantor as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Guarantied Obligations, but without reducing or affecting in any manner the liability of any Guarantor under this Guaranty.

12.08 Stay of Acceleration. If acceleration of the time for payment of any of the Guarantied Obligations is stayed, in connection with any case commenced by or against any Guarantor or the Borrowers under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor immediately upon demand by the Secured Parties.

12.09 Condition of Borrowers. Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrowers and any other guarantor such information concerning the financial condition, business and operations of the Borrowers and any such other guarantor as each Guarantor requires, and that none of the Secured Parties has any duty, and no Guarantor is relying on the Secured Parties at any time, to disclose to any Guarantor any information relating to the business, operations or financial condition of the Borrowers or any other guarantor (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

12.10 Keepwell. Each Guarantor that is a Qualified ECP hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under

this Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP shall only be liable under this Section 12.10 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 12.10, or otherwise under this Guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Guarantor that is a Qualified ECP under this Section shall remain in full force and effect until the Guarantied Obligations have been paid in full in cash. Each Guarantor that is a Qualified ECP intends that this Section 12.10 constitute, and this Section 12.10 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

12.11 Limitation of Guaranty. Notwithstanding anything to the contrary herein or otherwise, the Borrowers, the Administrative Agent and the Lenders hereby irrevocably agree that the Guarantied Obligations of each Guarantor in respect of the guarantee set forth in Article XII at any time shall be limited to the maximum amount as will result in the Guarantied Obligations of such Guarantor not constituting a fraudulent transfer or conveyance after giving full effect to the liability under such guarantee set forth in Article XII and its related contribution rights but before taking into account any liabilities under any other guarantee by such Guarantor.

[Remainder of page is intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWERS:

LIFECORE BIOMEDICAL, INC. (f/k/a Landec Corporation)

By:_____
Name:_____
Title:_____

CURATION FOODS, INC.

By:_____
Name:_____
Title:_____

LIFECORE BIOMEDICAL OPERATING COMPANY, INC. (f/k/a Lifecore Biomedical, Inc.)

By:_____
Name:_____
Title:_____

GUARANTORS:

GREENLINE LOGISTICS, INC.

By:_____
Name:_____
Title:_____

YUCATAN FOODS, LLC

By:_____
Name:_____
Title:_____

LIFECORE BIOMEDICAL, LLC

By:_____
Name:_____
Title:_____

CAMDEN FRUIT CORP.

By:_____
Name:_____
Title:_____

ADMINISTRATIVE AGENT:

BMO HARRIS BANK N.A., as Administrative Agent

By:_____
Name:_____
Title:_____

LENDERS:

BMO HARRIS BANK N.A., as a Lender, Letter of Credit Issuer and Swing Line Lender

By:_____
Name:_____
Title:_____

EXHIBIT C

Schedule 2.01

Commitments and Applicable Percentages
(as of the Fourth Amendment Effective Date)

Lender	Revolving Credit Commitment	Applicable Percentage
BMO Harris Bank N.A.	$60,000,000.00	100.000000000%
Total	**$60,000,000.00**	**100.000000000%**

Lifecore Biomedical Raises Capital with Private Placement of Convertible Preferred Stock; Amends Credit Facilities

$38.75 million Private Placement of Series A Convertible Preferred Stock to Support Working Capital and Capital Expenditures While Pursuing Ongoing Divestment Process of non-CDMO Assets

Credit Facilities Amended to Increase Liquidity and Provide Financial Covenant Relief

Nathaniel Calloway, PhD and Christopher Kiper Appointed to the Board of Directors

CHASKA, MN – January 9, 2023 – Lifecore Biomedical, Inc. ("Lifecore" or the "Company"), a fully integrated contract development and manufacturing organization ("CDMO"), today announced that it has entered into a securities purchase agreement with a select group of institutional investors, pursuant to which the Company issued and sold 38,750 shares of newly designated Series A convertible preferred stock in a private placement for total gross proceeds of $38.75 million before deducting offering expenses. The private placement was led by Legion Partners and 22NW Fund, LP, with participation by existing and new investors including Wynnefield Capital, Cove Street Partners and 325 Capital. The Company expects to use the proceeds to support its working capital requirements and help address strong demand it is experiencing for sterile injectable pharmaceutical products while it pursues the final phases of its divestment process of non-CDMO assets, as well as for capital expenditures, repayment of the Company's indebtedness and general corporate purposes. The Company also announced the amendment of its credit facilities to provide for increased overall liquidity and amended financial covenants to allow Lifecore to achieve its growth potential.

In connection with the issuance of the Series A convertible preferred stock, Nathaniel Calloway, PhD and Christopher Kiper were appointed to the Company's Board of Directors.

The Company also amended its credit facilities to provide for, among other things, increased overall liquidity, including the deferral of $2.2 million of quarterly debt repayments until the first quarter of calendar year 2025, and relief from certain financial covenants.

"We are extremely excited for 2023 and remain fully focused on taking advantage of the strong market tailwinds that are generating a myriad of opportunities within our development pipeline with some of the world's leading pharmaceutical companies," commented James G. Hall, President and Chief Executive Officer of Lifecore. "We are very pleased for the continued support of our long-term stockholders, which demonstrates their commitment to supporting Lifecore's continued focus to deliver on its growth ambitions. We expect to use the proceeds of the investment to support both our working capital and capital expenditure requirements with an objective of delivering on our increased near and longer term customer demands while we focus on additional cost savings, driving free cash flow and divesting our non-CDMO assets."

Important Information Regarding the Series A Convertible Preferred Stock

The Series A convertible preferred stock was issued in reliance on an exemption from registration under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to Section 4(a)(2) thereof. The Series A convertible preferred stock sold in the private placement has not been and will not be registered under the Securities Act, or any state or other applicable jurisdiction's securities laws, and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act and applicable state or other jurisdictions' securities laws.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any state or other jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or other jurisdiction.

About Lifecore Biomedical

Lifecore Biomedical, Inc. is a fully integrated contract development and manufacturing organization (CDMO) that offers highly differentiated capabilities in the development, fill and finish of complex sterile injectable pharmaceutical products in syringes and vials. As a leading manufacturer of premium, injectable grade Hyaluronic Acid, Lifecore brings more than 40 years of expertise as a partner for global and emerging biopharmaceutical and biotechnology companies across multiple therapeutic categories to bring their innovations to market. For more information about the Company, visit Lifecore's website at www.lifecore.com.

Important Cautions Regarding Forward-Looking Statements

This press release contains forward-looking statements regarding future events and future results that are subject to the safe harbor created under the Private Securities Litigation Reform Act of 1995 and other safe harbors under the Securities Act of 1933 and the Securities Exchange Act of 1934. Words such as "anticipate", "estimate", "expect", "project", "plan", "intend", "believe", "may", "might", "will", "should", "can have", "likely" and similar expressions are used to identify forward-looking statements. All forward-looking statements involve certain risks and uncertainties that could cause actual results to differ materially, including such factors among others, as the Company's ability to successfully complete the transition of the Company's business and operations to focus on Lifecore, the timing and needs of capital expenditures, the timing of regulatory approvals, uncertainties related to COVID-19 and the impact of our responses to it, and the ability to successfully realize the anticipated benefits of the refocusing of the Company's business on Lifecore. For additional information about factors that could cause actual results to differ materially from those described in the forward-looking statements, please refer to the Company's filings with the Securities and Exchange Commission, including the risk factors contained in its Quarterly Reports on Form 10-Q and Annual Report on Form 10-K. Forward-looking statements represent management's current expectations and are inherently uncertain. Except as required by law, the Company does not undertake any obligation to update forward-looking statements to reflect subsequent events or circumstances.

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