

**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): July 29, 2022

EOS ENERGY ENTERPRISES, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-39291

(Commission
File Number)

84-4290188

(IRS Employer
Identification No.)

3920 Park Avenue

Edison, New Jersey 08820

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(732) 225-8400**

N/A

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

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.0001 per share	EOSE	The Nasdaq Stock Market LLC
Warrants, each exercisable for one share of common stock	EOSEW	The Nasdaq Stock Market LLC

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On July 29, 2022 (the “Closing Date”), Eos Energy Enterprises, Inc., a Delaware corporation (the “Company”), entered into a Senior Secured Term Loan Credit Agreement (the “Credit Agreement”) with ACP Post Oak Credit I LLC, as lender, administrative agent and collateral agent (“Atlas”), and the lenders from time to time party thereto (collectively with Atlas, the “Lenders”). The Credit Agreement provides for an \$85.1 million term loan (the “Term Loan”), the entirety of which was funded on the Closing Date. The Credit Agreement also permits the Company to make a one-time request for an additional commitment of up to \$14.9 million, with funding of such commitment in the sole discretion of the Lenders, under certain circumstances and under the same terms as the Term Loan. On the Closing Date, the Company also entered into that certain Guarantee and Collateral Agreement, dated as of July 29, 2022, by and among the Company, the other grantors named therein and Atlas (the “Guarantee and Collateral Agreement”).

On the Closing Date, pursuant to the Credit Agreement, \$9.6 million of the Term Loan proceeds were deposited into an escrow account (the “Interest Escrow Account”) in the name of, and controlled by, Atlas that will be used towards, among other things, the first four interest payments due following the third anniversary of the Closing Date. Any amounts remaining in the Interest Escrow Account following the Company’s repayment in full of the Term Loan will be returned to the Company. In addition, pursuant to the Credit Agreement, a collateral protection insurance policy (the “Insurance Wrap”) was issued to the Lenders, and the Company paid a \$10.6 million cash premium on the Closing Date to the insurance provider thereunder. In the event that the Company’s obligations under the Credit Agreement remain outstanding on the first, second and third anniversaries of the Closing Date, the Company will be required to make additional cash premium payments on the Insurance Wrap as follows: (i) on the first anniversary of the Closing Date, a payment equal to 3.0% of the loans then outstanding under the Credit Agreement, (ii) on the second anniversary of the Closing Date, a payment equal to 3.0% of the loans then outstanding under the Credit Agreement and (iii) on the third anniversary of the Closing Date, a payment equal to 2.0% of the loans then outstanding under the Credit Agreement.

The Company agreed to use the remaining proceeds from the Term Loan to (i) fund growth investments and for general corporate purposes in accordance with the Credit Agreement, including corporate-level research and development investments, (ii) expand the manufacturing facility of the Company’s wholly owned subsidiary, Hi-Power, LLC (“Hi-Power”), in the Turtle Creek, Pittsburgh area in Pennsylvania, (iii) redeem in full the Company’s existing indebtedness to Holtec Power, Inc. and (iv) pay certain fees and expenses incurred in connection with the Credit Agreement.

The outstanding principal balance of the Term Loan bears interest at the applicable margin plus, at the Company’s election, either (i) the benchmark secured overnight financing rate (“SOFR”), which is a per annum rate equal to the greater of (y) the Term SOFR (as defined in the Credit Agreement) plus 0.2616% and (z) 1.0%, or (ii) the alternate base rate (“ABR”), which is a per annum rate equal to the greatest of (x) the Prime Rate (as defined in the Credit Agreement), (y) the NYFRB Rate (as defined in the Credit Agreement) plus 0.5% and (z) the SOFR. The applicable margin under the Credit Agreement is 8.50% per annum with respect to SOFR loans, and 7.50% per annum with respect to ABR loans.

Subject to certain exceptions as set forth in the Credit Agreement, interest on the Term Loan is payable quarterly in arrears on the last business day of each fiscal quarter. The Term Loan is set to mature on the earlier of (i) July 29, 2026 and (ii) 91 days prior to the then-current maturity date of the convertible notes issued in July 2021 in favor of Spring Creek Capital, LLC, as subsequently assigned to Wood River Capital, LLC, a wholly owned, indirect subsidiary of Koch Industries, Inc. (the “Koch Note”), which is currently June 30, 2026, after giving effect to any extension, refinancing or replacement thereof (the “Maturity Date”). The Credit Agreement provides for no scheduled principal amortization prior to the Maturity Date.

The Term Loan is secured by substantially all of the assets of the Company and its subsidiaries other than the assets of Hi-Power and is guaranteed by the Company’s subsidiaries other than Hi-Power. As set forth in more detail in the Credit Agreement, the Company is required to make mandatory prepayments on the Term Loan in the event of certain specified events, including in the event of certain capital raises by the Company and its subsidiaries. The Company may also prepay amounts under the Term Loan, subject to certain costs and conditions specified in the Credit Agreement.

The Credit Agreement also contains customary representations, warranties and events of default for a facility of this nature and affirmative and negative covenants. In particular, the Credit Agreement requires the Company to have liquidity of at least \$9.6 million as of the last day of each fiscal quarter, subject to certain adjustments set forth in the Credit Agreement. In addition, the Credit Agreement limits the Company’s and its subsidiaries’ ability to incur indebtedness, make restricted payments, including cash dividends on its common stock, make certain investments, loans and advances, enter into mergers and acquisitions, sell, assign transfer or otherwise dispose of its assets, enter into transactions with its affiliates and engage in sale and leaseback transactions, among other restrictions.

Furthermore, the limitation on the Company’s ability to incur indebtedness also (i) limits the amount of pre-advance loans that the Company may have outstanding at any time to \$15.0 million under that certain common stock standby equity purchase agreement (the “SEPA”) dated April 28, 2022, by and between the Company and an affiliate of Yorkville Advisors

("Yorkville"), as amended, and (ii) requires the payment of any principal and interest in kind on each of the SEPA and the Koch Note. Following the closing of the Term Loan, a substantial majority interest in the Term Loan was assigned to Ledgewood Credit Partners I, LLC.

The foregoing descriptions of the Credit Agreement and the Guarantee and Collateral Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the Credit Agreement and the Guarantee and Collateral Agreement, copies of which are filed herewith, as Exhibit 10.1 and 10.2, respectively, and incorporated by reference herein.

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

The information set forth under Item 1.01 of this Current Report on Form 8-K related to the incurrence of the Term Loan is incorporated by reference herein.

Item 7.01 Regulation FD Disclosure.

On August 1, 2022, the Company issued a press release announcing the Company's entry into the Credit Agreement. A copy of the press release is furnished as Exhibit 99.1 to this Current Report and is incorporated by reference herein.

The information included under Item 7.01 (including Exhibit 99.1) is furnished pursuant to Item 7.01 and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), or otherwise be subject to the liabilities of that section, nor shall it be deemed to be incorporated by reference in any filing under the Securities Act or the Exchange Act, whether made before or after the date hereof and regardless of any general incorporation language in such filing.

Item 9.01 Financial Statement and Exhibits.

(d) Exhibits

Exhibit Number	Description of Document
10.1*	<u>Senior Secured Term Loan Credit Agreement, dated as of July 29, 2022, by and among Eos Energy Enterprises, Inc., the lenders party thereto, and ACP Post Oak Credit I LLC, as administrative agent and collateral agent.</u>
10.2*	<u>Guarantee and Collateral Agreement, dated as of July 29, 2022, by and among Eos Energy Enterprises, Inc., the other grantors named therein and ACP Post Oak Credit I LLC, as collateral agent.</u>
99.1	<u>Press Release, dated August 1, 2022 (furnished pursuant to Item 7.01).</u>
104	Cover page of this Current Report on Form 8-K, formatted in Inline XBRL

* Certain schedules and exhibits to this agreement have been omitted pursuant to Item 601(a)(5) of Regulation S-K. A copy of any omitted exhibit or schedule will be furnished supplementally to the SEC or its staff upon request.

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.

EOS ENERGY ENTERPRISES, INC.

Dated: August 1, 2022

By: /s/ Randall Gonzales

Name: Randall Gonzales

Title: Chief Financial Officer

SENIOR SECURED TERM LOAN CREDIT AGREEMENT

dated as of July 29, 2022

among

EOS ENERGY ENTERPRISES, INC.,
as the Borrower,

the Lenders
from time to time party hereto

and

ACP POST OAK CREDIT I LLC,
as Administrative Agent and Collateral Agent

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- Exhibit B Form of Borrowing Request
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- Exhibit D Form of Quarterly IP Monitoring Report
- Exhibit E-1 Form of Solvency Certificate
- Exhibit E-2 Form of Compliance Certificate
- Exhibit F Form of Guarantee and Collateral Agreement
- Exhibit G Form of Assignment and Assumption
- Exhibit H-1 Form of U.S. Tax Compliance Certificate (Non-Partnership Foreign Lenders)
- Exhibit H-2 Form of U.S. Tax Compliance Certificate (Non-Partnership Foreign Participants)
- Exhibit H-3 Form of U.S. Tax Compliance Certificate (Foreign Participant Partnerships)
- Exhibit H-4 Form of U.S. Tax Compliance Certificate (Foreign Lender Partnerships)
- Exhibit I Form of Perfection Certificate

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SENIOR SECURED TERM LOAN CREDIT AGREEMENT, dated as of July 29, 2022 (this “Agreement”), among EOS ENERGY ENTERPRISES, INC., a Delaware corporation (the “Borrower”), the Lenders from time to time party hereto and ACP POST OAK CREDIT I LLC (“ACP”), as the Administrative Agent for the Lenders and Collateral Agent for the Secured Parties.

RECITALS

A. The Borrower has requested that the Lenders extend, and the Lenders have agreed to make available to the Borrower, the term loan facility provided for herein upon the terms and subject to the conditions set forth in this Agreement and the other Loan Documents.

B. The Borrower desires to secure the Secured Obligations by granting to the Collateral Agent, for the benefit of the Secured Parties, a first-priority security interest in and continuing Lien (subject to certain limitations set forth in this Agreement) upon all of its rights, title and interest in its property constituting Collateral.

C. Borrower has determined that it is in its best interests to cause each of its Subsidiaries (subject to certain exceptions set forth in this Agreement) to guarantee the Secured Obligations and to pledge and grant to the Collateral Agent, for the benefit of the Secured Parties, a first-priority security interest in and continuing Lien (subject to certain limitations set forth in this Agreement) upon all of its rights, title and interest in its property constituting Collateral.

In consideration of the mutual covenants and agreements herein contained and of the loans, extensions of credit and commitments hereinafter referred to, the parties hereto agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING MATTERS

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

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

“ACP” has the meaning assigned to such term in the introductory paragraph hereto.

“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 one percent (1.00%), then Adjusted Term SOFR shall be deemed to be one percent (1.00%).

“Administrative Agent” means ACP, as the administrative agent for the Lenders under this Agreement and the other Loan Documents, or any successor administrative agent or administrative agent appointed in accordance with the provisions of Section 12.06.

“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 UK Financial Institution.

“Affected Loans” has the meaning assigned to such term in Section 5.05.

“Affiliate” means, with respect to a specified Person, (a) 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, (b) another Person that directly or indirectly owns or holds (i) ten percent (10.0%) or

more of any class of Equity Interests with voting power in the specified Person or (ii) ten percent (10.0%) or more of the Equity Interests in the specified Person or (c) any officer, director, manager or partner of the specified Person.

“Agent” means the Administrative Agent or the Collateral Agent, as applicable, and “Agents” shall refer to both the Administrative Agent and the Collateral Agent, collectively.

“Agreement” has the meaning assigned to such term in the introductory paragraph hereto.

“Alternate Base Rate” means, for any day, a rate *per annum* equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted Term SOFR for a one-month Interest Period beginning on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof (for the avoidance of doubt, only until any amendment has become effective pursuant to Section 3.03(b)), then the Alternate Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate shall be less than two percent (2.00%), such rate shall be deemed to be two percent (2.00%) for purposes of this Agreement.

“Alternate Base Rate Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR”.

“AML Laws” means all laws, rules, and regulations of any jurisdiction applicable to any Lender, any Loan Party or their Subsidiaries from time to time concerning or relating to anti-money laundering.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to any Loan Party or their Subsidiaries from time to time concerning or relating to bribery or corruption, including, without limitation, the FCPA, and any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

“Applicable Margin” means, for any day, (a) with respect to any ABR Loan, a rate *per annum* equal to 7.50% or (b) with respect to any SOFR Loan, a rate *per annum* equal to 8.50%.

“Applicable Percentage” means, with respect to any Lender at any time, the percentage which such Lender’s Commitment then constitutes of the aggregate Commitments (or, at any time after the Closing Date, the percentage which the aggregate principal amount of such Lender’s Loans then outstanding constitutes of the aggregate principal amount of all Loans of all Lenders then outstanding).

“Approved Fund” means any Person (other than a natural person) that is primarily engaged in making, purchasing, holding or investing in commercial bank loans and similar extensions of credit in the ordinary course of its business and any investment fund or asset manager that is administered, advised, sub-advised 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.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 13.04(b)), and accepted by the Administrative Agent, in the form of Exhibit G or any other form approved by the Administrative Agent.

“Atlas” means Atlas Credit Partners, LLC.

“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 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 3.03(d).

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

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“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 3.03(d).

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

(a) Daily Simple SOFR or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower 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 (b) above would be less than one percent (1.00%), the Benchmark Replacement will be deemed to be one percent (1.00%) for the purposes of this Agreement and the other Loan Documents.

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

“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 non-representative or non-compliant with or non-aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; provided that such non-representativeness, non-compliance or non-alignment 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 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 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 not, or as of a specified future date will not be, representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

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 Loan Document in accordance with Section 3.03 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03.

“Beneficial Owner” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” will be deemed to have beneficial

ownership of all securities that such “person” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time.

“Beneficial Ownership Certification” means a certification regarding the Beneficial Owners of the Borrower as required by the Beneficial Ownership Regulation.

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

“Board” means the Board of Governors of the Federal Reserve System of the United States of America or any successor Governmental Authority.

“Borrower” has the meaning assigned to such term in the introductory paragraph hereto.

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

“Borrowing Date” means any Business Day specified by the Borrower as a date on which the Borrower requests the relevant Lenders to make Loans hereunder.

“Borrowing Request” means a written request by the Borrower for a Borrowing in accordance with Section 2.03 and substantially in the form of Exhibit B or such other form approved by the Administrative Agent.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; and if such day relates to a Borrowing or continuation of, a payment or prepayment of principal of or interest on, or a conversion of or into, or the Interest Period for, a SOFR Loan or a notice by the Borrower with respect to any such Borrowing or continuation, payment, prepayment, conversion or Interest Period, any day which is also a day on which banks are open for dealings in dollar deposits in the London interbank market.

“Call Premium” means with respect to any prepayment of Loans hereunder and any other payment of the Loans hereunder, whether due to acceleration or otherwise: (a) in the case of any such payment of Loans that occurs during the period from the Closing Date to and including the Call Premium Expiration Date, an amount equal to the excess, if any, of (i) the sum of (x) the principal amount of the Loans being repaid or prepaid or that has become or is declared accelerated, plus (y) the present value of all required payments of interest on such Loans being prepaid, repaid or that has become or is declared accelerated, from the date of such prepayment, repayment or acceleration through the Call Premium Expiration Date, which present value shall be calculated using a discount rate equal to the Treasury Rate plus 50 basis points, over (ii) the principal amount of such Loans being prepaid, repaid or that has become or is declared accelerated as of the day of determination, *provided* that, in no case shall the Call Premium pursuant to this clause (a) be less than zero, and (b) in the case of any such payment of Loans that occurs after the Call Premium Expiration Date, zero.

“Call Premium Expiration Date” means the date that is the second anniversary of the Closing Date.

“Capital Expenditures” means, for any Person, all expenditures for fixed or capital assets or other capital expenditures which, in accordance with GAAP, are required to be capitalized and so shown on the consolidated balance sheet of such Person.

“Capital Leases” means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, recorded as capital leases or finance leases on the balance sheet of the Person liable (whether contingent or otherwise) for the payment of rent thereunder.

“Cash Equivalents” means Investments in:

(a) marketable obligations, maturing within one (1) year after acquisition thereof, issued or unconditionally guaranteed by the United States or an instrumentality or agency thereof and entitled to the full faith and credit of the United States;

(b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one (1) year from the date of acquisition thereof and, at the time of acquisition, having one of the three highest ratings obtainable from either S&P or Moody's;

(c) deposits maturing within one (1) year from the date of creation thereof with, including certificates of deposit issued by, any Lender or any office located in the United States of any other bank or trust company which is organized under the laws of the United States or any state thereof, has capital, surplus and undivided profits aggregating at least \$500,000,000 (as of the date of such bank or trust company's most recent financial reports) and has a short term deposit rating of no lower than A2 or P2, as such rating is set forth from time to time, by S&P or Moody's, respectively; and

(d) money market funds substantially all of the assets of which comprise securities of the types described in subsections (a) through (c) above.

“Casualty Event” means (a) any loss, casualty or other insured damage to any Property of any Loan Party or any of its Subsidiaries or (b) any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of (or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking), any Property of any Loan Party or any of its Subsidiaries (any event in this clause (b), a “Condemnation Event”).

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

(a) any Person or group (within the meaning of Rule 13d-5 of the Exchange Act as in effect on the Closing Date), other than Permitted Holders, owning and controlling, directly or indirectly, of record and beneficially, in the aggregate Equity Interests representing 35.0% or more of the economic and voting Equity Interests in the Borrower;

(b) the Borrower ceasing to beneficially own and control, directly, 100% on a fully diluted basis of the economic and voting interest in the Equity Interests of IPHoldCo;

(c) IPHoldCo ceasing to beneficially own and control, directly, 100% on a fully diluted basis of the economic and voting interest in the Equity Interests of IPCo; or

(d) the sale, exclusive license or transfer, in a single transaction or in a related series of transactions, of all or substantially all of the assets of IPCo to any Person.

“Change in Law” means the occurrence after the date of this Agreement or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement, of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by any Lender (or, for purposes of Section 5.01(b), by any lending office of such Lender or by such Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith (whether or not having the force of law) or in implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “Change in Law,” regardless of the date enacted, adopted, promulgated, issued or implemented.

“Closing Date” means the date on which the conditions specified in Section 7.01 are satisfied (or waived in accordance with Section 13.02).

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means all Property now owned or hereafter acquired by the Loan Parties or any other Guarantor which is subject to a Lien created or purported to be created under one or more Security Documents.

“Collateral Agent” means ACP, as collateral agent for the Secured Parties, together with any successor collateral agent or collateral agent appointed in accordance with the provisions of Section 12.06.

“Commitments” means, with respect to each Lender, the commitment of such Lender to make Loans hereunder pursuant to Section 2.01(a) in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Annex I hereto under the heading “Commitments” and any additional commitments established pursuant to Section 2.06. As of the Closing Date, the aggregate principal amount of Commitments of the Lenders is \$85,106,383.00.

“Commodity Accounts” means all “commodity accounts” (as such term is defined in the UCC) of the Loan Parties.

“Condemnation Event” has the meaning assigned to such term in the definition of “Casualty Event”.

“Conforming Changes” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “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 3.03 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).

“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.

“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, including the power to elect a majority of the directors, managers, trustees or equivalent of a Person, as the case may be. “Controlling” and “Controlled” have meanings correlative thereto.

“Control Agreement” means, with respect to any Deposit Account, Securities Account or Commodity Account, a control agreement, in form and substance reasonably satisfactory to the Collateral Agent.

“Convertible Notes” means those certain convertible promissory notes made by Borrower in favor of Wood River Capital, LLC, and issued pursuant to that certain Indenture dated as of April 7, 2022, such Indenture as contemplated by the terms of that certain Investment Agreement dated as of July 6,

2021 between Borrower and Spring Creek Capital, LLC, an affiliate of Wood River Capital, LLC, both wholly-owned, indirect subsidiaries of Koch Industries, Inc., as such convertible promissory notes may be reissued, divided and increased, any increases limited to the addition of interest “paid in kind” under the terms of the Indenture.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” has the meaning set forth in Section 3.03(c).

“Deposit Accounts” means all “deposit accounts” (as such term is defined in the UCC) of the Loan Parties.

“Designee(s)” has the meaning set forth in Section 13.04(e).

“Disposition” means, (a) with respect to any Intellectual Property, any sale, exclusive license, sale with retained non-exclusive license, assignment, conveyance or transfer, and (b) with respect to any other Property (including, without limitation, Equity Interests of any Subsidiaries), any sale, lease, sale and leaseback, assignment, conveyance, transfer, license or other disposition thereof, including, without limitation, any issuance of Equity Interests of any Subsidiary. The terms “Dispose” and “Disposed of” have meanings correlative thereto.

“Disqualified Capital Stock” 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, matures or is mandatorily redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is convertible or exchangeable for Indebtedness or redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock) at the option of the holder thereof, in whole or in part, on or prior to the date that is one year after the earlier of (a) the Maturity Date and (b) the date on which there are no Loans or other obligations hereunder outstanding and all of the Commitments are terminated.

“dollars” or “\$” refers to lawful money of the United States of America.

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

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

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

“Environmental Laws” means any and all Governmental Requirements pertaining in any way to health, safety, the environment, the preservation or reclamation of natural resources, or the management, Release or Threatened Release of any Hazardous Materials, in effect in any and all jurisdictions in which any Loan Party or any Subsidiary of any Loan Party is conducting, or at any time has conducted, business, or where any Property of any Loan Party or any Subsidiary of any Loan Party is located, including, the Oil Pollution Act of 1990, as amended, the Clean Air Act, as amended, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended, the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act of 1970, as amended, the Resource Conservation and Recovery Act of 1976 (“RCRA”), as amended, the Safe

Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Hazardous Materials Transportation Act, as amended, and other environmental conservation or protection Governmental Requirements.

“Environmental Permit” means any permit, registration, license, notice, approval, consent, exemption, variance, or other authorization required under or issued pursuant to applicable Environmental Laws.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, including both preferred and common equity, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such Equity Interest, including the Convertible Notes and any other debt securities convertible into any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute.

“ERISA Affiliate” means each trade or business (whether or not incorporated) which together with the Borrower or a Subsidiary would be deemed to be a “single employer” within the meaning of section 4001(b)(1) of ERISA or subsections (b), (c), (m) or (o) of section 414 of the Code.

“Escrow Agent” means NCC Group Software Resilience (NA) LLC.

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

“Event of Default” has the meaning assigned to such term in Section 11.01.

“Excepted Liens” means:

(a) Liens for Taxes, assessments or other governmental charges or levies which are (i) not delinquent or (ii) being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP;

(b) Liens in connection with workers’ compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP;

(c) statutory landlord’s liens, operators’, vendors’, carriers’, warehousemen’s, repairmen’s, mechanics’, suppliers’, workers’, materialmen’s, construction or other like Liens arising by operation of law in the ordinary course of business, each of which is in respect of obligations that are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP or in respect of which bonds otherwise in an amount sufficient to repay the underlying obligation of such Liens shall have been obtained and remain in effect;

(d) Liens arising solely by virtue of any statutory or common law provision or customary deposit account terms (pursuant to a depository institution’s standard documentation that is provided to its customers generally) relating to banker’s liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution; provided that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board and no such deposit account is intended by any Loan Party or any Subsidiary of any Loan Party to provide collateral to the depository institution; and

(e) encumbrances consisting of zoning restrictions, easements or other restrictions on the use of real property, none of which materially impairs the use or operation of such property in the ordinary course of business of the Loan Parties, or the value thereof, and that do not otherwise individually or in the aggregate materially impair the validity, perfection or priority of the Liens granted under the Security Documents;

provided, further, that (x) Liens described in clauses (a) through (d) shall remain “Excepted Liens” only for so long as no action to enforce such Lien has been commenced and no intention to subordinate the first priority Lien granted in favor of the Collateral Agent and the Lenders is to be hereby implied or expressed by the permitted existence of such Excepted Liens and (y) in no event shall “Excepted Liens” secure Indebtedness of the type specified in clauses (a) and (b) of the definition of Indebtedness.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Excluded Subsidiary” means HI-POWER, LLC, a Delaware limited liability company; provided, if the Government Loan has not been executed on or prior to January 1, 2024, then HI-POWER, LLC shall no longer be an Excluded Subsidiary and HI-POWER, LLC’s owner(s) or member(s) will grant a lien on its equity and HI-POWER, LLC shall guarantee the Secured Obligations; provided further, at no time shall HI-POWER, LLC grant a lien in any of its assets to secure all or any portion of the Secured Obligations.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower or any Guarantor hereunder or under any other Loan Document, (a) any and all Taxes imposed on (or measured by) such recipient’s net income (however denominated), franchise Taxes or branch profits Taxes, in each case imposed by (i) any jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or incorporated or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) that are Other Connection Taxes, (b) any and all Taxes attributable to such Lender’s failure to comply with Section 5.03(f), (c) in the case of a Lender, U.S. federal withholding Taxes that are imposed on amounts payable to or for the account of such Lender (x) pursuant to a law in effect at the time such Lender acquires an interest in a Loan or Commitment or (y) pursuant to a law in effect at the time such Lender designates a new lending office, except in each case to the extent that such Lender (or its assignor, if any) was entitled, immediately before the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding Taxes pursuant to Section 5.03 and (d) any withholding Taxes imposed by FATCA.

“Existing Indebtedness” means \$15,000,000 owed by Eos Energy Storage LLC, as borrower, to Holtec Power, Inc., pursuant to a promissory note dated April 8, 2021, which Indebtedness has been guaranteed by the Borrower.

“Extraordinary Net Cash Receipts” means any cash received by or paid to or for the account of the Borrower or any of its Subsidiaries not in the ordinary course of business and related to the Collateral, in each case, net of customary reasonable costs and expenses associated therewith; provided that Extraordinary Net Cash Receipts shall not include the following (the parties to this Agreement agreeing that the following exclusions are not intended to be exhaustive or complete listing of payments that would be considered ordinary course): (a) proceeds of grants or other similar programs extended by a Governmental Authority, or (b) any payments received in connection with liquidated damages received from suppliers or customers, purchase price adjustments or early termination fees or termination for convenience fees from suppliers or customers.

“Facility” means this Agreement and the Commitments and the extensions of credit made hereunder.

“FATCA” means Sections 1471 through 1474 of the Code, as in effect as of the date of this Agreement (or any amended or successor version or similar requirement of law that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official

interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code (including any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any fiscal or regulatory legislation, rules, administrative guidance, or practices adopted or entered into pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“FCPA” means the United States Foreign Corrupt Practices Act of 1977, as amended.

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; provided that (a) if such a day is not a Business Day, the Federal Funds Effective 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 Effective Rate for such day shall be the average rate charged to three major banks on such day of such transactions as determined by the Administrative Agent; provided further that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“Fee Letter” means that certain Fee Letter among the Agents and the Borrower dated as of the date hereof.

“Financial Covenant” has the meaning set forth in Section 10.01.

“Financial Officer” means, for any Person, a chief financial officer, principal accounting officer, treasurer or controller of such Person. Unless otherwise specified, all references herein to a Financial Officer means a Financial Officer of the Borrower.

“Flood Laws” mean all collectively, (a) National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (b) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (c) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

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

“Foreign Subsidiary” means any Subsidiary of the Borrower that is not organized under the laws of any political subdivision of the United States of America.

“Funds Flow Memorandum” has the meaning set forth in Section 7.01(r).

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time subject to the terms and conditions set forth in Section 1.04.

“General and Administrative Costs” means the general and administrative costs of the Borrower, including utilities, communications, consulting fees, salary, rent, supplies, travel, insurance, accounting, legal, engineering and broker related fees required to manage its affairs.

“Government Loan” means up to \$300,000,000 outstanding principal amount of Indebtedness provided by the U.S. Department of Energy or other U.S. or State government entity, as the same may be amended.

“Governmental Approval” means any authorization, consent, approval, license, ruling, permit, tariff, rate, certification, exemption, filing, variance, claim, order, judgment, decree, publication, notice, declaration, or registration, filed with, or issued or granted, by any Governmental Authority.

“Governmental Authority” means the government of the United States of America, any other nation or 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).

“Governmental Requirement” means any law, statute, code, ordinance, order, determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, authorization or other directive or requirement, whether now or hereinafter in effect, including Environmental Laws and occupational, safety and health standards or controls, of any Governmental Authority.

“Guarantee and Collateral Agreement” means the Guarantee and Collateral Agreement dated as of the Closing Date executed by the Borrower and the other Loan Parties (including any Subsidiaries that execute such agreement after the Closing Date pursuant to Section 9.12), in substantially the form of Exhibit F.

“Guarantors” means each Subsidiary of the Borrower, excluding any Immaterial Subsidiaries and the Excluded Subsidiary, that is a party to the Guarantee and Collateral Agreement as a “Guarantor” and “Grantor” (as such terms are defined in the Guarantee and Collateral Agreement) and guarantees the Secured Obligations. For the avoidance of doubt, the Excluded Subsidiary shall not be a “Guarantor” or “Grantor” under the Guarantee and Collateral Agreement.

“Hazardous Material” means any substance regulated or as to which liability might arise under any applicable Environmental Law and including: (a) any chemical, compound, material, product, byproduct, substance or waste defined as or included in the definition or meaning of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic waste,” “extremely hazardous substance,” “toxic substance,” “contaminant,” “pollutant,” or words of similar meaning or import found in any applicable Environmental Law; (b) Hydrocarbons, petroleum products, petroleum substances, natural gas, oil, oil and gas waste, crude oil, and any components, fractions, or derivatives thereof; and (c) radioactive materials, asbestos containing materials, polychlorinated biphenyls, per- and poly-fluorinated substances or radon.

“Hedging Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement, whether exchange traded, “over-the-counter” or otherwise, involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of any Loan Party or their Subsidiaries shall be a Hedging Agreement.

“Highest Lawful Rate” means, with respect to each Lender, the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Loans or on other Secured Obligations under laws applicable to such Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws allow as of the date hereof.

“Immaterial Subsidiary” means, at any time of determination, any Foreign Subsidiary: (a) that, together with its Subsidiaries that constitute Foreign Subsidiaries, does not have total assets in excess of 2.5% of the consolidated total assets of the Borrower and its Subsidiaries or total revenues in excess of 2.5% of the consolidated total revenues of the Borrower and its Subsidiaries (based upon and as of the date of delivery of the most recent consolidated financial statements of the Borrower furnished pursuant to this Agreement), and (b) does not own, directly or indirectly, Equity Interests in any other Subsidiary that is not an Immaterial Subsidiary; provided that the total assets or total revenues of all Immaterial Subsidiaries shall not exceed 5% of the consolidated total assets or total revenues, as the case may be, of the Borrower and its Subsidiaries (based upon and as of the date of delivery of the most recent consolidated financial statements of the Borrower furnished pursuant to this Agreement).

“Increased Cost Lender” has the meaning assigned to such term in Section 5.06.

“Indebtedness” means, for any Person, the sum of the following (without duplication): (a) all obligations of such Person for borrowed money or evidenced by bonds, bankers’ acceptances, debentures, notes or other similar instruments; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, surety or other bonds and similar instruments; (c) all accounts payable and other accrued expenses, liabilities or other 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); (d) in respect of any Capital Lease of any Person, the capitalized amount thereof (or finance lease liabilities) that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP; (e) all Indebtedness (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Indebtedness is assumed by such Person; (f) all Indebtedness (as defined in the other clauses of this definition) of others guaranteed by such Person or in which such Person otherwise assures a creditor against loss of the Indebtedness (howsoever such assurance shall be made); (g) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others or to purchase the Indebtedness or Property of others; (h) obligations to deliver commodities, goods or services in consideration of one or more advance payments; (i) obligations to pay for goods or services, even if such goods or services are not actually received or utilized by such Person, i.e., take-or-pay and similar obligations; (j) any Indebtedness of a partnership for which such Person is liable either by agreement, by operation of law or by a Governmental Requirement but only to the extent of such liability; (k) Disqualified Capital Stock; and (l) obligations under Hedging Agreements. The Indebtedness of any Person shall include all obligations of such Person of the character described above to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is not included as a liability of such Person under GAAP.

“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 the Borrower or any Guarantor under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 13.03(b).

“Information” has the meaning assigned to such term in Section 13.12.

“Insurance Policy” means that certain Collateral Protection Insurance Policy issued by the Insurers to the Collateral Agent on behalf of the Lenders, as insured, with the Lenders as loss payee thereunder.

“Insurance Proceeds” has the meaning set forth in Section 13.04(e).

“Insurers” means each Insurer, as defined in the Insurance Policy.

“Intellectual Property” has the meaning set forth in the Guarantee and Collateral Agreement.

“Intercompany IP Licensing Agreement” means, collectively, that certain Intellectual Property License Agreement, dated July 28, 2022, among IPCo, the other Loan Parties and the Excluded Subsidiary, and any other license or sublicense agreement between IPCo, on the one hand, and the other Loan Parties or the Excluded Subsidiary, on the other hand, pursuant to which such Loan Party or the Excluded Subsidiary has made arrangements to exploit certain Intellectual Property of IPCo, as such agreements may be amended, restated, amended and restated, supplemented or otherwise modified not in contravention of this Agreement.

“Interest Election Request” means a written request by the Borrower to convert or continue a Borrowing in accordance with Section 2.04 and substantially in the form of Exhibit C or such other form approved by the Administrative Agent.

“Interest Escrow Account” means (a) initially, that certain account in the name of the Collateral Agent (or its sub-agent) as notified in writing to the Borrower and the Lenders, or (b) if permitted by the Collateral Agent in its sole discretion (acting at the direction of the Majority Lenders), any deposit account of the Borrower designated by the Borrower from time to time in writing to the Collateral Agent, subject to a Control Agreement in favor of the Collateral Agent, in form and substance reasonably satisfactory to the Collateral Agent (it being understood and agreed that the Collateral Agent shall have sole control over the Interest Escrow Account immediately upon the occurrence of the Closing Date and at all times thereafter).

“Interest Escrow Account Funds” has the meaning assigned to such term in Section 3.02(d).

“Interest Escrow Required Amount” means (a) as of the Closing Date, an amount equal to \$9,621,225.53 and (b) thereafter, an amount equal to the aggregate amount of the four (4) immediately following interest payments owed on the Loans; *provided*, it being understood and agreed that if (i) as of any date the amount of interest actually owed with respect to the four (4) interest payments immediately following such date exceeds the aggregate amount of Interest Escrow Account Funds as a result of any change in the reference rate or otherwise, then the Borrower shall deposit such deficient amount into the Interest Escrow Account within three (3) Business Days after the Administrative Agent provides written notice of such deficiency to the Borrower, and (ii) as of any date the amount of interest actually owed with respect to the four (4) interest payments immediately following such date is less than the aggregate amount of Interest Escrow Account Funds as a result of any change in the reference rate, a paydown of the Loans or otherwise, then, if no Default or Event of Default exists, the Administrative Agent shall promptly (and in any event, within three (3) Business Days) release and deliver to the Borrower such excess amount after the Borrower provides written notice of such excess to the Administrative Agent.

“Interest Payment Date” has the meaning assigned to such term in Section 3.02(d).

“Interest Period” means, as to each SOFR Loan, the period commencing on the date such SOFR Loan is disbursed or converted to or continued as a SOFR Loan and ending on the date three (3) months thereafter; *provided* that:

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

(2) 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; and

(3) no Interest Period shall extend beyond the Maturity Date.

“Intermediate Holdco” means Eos Energy Enterprises Intermediate Holdings, LLC, a Delaware limited liability company.

“Investment” means, for any Person: (a) the purchase or acquisition (whether for cash, Property, services or securities or otherwise) of Equity Interests of any other Person or any agreement to make any such acquisition (including any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such short sale); (b) the making of any deposit with, or advance, loan or capital contribution to, assumption of Indebtedness of, purchase or other acquisition of any other Indebtedness or equity participation or interest in, or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days representing the purchase price of inventory or supplies sold by such Person in the ordinary course of business); (c) the purchase or acquisition (in one or a series of transactions) of Property of another Person that constitutes a business unit or a discrete set of Properties of the seller of such Properties, other than any Property consisting of equipment, materials or consumables purchased or acquired in the ordinary course of business; or (d) the entering into of any guarantee of, or other contingent obligation (including the deposit of any Equity

Interests to be sold) with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person.

“IPCo” means Eos Energy Technology Holdings, LLC, a Delaware limited liability company.

“IPHoldCo” means Eos Enterprise Holdings, LLC, a Delaware limited liability company.

“IP Escrow Agreement” means that certain Information Escrow Agreement, by and among the Escrow Agent, the Administrative Agent and IPCo.

“IRS” means the United States Internal Revenue Service.

“Labor Contracts” means all employment agreements, employment contracts, collective bargaining agreements and other agreements among any Loan Party or Subsidiary of a Loan Party and its employees.

“Lenders” means the Persons listed on Annex I and any Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“License Agreements” means any license or sublicense agreement between IPCo and a Loan Party pursuant to which such Loan Party has made arrangements to exploit certain Intellectual Property of IPCo, as such agreements may be amended, restated, amended and restated, supplemented or otherwise modified not in contravention of this Agreement.

“Lien” means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute or contract, and whether such obligation or claim is fixed or contingent, and including (a) the lien or security interest arising from a mortgage, deed of trust, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and any filed financing statement or other notice of any of the foregoing (whether or not a lien or other encumbrance is created or exists at the time of the filing).

“Liquidity” means (a) aggregate principal amounts then available to be borrowed under any revolving facility of the Borrower permitted hereunder, (b) the Unrestricted Cash of the Loan Parties that is subject to a valid and first priority perfected Lien (subject to Excepted Liens of the type described in clause (d) of the definition thereof) in favor of the Collateral Agent, (c) any other cash held in a Deposit Account of the Excluded Subsidiary that is not listed as “Restricted” (or similar caption) on the balance sheet of such Person and (d) any other cash of the Excluded Subsidiary held for the benefit of the lender of the Government Loan pursuant to the terms thereof.

“Loan Documents” means this Agreement, the Notes, the Security Documents, the Fee Letter, any agreement, instrument or certificate required to be delivered under this Agreement by or on behalf of any Loan Party and each other document designated as a Loan Document thereunder (but for the avoidance of doubt shall not include the Insurance Policy).

“Loan Parties” means, collectively, the Borrower and the Guarantors. “Loan Party” means the Borrower or a Guarantor, individually, as the context may require. For so long as HI-POWER, LLC is an Excluded Subsidiary, HI-POWER, LLC shall not be a Loan Party or Guarantor under any Loan Document and none of its Property or any Equity Interests issued by it shall be subject to the Liens of the Agents and the Lenders.

“Loans” has the meaning specified for such term in Section 2.01(a).

“Majority Lenders” means, as of any date of determination, the holders of more than 50% of (a) the Commitments of all the Lenders then in effect or (b) after the Closing Date, the outstanding principal amount of the Loans of all Lenders then outstanding at such date (without regard to any sale by a Lender of a participation in any Loan under Section 13.04(c)); *provided*, (i) that at any time there are two or more Lenders, at least two Lenders shall be necessary to constitute “Majority Lenders” and (ii) to the extent Atlas or an Affiliate thereof holds any Commitments or Loans at such time, then Atlas or such Affiliate shall be one of the Majority Lenders.

“Manufacturing and Supply Agreement” means that certain Manufacturing and Supply Agreement, among Excluded Subsidiary and the Loan Parties, in form and substance reasonably satisfactory to the Collateral Agent.

“Material Adverse Effect” means a material adverse change in, or material adverse effect on, (a) the business, operations, liabilities (actual or contingent) or financial condition of (i) the Borrower and its Subsidiaries, taken as a whole or (ii) the Borrower, (b) the ability of any Loan Party to perform any of its obligations under any Loan Document to which it is a party, (c) the validity or enforceability of any Loan Document or (d) the rights and remedies of or benefits available to any Agent or any Lender under any Loan Document.

“Material Contract” means (a) the agreements listed on Schedule 1.01, (b) the Intercompany IP Licensing Agreement, and (c) any other contract or other arrangement to which any Loan Party or any of its Subsidiaries is a party (other than the Loan Documents) which are entered into after the date of the Agreement and for which disclosure under Item 1.01 of Form 8K is required.

“Material Contract Estoppel” means an undertaking in form and substance reasonably satisfactory to the Collateral Agent pursuant to which each Person other than a Loan Party that is a party to a Material Contract (excluding any agreements, permits or licenses between a Loan Party, on the one hand, and any Governmental Authority, on the other hand) (i) consents to the granting of Liens encumbering the applicable Loan Party’s interest in such Material Contract, (ii) consents to the enforcement of such Lien pursuant to the terms of the Loan Documents, (iii) consents to transfer of the applicable Material Contract to any initial transferee following enforcement of such Lien or a transfer in lieu of such enforcement, and (iv) agrees to continue to perform its obligations under such Material Contract so long as such transferee performs the obligations of the Loan Party thereunder.

“Material Indebtedness” means Indebtedness (other than the Loans) of any one or more of the Loan Parties or their Subsidiaries in an aggregate principal amount exceeding \$5,000,000.

“Maturity Date” means the earlier of (a) July 29, 2026 and (b) 91 days prior to the then-current maturity date of the Convertible Notes, after giving effect to any extension, refinancing or replacement of the Convertible Notes (including, without limitation, pursuant to any Permitted Convertible Debt).

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto that is a nationally recognized rating agency.

“Mortgage” means each mortgage, deed of trust or any other document (including any assignment thereof) creating and evidencing a Lien on real Property and other Property in favor of the Collateral Agent, for the benefit of the Secured Parties, which shall be in a form reasonably satisfactory to the Collateral Agent.

“Mortgaged Property” means any Property owned by any Loan Party that is subject to a Mortgage.

“Net Cash Proceeds” means, (a) with respect to any Disposition of Collateral by any Loan Party, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such Disposition, but only as and when so received, over (ii) the sum, without duplication, of (A) the reasonable costs and expenses incurred by such Loan Party in connection with such Disposition and (B) all title and recording Tax expense and all federal, state, provincial, foreign and local income Taxes required to be paid in the then-current fiscal year or subsequent fiscal year as a consequence of such

Disposition; (b) with respect to the issuance of any Indebtedness, the cash proceeds received from such issuance of Indebtedness, as the case may be, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith; and (c) with respect to any issuance of Equity Interests, the cash proceeds thereof, net of all Taxes paid in cash incurred in connection therewith and customary fees, discounts, commissions, costs and other expenses incurred in connection therewith.

“Non-Consenting Lender” has the meaning assigned to such term in Section 5.06.

“Notes” means the promissory notes of the Borrower described in Section 2.02(c) and being substantially in the form of Exhibit A.

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Organizational 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 such corporation) and any shareholders agreement; (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.

“Original Indebtedness” means Indebtedness permitted by this Agreement that is extended, refinanced or replaced.

“Other Connection Taxes” means, with respect to any the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower or any Guarantor hereunder or under any other Loan Document, 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 any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes arising from any payment made hereunder or from the execution, delivery, performance, registration or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement and any other Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.06).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight SOFR borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Participant” has the meaning set forth in Section 13.04(c)(i).

“Participant Register” has the meaning set forth in Section 13.04(c)(ii).

“Patent, Trademark and Copyright Security Agreements” means each patent security agreement, trademark security agreement and copyright security agreement, in substantially the form attached as exhibits to the Guarantee and Collateral Agreement or otherwise in a form acceptable to the Collateral Agent, each as executed and delivered by the applicable Loan Parties in favor of the Collateral Agent, for the benefit of the Secured Parties.

“Payment” has the meaning assigned to such term in Section 12.12(a).

“Payment in Full” means (a) the Commitments have expired or been terminated, (b) the principal of and premium (if any) on and interest on each Loan and all fees payable hereunder and all other amounts payable under the Loan Documents shall have been paid in full in cash (other than contingent indemnification obligations) and (c) all other Secured Obligations shall have been paid in full in cash.

“Payment Notice” has the meaning assigned to such term in Section 12.12(b).

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

“Permitted Convertible Debt” means Indebtedness incurred pursuant to the Standby Equity Purchase Agreement with affiliates of Yorkville Advisors, dated April 28, 2022, not to exceed an aggregate principal amount of \$15,000,000 outstanding at any time, to be repaid only with proceeds of Equity Interests of the Borrower or additional Indebtedness incurred pursuant to such Standby Equity Purchase Agreement.

“Permitted Holders” means (a) YA II PN, Ltd., an affiliate of Yorkville Advisors, (b) Wood River Capital, LLC, a Delaware limited liability company that is a wholly-owned, indirect subsidiary of Koch Industries, Inc., and (c) each of their respective Affiliates.

“Permitted Liens” means Liens permitted pursuant to Section 10.03.

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

“Personnel Agreement” means that certain intercompany agreement to be entered into regarding the allocation of employees among the Borrower and its Subsidiaries, in form and substance reasonably satisfactory to the Collateral Agent.

“Plan” means any employee pension benefit plan, as defined in section 3(2) of ERISA, which (a) is currently or hereafter sponsored, maintained or contributed to by the Borrower or an ERISA Affiliate or (b) was at any time during the six (6) calendar years preceding the date hereof, sponsored, maintained or contributed to by the Borrower or an ERISA Affiliate.

“Prime Rate” means the “U.S. Prime Lending Rate” as published in *The Wall Street Journal* (or, if *The Wall Street Journal* ceases quoting a prime rate, the highest *per annum* rate of interest published by the Federal Reserve Board in Federal Reserve statistical release H.15 (519) entitled “Selected Interest Rates” as the bank prime loan rate or its equivalent). Any change in such prime rate shall take effect at the opening of business on the day specified in the public announcement of such change.

“Property” means any interest in any kind of property, right or asset, whether real, personal or mixed, or tangible or intangible (including cash, securities, accounts, contract rights, Intellectual Property and Equity Interests or other ownership interests of any Person), whether now in existence or owned or hereafter acquired.

“Prudent Industry Practice” means, with respect to any Person, those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by a significant portion of utility-scale battery producers, as good, safe and

prudent practices in connection with construction, operation, maintenance, repair, improvement and use of equipment, facilities and improvements of such utility-scale battery production facilities, with commensurate standards of safety, performance, dependability, efficiency and economy. Prudent Industry Practices does not necessarily mean one particular practice, method, equipment specification or standard in all cases, but is instead intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards.

“Real Property Rights” means all of the rights-of-way, easements, leases, consents, fee ownership, and other real property rights of the Loan Parties.

“Recipient” means (a) the Administrative Agent or (b) any Lender, as applicable.

“Redemption” means, with respect to any Indebtedness, the repurchase, redemption, prepayment, repayment, or defeasance or any other acquisition or retirement for value (or the segregation of funds with respect to any of the foregoing) of such Indebtedness. “Redeem” has the correlative meaning thereto.

“Refinance Indebtedness” means Indebtedness that extends, refinances or replaces Original Indebtedness.

“Register” has the meaning assigned to such term in Section 13.04(b)(iv).

“Regulation D” means Regulation D of the Board, as the same may be amended, supplemented or replaced from time to time.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors (including attorneys, accountants and experts) of such Person and such Person’s Affiliates.

“Release” (or “Threatened Release”) has the meaning assigned to such terms as specified in CERCLA, as amended; provided, however, that (a) in the event that CERCLA is amended so as to broaden the meaning of the term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment and (b) to the extent the laws of the state or other jurisdiction in which any Property of any Loan Party or any Subsidiary of any Loan Party is located establish a meaning for “release” that is broader than that specified in CERCLA, such broader meaning shall apply.

“Relevant Governmental Body” means the Board and/or the NYFRB, or a committee officially endorsed or convened by the Board and/or the NYFRB or, in each case, any successor thereto.

“Remedial Work” has the meaning assigned to such term in Section 9.10(a).

“Replacement Lender” has the meaning assigned to such term in Section 5.06.

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

“Responsible Officer” means, as to any Person, a chief executive officer, the president, any Financial Officer, the secretary or any vice president of such Person, or if such Person does not have any such officer, an individual holding such position with a Person directly or indirectly managing its business and affairs. Unless otherwise specified, all references to a Responsible Officer herein shall mean a Responsible Officer of the Borrower.

“Restricted Payment” means (a) the payment of any dividend or making of any other payment or distribution (whether in cash, securities or other property) on account of any Loan Party’s or any of its Subsidiaries’ respective Equity Interests or to the direct or indirect holders of any Loan Party’s or any of its Subsidiaries’ respective Equity Interests in their capacity as such, (b) the purchase, redemption, acquisition, retirement for value, acquisition, cancellation or termination of any Loan Party’s or any of its Subsidiaries’ respective Equity Interests, (c) any payment or distribution (whether in cash, securities or

other property) on account of any return of capital to any Loan Party's or any of its Subsidiaries' respective stockholders, partners or members (or the equivalent Person thereof), (d) any payment by any Loan Party's or any of its Subsidiaries' for any advisory, consulting, management or similar services provided by or payable to any Affiliate of the Borrower or (e) any payment of principal or interest in cash with respect to any Indebtedness that extends, refinances or replaces the Convertible Notes.

“S&P” means S&P Global Ratings, a division of S&P Global Inc., and any successor thereto that is a nationally recognized rating agency.

“Sanctioned Country” means, at any time, a country, region or territory which is itself, or whose government is, the subject or target of any Sanctions broadly restricting or prohibiting dealings with such country, territory or government.

“Sanctioned Person” means, at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons maintained by the United States (including by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce), or by the United Nations Security Council, the European Union or any EU member state, Her Majesty's Treasury, or other relevant sanctions authority (b) any Person located, operating, organized or resident in a Sanctioned Country or (c) any Person directly or indirectly owned or controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes or restricted measures imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission or any successor Governmental Authority.

“Secured Obligations” means (a) any and all amounts owing or to be owing (including interest accruing at any Default Rate and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, any other Loan Party or any of their Subsidiaries (other than the Excluded Subsidiary), whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) by the Borrower or any other Loan Party or any of their Subsidiaries (whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising) to the Administrative Agent, the Collateral Agent or any Lender or other Secured Party under any Loan Document or paid on behalf of any Loan Party or any other Loan Party or any of their Subsidiaries by the Administrative Agent or the Collateral Agent or any of their Affiliates, and (b) all renewals, restatements, extensions and/or rearrangements of any of the above. Without limitation of the foregoing, the term “Secured Obligations” shall include the unpaid principal or premium (if any) of and interest on the Loans (including, without limitation, interest accruing at the then applicable rate provided in this Agreement after the maturity of the Loans and interest accruing at the then applicable rate provided in this Agreement after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party or any of their Subsidiaries (other than the Excluded Subsidiary), whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), reimbursement obligations and unpaid amounts, fees, expenses, indemnities, costs, and all other obligations and liabilities of every nature of the Borrower or any other Loan Party or any of their Subsidiaries, whether absolute or contingent, due or to become due, now existing or hereafter arising under this Agreement and the other Loan Documents.

“Secured Parties” means the Administrative Agent, the Collateral Agent, each Lender and each Indemnitee.

“Securities Accounts” means all “securities accounts” (as such term is defined in the UCC) of the Loan Parties.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Security Documents” means, collectively, the Guarantee and Collateral Agreement, any Material Contract Estoppel, the Control Agreements, the Mortgages, the Patent, Trademark and Copyright Security Agreements, any Perfection Certificate, and any and all other agreements, instruments, consents or certificates now or hereafter executed and delivered by any Loan Party or any other Person in connection with, or as security for the payment or performance of the Secured Obligations, the Notes or this Agreement (but, for the avoidance of doubt, shall not include the Insurance Policy).

“SOFR” with respect to any day means the secured overnight financing rate published for such day by the NYFRB, as the administrator of the benchmark (or a successor administrator), on the NYFRB’s Website.

“Solvent” means, with respect to any Person(s) as of any date, that (a) as of such date, such Person(s) is able to pay all liabilities of such Person(s) as such liabilities mature, and (b) as of such date, such Person(s) does not have unreasonably small capital given the nature of its business. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Subsidiary” means, with respect to any Person (the “parent”) at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which Equity Interests representing more than 50% of the equity or more than 50% of the ordinary voting power (irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) or, in the case of a partnership, any general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Successor Effective Date” has the meaning set forth in Section 12.06.

“Taxes” means any and 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, penalties and additions to taxes applicable thereto.

“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) Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding Business Day is not more than three (3) Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an Alternate Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “Alternate Base Rate Term SOFR Determination Day”) that is two (2) 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

Alternate 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 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) Business Days prior to such Alternate Base Rate Term SOFR Determination Day.

“Term SOFR Adjustment” means 0.2616%.

“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.

“Terminated Lender” has the meaning assigned to such term in Section 5.06.

“Third Party License Agreement” has the meaning set forth in Section 9.16.

“Transaction Costs” means all fees and expenses incurred or paid by the Borrower in connection with the Transactions.

“Transactions” means, collectively, (a) with respect to (i) the Borrower, the execution, delivery and performance by the Borrower of this Agreement and each other Loan Document to which it is a party, the borrowing of Loans and the use of the proceeds thereof, and the grant of Liens by the Borrower on the Collateral pursuant to the Security Documents, and (ii) each other Loan Party, the execution, delivery and performance by such Loan Party of each Loan Document to which it is a party, such Loan Party’s guarantee of the Secured Obligations pursuant to the applicable Security Documents, and the grant of Liens by such Loan Party on the Collateral pursuant to the Security Documents, (b) the funding of the Interest Escrow Account and payment of Transaction Costs and other amounts in accordance with the Funds Flow Memorandum and (c) the repayment of Existing Indebtedness of the Borrower.

“Trinity Equipment Financing Loan” means Indebtedness pursuant to the Master Equipment Financing Agreement dated September 30, 2021, between the Excluded Subsidiary and Trinity Capital Inc., including the Guaranty by the Borrower of such Indebtedness.

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

“UCC” means the Uniform Commercial Code as in effect in the State of New York.

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

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

“Unadjusted Benchmark Replacement” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment; provided that, if the Unadjusted Benchmark Replacement as so determined would be less than zero, the Unadjusted Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

“Unrestricted Cash” means, with respect to any Loan Party, cash held in a Deposit Account of such Loan Party subject to a Control Agreement, other than (a) Interest Escrow Account Funds and (b) any other cash listed as “Restricted” (or similar caption) on the balance sheet of such Person.

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

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56), as amended.

“Withholding Agent” means the Borrower, any Guarantor or the Administrative Agent.

“Withholding Certificate” has the meaning assigned to such term in Section 5.03(f)(ii)(B)(4).

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

“Yield Maintenance Event” has the meaning assigned to such term in Section 11.02(a).

“Yorkville Advisors” means YA II PN, LTD., a Cayman Islands exempt limited partnership.

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

Section 1.03 Terms Generally; Rules of Construction. 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”, and the word “or” is not exclusive. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The use of the words “repay” and “prepay” and the words “repayment” and “prepayment” herein shall each have identical meanings hereunder. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein 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 in the Loan Documents), (b) except as otherwise provided herein, any reference herein to any law shall be construed as referring to such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to the restrictions contained in the Loan Documents), (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) with respect to the determination of any time period, the word “from” means “from and including” and the word “to” means “to and including”, (f) unless otherwise specified, any reference herein to Articles, Sections, Annexes, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Annexes, Exhibits and Schedules to, this Agreement, (g) any reference to amounts “deposited” into or “on deposit” in any account shall be construed to include any cash equivalents or other amounts credited to such account, (h) the term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form, (i) 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 (j) all references to currencies and to amounts payable hereunder and under the other Loan Documents shall be to United States dollars. A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by the Majority Lenders. The use of the phrase “subject to” as used in connection with Excepted Liens, Permitted Liens or otherwise and the permitted existence of any Excepted Liens, Permitted Liens or any other Liens shall not be interpreted to expressly or impliedly subordinate any Liens granted in favor of the Collateral Agent and the other Secured Parties as there is no intention to subordinate the Liens granted in favor of the Collateral Agent and the other Secured Parties. No provision of this Agreement or any other Loan Document shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

Section 1.04 Accounting Terms and Determinations; GAAP. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished to the Administrative Agent or the Lenders hereunder shall be prepared, in accordance with GAAP, applied on a basis consistent with the financial statements except for changes in which Borrower’s independent certified public accountants concur and which are disclosed to Administrative Agent on the next date on which financial statements are required to be delivered to the Lenders pursuant to Section 9.01(a); provided that, unless the Borrower and the Majority Lenders shall otherwise agree in writing, no such change shall modify or affect the manner in which compliance with the covenants contained herein is computed such that all such computations shall be conducted utilizing financial information presented consistently with prior periods. All indemnification and release provisions of this Agreement shall be construed broadly (and not narrowly) in favor of the Persons receiving indemnification or being released.

Section 1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.06 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day.

Section 1.07 Benchmark Replacement. 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 Alternate 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, Alternate 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. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of Alternate Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain Alternate Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person 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 CREDITS

Section 2.01 Commitments.

(a) Loans. Subject to and upon the terms and conditions herein set forth, each Lender having a Commitment severally, but not jointly, agrees to make term loans denominated in dollars (together with any additional loan made pursuant to a Commitment established in accordance with Section 2.06, each a “Loan” and, collectively, the “Loans”) to the Borrower on the Closing Date (or such later date as contemplated by Section 2.06) in an amount equal to such Lender’s Commitment. Each Lender’s Commitment shall immediately terminate without further action upon the funding of such Lender’s Loan pursuant to this Section 2.01(a).

(b) Nature of Loans as Term Loans. Any amounts borrowed hereunder and repaid or prepaid may not be reborrowed.

Section 2.02 Loans and Borrowings.

(a) Borrowings; Several Obligations. The Loans made on the Closing Date pursuant to the Commitments shall be made as part of one or more Borrowings on the Closing Date consisting of Loans made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments are several and no Lender shall be responsible for any other Lender’s failure to make Loans as required.

(b) Types of Loans. Subject to Section 3.03, each Borrowing shall be comprised entirely of ABR Loans or SOFR Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any SOFR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) Notes. Any Lender may request that the Loans made by it be evidenced by a single promissory note of the Borrower in substantially the form of Exhibit A, dated, in the case of (i) any Lender party hereto as of the date of this Agreement, as of the date of this Agreement or (ii) any Lender that becomes a party hereto pursuant to an Assignment and Assumption, as of the effective date of the Assignment and Assumption, in each case, payable to such Lender or its registered assigns in a principal amount equal to the aggregate principal amount of its Loans as in effect on such date, and otherwise duly completed. In the event that the aggregate principal amount of any Lender’s Loans increases or decreases for any reason (whether pursuant to Section 2.01, Section 13.04(b) or otherwise), upon the request of such Lender, the Borrower shall deliver or cause to be delivered on the effective date of such increase or decrease, a new Note payable to such Lender or its registered assigns in a principal amount equal to the aggregate principal amount of its Loans after giving effect to such increase or decrease, and otherwise duly completed. Borrower’s obligation to deliver a Note evidencing Loans for which the Borrower has previously delivered a Note shall be subject to Borrower’s receipt of such previously-delivered Note or satisfactory indemnity therefor in Borrower’s discretion. The replaced Note shall be deemed cancelled upon delivery from the Borrower to the Lender of such new Note. The date, amount, Type, interest rate and, if applicable, Interest Period of each Loan made by each Lender, and all payments made on account of the principal thereof, shall be recorded by such Lender on its books for its Note, and, prior to any transfer, may be recorded by such Lender on a schedule attached to such Note or any continuation thereof or on any separate record maintained by such Lender. Failure to make any such notation or to attach a schedule shall not affect any Lender’s or the Borrower’s rights or obligations in respect of such Loans or affect the validity of such transfer by any Lender of its Note.

Section 2.03 Requests for Borrowings. (a) To request a Borrowing of Loans on the Closing Date, the Borrower shall give irrevocable notice to the Administrative Agent of such request in writing by facsimile or e-mail to the Administrative Agent by delivering a written Borrowing Request signed by the Borrower to the Administrative Agent not later than 2:00 p.m., New York City time, at least one (1)

Business Day in advance of the Closing Date, requesting that the Lenders make the Loans on the Closing Date and specifying:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the proposed Borrowing Date, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing or a SOFR Borrowing; and
- (iv) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.05(a).

Promptly following receipt of a Borrowing Request in accordance with this Section 2.03(a), the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

(b) In respect of Section 2.03(a)(iv), the Borrower hereby designates that on the Closing Date (i) proceeds of Loans in an amount equal to the Interest Escrow Required Amount will be deposited in the Interest Escrow Account and (ii) all other proceeds of the Loans will be applied in accordance with the Funds Flow Memorandum.

Section 2.04 Interest Elections.

(a) Conversion and Continuance. Each Borrowing initially shall be of the Type specified in the Borrowing Request delivered pursuant to Section 2.03 and, in the case of a SOFR Borrowing, shall have an Interest Period as contemplated by the definition of the term "Interest Period". Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing as provided in this Section 2.04. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Each conversion to or continuance of SOFR Borrowing shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Each conversion to an ABR Borrowing shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof.

(b) Interest Election Requests. To make an election pursuant to this Section 2.04, the Borrower shall notify the Administrative Agent of such election in writing by (i) in the case of continuation of or conversion to a SOFR Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the last day of the current Interest Period or date of conversion, or (ii) in the case of conversion to an ABR Borrowing, not later than 11:00 a.m., New York City time, one (1) Business Day before the date of conversion. Each such written Interest Election Request shall be irrevocable and delivered by facsimile or e-mail to the Administrative Agent and be substantially in the form of Exhibit C and signed by the Borrower.

(c) Information in Interest Election Requests. Each written Interest Election Request shall specify the following information in compliance with Section 2.02:

- (i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to Section 2.04(c)(iii) shall be specified for each resulting Borrowing);
- (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day; and

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a SOFR Borrowing.

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

(e) Effect of Failure to Deliver Timely Interest Election Request and Events of Default on Interest Election. If the Borrower fails to deliver a timely Interest Election Request with respect to a SOFR Borrowing prior to the end of the Interest Period applicable thereto (which, for the avoidance of doubt shall be three (3) Business Days prior to the end of the Interest Period), then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing: (i) no outstanding Borrowing may be converted to or continued as a SOFR Borrowing (and any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a SOFR Borrowing shall be ineffective) and (ii) unless repaid, each SOFR Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

Section 2.05 Funding of Borrowings.

(a) Funding by Lenders. Each Lender shall make each Loan to be made by it hereunder on the proposed Borrowing Date thereof by wire transfer of immediately available funds by 1:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Upon receipt of all requested Loan funds, the Administrative Agent will make such Loans available to the Borrower by promptly wire-transferring the amounts so received, in like funds, to the accounts designated by the Borrower in the applicable Borrowing Request in accordance with Section 2.03. Nothing herein shall be deemed to obligate any Lender to obtain the funds for its 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 its Loan in any particular place or manner.

(b) Presumption of Funding by the Lenders. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any 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 2.05(a) and may, in reliance upon such assumption, make available to the Borrower 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 Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If the Borrower 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 Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.06 Incremental Loan. The Borrower may request an additional Commitment for the making of one additional Loan under this Agreement following the Closing Date upon not less than 10 Business Days' notice to the Administrative Agent (or such lesser period of time permitted by the

Administrative Agent), so long as (a) the requested additional Commitment is not more than \$14,893,617.00, (b) the Insurance Policy limit has increased by at least such requested Commitment amount (less any agreed retention) and is offered on the same terms as the Loans made on the Closing Date, except as otherwise agreed by the Lenders, (c) the Borrower does not permit Liquidity to be less than the Interest Escrow Required Amount, calculated on a pro forma basis immediately after giving effect to each of (i) the establishment of such additional Commitment and (ii) the incurrence of such additional Loan (using Liquidity calculated as of the date of such establishment and/or incurrence (as applicable) and immediately after giving effect thereto, and the Interest Escrow Required Amount equal to the aggregate amount of the four (4) immediately following interest payments owed on the Loans) and (d) unless otherwise agreed by the Lenders, the Borrower shall use the proceeds of any such additional Loans solely for general corporate purposes. The Administrative Agent shall promptly notify the Lenders of the requested additional Commitment and, within ten (10) Business Days thereafter (or such other period agreed by the Administrative Agent and the Borrower), each Lender shall notify the Administrative Agent if and to what extent such Lender agrees to provide such additional Commitment. Any Lender not accepting in writing within such period shall be deemed to have declined to provide the requested additional Commitment. The Administrative Agent and the Borrower may allocate, in their discretion, any additional Commitments among committing existing Lenders. Any additional Commitment established pursuant to this Section 2.06 shall be established at the requested amount (or such lesser amount committed by existing Lenders and agreed by the Borrower) on the date requested by the Borrower and agreed upon by the Administrative Agent and the Lenders providing such incremental Commitment, provided the conditions set forth in Section 7.01 are satisfied at such time. The Administrative Agent, the Borrower, and the existing Lenders shall execute and deliver such documents and agreements as the Administrative Agent deems appropriate to evidence the establishment of any additional Commitments and the making of any additional Loans, in each case, pursuant to this Section 2.06. Any incremental Commitment and Loan made pursuant to this Section 2.06 shall have the same interest rate, maturity date and other terms as the Loans made on the Closing Date.

ARTICLE III PAYMENTS OF PRINCIPAL AND INTEREST; PREPAYMENTS; FEES

Section 3.01 Repayment of Loans. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the unpaid principal amount of each Loan on the Maturity Date.

Section 3.02 Interest.

(a) ABR Loans. The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(b) SOFR Loans. The Loans comprising each SOFR Borrowing shall bear interest at the Adjusted Term SOFR for the Interest Period in effect for such Borrowing plus the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(c) Post-Default Rate.

(i) Secured Obligations. The Secured Obligations shall automatically bear interest, after as well as before judgment, from the date of occurrence of any Event of Default set forth in Sections 11.01(a), 11.01(g), or 11.01(h) or, in the case of any other Event of Default, from the date the Administrative Agent provides written notice to Borrower of the occurrence of such Event of Default, in each case, of until such Event of Default is no longer continuing at a rate *per annum* equal to (i) in the case of principal of any Loan, 2.0% *per annum* plus the rate otherwise applicable to such Loan or (ii) in the case of any other amounts, the sum of the rate of interest applicable under to ABR Loans plus an additional 2.0% *per annum* on such amount, but in no event to exceed the Highest Lawful Rate (with such interest to be retroactive to the date of such Event of Default) (the "Default Rate").

(ii) Acknowledgment. The Borrower acknowledges that the increase in rates referred to in this Section 3.02(c) reflects, among other things, the fact that such Loans or other

amounts have become a substantially greater risk given their default status and that the Lenders are entitled to additional compensation for such risk; and all such interest shall be payable by the Borrower upon demand by the Majority Lenders or by the Administrative Agent at the written direction of the Majority Lenders.

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable quarterly in arrears on the last Business Day of each fiscal quarter (each, an “Interest Payment Date”) and shall be paid in cash; provided that (i) interest accrued pursuant to Section 3.02(c) shall be payable on demand in cash, (ii) in the event of any repayment or prepayment of any Loan (including on the Maturity Date, upon acceleration or otherwise), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment in cash, (iii) notwithstanding anything to the contrary herein, if any Event of Default has occurred that is continuing, on each Interest Payment Date during the continuance of an Event of Default, the Borrower hereby directs and authorizes the Collateral Agent, and the Collateral Agent hereby agrees, to disburse the applicable amount of interest payable on such Interest Payment Date from the Interest Escrow Account to each Lender holding Loans on such date, and upon such disbursement from the Interest Escrow Account to the Lenders, the Borrower shall be deemed to have made the interest payment due on such Interest Payment Date (it being understood and agreed that to the extent the funds in the Interest Escrow Account are not sufficient to pay the full amount of the interest then due, the Borrower agrees to pay the Administrative Agent (for the account of each Lender) any such deficient amount in cash on the applicable Interest Payment Date) and (iv) notwithstanding anything to the contrary herein, with respect to the first four (4) interest payments due following the third (3rd) anniversary of the Closing Date, on each applicable Interest Payment Date, the Borrower hereby directs and authorizes the Collateral Agent, and the Collateral Agent hereby agrees, to disburse the applicable amount of interest payable on such Interest Payment Date from the Interest Escrow Account to each Lender holding Loans on such date, and upon such disbursement from the Interest Escrow Account to the Lenders, the Borrower shall be deemed to have made the interest payment due on such Interest Payment Date (it being understood and agreed that to the extent the funds in the Interest Escrow Account are not sufficient to pay the full amount of the interest then due, the Borrower agrees to pay the Administrative Agent (for the account of each Lender) any such deficient amount in cash on the applicable Interest Payment Date). Notwithstanding anything to the contrary herein, the Interest Escrow Account Funds) shall be subject to the exclusive dominion and control of the Collateral Agent; provided that immediately after Payment in Full the Collateral Agent shall return any funds, investments or other property in the Interest Escrow Account to the Borrower. The Borrower hereby acknowledges and agrees that neither it nor any of its Subsidiaries or Affiliates shall directly or indirectly seek to obtain (whether by informal or formal process) control over the Interest Escrow Account or the Interest Escrow Account Funds at any time prior to Payment in Full. The Borrower further agrees that it and its Subsidiaries and Affiliates will support the Agents and the Lenders in any proceeding, action or similar dispute regarding the fact that no party, other than the Collateral Agent, has control over the Interest Escrow Account or the Interest Escrow Account Funds. The Collateral Agent and the Borrower have not entered and will not enter into any other agreement with respect to control of the Interest Escrow Account, except for a Control Agreement to the extent contemplated by the definition of Interest Escrow Account.

(e) Interest Rate Computations. All interest hereunder shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted Term SOFR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error, and be binding upon the parties hereto.

Section 3.03 Benchmark Replacement Setting.

(a) Benchmark Replacement.

(i) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior 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 Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date 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 Majority Lenders.

(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) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.03(d) and (y) the commencement of any Benchmark Unavailability Period. 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 3.03, 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 3.03.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, 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 (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 or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks 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 Borrowing of, 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 ABR 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 Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

(f) Compensation for Breakage or Non-Commencement of Interest Periods. The Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts in reasonable detail), for all reasonable losses, expenses and liabilities (including any interest paid or 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 Borrowing Request 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 notice of conversion or continuation 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 a date prior to the last day of an Interest Period applicable to that Loan; 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 Borrower.

(g) 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.

(h) Assumptions Concerning Funding of SOFR Loans. Calculation of all amounts payable to a Lender under this Section 3.03 and under Section 5.01 shall be made as though such Lender had actually funded each of its relevant SOFR Loans through the purchase of a SOFR deposit bearing interest at the rate obtained pursuant to the definition of "Adjusted Term SOFR" in an amount equal to the amount of such SOFR Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such SOFR deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; *provided, however*, each Lender may fund each of its SOFR Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 3.03 and under Section 5.01.

Section 3.04 Prepayments.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part in an amount of not less than \$500,000 and integral multiples of \$100,000 in excess of that amount or, if less, the entire outstanding principal amount of the Borrowings, subject to prior notice in accordance with Section 3.04(b). Prepayments pursuant to this Section 3.04(a) shall, in each case, be accompanied by the payment of the Call Premium (if applicable) and all accrued interest on the amount prepaid together with any additional payments to the extent required by Sections 5.01, 5.02 or 5.03.

(b) Notice and Terms of Optional Prepayment. The Borrower shall notify the Administrative Agent in writing by facsimile or other electronic transmission of any prepayment under Section 3.04(a) not later than 12:00 noon, New York City time, three (3) Business Days before the date of prepayment (or such shorter time period as to which the Administrative Agent shall agree). Each such notice shall be irrevocable and shall in the case of a prepayment specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is conditioned upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable event or condition, such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied (it being understood that the requirements of Section 5.02 shall apply to any failure of such condition to occur and any such revocation). Promptly

following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof.

(c) Mandatory Prepayments.

(i) Dispositions and Casualty Events. If any Loan Party or any of its Subsidiaries receives Net Cash Proceeds in respect of (A) any Dispositions of Collateral pursuant to Section 10.10(e) in excess of \$1,500,000 in the aggregate in any calendar year or any Disposition not permitted under this Agreement or (B) any Casualty Event with respect to Collateral, then, within five (5) Business Days of receipt of such Net Cash Proceeds, the Borrower shall prepay the principal amount of the Loans in an amount equal to 100% of such Net Cash Proceeds in accordance with Section 3.04(c)(vi); provided that, the Borrower shall immediately deposit or cause to be deposited such Net Cash Proceeds into a Deposit Account subject to a Control Agreement until application in accordance herewith; and provided, further, that, in the case of any Casualty Event in respect of Collateral, upon written notice by the Borrower to the Administrative Agent not more than five (5) Business Days following receipt of such Net Cash Proceeds from such Disposition or Casualty Event, such Net Cash Proceeds shall be excluded from the prepayment requirements of this Section 3.04(c)(i) if (x) the Borrower shall deliver to the Administrative Agent a certificate to the effect that the Borrower intends to apply the Net Cash Proceeds from such Disposition or Casualty Event (or a portion thereof specified in such notice) to reinvest such Net Cash Proceeds in the business of the Loan Parties and/or restore or replace any Collateral affected by such Casualty Event, within 365 days after receipt of such Net Cash Proceeds (any such event, a “Reinvestment”), and certifying therein that (1) no Event of Default exists prior to giving such notice and prior to or after giving effect to such Reinvestment and (2) before and after giving effect to such Reinvestment, the Borrower shall be in pro forma compliance with the Financial Covenant and setting forth reasonably detailed calculations demonstrating such pro forma compliance, and (y) within 365 days from the date of receipt of such Net Cash Proceeds, such Net Cash Proceeds are applied to such Reinvestment; provided, further, however, that the amount of such Net Cash Proceeds (i) that the Borrower or the applicable Loan Party or Subsidiary of any Loan Party shall have determined not to, or shall have otherwise ceased to, or is not able to, by operation of contract or law or otherwise (including not being able to make the certifications required pursuant to this clause (i) above), apply toward a Reinvestment or (ii) that have not been so applied toward a Reinvestment by the end of such 365-day period, in each case shall be applied to a mandatory prepayment of the Loans pursuant to this Section 3.04(c)(i).

(ii) Extraordinary Net Cash Receipts. Promptly (but in no event later than three (3) Business Days) following the receipt of Extraordinary Net Cash Receipts in an amount (individually or in the aggregate for any particular event) in excess of \$1,000,000 by the Borrower or any of its Subsidiaries, the Borrower shall use, or shall cause to be used, 100% of such Extraordinary Net Cash Receipts to prepay the Loans in accordance with Section 3.04(c)(vi).

(iii) Indebtedness. Immediately upon the receipt of Net Cash Proceeds by any Loan Party or any of its Subsidiaries in respect of the issuance or incurrence of Indebtedness (other than Indebtedness permitted to be issued pursuant to Section 10.02), such Loan Party shall apply such Net Cash Proceeds received from such issuance or incurrence of Indebtedness upon receipt thereof to prepay the Loans in accordance with Section 3.04(c)(vi).

(iv) Issuance of Equity Interests. To the extent the Borrower or any of its Subsidiaries receives any Net Cash Proceeds in respect of any issuance or sale by the Borrower or any of its Subsidiaries of its Equity Interests to any Person after the Closing Date other than (A) up to \$300,000,000 of Net Cash Proceeds received pursuant to the Borrower’s Form S-3 Registration Statement (as amended) (including, without limitation, (x) the Standby Equity Purchase Agreement with affiliates of Yorkville Advisors, dated April 28, 2022 and (y) any sales of Equity Interests pursuant to an at-the-market offering) and (B) pursuant to any Permitted Convertible Debt, the Borrower shall use, or shall cause to be used, 100% of all Net Cash Proceeds to prepay the Loans in accordance with Section 3.04(c)(vi).

(v) Change in Control. Upon a Change in Control, the Borrower shall prepay all outstanding Loans in accordance with Section 3.04(c)(vi).

(vi) Each prepayment of Borrowings pursuant to this Section 3.04(c) shall be applied ratably to the Loans included in the prepaid Borrowings. Prepayments pursuant to this Section 3.04(c) shall, in each case, be accompanied by the payment of the Call Premium and all accrued interest on the amount prepaid together with any additional payments to the extent required by Sections 5.01, 5.02 or 5.03. The Borrower shall provide written notice to the Administrative Agent prior to each prepayment required under this Section 3.04(c), and such notice shall (x) include a certificate signed by a Financial Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment and (y) if such prepayment results from a voluntary event, be delivered at least one (1) Business Day prior to such prepayment. Each notice of prepayment shall specify the prepayment date and the principal amount of each Loan (or portion thereof) to be prepaid.

(d) Call Premium. Prepayments permitted or required under this Section 3.04 (including optional prepayments described in Section 3.04(a) and mandatory prepayments described in Section 3.04(c) hereof) and, for avoidance of doubt, any prepayments of the Loans occurring after acceleration of the Loans pursuant to Section 11.02 and any other prepayments of the Loans (which payments, for the purpose of calculating the Call Premium, shall be deemed to have been made (i) on the date of acceleration, if earlier than the date of payment and (ii) on the amount of Loans outstanding on the date of acceleration, if more than the amount paid on the date of payment), shall be subject to payment of the applicable Call Premium and any amounts required to be paid pursuant to Sections 5.01, 5.02 or 5.03.

Section 3.05 Administrative Agent and Other Fees. The Borrower agrees to pay to the Administrative Agent, the Collateral Agent and Lenders, in each case for its own account, the fees payable in the amounts and at the times (including the fees payable on the Closing Date) separately agreed upon in the Fee Letter.

ARTICLE IV PAYMENTS; PRO RATA TREATMENT; SHARING OF SET-OFFS

Section 4.01 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Payments by the Borrower. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or of amounts payable under Section 5.01, Section 5.02, Section 5.03 or otherwise) prior to 2:00 p.m., New York City time, on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim. Fees, once paid, shall be fully earned and shall not be refundable under any circumstances, absent manifest error. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices or accounts specified in Section 13.01 or such other offices or accounts as the Administrative Agent shall specify to the Borrower in writing from time to time, except that payments pursuant to Section 5.01, Section 5.02, Section 5.03 and Section 13.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) Application of Insufficient Payments. Each payment (including each prepayment) by the Borrower on account of principal and interest on the Loans shall be made to the Administrative Agent for the *pro rata* benefit of the Lenders according to the respective outstanding principal amounts of the Loans then held by the Lenders. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) *first*, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to

such parties, and (ii) *second*, towards payment of principal and premium then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall promptly remit such excess amount to the Administrative Agent for the pro rata benefit of the Lenders. If such Lender fails to promptly remit such excess amount to the Administrative Agent, then such Lender shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that if (i) any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this Section 4.01(c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Affiliate thereof (as to which the provisions of this Section 4.01(c) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 4.02 Presumption of Payment by the Borrower. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

Section 4.03 Certain Deductions by the Administrative Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05, Section 4.02, Section 5.03(d) or Section 13.03(c) then the Administrative Agent may, in its sole discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

ARTICLE V INCREASED COSTS; BREAK FUNDING PAYMENTS; TAXES; ILLEGALITY

Section 5.01 Increased Costs

(a) Changes in Law. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirements, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection

Income Taxes) on its loans, loan principal, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender that is not otherwise accounted for in the definition of "SOFR" or this clause (a);

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender or such other Recipient (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Section 5.01(a) or Section 5.01(b) shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Effect of Failure or Delay in Requesting Compensation. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Lender's right to demand such compensation.

Section 5.02 Break Funding Payments. The Borrower shall compensate each Lender for the loss, cost and expense attributable to any of the following (a) the payment of any principal of any SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any SOFR Loan into an ABR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 5.04. In the case of a SOFR Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted Term SOFR that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 5.02 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 5.03 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without

deduction or withholding for any Taxes; provided that if an applicable Withholding Agent shall be required under any applicable law (as determined in its good faith discretion) to deduct or withhold any Taxes from such payments, then the applicable Withholding Agent shall make such deductions or withholdings, shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law, and if such Taxes are Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 5.03), the Administrative Agent, the Collateral Agent, Lender or other Recipient (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made.

(b) Payment of Other Taxes by the Borrower. Without duplication of any amount paid pursuant to Section 5.03(a), each Loan Party shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent or the Collateral Agent timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by the Borrower. The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.03) and any and all 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. Each Recipient agrees to promptly notify the Loan Parties of the imposition of any Indemnified Taxes; provided, however, that a Recipient's failure to provide prompt notice to Loan Party shall not prejudice any of such Recipient's rights in this Agreement (other than (i) Indemnified Taxes or Other Taxes and additional amounts that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Recipient or (ii) interest or penalties attributable to the failure or delay by such Recipient to make a written demand to the Loan Party within 180 days of becoming aware that such Taxes subject to indemnification under this Section 5.03(c) have been levied, imposed or asserted against it). A certificate as to the amount of such payment or liability delivered to the Borrower by the Administrative Agent (on its own behalf or on behalf of a Lender), the Collateral Agent or a Lender (with a copy to the Administrative Agent) shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.04(c)(ii) 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 the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 5.03(d).

(e) Evidence of Payments. As soon as practicable after any payment of any Taxes by the Borrower or a Guarantor to a Governmental Authority pursuant to this Section 5.03, the Borrower shall deliver to the 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.

(f) Withholding Certificates.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments under this Agreement or any other Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than the documentation set forth in Sections 5.03(f)(ii)(A), (ii)(B), and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

A. any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

B. each Foreign Lender shall, to the extent that it is legally entitled to do so, deliver to the Borrower and the Administrative Agent, on or prior to the Closing Date (or, in the case of any Foreign Lender that is an assignee of a Lender, on the date such assignee becomes a party to this Agreement) and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent, whichever of the following is applicable:

1. in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

2. executed copies of IRS Form W-8ECI;

3. executed copies of IRS Form W-8EXP;

4. in the case of any Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "Withholding Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

5. to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, IRS Form W-8 EXP, a Withholding Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a Withholding Certificate substantially in the form of Exhibit H-4 on behalf of each such direct and indirect partner;

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

D. if a payment made to a Lender under this Agreement would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and Administrative Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Borrower and Administrative Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower and Administrative Agent as may be necessary for the Borrower 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, if any, to deduct and withhold from such payment. Solely for the purposes of this Section 5.03(f)(ii)(D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

E. On or before the date the Administrative Agent becomes the Administrative Agent hereunder, it shall deliver to the Loan Parties an executed IRS Form W-9 certifying that it is exempt from U.S. federal backup withholding Tax. The Administrative Agent agrees that if any form or certification it previously delivered becomes expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification.

Each Lender agrees that if any form or certification it previously delivered expired or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.03 (including by the payment of additional amounts pursuant to this Section 5.03), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 5.03 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund or credit). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less

favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 5.03 shall survive the resignation or replacement of the 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 Loan Document.

(i) Defined Terms. For purpose of this Section 5.03, the term "applicable law" includes FATCA.

Section 5.04 Mitigation Obligations; Designation of Different Lending Office. If any Lender requests compensation under Section 5.01, or if any Loan Party is required to indemnify any Lender or pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, then such Lender 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, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.03, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 5.05 Illegality. Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its applicable lending office to honor its obligation to make or maintain SOFR Loans either generally or having a particular Interest Period hereunder, then (a) such Lender shall promptly notify the Borrower and the Administrative Agent thereof and such Lender's obligation to make such SOFR Loans shall be suspended (the "Affected Loans") until such time as such Lender may again make and maintain such SOFR Loans and (b) all Affected Loans which would otherwise be made by such Lender shall be made instead as ABR Loans (and, if such Lender so requests by notice to the Borrower and the Administrative Agent, all Affected Loans of such Lender then outstanding shall be automatically converted into ABR Loans on the date specified by such Lender in such notice) and, to the extent that Affected Loans are so made as (or converted into) ABR Loans, all payments of principal which would otherwise be applied to such Lender's Affected Loans shall be applied instead to its ABR Loans.

Section 5.06 Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an "Increased Cost Lender") shall give notice to Borrower that such Lender is an affected Lender or that such Lender is entitled to receive payments under Section 5.01, Section 5.03 or Section 5.04, (ii) the circumstances which have caused such Lender to be an affected Lender or which 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 the Borrower's request for such withdrawal; or (b) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 13.02 that requires the consent of all Lenders, the consent of the Majority Lenders 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 or Non-Consenting Lender (the "Terminated Lender"), the Administrative Agent may, by giving written notice to Borrower (which, in the case of an Increased Cost Lender, only after receiving written request from the Borrower to remove such Increased Cost Lender), or the Borrower may, by giving written notice to the Administrative Agent, and, in each case, 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 in full to one or more Persons (each a "Replacement Lender") in accordance with the provisions of Section 13.04 and the Terminated Lender shall pay any fees payable thereunder in connection with such assignment; provided,

that (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender; (2) on the date of such assignment, the Borrower shall pay any amounts payable to such Terminated Lender pursuant to Section 5.01 or Section 5.03; and (3) 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, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, that any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender. Each party hereto agrees that (x) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee, and (y) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to be bound by the terms thereof; provided, that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender; provided, that any such documents shall be without recourse to or warranty by the parties thereto.

**ARTICLE VI
[RESERVED]**

**ARTICLE VII
CONDITIONS PRECEDENT**

Section 7.01 Closing Date. The obligations of the Lenders to make the Loans hereunder shall not become effective until the Business Day on which each of the following conditions is satisfied (or waived in accordance with Section 13.02):

(a) Credit Agreement. The Administrative Agent shall have received from each party hereto, counterparts (in such number as may be requested by the Administrative Agent) of this Agreement signed on behalf of such other party. The Administrative Agent shall have received duly executed Notes payable to each Lender that has requested a Note in a principal amount equal to its Commitment dated as of the Closing Date.

(b) Loan Documents.

(i) Security Documents. The Administrative Agent shall have received from each party thereto, duly executed counterparts (in such number as may be requested by the Administrative Agent) of the Security Documents, in proper form for filing, registration or recordation, as applicable, including: (A) the Guarantee and Collateral Agreement, (B) the Perfection Certificate, (C) the Patent, Trademark and Copyright Security Agreements and (D) the other Security Documents referred to in this clause (b).

(ii) Filings, Registrations and Recordings. Each Security Document and any other document (including any Uniform Commercial Code financing statement and the Patent, Trademark and Copyright Agreements) required by any Security Document or under law or requested by the Collateral Agent to be filed, registered or recorded in order to create in favor of the Collateral Agent, for the benefit of the Lenders, a perfected Lien on the Collateral described therein shall be in proper form for filing, registration or recordation (including, for the avoidance of doubt, fixture financing statements, as applicable) and all recordation and filing fees and mortgage taxes have been paid (or arrangement for the payment of the same shall have been made by the Borrower), in each case, in connection with those filings.

(iii) Pledged Stock; Stock Powers; Pledged Notes. The Collateral Agent shall have received (A) the certificates (if any) representing the shares of Equity Interests pledged pursuant to the Guarantee and Collateral Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof and (B) each promissory note (if any) pledged to the Collateral Agent pursuant to the Guarantee and

Collateral Agreement endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(iv) Title. The Administrative Agent shall have received copies of all leases to which the Borrower or any of other Loan Party is a party or other agreements relating to possessory interests in any Real Property Rights, in each case, to the extent material to the Borrower's, the Loan Parties' and Excluded Subsidiary's business.

(c) Existing Indebtedness. Substantially simultaneously with the Closing Date, the Existing Indebtedness shall have been repaid or cancelled in full, and the Administrative Agent shall have received payoff documentation in respect thereof in form and substance reasonably satisfactory to the Administrative Agent. All other Indebtedness of the Loan Parties not otherwise permitted hereunder (after giving effect to the Transactions), shall have been repaid or cancelled in full and all Liens securing any such Indebtedness shall have been released or terminated pursuant to documentation in form and substance satisfactory to the Administrative Agent.

(d) Fees. The Agents and the Lenders shall have received all fees and amounts, including under the Fee Letter, due and payable on or prior to the Closing Date, and to the extent invoiced in reasonable detail at least one (1) Business Day prior to the Closing Date, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder (including, without limitation, the taxes, costs and expenses for recordation of certain Security Documents and the reasonable and documented fees and expenses of Baker Botts L.L.P., counsel to the Administrative Agent, pursuant to Section 13.03).

(e) Organizational Documents; Incumbency. The Administrative Agent shall have received a certificate of a Responsible Officer of each Loan Party setting forth (i) resolutions of its members, board of directors, board of managers or other governing body, as applicable, with respect to the authorization of such Loan Party to execute and deliver the Loan Documents to which it is a party and to enter into the Transactions contemplated in those documents, (ii) the officers of such Loan Party (A) who are authorized to sign the Loan Documents to which such Loan Party is a party and (B) who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement and the Transactions contemplated hereby, (iii) specimen signatures of such authorized individuals, and (iv) the Organizational Documents of such Loan Party certified by the appropriate state official where such documents are filed in a state office, and certified by the applicable Loan Party as being true and complete. The Administrative Agent and the Lenders may conclusively rely on such certificate until the Administrative Agent receives notice in writing from such Loan Party to the contrary.

(f) Organizational and Capital Structure. The organizational structure and capital structure of the Loan Parties and their respective Subsidiaries (including the Excluded Subsidiary) as of the Closing Date shall be as set forth on Schedule 7.01(f). Each of IPCo and IPHoldCo shall be organized as "bankruptcy remote" entities with governance satisfactory to the Lenders including, without limitation, Organizational Documents in form and substance reasonably acceptable to the Lenders, which Organizational Documents shall contain usual and customary provisions for (i) appointment of an independent director provided by a recognized corporate service company whose affirmative vote shall be required to commence an insolvency proceeding and (ii) separateness representations and covenants.

(g) Corporate Status; Good Standing Certificates. The Administrative Agent shall have received certificates of the appropriate State or other applicable agencies with respect to the existence, qualification and good standing of each Loan Party in each jurisdiction where any such Loan Party is organized or owns Property.

(h) Opinions. The Administrative Agent shall have received opinions of Haynes and Boone, LLP, counsel to the Loan Parties each in form and substance reasonably satisfactory to the Administrative Agent. Opinions will include, as applicable, (a) customary third party closing opinions with respect to, among other customary items, due authorization, execution, delivery and enforceability of Loan Documents under applicable law, non-contravention of applicable law and contracts in respect of the Trinity Equipment Financing Loan, no governmental consents, attachment and perfection of security

interests and Liens, Investment Company Act and margin regulations, and (b) customary non-consolidation opinions with respect to IPCo and IPHoldCo.

(i) Solvency Certificate. The Administrative Agent shall have received a solvency certificate substantially in the form of Exhibit E-1, duly and properly executed by a Financial Officer of the Borrower and dated as of the Closing Date, after giving effect to the Transactions, including the borrowing of the Loans.

(j) Insurance Certificates. The Administrative Agent shall have received certificates of insurance coverage of the Loan Parties in form and substance reasonably satisfactory to the Administrative Agent evidencing that the applicable Loan Parties are carrying insurance in accordance with Section 9.07 and naming the Collateral Agent as lender loss payee with respect to property insurance related to the Collateral, and the Agents and the Lenders as additional insured with respect to customary liability insurance policies.

(k) Lien Searches. The Administrative Agent shall have received recent appropriate UCC lien, Tax lien, Intellectual Property, judgment and litigation search reports for the Loan Parties reflecting no prior Liens (other than those being released on or prior to the Closing Date and Permitted Liens) or judgments encumbering the Properties of the Loan Parties and all lien terminations, UCC-3 termination statements and other documentation evidencing such releases.

(l) Financial Information. The Administrative Agent shall have received the financial information referred to in Section 8.04(a), which shall reflect no Indebtedness for borrowed money other than Indebtedness permitted pursuant to Section 10.02.

(m) Patriot Act. The Administrative Agent and the Lenders shall have received (i) at least three (3) Business Days prior to the Closing Date, and be reasonably satisfied in form and substance with, all documentation, including a duly executed IRS Form W-9 (or such other applicable IRS tax form) of the Borrower and other Loan Parties, and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including but not restricted to the USA PATRIOT Act, in each case to the extent requested at least three (3) Business Days prior to the Closing Date and (ii) to the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, at least three (3) Business Days prior to the Closing Date, a Beneficial Ownership Certification in relation to the Borrower.

(n) Responsible Officer’s Certificate. The Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower, dated the Closing Date and in form and substance reasonably satisfactory to the Administrative Agent, certifying as to the matters set forth in clauses (c), (o), (t), (u), (v) and (w) of this Section 7.01.

(o) Material Contracts.

(i) The Administrative Agent shall have received certified copies of executed versions of each Material Contract in effect as of the Closing Date and any existing supplements or amendments thereto, all of which Material Contracts and supplements or amendments thereto shall be satisfactory in form and substance to the Administrative Agent and the Lenders.

(ii) The Borrower is not in default in the performance, observance or fulfillment of any of its material obligations, covenants or conditions contained in any of the Material Contracts and, to the Borrower’s knowledge, no counterparty to any Material Contract is in material default in the performance, observance or fulfillment of any of its material obligations, covenants or conditions contained in the applicable Material Contracts, in each case, to the extent a Material Adverse Effect would reasonably be expected to result therefrom.

(p) Insurance Policy. The Administrative Agent shall have received evidence satisfactory to the Administrative Agent that (i) the Insurance Policy is in final form and not subject to further change, (ii) the Insurance Policy is satisfactory to the Agents and each Lender, and (iii) the

Borrower has paid the aggregate amount of premium payable on the Closing Date under the Insurance Policy.

(q) Due Diligence. The Administrative Agent shall have received, and satisfactorily completed its review of, all due diligence information regarding the Loan Parties and their Subsidiaries as it shall have requested including, without limitation, information regarding litigation, tax matters, accounting matters, insurance matters, labor matters, pension liabilities (actual or contingent), real estate leases, Material Contracts, debt agreements, Property ownership, contingent liabilities and other legal matters of the Loan Parties and their Subsidiaries.

(r) Borrowing Request. The Administrative Agent shall have received a Borrowing Request in accordance with Section 2.03 and an accompanying flow of funds memorandum, in form and substance reasonably satisfactory to the Administrative Agent (the "Funds Flow Memorandum").

(s) Intellectual Property. Concurrently with the funding of the Loans on the Closing Date: (i) the Intellectual Property Assignment Agreement made by and between the Borrower and its Subsidiaries, on the one hand, and IPCo, on the other hand, shall be in form and substance acceptable to the Collateral Agent and in full force and effect, (ii) a fully executed and assembled copy of the assignment agreement described in clause (i) shall have been delivered to the Collateral Agent; and (iii) the "Assigned IP" defined in the assignment agreement described in clause (i) (which shall exclude any Intellectual Property with respect to intent-to-use trademark applications) shall be legally and beneficially owned by IPCo.

(t) No Default. As of the Closing Date, after giving effect to the Transactions, no Default or Event of Default shall have occurred and be continuing and no default or event of default shall have occurred and be continuing under any Material Contracts of the Borrower and its Subsidiaries.

(u) Representations and Warranties. On the Closing Date, both before and after giving effect to the Transactions, all representations and warranties of the Borrower and each other Loan Party contained in the Loan Documents shall be true and correct in all respects, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct in all respects as of such earlier date).

(v) No Material Adverse Effect. As of the Closing Date, after giving effect to the Transactions, no event, development or circumstance has occurred or shall then exist that has resulted in, or could reasonably be expected to have, a Material Adverse Effect.

(w) No Conflict. The making of the Loans would not violate any applicable Governmental Requirement, and no action, proceeding or litigation is pending or threatened in any court or before any Governmental Authority that involves any Loan Document or that is seeking to enjoin or prevent the making or repayment of any Loan or the consummation of the Transactions contemplated by this Agreement or any other Loan Document.

(x) Other Documents. The Agents shall have received such other documents as the Agents or special counsel to the Agents may reasonably request.

The Administrative Agent may notify the Borrower and the Lenders of the Closing Date, and such notice shall be conclusive and binding. For purposes of determining compliance with the conditions specified in this Section 7.01, 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 written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**ARTICLE VIII
REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Agents and each of the Lenders as follows:

Section 8.01 Organization; Powers. Each of the Loan Parties and their respective Subsidiaries (a) is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority (i) to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby and, in the case of the Borrower, to make the borrowings hereunder and, (ii) except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, own and operate its properties and has all governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and (c) except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification.

Section 8.02 Authority; Enforceability. The Transactions are within each Loan Party's corporate, limited partnership, limited liability company or other organizational powers, as applicable, and have been duly authorized by all necessary corporate, limited partnership, limited liability company or other organizational, as applicable, and, if required, shareholder, partner or member action, as applicable (including any action required to be taken by any class of directors of the Borrower or any other Person, whether interested or disinterested, in order to ensure the due authorization of the Transactions). Each Loan Document to which any Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 8.03 Approvals; No Conflicts. Neither the execution and delivery of this Agreement or the other Loan Documents by any Loan Party, nor the consummation of the Transactions herein or therein contemplated or compliance with the terms and provisions hereof or thereof by any of them (a) require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including holders of its Equity Interests or any class of directors or managers, whether interested or disinterested, of any Loan Party or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the Transactions contemplated thereby, except such as have been obtained or made and are in full force and effect, (b) will violate (i) any applicable law or regulation or (ii) any Organizational Document of any Loan Party or any Subsidiary of any Loan Party or any order of any Governmental Authority, (c) will violate or constitute a default under or result in any breach of any material indenture, agreement or other instrument binding upon any Loan Party or any Subsidiary of any Loan Party or any of their respective Properties, or give rise to a right thereunder to require any payment to be made by such Loan Party or such Subsidiary and (d) will result in the creation or imposition of any Lien on any Collateral or any other Property of any Loan Party or any Subsidiary of any Loan Party (other than the Liens created by the Loan Documents).

Section 8.04 Financial Condition; No Material Adverse Change.

(a)

(i) The Borrower has heretofore furnished in writing to the Administrative Agent the audited balance sheet and related statements of operations, shareholders' equity and cash flows as of the end of and for the twelve month period ended December 31, 2021 and the unaudited balance sheet and related statements of operations, shareholders' equity and cash flows as of the end of and for the fiscal quarter ended March 31, 2022, all certified by a Responsible Officer of the Borrower as presenting fairly, in all material respects, the financial condition and results of operations of the Borrower and its Subsidiaries, on a consolidated basis, in accordance

with GAAP consistently applied, subject, in the case of the unaudited financial statements, to normal year-end audit adjustments and the absence of footnotes.

(ii) The Borrower has heretofore furnished in writing to the Administrative Agent financial statement projections (including balance sheet and related statements of operations, shareholders' equity and cash flows) on a quarterly basis for the three (3) year period ending after the Closing Date, all certified by a Responsible Officers of the Borrower as having been prepared in good faith based upon reasonable assumptions.

(b) Since December 31, 2021, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

Section 8.05 Litigation. Except as set forth on Schedule 8.05, there are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened by, against or affecting any Loan Party, any Subsidiary of any Loan Party, or their respective Properties (including Intellectual Property) or revenues (i) which individually could reasonably be expected to result in liability exceeding \$2,500,000, or (ii) that involve any Loan Document or the Transactions. None of the Loan Parties or any of their Subsidiaries is in violation of any order, writ, injunction or any decree of any Governmental Authority which individually or in the aggregate could reasonably be expected to result in liability exceeding \$2,500,000.

Section 8.06 Environmental Matters. Except for such matters as set forth on Schedule 8.06:

(a) to the knowledge of the Loan Parties: the Properties are in compliance with all applicable Environmental Laws in all material respects, the Loan Parties and their Subsidiaries have operated the Properties in compliance with all applicable Environmental Laws in all material respects, and the Properties were operated in compliance in all material respects with applicable Environmental Laws prior to the acquisition by the Borrower or the applicable Subsidiary;

(b) the Loan Parties and their Subsidiaries have obtained all Environmental Permits required for their respective operations and each of their Properties, except as would not reasonably be expected to result in a Material Adverse Effect, with all such Environmental Permits being currently in full force and effect, and none of the Loan Parties or their Subsidiaries has received any written notice or otherwise has knowledge that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be protested or denied;

(c) there are no claims, demands, suits, orders, inquiries, investigations, requests for information or proceedings concerning any material violation of, or any material liability or obligation (including as a potentially responsible party) under, any applicable Environmental Law that is pending or threatened in writing against any Loan Party or any Subsidiary of any Loan Party or any of their respective Properties or as a result of any operations at such Properties, and to the Borrower's knowledge, there are no conditions or circumstances that would be reasonably expected to result in the receipt of such claims, demands, suits, orders, inquires, investigations, requests for information or proceedings;

(d) none of the Properties of the Loan Parties or any Subsidiary of any Loan Party, to the Loan Parties' knowledge, contain or have contained any: (i) regulated underground storage tanks; (ii) friable asbestos-containing materials; (iii) landfills or dumps; or (iv) sites on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law;

(e) except as would not reasonably be expected to result in a Material Adverse Effect, there has been no Release or, to the Loan Parties' knowledge, Threatened Release, of Hazardous Materials at, on, under or from any Loan Party's or any of their Subsidiaries' Properties that could reasonably be expected to give rise to a liability of any Loan Party or any of its Subsidiaries under any Environmental Law, and to the Loan Parties' knowledge, there are no investigations, remediations, abatements, removals, or monitoring of Hazardous Materials required under applicable Environmental

Laws at such Properties and, to the knowledge of the Loan Parties, none of such Properties are adversely affected by any Release or Threatened Release of a Hazardous Material originating or emanating from any other real property;

(f) none of the Loan Parties nor any of their Subsidiaries has received any written notice asserting an alleged material liability or material obligation under any applicable Environmental Laws with respect to the investigation, remediation, abatement, removal, or monitoring of any Hazardous Materials at, under, or Released or threatened to be Released from any real properties offsite any Loan Parties' or any of their Subsidiaries' Properties and, to the Loan Parties' knowledge, there are no conditions or circumstances that could reasonably be expected to result in the receipt of such written notice;

(g) the Loan Parties have not received any written notice of and, to the Loan Parties' knowledge, there has been no, exposure of any Person or Property to any Hazardous Materials as a result of or in connection with the operations and businesses of any of the Loan Parties' or their Subsidiaries' Properties that could reasonably be expected to form the basis for a claim for material damages or compensation against any Loan Party or any such Subsidiary and, to the Loan Parties' knowledge, there are no conditions or circumstances that could reasonably be expected to result in the receipt of notice regarding such exposure; and

(h) the Loan Parties and their Subsidiaries have provided to the Lenders complete and correct copies of all environmental site assessment reports, investigations, studies, analyses, and correspondence addressing potentially material environmental matters (including matters relating to any alleged non-compliance with or liability under Environmental Laws) that were in any of the Loan Parties' or their Subsidiaries' possession or control prior to the Closing Date and that are material to their respective Properties and operations thereon.

Section 8.07 Compliance with the Laws and Agreements; No Defaults.

(a) To the Loan Parties' knowledge, each of the Loan Parties and their Subsidiaries is in compliance with all Governmental Requirements applicable to it or its Property and all agreements and other instruments binding upon it or its Property, and possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations necessary for the ownership of its Property and the conduct of its business, in each case except to the extent a Material Adverse Effect could reasonably be expected to result from the failure to do so.

(b) None of the Loan Parties or their Subsidiaries is in default nor has any event or circumstance occurred which, but for the expiration of any applicable grace period or the giving of notice, or both, would constitute a default or would require any Loan Party or Subsidiary of a Loan Party to Redeem or make any offer to Redeem under any material indenture, note, credit agreement or instrument pursuant to which any Indebtedness is outstanding or by which any Loan Party or any Subsidiary of a Loan Party or any of their Properties is bound.

(c) Both before and immediately after giving effect to the Transactions, no Default or Event of Default shall have occurred and be continuing.

(d) Each Material Contract is in full force and effect, and is valid, binding and enforceable upon any Loan Party party thereto and, to the best knowledge of the Loan Parties upon each of the other parties thereto in accordance with their respective terms. The Borrower and each other Loan Party party thereto is, and, to the knowledge of the Borrower, each other party to a Material Contract is, in compliance in all material respects with such agreements. The Borrower has delivered or made available to the Administrative Agent true, correct and complete copies of each Material Contract (including any amendments, modifications, and supplements thereto) in effect and not previously delivered or made available to the Administrative Agent.

Section 8.08 Investment Company Act. No Loan Party is an “investment company” or a company “controlled” by an “investment company,” within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 8.09 Taxes. Each Loan Party and each of its Subsidiaries has timely (taking into account any valid extensions) filed or caused to be filed all income and other material Tax returns required to have been filed by it and has paid or caused to be paid all material Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP. No Tax Lien has been filed for unpaid Taxes of such Loan Party or any of its Subsidiaries and, to the knowledge of any Loan Party, no claim is being asserted with respect to any such material Tax by a Governmental Authority.

Section 8.10 ERISA. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) The Loan Parties and each ERISA Affiliate have complied with ERISA and, where applicable, the Code regarding each Plan.

(b) Each Plan is, and has been, established and maintained in compliance with its terms, ERISA and, where applicable, the Code.

(c) (i) To the Borrower’s knowledge, no act, omission or transaction has occurred in respect of a Plan which could reasonably be expected to result in imposition on any Loan Party or any ERISA Affiliate (whether directly or indirectly) of (A) either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed pursuant to Chapter 43 of Subtitle D of the Code or (B) breach of fiduciary duty liability damages under section 409 of ERISA, and (ii) full payment when due has been made of all amounts which the Loan Parties or any ERISA Affiliate is required under the terms of each Plan or applicable law to have paid as contributions to such Plan.

(d) None of the Loan Parties nor any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in section 3(1) of ERISA, that is maintained to provide benefits to former employees of such entities, that may not be terminated by any Loan Party in its sole discretion at any time without any material liability to any Loan Party.

(e) None of the Loan Parties nor any ERISA Affiliate sponsors, maintains or contributes to, or has at any time in the six-year period preceding the date hereof sponsored, maintained or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

Section 8.11 Disclosure; No Material Misstatements. Each of the Loan Parties has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or similar restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it with respect to the Loan Parties and their Subsidiaries, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates (other than the Beneficial Ownership Certification) or other information furnished by or on behalf of any Loan Party or any Subsidiary of any Loan Party to the Administrative Agent or any Lender or any of their Affiliates in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or under any other Loan Document 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, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time. There is no fact peculiar to any Loan Party or any Subsidiary of any Loan Party (as opposed to other participants in their industries generally) that has not been disclosed to the Administrative Agent prior to the Closing Date which could reasonably be expected to have a

Material Adverse Effect. The information included in the Beneficial Ownership Certification is true and correct in all respects.

Section 8.12 Insurance. The Borrower has, and has caused its Subsidiaries to have insurance coverage in at least amounts and against such risk (including public liability) that are usually insured against by companies similarly situated and engaged in the same or a similar business for the assets and operations of the Borrower and their Subsidiaries. The Agents and the Lenders have been named as additional insureds in respect of all intellectual property liability insurance and other customary liability insurance policies and the Collateral Agent has been named as loss payee with respect to all property loss insurance with respect to the Collateral. All insurance policies of the Borrower and its Subsidiaries are valid and in full force and effect as of the Closing Date. Such policies provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of each Loan Party and each Subsidiary of each Loan Party in accordance with prudent business practice in the industry of the Loan Parties and their Subsidiaries. None of the Loan Parties nor any of their Subsidiaries 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.

Section 8.13 Restriction on Liens. Except as set forth on Schedule 8.13, none of the Loan Parties nor any of their Subsidiaries is a party to any material agreement or arrangement, or subject to any order, judgment, writ or decree, which either restricts or purports to restrict its ability to grant Liens to the Administrative Agent and the Lenders on or in respect of their Properties to secure the Secured Obligations and the Loan Documents.

Section 8.14 Ownership. Schedule 8.14 states the name of the Borrower and each of its Subsidiaries and joint ventures, if any, their respective jurisdictions of incorporation or formation and foreign qualification, their authorized Equity Interests (if applicable), any issued and outstanding Equity Interests and, other than with respect to the Borrower, the owners thereof. The Borrower and each of its Subsidiaries has good title to all of the Equity Interests it purports to own, free and clear in each case of any Lien. All Equity Interests of the Borrower and each of its Subsidiaries have been validly issued, and all such Equity Interests are fully paid and non-assessable and were offered and issued in compliance with applicable laws. There are no options, warrants or other rights outstanding to purchase any such Equity Interests except as indicated on Schedule 8.14.

Section 8.15 Jurisdiction of Organization; Name; Location of Business and Offices. Each Loan Party's jurisdiction of organization and name as listed in the public records of its jurisdiction of organization is specified in the Guarantee and Collateral Agreement, and the location of its principal place of business and chief executive office is at its address set forth in the Guarantee and Collateral Agreement.

Section 8.16 Properties; Titles, Etc.

(a) Each of the Loan Parties and their Subsidiaries has good title to all of their material Properties, in each case, free and clear of all Liens except Permitted Liens.

(b) All leases and agreements necessary for the conduct of the business of the Loan Parties and their Subsidiaries are valid and subsisting, in full force and effect, and there exists no default or any event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any such lease or leases that could reasonably be expected to result in a Material Adverse Effect.

(c) The rights and Properties presently owned, leased or licensed by the Loan Parties and their Subsidiaries including all Real Property Rights, include all rights and Properties necessary to permit the Borrower and its Subsidiaries to conduct their respective business in all material respects in the same manner as their business has been conducted prior to the date hereof.

(d) Each of the Loan Parties and their Subsidiaries has complied with all material obligations under the Real Property Rights to which they are a party and all such Real Property Rights are in full force and effect in all material respects. Each of the Loan Parties and their Subsidiaries enjoys

peaceful and undisturbed possession under all such Real Property Rights except for minor disturbances which could not, individually or in the aggregate, materially interfere with or impact the business or operations of any Loan Party or any of its Subsidiaries or materially detract from the value or use of such Real Property Rights.

(e) All of the Properties of the Loan Parties and their Subsidiaries which are reasonably necessary for the operation of their businesses are in good working condition (ordinary wear and tear excepted) and are maintained in accordance with prudent business standards.

(f) Each Loan Party and each Subsidiary of each Loan Party owns or is licensed to use all Intellectual Property necessary for the Loan Parties to own and operate their properties and to carry on their businesses as presently conducted and planned to be conducted by such Loan Parties and Subsidiaries, and to the knowledge of the Loan Parties, the use thereof and operation of their businesses by such Loan Parties and such Subsidiaries does not infringe upon, misappropriate or otherwise violate the rights of any other Person in any material respect. Each of the Loan Parties and each Subsidiary of each Loan Party has used commercially reasonable efforts to protect and maintain its ownership of, and the validity and enforceability of, all Intellectual Property necessary for the operation of their respective businesses.

(g) Schedule 7.01(b) lists completely and correctly all Real Property Rights leased by each Loan Party and the lessors thereof. No Loan Party owns any fee interest in any Real Property Rights.

Section 8.17 Permits.

(a) The Borrower and each of its Subsidiaries hold all permits, licenses, registrations, certificates, approvals, consents, clearances and other authorizations from any Governmental Authority required under any currently applicable laws for the operation of its business as presently conducted except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

(b) Except as disclosed on Schedule 8.17(b), none of the Loan Parties or their Subsidiaries is the subject of a material complaint, investigation or other proceeding by any Governmental Authority regarding their respective businesses.

Section 8.18 Security Documents.

(a) Guarantee and Collateral Agreement. The provisions of the Guarantee and Collateral Agreement are effective to create, in favor of the Collateral Agent for the benefit of the Secured Parties, a legal, valid and enforceable Lien on, and security interest in, all of the Collateral covered thereby, and (i) when financing statements and other filings in appropriate form are filed in the offices specified in the Guarantee and Collateral Agreement and (ii) upon the taking of possession or control by the Collateral Agent of Equity Interests and other Collateral with respect to which a security interest may be perfected by possession or control required by the Guarantee and Collateral Agreement or hereunder, the Liens created by the Guarantee and Collateral Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the Loan Parties in the Collateral covered thereby in which a security interest may be perfected by such filing or control, in each case free of all Liens other than, in the case of clause (i), Permitted Liens or, in the case of clause (ii), Excepted Liens. The Liens granted to the Collateral Agent for the benefit of the Secured Parties pursuant to each of the Control Agreements constitute a valid first-priority Lien under applicable law, subject only to Excepted Liens.

(b) Mortgages. Each Mortgage (if any) is effective to create, in favor of the Collateral Agent (or such other trustee as may be required or desired under local law) for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Mortgaged Property thereunder and the proceeds thereof, and when the Mortgages are recorded or filed in the offices specified on Schedule 8.18, the Mortgages shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the applicable Loan Parties in the Mortgaged Property and the proceeds thereof, in each case prior and superior in right to any other person, other than Excepted Liens identified in clauses (a) through (c) of the definition thereof.

(c) Valid Liens. Each Security Document delivered pursuant to Section 9.11 and Section 9.12, upon execution and delivery thereof, is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Collateral thereunder, and constitute fully perfected Liens on, and security interests in, all right, title and interest of the Loan Parties in such Collateral, in each case with no other Liens except for applicable Excepted Liens and other Liens permitted by Section 10.03 and in each case prior and superior in right to any other person, other than Permitted Liens.

Section 8.19 Hedging Agreements. Neither the Borrower nor any other Loan Party is a party to any Hedging Agreements.

Section 8.20 Use of Proceeds. The proceeds of the Loans made on the Closing Date shall be used (a) to fund the Interest Escrow Account in an amount equal to the Interest Escrow Required Amount; (b) to fund growth investments and for general corporate purposes in accordance with this Agreement, including corporate-level R&D investments; (c) expansion of the Excluded Subsidiary's manufacturing facility in the Turtle Creek, Pittsburgh area in Pennsylvania; (d) to Redeem in full the Existing Indebtedness and (e) to pay the Transaction Costs, in each case in accordance with the Funds Flow Memorandum. The Loan Parties and their Subsidiaries are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of any Loan will be used by any Loan Party or any Subsidiary of any Loan Party for any purpose which violates the provisions of Regulation T, U or X of the Board. The proceeds of the Loans made after the Closing Date shall be used to fund any additional purposes set forth in Section 2.06.

Section 8.21 Solvency. After giving effect to the Transactions, the Loan Parties, taken as a whole, are Solvent. No Loan Party is subject to, or planning to take, any action described in Section 11.01(g) or Section 11.01(h).

Section 8.22 USA PATRIOT; AML Laws; Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with the USA PATRIOT Act, Anti-Corruption Laws, applicable AML Laws and applicable Sanctions. None of (a) the Borrower, its Subsidiaries or any of their respective directors or officers, or, to the knowledge of the Borrower, any of their respective employees or Affiliates, or (b) to the knowledge of the Borrower, any agent of any Loan Party or their Subsidiaries or other Affiliate that will act in any capacity in connection with or benefit from the Facility established hereby, (i) is a Sanctioned Person or is engaged in any activity that could result in the Borrower being designated a Sanctioned Person, or (ii) is in violation of AML Laws, Anti-Corruption Laws, or Sanctions. No Borrowing, use of proceeds or other transaction contemplated by this Agreement will cause a violation of AML Laws, Anti-Corruption Laws or applicable Sanctions by any Person participating in the Transactions contemplated by this Agreement, whether as lender, borrower, guarantor, agent, or otherwise. Neither the Borrower nor any Affiliate is engaged in or intends to engage in any dealings or transactions with, or for the benefit of, any Sanctioned Person or with or in any Sanctioned Country.

Section 8.23 Accounts. No Loan Party has any Deposit Accounts, Securities Accounts or Commodity Accounts other than the accounts set forth on Schedule 8.23.

Section 8.24 Labor Matters. Each of the Loan Parties and each of their respective Subsidiaries is in compliance with the Labor Contracts and all applicable federal, state and local labor and employment laws, including those related to equal employment opportunity and affirmative action, labor relations, minimum wage, overtime, child labor, medical insurance continuation, worker adjustment and relocation notices, immigration controls and worker and unemployment compensation, except where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in liability exceeding \$2,500,000. There are no outstanding grievances, arbitration awards or appeals therefrom arising out of the Labor Contracts or current or threatened strikes, picketing, handbilling or other work stoppages or slowdowns at facilities of any of the Loan Parties or any of their Subsidiaries which in any

case, individually or in the aggregate, could reasonably be expected to result in liability exceeding \$2,500,000.

Section 8.25 Affected Financial Institutions. No Loan Party is an Affected Financial Institution.

ARTICLE IX AFFIRMATIVE COVENANTS

Until Payment in Full, the Borrower covenants and agrees with the Lenders and the Administrative Agent that:

Section 9.01 Financial Statements; Other Information. The Borrower will furnish to the Administrative Agent:

(a) Annual Borrower Financial Statements. As soon as available, but in any event in accordance with applicable law and not later than ninety (90) days after the end of each fiscal year of the Borrower (provided that if the Borrower files annual reports with the Securities and Exchange Commission, then delivery of annual financial statements hereunder shall be deemed delivered as and when the Borrower's Form 10-K is filed with the SEC for such fiscal year), its audited balance sheet and related statements of operations, shareholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year of the Borrower, all reported on by Deloitte & Touche LLP or other independent public accountants of recognized national standing reasonably acceptable to the Administrative Agent to the effect that such financial statements present fairly in all material respects the financial condition and results of operations of the Borrower in accordance with GAAP consistently applied.

(b) Quarterly Borrower Financial Statements. As soon as available, but in any event in accordance with then applicable law and not later than forty-five (45) days after the end of each of the three (3) fiscal quarters of each fiscal year of the Borrower (provided that if the Borrower files quarterly reports with the Securities and Exchange Commission, then delivery of quarterly financial statements hereunder shall be deemed delivered as and when the Borrower's Form 10-Q is filed with the SEC for such fiscal quarter), commencing with the fiscal quarter ended June 30, 2022, its unaudited balance sheet and related statements of operations, shareholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year of the Borrower, all certified by one of its Responsible Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

(c) Compliance Certificate. Concurrently with any delivery of financial statements under Section 9.01(a) or Section 9.01(b) (or within two (2) Business Days after the filing of the Borrower's 10-K or 10-Q with the SEC, as applicable), a certificate of a Responsible Officer in substantially the form of Exhibit E-2 hereto (A) certifying as to whether a Default or Event of Default has occurred and, if a Default or Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (B) setting forth reasonably detailed calculations demonstrating compliance with the Financial Covenant, substantially in the form of Annex A to Exhibit E-2, (C) stating whether any change in GAAP or in the application thereof has occurred since the Closing Date, and if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate, and (D), (1) a description of any change in the jurisdiction of organization of any Loan Party or the sale of any Equity Interests in any Loan Party, and (2) a list of any Intellectual Property acquired or Disposed by any Loan Party or in respect of which a material event has occurred, in each case since the date of the most recent report delivered pursuant to this clause (D) (or, in the case of the first such report so delivered, since the Closing Date).

(d) Certificate of Insurer — Insurance Coverage. Concurrently with any delivery of financial statements under Section 9.01(a), a certificate of a Responsible Officer of the Borrower,

certifying that (i) the insurance requirements of Section 9.07 have been implemented and are being complied with, (ii) the Loan Parties have paid or caused to be paid all insurance premiums then due and payable by the Loan Parties under their respective insurance policies and (iii) the Loan Parties are in compliance with their respective insurance policies, and attaching a certificates of insurance required pursuant to Section 9.07 (or, if such certificate is not available because the broker has not provided it, a copy of the request to the broker for such certificate), and, if requested by the Administrative Agent or any Lender, all copies of the applicable policies and endorsements.

(e) Reserved.

(f) Notices Under the Government Loan. Promptly after the furnishing thereof, copies of any financial statement, material report or material notice furnished to or by any Person pursuant to the terms of the Government Loan and not otherwise required to be furnished to the Lenders pursuant to any other provision of this Section 9.01; provided that the Borrower is not prohibited from delivering such information due to the confidentiality provisions included in the Government Loan.

(h) Information Regarding Loan Parties. Prompt written notice (and in any event at least thirty (30) days prior thereto, or such shorter time as the Administrative Agent may agree in its sole discretion) of any change (i) in any Loan Party's corporate, limited liability company or limited partnership name or in any trade name used to identify such Person in the conduct of its business or in the ownership of its Properties, (ii) in the location of any Loan Party's chief executive office or principal place of business, (iii) in any Loan Party's entity type or jurisdiction in which such Person is incorporated or formed, and (iv) in any Loan Party's United States federal taxpayer identification number.

(i) Board Information Rights. Promptly following any formal meeting of the Borrower's board of directors (or action by written consent in lieu of such a meeting), a written summary (which may be in the form of minutes) of such meeting (or such written consent), together with all documents and information furnished to the Borrower's board of directors in connection therewith, in each case redacting any privileged information but providing the Administrative Agent and the Lenders with notice of such redaction; provided that the Borrower shall not be required to provide any summary, documents or information relating to any discussion of this Facility.

(j) Annual Operating Plan and Budget. No later than ninety (90) days following the end of each fiscal year of the Borrower, an annual operating plan and budget for such fiscal year, which annual operating plan and budget shall (a) (if applicable) be prepared on a substantially similar basis to the immediately preceding annual operating plan and budget, and (b) present the Borrower's plan for the relevant period's ongoing operations, including, among other things, the Borrower's good faith estimate of its projected revenues, operation and maintenance expenses, General and Administrative Costs, Capital Expenditures, major maintenance expenditures and other capital requirements and permitting requirements.

(k) Patriot Act. Promptly upon request, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation.

(l) Other Requested Information. Promptly following any reasonable request therefor, such other information regarding the operations, business affairs, prospects and financial condition of the Borrower and its Subsidiaries (including with respect to beneficial ownership of the Borrower) or compliance with the terms of this Agreement or any other Loan Document or any Material Contract, as the Administrative Agent or any Lender may reasonably request.

(m) Monthly Lender Calls. To the extent requested in writing by Administrative Agent, the Borrower will participate in a telephonic meeting with the Administrative Agent and the Lenders once during each calendar month to be held at such times as may be agreed to by the Borrower and the Administrative Agent.

(n) Reserved.

(o) Notice of Changes to Beneficial Ownership Certification. At the time of the delivery of the financial statements provided for in Section 9.01(b), written notice of any change in the information provided in the Beneficial Ownership Certification delivered to the Administrative Agent or any Lender that would result in a change in the list of beneficial owners identified in such certification.

(p) Quarterly IP Monitoring Report. Within thirty (30) days after the end of each fiscal quarter of the Borrower, a report signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit D (a "Quarterly IP Monitoring Report"), and the Borrower will, upon the reasonable request of the Collateral Agent or the Insurers, discuss any material changes to the portfolio of Intellectual Property of the Borrower and participate in a meeting by conference call at such time as may be agreed by the Borrower, the Collateral Agent and the Insurers.

(q) Liquidity Report. As soon as available, but in any event not later than ten (10) Business Days after the end of each fiscal quarter of the Borrower, a cash report (the "Liquidity Report"), setting forth the Liquidity as of the last day of the fiscal quarter most recently ended, identifying for the Borrower and each Subsidiary thereof the institution(s) at which the Unrestricted Cash is held and the amount of such Unrestricted Cash at such institution.

Section 9.02 Notices of Material Events. Within five (5) Business Days of any Responsible Officer of the Borrower obtaining knowledge thereof, the Borrower will furnish to the Administrative Agent written notice of the following:

(a) the occurrence of any Default or Event of Default,

(b) the occurrence of any Casualty Event or the commencement of any action or proceeding that could reasonably be expected to result in a Casualty Event, in each case with a fair market value in excess of \$2,500,000;

(c) the filing or commencement of, or the threat in writing of, any action, suit, proceeding, investigation or arbitration by or before any arbitrator or Governmental Authority against or affecting any Loan Party or any Subsidiary of any Loan Party not previously disclosed in writing to the Administrative Agent or any material adverse development in any action, suit, proceeding, investigation or arbitration (whether or not previously disclosed to the Lenders) that, in either case, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(d) any litigation or proceeding affecting any Material Contract or involving any Intellectual Property of the Loan Parties and their Subsidiaries, which if adversely determined could reasonably be expected to (i) result in potential liability of the Loan Parties and their Subsidiaries of \$2,500,000 or more or (ii) have a Material Adverse Effect;

(e) (i) any event or condition that constitutes a material default or event of default or a termination event under any Material Contract, (ii) any notice of termination (other than expiration by its terms) or notice of material default received or given, under, or in connection with, any Material Contract, and (iii) any termination (other than expiration by its terms) or material amendment or modification of any Material Contract, and in each case, a copy of such early termination, amendment or modification;

(f) of the occurrence of any event for which the Borrower is required to make a mandatory prepayment pursuant to Section 3.04;

(g) any revocation, denial, adverse modification or non-renewal of any Governmental Approval material to the Loan Parties' and Excluded Subsidiary's business, which revocation, denial, adverse modification or non-renewal would reasonably be expected to result in a Material Adverse Effect;

(h) any notice from a Governmental Authority of potential liability of any Loan Party or any of its Subsidiaries under any Environmental Laws for an amount in excess of, or that could reasonably be expected to exceed, \$2,500,000;

(i) any early cancellation or material adverse change in the terms, coverage or amounts of any insurance required to be maintained pursuant to Section 9.07; and

(j) any other development or circumstance that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 9.02 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice in reasonable detail and any action taken or proposed to be taken with respect thereto.

Section 9.03 Existence; Conduct of Business. Each Loan Party will, and will cause each of its Subsidiaries to, at all times, do or cause to be done all things necessary to preserve, renew and keep in full force and effect (a) its legal existence and (b) except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, the rights, licenses, permits, privileges and franchises material to the conduct of its business and maintain, if necessary, its qualification to do business in each other jurisdiction in which its Properties are located or the ownership of its Properties requires such qualification.

Section 9.04 Payment of Obligations. Each Loan Party will, and will cause each of its Subsidiaries to, (a) timely file all income and other material Tax returns; (b) timely pay all income Taxes and other material Taxes, assessments, and other governmental charges or levies imposed upon its income, profits or Property before the same become delinquent; (c) within ninety (90) days past the original invoice billing date therefor, or, if earlier, when due in accordance with its terms, pay and discharge all obligations owed by it on ordinary trade terms to vendors, suppliers and other Persons providing goods and services used by it in the ordinary course of its business; (d) pay and discharge before the same becomes delinquent all other obligations now or hereafter owed by it; and (e) maintain appropriate accruals and reserves for all of the foregoing in accordance with GAAP. Each Loan Party and/or its Subsidiaries may, however, delay paying or discharging any of the foregoing so long as it is in good faith contesting the validity thereof by appropriate proceedings, if necessary, and has set aside on its books adequate reserves therefor that are required by GAAP.

Section 9.05 Material Contracts. The Borrower will (a) perform and observe all of its covenants and obligations contained in each of the Material Contracts, unless such non-performance would not reasonably be expected to result in a Material Adverse Effect, (b) take all reasonable and necessary action to prevent the termination or cancellation of any Material Contract (except for the expiration of any Material Contract in accordance with its terms and not as a result of a breach or default thereunder), unless such termination or cancellation could not reasonably be expected to result in a Material Adverse Effect and (c) upon the written request of the Collateral Agent, promptly (but in any event within five (5) Business Days of such request or such later time agreed to by the Collateral Agent in its sole discretion), each Loan Party shall use commercially reasonable efforts to deliver to the Collateral Agent a Material Contract Estoppel with respect to each Material Contract from each Person other than a Loan Party that is a party to any contract that becomes a Material Contract after the Closing Date.

Section 9.06 Maintenance of Properties.

(a) Except if the failure to do so could not reasonably be expected to have a Material Adverse Effect, each Loan Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted and casualty and condemnation excepted, all properties used or useful in the business of the Loan Parties and their respective Subsidiaries and from time to time will make or cause to be made all necessary repairs, renewals and replacements thereof.

(b) Without limiting the generality of the foregoing in this Section 9.06, each Loan Party will, and will cause each of its Subsidiaries to, maintain in full force and effect all Intellectual Property, licenses and franchises necessary for the ownership and operation of its Properties and business.

Section 9.07 Insurance. Each Loan Party will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurance companies, insurance (including fire, extended coverage, property damage, workers' compensation, comprehensive general liability, auto liability and business interruption insurance) in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses in accordance with prudent business practice. The lender loss payable clauses or provisions in said insurance policy or policies insuring any of the Collateral shall be endorsed in favor of and made payable to the Collateral Agent as "loss payee" or other formulation reasonably acceptable to the Administrative Agent and such policies shall name the Agents and the Lenders as "additional insureds" and provide that the insurer will endeavor to give at least thirty (30) days' prior notice of any cancellation to the Administrative Agent. The Loan Parties shall deliver to the Administrative Agent (x) on the Closing Date and annually thereafter a certificate of insurance of the Loan Parties' independent insurance broker describing and confirming the existence of the insurance on the Collateral required to be maintained by this Agreement and the other Loan Documents, together with a copy of the endorsement(s) described in the immediately preceding sentence attached to such certificate (or if the insurance broker has failed to provide such certificate or copy of an endorsement, a copy of the applicable Loan Party's or Subsidiary's written request to the broker to provide the same) and (y) at the reasonable request of the Administrative Agent, from time to time a summary schedule indicating all insurance then in force with respect to each of the Loan Parties.

Section 9.08 Books and Records; Inspection Rights. Each Loan Party will, and will cause each of its Subsidiaries to, keep proper books of record and account in which materially full, true and correct entries in conformity with GAAP with a reconciliation to GAAP are made of all dealings and transactions in relation to its business and activities. Each Loan Party will permit any representatives designated by the Administrative Agent or any Lender, at the Loan Parties' expense (such reimbursement to be limited to reasonable and documented out of pocket expenses) and upon reasonable prior notice and during normal business hours, to visit and inspect their Properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested, provided that, if no Default or Event of Default is continuing, the Loan Parties shall not be responsible for the expense of more than one such visit and inspection during any twelve-month period.

Section 9.09 Compliance with Laws. Each Loan Party will, and will cause each of its Subsidiaries to, comply in all material respects with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its Property. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, applicable AML Laws and applicable Sanctions.

Section 9.10 Environmental Matters.

(a) The Borrower shall at its sole expense: (i) comply, and shall cause its Properties and operations to comply, with all applicable Environmental Laws in all material respects; (ii) not Release or threaten to Release any Hazardous Material on, under, about or from any of the Borrower's Properties or any other property offsite the Property to the extent caused by the Borrower's operations except in compliance with applicable Environmental Laws; (iii) timely obtain or file all material Environmental Permits, if any, required under applicable Environmental Laws to be obtained or filed in connection with the operation or use of the Borrower's Properties; (iv) promptly commence and diligently prosecute to completion, any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations (collectively, the "Remedial Work") in the event any Remedial Work is required under applicable Environmental Laws because of or in connection with the actual or suspected past, present or future Release or Threatened Release of any Hazardous Material on, under, about or from any of the Borrower's Properties; (v) conduct its operations and businesses in a manner that will not expose any Property or Person to Hazardous Materials that could reasonably be expected to form the basis for a claim for damages or compensation; and (vi) establish and implement

such procedures as may be necessary to continuously determine and assure that the Borrower's obligations under this Section 9.10 are timely and fully satisfied.

(b) The Borrower will promptly, but in no event later than five (5) Business Days after the Borrower or any of its Subsidiaries receives written notice thereof, notify the Administrative Agent and the Lenders in writing of any threatened action, investigation or inquiry by any Governmental Authority or any threatened demand or lawsuit by any Person against the Borrower, any Loan Party or its Subsidiaries or their Properties of which the Borrower has knowledge in connection with any Environmental Laws if the Borrower could reasonably anticipate that such action will result in liability (whether individually or in the aggregate) in excess of \$2,500,000, not fully covered by insurance, subject to normal deductibles.

(c) The Borrower will provide copies of any environmental assessments, audits and tests obtained by, or in the possession of, the Borrower or any of its Subsidiaries in connection with the Properties or the Borrower's and its Subsidiaries' operation thereof, if reasonably requested by the Administrative Agent.

Section 9.11 Further Assurances.

(a) Each Loan Party at its sole expense will, and will cause each of its Subsidiaries to, promptly execute and deliver to the Administrative Agent or the Collateral Agent all such other documents, agreements and instruments reasonably requested by the Administrative Agent or the Collateral Agent to comply with or accomplish the conditions precedent, covenants and agreements of the Loan Parties or any of their Subsidiaries, as the case may be, in the Loan Documents, including the Notes, or to further evidence and more fully describe the Collateral intended as security for the Secured Obligations, or to correct any omissions in the Security Documents, or to state more fully the obligations secured therein, or to perfect, protect or preserve any Liens created pursuant to this Agreement or any of the Security Documents or the priority thereof, or to make any recordings, file any notices or obtain any consents, all as may be reasonably necessary or appropriate, in the reasonable discretion of the Administrative Agent, in connection therewith, including in the event any Loan Party develops or acquires any Intellectual Property, Patent, Trademark and/or Copyright Security Agreements, as applicable. In addition, at the Administrative Agent's request, each Loan Party, at its sole expense, shall provide any information reasonably requested to identify any Collateral pledged by it, including an updated Perfection Certificate, exhibits to Mortgages in form and substance reasonably satisfactory to the Administrative Agent (which such exhibits shall be in recordable form for the applicable jurisdiction) or any other information reasonably requested in connection with the identification of any Collateral.

(b) The Borrower hereby authorizes the Collateral Agent to file one or more financing or continuation statements against the Borrower and each Guarantor, and amendments thereto, relative to all or any part of the Collateral without the signature of the Borrower or any Guarantor where permitted by law. A carbon, photographic or other reproduction of the Security Documents or any financing statement covering such Collateral or any part thereof shall be sufficient as a financing statement where permitted by law. The Borrower acknowledges and agrees that any financing statement may describe the Collateral as "all assets" of the applicable Loan Party (or words of similar effect as may be required by the Collateral Agent).

Section 9.12 Additional Guaranty; Additional Collateral.

(a) Within the time periods specified in this Section 9.12, after any Person (other than an Immaterial Subsidiary and the Excluded Subsidiary) becomes a Subsidiary (or ceases to be an Immaterial Subsidiary or the Excluded Subsidiary) (each, a "New Loan Party"), in each case, the Borrower shall promptly provide the Administrative Agent with written notice thereof and shall cause each such New Loan Party to deliver to the Administrative Agent (x) a guaranty or a joinder to the Guarantee and Collateral Agreement in form and substance reasonably satisfactory to the Administrative Agent, guaranteeing the Loan Parties' obligations under the Loan Documents and (y) a joinder to all applicable Security Documents then in existence, in each case, in form and substance reasonably satisfactory to the Administrative Agent, accompanied by appropriate legal opinions, resolutions,

certificates and other documentation as may be reasonably requested by, and in form and substance reasonably satisfactory to, the Administrative Agent and its counsel.

(b) With respect to any personal Property (other than Excluded Assets, as such term is defined in the Guarantee and Collateral Agreement) acquired after the Closing Date by any Loan Party, as to which the Collateral Agent, for the benefit of the Secured Parties, does not have a perfected Lien, promptly (and in any event, with respect to Intellectual Property, within thirty (30) days of such acquisition (or such later date as the Collateral Agent may agree in its sole discretion)) (i) execute and deliver to the Collateral Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent reasonably deems necessary or reasonably advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a security interest in such property, subject to Permitted Liens and (ii) take all actions necessary or reasonably advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in such property, including (x) the filing of UCC financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be necessary or reasonably requested by the Collateral Agent or the Administrative Agent and (y) with respect to Intellectual Property, the execution and delivery of Patent, Trademark and Copyright Security Agreements, as applicable.

(c) If any Loan Party shall at any time acquire any real property or leasehold or other interest in real property not covered by a Mortgage (other than any such leasehold or other interest in real property that is primarily an office lease), promptly upon such acquisition, the Borrower shall, or shall cause such Loan Party to, execute, deliver and record a new Mortgage or a supplement to an existing Mortgage, as applicable, reasonably satisfactory in form and substance to the Administrative Agent and the Collateral Agent, subjecting such real property or leasehold or other interests to the Lien and created by such Mortgage. The Administrative Agent shall have received with respect to such Mortgage or a supplement to an existing Mortgage, as applicable, (i) evidence of title reasonably satisfactory to the Administrative Agent and the Collateral Agent; and (ii) evidence reasonably acceptable to the Collateral Agent of payment by Borrower of all mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages. If requested by the Administrative Agent, the Borrower shall deliver a supplemental customary legal opinion with respect to such Mortgage or supplement to an existing Mortgage.

(d) Upon the request by any Lender (or any potential Lender who has entered into a binding agreement to become a Lender) subject to the Flood Laws, provide the Administrative Agent with evidence that any applicable Loan Party has taken all actions required under the Flood Laws and/or reasonably requested by any such Lender, to assist in ensuring that each such Lender is in compliance with the Flood Laws applicable to the Collateral to the extent such Collateral includes any "building" or "mobile home" (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Laws), including, but not limited to, providing the Administrative Agent with the address, legal description and/or GPS coordinates of each structure on any Real Property Rights, whether owned or leased, that is or will be subject to a Mortgage in favor of the Collateral Agent, for the benefit of the Secured Parties, and, to the extent required, obtaining flood insurance.

(e) If requested by the Administrative Agent or any Lender, the Borrower will, and will cause their Subsidiaries to, cooperate with and provide any information reasonably necessary for the Administrative Agent or such Lender, as the case may be, to conduct its flood due diligence and flood insurance compliance.

Section 9.13 ERISA Compliance. The Borrower will promptly furnish and will cause any ERISA Affiliate to promptly furnish to the Administrative Agent (i) upon written request, copies of each annual Form 5500 report with respect to each Plan most recently filed with the United States Secretary of Labor or the Internal Revenue Service, and (ii) promptly upon becoming aware of the occurrence of any non-exempt "prohibited transaction," as described in section 406 of ERISA or in section 4975 of the Code, in connection with any Plan or any trust created thereunder, that could reasonably be expected to have a Material Adverse Effect, a written notice signed by the President or any other Responsible Officer, of the Borrower or the ERISA Affiliate, as the case may be, specifying the nature thereof, what action the Borrower or the ERISA Affiliate is taking or proposes to take with respect thereto, and, when known, any

action taken or proposed by the Internal Revenue Service or the Department of Labor with respect thereto.

Section 9.14 Casualty Event. If a Casualty Event occurs with respect to any Collateral, the Borrower shall (i) diligently pursue all its rights to compensation against any Person with respect to such Casualty Event and (ii) cause the Net Cash Proceeds of such Casualty Event to be subject to a Reinvestment or applied to prepay Loans in accordance with, and to the extent required by, Section 3.04(c).

(a) The Administrative Agent shall, upon the occurrence and during the continuance of an Event of Default, be entitled to participate in any compromise, adjustment or settlement in connection with any Casualty Event under any policy or policies of insurance or in respect of any proceeding with respect to any Casualty Event.

Section 9.15 Miscellaneous Business Covenants.

(a) Non-Consolidation. IPHoldCo will and will cause each of its Subsidiaries to: (i) maintain entity records and books of account separate from those of any other entity which is an Affiliate of such entity (other than IPHoldCo or any of its Subsidiaries); (ii) not commingle its funds or assets with those of any other entity which is an Affiliate of such entity except pursuant to a cash management system permitted pursuant to the below clause (b); and (iii) provide that its board of directors or other analogous governing body will hold all appropriate meetings to authorize and approve such entity's actions, which meetings will be separate from those of any other entities (other than IPHoldCo or any of its Subsidiaries).

Section 9.16 License Agreements and Third-Party License Agreements.

(a) Each existing and future sublicense agreement (other than customary non-exclusive licenses in customer contracts and other contracts entered into in the ordinary course of business) in respect of Intellectual Property entered into by a Loan Party as sublicensor with a Person other than a Loan Party as licensee or sublicensee (a "Third Party License Agreement") shall be covered by an intellectual property indemnity insurance policy satisfactory to the Lenders. If (x) a notice of termination or notice of default (or similar such notification) shall have been delivered under any Third Party License Agreement and the event giving rise to such notice has not been cured by the Loan Parties fifteen (15) days prior to the expiration of the applicable cure period with respect thereto, or (y) any event giving rise to an immediate termination right under any Third Party License Agreement shall have occurred, each Loan Party agrees that any Lender shall have the right, but not the obligation, to perform or cause the relevant Loan Party to perform any of its obligations under any such Third Party License Agreement or deliver any performance required by such Third Party License Agreement. Each Loan Party agrees that any out of pocket payments by the Lenders providing such performance shall be reimbursable by the Loan Parties.

(b) If (i) a notice of termination or notice of default (or similar such notification) shall have been delivered under any License Agreement and the event giving rise to such notice has not been cured by the Loan Parties fifteen (15) days prior to the expiration of the applicable cure period with respect thereto, or (ii) any event giving rise to an immediate termination right under any License Agreement shall have occurred, in each case, solely to the extent a Material Adverse Effect would reasonably be expected to result from a termination of such License Agreement, each Loan Party agrees that any Lender shall have the right, but not the obligation, to perform or cause the relevant Loan Party to perform any of its obligations under any such License Agreement or deliver any performance required by such License Agreement. Each Loan Party agrees that any out of pocket payments by the Lender providing such performance shall be reimbursable by the Loan Parties.

Section 9.17 Insurance Policy Premium. Borrower shall make the following additional payments in cash to the Insurers with respect to the premium on the Insurance Policy:

(a) on the Closing Date, 12.00% of the amount of Loans funded as of the Closing Date, payable in cash; and

(b) in the event that the Secured Obligations remain outstanding on the final day of the calendar month in which the twelve-month anniversary of the Closing Date occurs, 3.00% of the outstanding amount of Loans on such final day, payable on such final day; and

(c) in the event that the Secured Obligations remain outstanding on the final day of the calendar month in which the twenty-four-month anniversary of the Closing Date occurs, 3.00% of the outstanding amount of Loans on such final day, payable on such final day; and

(d) in the event that the Secured Obligations remain outstanding on the final day of the calendar month in which the thirty-six-month anniversary of the Closing Date occurs, 2.00% of the outstanding amount of Loans on such final day, payable on such final day.

Promptly (and in any event not more than two (2) Business Days) following any such payment with respect to the premium on the Insurance Policy, the Borrower shall confirm in writing to the Administrative Agent (with a copy to any Lender identified by the Administrative Agent from time to time in a written notice to the Borrower) that such payment has been made and the date and amount of such payment.

The Loan Parties, Lenders, Administrative Agent, and any other Person that becomes a party to this Agreement shall treat all premiums paid or payable with respect to the Insurance Policy (including the initial premium paid on or around the Closing Date pursuant to Section 9.17(a)) as paid by and properly deductible by the Borrower for U.S. federal income tax and applicable state and local income tax purposes, and no portion of any premium paid or payable with respect to the Insurance Policy shall be treated as "original issue discount" within the meaning of Section 1273 of the Code. All parties to this Agreement shall file all applicable tax returns consistent with the foregoing treatment except as otherwise required due to a "determination" within the meaning of Section 1313 of the Code.

Section 9.18 Post-Closing Covenants. Each of the Loan Parties shall (and shall cause each of its Subsidiaries, as applicable) to satisfy each of the requirements specified in Schedule 9.18 to the reasonable satisfaction of the Administrative Agent on or prior to the date specified for such requirement (or such later date as the Administrative Agent shall agree in its reasonable discretion).

Section 9.19 Intellectual Property.

(a) The Borrower acknowledges and agrees (on behalf of itself and its Subsidiaries) that all Intellectual Property owned (in each case, in whole or in part) after the date hereof by the Borrower or any of its Subsidiaries will constitute Collateral, other than any Intellectual Property owned, developed or acquired (other than from a Loan Party) by the Excluded Subsidiary. Borrower and its Subsidiaries (other than the Excluded Subsidiary) will convey, assign and transfer to IPCo all Intellectual Property it and they own, develop or acquire (in each case, in whole or in part) after the date hereof immediately upon such ownership, development or acquisition, but in any event, must transfer Collateral constituting registered Intellectual Property to IPCo within thirty (30) days following registration of the same (or such later date permitted by the Collateral Agent).

(b) The Borrower and its Subsidiaries (other than the Excluded Subsidiary) shall, and shall cause IPCo to, (i) deliver embodiments of Intellectual Property owned (in each case, in whole or in part) by it or they after the date hereof to the Escrow Agent in accordance with the IP Escrow Agreement and (ii) do all things necessary at all times to cause the Borrower and its Subsidiaries (other than the Excluded Subsidiary) to comply with its obligations under the IP Escrow Agreement.

(c) If, during the term of this Agreement, (x) the IP Escrow Agreement is terminated, invalidated or otherwise ceases to be in full force and effect or (y) the Escrow Agent becomes bankrupt, insolvent, or otherwise unable to discharge its duties under the IP Escrow Agreement to the reasonable satisfaction of the Collateral Agent, then as promptly practicable after notice from the Collateral Agent, (but in any event no later than fifteen (15) days after such notice (or such later date as the Collateral Agent may agree in its sole discretion)), IPCo shall enter into a three-party escrow agreement with the Collateral Agent and another reputable third-party escrow agent mutually agreed upon by the Collateral Agent and IPCo in their reasonable discretion ("Replacement Escrow Agent") (such agreement, the

“Replacement Escrow Agreement”) on terms identical in all material respects to the IP Escrow Agreement entered into on or prior to the Closing Date.

ARTICLE X NEGATIVE COVENANTS

Until Payment in Full, the Borrower covenants and agrees with the Lenders and the Administrative Agent that:

Section 10.01 Financial Covenant. As of the last day of each fiscal quarter, the Borrower will not permit Liquidity (as set forth in the Liquidity Report delivered pursuant to Section 9.01(q)) to be less than the Interest Escrow Required Amount (the “Financial Covenant”), in each case, subject to the delivery timing permitted pursuant to the definition of Interest Escrow Required Amount.

Section 10.02 Indebtedness. No Loan Party will, and will not permit any of its Subsidiaries to, incur, create, assume or suffer to exist any Indebtedness, except:

(a) the Secured Obligations arising under the Loan Documents or any guarantee of the Secured Obligations arising under the Loan Documents;

(b) Indebtedness described on Schedule 10.02 (including the payment of interest in kind on the Convertible Notes) and extensions, refinancing or replacements thereof; provided that (i) the Refinance Indebtedness does not increase the principal amount of the corresponding Original Indebtedness (except in an amount equal to any prepayment premiums, fees, expenses or any other similar amounts payable in respect of such Original Indebtedness), (ii) the Refinance Indebtedness does not increase the interest rate of the corresponding Original Indebtedness, except as necessary to reflect market terms and conditions at the time of the incurrence or issuance of such Refinance Indebtedness, (iii) the Refinance Indebtedness is unsecured, (iv) no Loan Party or any Subsidiary that is not originally obligated with respect to repayment of the corresponding Original Indebtedness is obligated with respect to the Refinance Indebtedness, (v) the Refinance Indebtedness does not result in a shortening of the average weighted maturity of the corresponding Original Indebtedness, and (vi) the terms of the Refinance Indebtedness other than fees and interests are not less favorable, when taken as a whole, to the obligor thereunder than the original terms of the corresponding Original Indebtedness;

(c) Indebtedness of the Loan Parties and the Excluded Subsidiary under Capital Leases and purchase money obligations to finance the acquisition, construction or improvement of any fixed or capital assets not to exceed, in the aggregate at any time outstanding, (x) prior to the date on which the Government Loan is funded in full, \$40,000,000 (inclusive of amounts borrowed under the Trinity Equipment Financing Loan) and (y) thereafter \$15,000,000, and in each case, solely to the extent such Indebtedness is incurred within 90 days of such acquisition, construction or improvement of such fixed or capital asset, and extensions, refinancing or replacements of the foregoing; provided that (i) the Refinance Indebtedness does not increase the principal amount of the corresponding Original Indebtedness (except in an amount equal to any prepayment premiums, fees, expenses or any other similar amounts payable in respect of such Original Indebtedness), (ii) the Refinance Indebtedness does not increase the interest rate of the corresponding Original Indebtedness, except as necessary to reflect market terms and conditions at the time of the incurrence or issuance of such Refinance Indebtedness, (iii) if the Refinance Indebtedness secured, (A) such Refinancing Indebtedness shall be secured by substantially the same or less collateral as the corresponding Original Indebtedness on terms no less favorable, when taken as a whole, to the Agents and the Lenders and (B) the Liens securing such Refinancing Indebtedness shall not have a priority more senior than the Liens securing the corresponding Original Indebtedness, (iv) no Loan Party or any Subsidiary that is not originally obligated with respect to repayment of the corresponding Original Indebtedness is obligated with respect to the Refinance Indebtedness, (v) the Refinance Indebtedness does not result in a shortening of the average weighted maturity of the corresponding Original Indebtedness, and (vi) the terms of the Refinance Indebtedness other than fees and interests are not less favorable, when taken as a whole, to the obligor thereunder than the original terms of the corresponding Original Indebtedness;

(d) unsecured Indebtedness associated with worker's compensation claims, health, disability or other employee benefits, bonds or surety obligations, completion guarantees and other similar obligations required by Governmental Requirements or unaffiliated third parties or otherwise in the ordinary course of business;

(e) intercompany Indebtedness owed by any Loan Party and payable to any other Loan Party; provided that any such Indebtedness shall be subordinated to the Secured Obligations on terms set forth in the Guarantee and Collateral Agreement;

(f) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services, in each case incurred in the ordinary course of business; provided that such Indebtedness is extinguished within 10 Business Days of its incurrence;

(g) Indebtedness of the Excluded Subsidiary in respect of the Government Loan;

(h) to the extent constituting Indebtedness, Indebtedness of the Borrower pursuant to a guaranty of the Excluded Subsidiary's obligations under its lease of the manufacturing facility in Turtle Creek, Pittsburgh, Pennsylvania and under the Trinity Equipment Financing Loan;

(i) obligations to pay for goods or services, even if such goods or services are not actually received or utilized by the Excluded Subsidiary, i.e., take-or-pay and similar obligations, in the ordinary course of business, including any guaranty by the Loan Parties in respect thereof;

(j) obligations to deliver commodities, goods or services in consideration of one or more advance payments in the ordinary course of business;

(k) Indebtedness evidenced by letters of credit with an aggregate amount at any time outstanding not to exceed \$4,000,000;

(l) Hedging Agreements entered into in the ordinary course of business for bona fide hedging purposes and not for speculation;

(m) to the extent constituting Indebtedness, contingent payment obligations and contingent liabilities in respect of customary indemnification or other contingent payment obligations in respect of purchase price (including earn-outs);

(n) Indebtedness arising as a result of judgments, orders, awards or decrees that do not constitute an Event of Default;

(o) other unsecured Indebtedness (other than Indebtedness of IPCo or IPHoldCo) not to exceed, in the aggregate at any time outstanding, \$2,500,000;

(p) Permitted Convertible Debt not exceeding \$15,000,000 at any time outstanding;

(q) intercompany Indebtedness pursuant (i) to the Manufacturing and Supply Agreement and (ii) Investments permitted pursuant to Section 10.05(b); and

(r) to the extent constituting Indebtedness, unsecured Indebtedness representing any Taxes to the extent such Taxes are being contested by such Loan Party or such Subsidiary in good faith by appropriate proceedings and adequate reserves are being maintained in accordance with GAAP.

Notwithstanding anything to the contrary herein, the Borrower will not permit IPCo and IPHoldCo to incur, create, assume or permit to exist any Indebtedness, except Indebtedness permitted by Section 10.02(a) or Section 10.02(e).

Section 10.03 Liens. No Loan Party will, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any of its Properties (now owned or hereafter acquired), except:

- (a) Liens securing the payment of any Secured Obligations pursuant to the Security Documents;
- (b) Excepted Liens;
- (c) Liens (other than Liens on assets of IPCo or IPHoldCo) securing Indebtedness permitted by Section 10.02(c) but only on the Property under lease or financed thereby and only to the extent such Lien is created at the time of such lease or financing;
- (d) Liens (other than Liens on assets of IPCo or IPHoldCo) on cash or securities pledged to secure performance of tenders, surety and appeal bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations and other obligations of a like nature incurred in the ordinary course of business;
- (e) judgment and attachment Liens not giving rise to an Event of Default; provided that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired and no action to enforce such Lien has been commenced;
- (f) Liens on the assets of the Excluded Subsidiary securing Indebtedness permitted pursuant to Section 10.02(g); and
- (g) Liens existing on the date hereof as set forth on Schedule 10.03 hereto.

For the avoidance of doubt, no intention to subordinate any Lien granted in favor of the Collateral Agent and the Lenders is to be hereby implied or expressed by the permitted existence of Permitted Liens or by indicating that any such Lien is subject to any Permitted Lien.

Section 10.04 Restricted Payments. No Loan Party will, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, return any capital to the holders of its Equity Interests or make any distribution of its Property to its Equity Interest holders, except:

- (a) the Borrower may declare and pay dividends with respect to its common Equity Interests payable solely in additional shares of its common Equity Interests;
- (b) the Borrower may (i) pay principal and interest with respect to the Convertible Notes, Permitted Convertible Debt and any Indebtedness permitted by Section 10.02(b) that extends, refinances or replaces the Convertible Notes, in each case, payable solely in additional Convertible Notes, Permitted Convertible Debt or such permitted Indebtedness (as applicable) or in shares of its common Equity Interests and (ii) extend, refinance or replace the Convertible Notes to the extent permitted by Section 10.02(b);
- (c) Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests;
- (d) so long as no Event of Default has occurred and is continuing or would result after giving effect to such payment, the Borrower and its Subsidiaries may make repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such repurchased Equity Interests represents a portion of the exercise price of such options or warrants;
- (e) so long as no Event of Default has occurred and is continuing or would result after giving effect to such payment, repurchases of Equity Interests deemed to occur upon the withholding

of a portion of the Equity Interests granted or awarded to a current or former officer, director, employee or consultant to pay for the taxes payable by such Person upon such grant or award (or upon vesting thereof); and

- (f) the Excluded Subsidiary may make Restricted Payments to the Borrower and its Subsidiaries.

Section 10.05 Investments, Loans and Advances. Each of the Loan Parties will not, and will not permit any of its Subsidiaries to, make or permit to remain outstanding any Investments in or to any Person or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and Capital Expenditures permitted hereunder in the ordinary course of business consistent with past practice) any Property from any Person, except that the foregoing restriction shall not apply to:

- (a) Investments in Loan Parties or any Person that becomes a Loan Party in accordance with Section 9.12(a);
- (b) without limiting Section 10.19, Investments in the Excluded Subsidiary;
- (c) Investments in the Excluded Subsidiary and the Immaterial Subsidiaries existing on the Closing Date;
- (d) Investments in accounts receivable arising in the ordinary course of business (including any instrument evidencing the same and any instrument, security or other asset acquired through bona fide collection efforts with respect to the same);
- (e) Investments in Cash Equivalents;
- (f) (i) Guarantees permitted by Section 10.02 and (ii) Guarantees of the obligations (other than in respect of Indebtedness) of Subsidiaries of the Borrower entered into in the ordinary course of business in connection with operating leases, commercial contracts, purchase agreements, trade payables and other similar obligations;

(g) to the extent constituting an Investment: (i) financing or other credit extended by the Loan Parties or their Subsidiaries to their customers in the ordinary course of business in connection with the sale of inventory or project development in connection with orders received by the Loan Parties as of the Closing Date (including orders that are backlogged as of the Closing Date) to the extent set forth on Part I of Schedule 10.05; and (ii) financing or other credit extended by a Loan Party or its Subsidiary to its customers after the Closing Date that is consented to in writing by the Majority Lenders (such consent not to be unreasonably withheld or delayed); and

(h) other Investments (valued at the time each such Investment is made) in the aggregate at any time outstanding, not to exceed \$5,000,000.

Notwithstanding anything to the contrary herein, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly, make any Investment if the effect of such transaction is to, directly or indirectly, Dispose of (i) any Intellectual Property owned (in each case, in whole or in part) now or in the future by any Loan Party to any Person other than IPCo or (ii) any Collateral (other than (x) cash and Cash Equivalents and (y) the lease and associated lease equipment described on Part II of Schedule 10.05) to the Excluded Subsidiary or any Immaterial Subsidiary.

Section 10.06 Nature of Business. No Loan Party will, nor will it permit any Subsidiary to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date hereof and businesses reasonably related thereto.

Section 10.07 Proceeds of Loans. (a) The Borrower will not permit the proceeds of the Loans to be used for any purpose other than those permitted by Section 8.20. Neither the Borrower nor any

Person acting on behalf of the Borrower has taken or will take any action which might cause any of the Loan Documents to violate Regulations T, U or X or any other regulation of the Board or to violate Section 7 of the Securities Exchange Act of 1934 or any rule or regulation thereunder, in each case as now in effect or as the same may hereinafter be in effect. If requested by the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form U-1 or such other form referred to in Regulations T, U or X of the Board, as the case may be.

(b) The Borrower will not request any Borrowing, and the Borrower shall not use, and shall procure that any other Loan Party and its or their respective directors, officers, employees, Affiliates and agents shall not use, directly or indirectly, the proceeds of any Borrowing, or lend, contribute or otherwise make available such proceeds to any Subsidiary, other Affiliate, joint venture partner or other Person, (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 or AML Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or involving any goods originating in or with a Sanctioned Person or Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions by any Person (including any Person participating in the transactions contemplated hereunder, whether as underwriter, advisor lender, investor or otherwise).

Section 10.08 ERISA Compliance. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each of the Loan Parties will not, and will not permit any ERISA Affiliate to, at any time:

(a) engage in respect of any Plan, any transaction in connection with which the Borrower or any other Loan Party could be subjected to either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed by Chapter 43 of Subtitle D of the Code;

(b) fail to make full payment when due of all amounts which, under the provisions of any Plan, agreement relating thereto or applicable law, the Borrower, any other Loan Party or any ERISA Affiliate is required to pay as contributions thereto; or

(c) contribute to or assume an obligation to contribute to or have any liability (contingent or otherwise), with respect to (i) any employee welfare benefit plan, as defined in section 3(1) of ERISA, maintained to provide benefits to former employees of such entities, that may not be terminated by such entities in their sole discretion at any time without any material liability, or (ii) any employee pension benefit plan, as defined in section 3(2) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

Section 10.09 Mergers, Etc. Each of the Loan Parties will not, and will not permit any of its Subsidiaries to, enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or divide or Dispose of, all or substantially all its business units, assets or other Properties, except that (a) any Loan Party (other than IPCo and IPHoldCo) may be merged, divided, amalgamated or consolidated with or into another Loan Party, so long as (i) no Event of Default has occurred and is continuing or would occur as a result of such transaction and notice of such transaction is provided to the Administrative Agent promptly following such transaction, and (ii) if the Borrower is a party to such transaction, the Borrower is the surviving entity, and (b) any Loan Party (other than the Borrower, IPCo and IPHoldCo) may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to any other Loan Party (other than IPCo and IPHoldCo), so long as no Event of Default has occurred and is continuing or would occur as a result of such transaction.

Section 10.10 Sale of Properties. Each of the Loan Parties will not, and will not permit any of its Subsidiaries to, sell, assign, farm-out, convey or otherwise transfer or Dispose of any Collateral or Equity Interests of the Excluded Subsidiary except for:

(a) the sale or lease financing of inventory in the ordinary course of business;

- (b) equipment that is worthless or obsolete or worn out in the ordinary course of business, which is no longer used or useful in the conduct of its business or which is replaced by equipment of equal suitability and value;
- (c) Dispositions to a Loan Party (other than Dispositions by IPCo or IPHoldCo);
- (d) Dispositions (other than of Intellectual Property) resulting from any taking or condemnation of any Property of any Loan Party or any Subsidiary of any Loan Party by any Governmental Authority or any assets subject to a casualty; and
- (e) other Dispositions of Collateral of fair market value not exceeding \$3,000,000 in the aggregate during any calendar year for which the applicable Loan Party or Subsidiary receives at least 75% of the consideration therefor in the form of cash or Cash Equivalents; *provided*, that the Net Cash Proceeds of such Disposition shall be subject to Section 3.04(c);
- (f) Casualty Event; *provided*, that the Net Cash Proceeds of such Disposition shall be subject to Section 3.04(c);
- (g) Dispositions of equipment in the ordinary course of business and to the extent that (i) such equipment is exchanged for credit against the purchase price of similar replacement equipment or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement equipment;
- (h) to the extent constituting Dispositions, non-exclusive licenses, sublicenses, bailment, leases or other subleases granted to third parties in the ordinary course of business and not interfering in any material respect with the business of the Loan Parties or any of their Subsidiaries, including the Intercompany IP Licensing Agreement;
- (i) Dispositions of cash and Cash Equivalents in the ordinary course of business;
- (j) Dispositions pursuant to the Manufacturing and Supply Agreement;
- (k) Dispositions in the ordinary course of business that consist of write-offs or grants of discounts or forgiveness of accounts receivable, without recourse, which are at least ninety (90) days past due in connection with the compromise or collection thereof;
- (l) Dispositions of Equity Interests pursuant to the Borrower's Form S-3 Registration Statement (as amended) (including, without limitation, the (x) Standby Equity Purchase Agreement with affiliates of Yorkville Advisors, dated April 28, 2022 and (y) any sales of Equity Interests pursuant to an at-the-market offering); and
- (m) Dispositions in connection with the settlement of claims or disputes and the settlement, release or surrender of tort or other litigation claims upon terms and conditions determined by Borrower in its good faith business judgment.

Notwithstanding anything to the contrary herein, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly, Dispose of (i) any Intellectual Property owned by any Loan Party to any Person other than IPCo or (ii) any Collateral (other than (x) cash and Cash Equivalents, (y) the lease and associated lease equipment described on Part II of Schedule 10.05 and (z) any other Collateral in accordance with Section 10.10(e) (except that a Loan Party receives 100% of the consideration therefor in the form of cash or Cash Equivalents)) to the Excluded Subsidiary or any Immaterial Subsidiary.

Section 10.11 Environmental Matters. Each of the Loan Parties will not, and will not permit any of its Subsidiaries to, cause or permit any of its Property to be in violation of, or do anything or permit anything to be done which will subject any such Property to a Release or Threatened Release of Hazardous Materials, exposure to any Hazardous Materials, or to any Remedial Work under any Environmental Laws, assuming disclosure to the applicable Governmental Authority of all relevant facts,

conditions and circumstances, if any, pertaining to such Property where such violations, Release or Threatened Release, exposure, or Remedial Work would reasonably be expected to have a Material Adverse Effect.

Section 10.12 Transactions with Affiliates. Each of the Loan Parties will not, and will not permit any of its Subsidiaries to, enter into any transaction, including any purchase, sale, lease or exchange of Property or the rendering of any service, with any Affiliate except (x) such transactions as are otherwise permitted under this Agreement, (y) such transactions that are upon fair and reasonable terms no less favorable to it than it would obtain in a comparable arm's length transaction with a Person not an Affiliate and (z) transactions pursuant to the Intercompany IP Licensing Agreement, pursuant to the Manufacturing and Supply Agreement or pursuant to the Personnel Agreement.

Section 10.13 Negative Pledge Agreements; Dividend Restrictions. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist any contract, agreement or understanding (other than the Loan Documents, the documents governing Indebtedness permitted by Section 10.02(c), but only with respect to the Property that is the subject of such Indebtedness, and the documents governing Indebtedness permitted by Section 10.02(g), but solely with respect to the Excluded Subsidiary), which in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of its Collateral in favor of the Collateral Agent and the Lenders or restricts any Subsidiary of any Loan Party from paying dividends or making distributions to any Loan Party or any other Subsidiary of any Loan Party, or which requires the consent of or notice to other Persons in connection therewith.

Section 10.14 Sale and Leaseback. Each of the Loan Parties will not, and will not permit any of its Subsidiaries (other than the Excluded Subsidiary) to, enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any Collateral, whether now owned or hereafter acquired, and thereafter rent or lease such Collateral which it intends to use for substantially the same purpose or purposes as the Collateral being sold or transferred.

Section 10.15 Amendments to Organizational Documents, Fiscal Year End.

(a) Each of the Loan Parties will not, and will not permit any of its Subsidiaries to, amend or otherwise modify (or permit to be amended or modified) its Organizational Documents, or take any action that would impair its rights under its Organizational Documents, in each case, in a manner that would reasonably be expected to be adverse to such Loan Party or the Lenders in any material respect or to materially adversely affect any transfer or voting provisions applicable to the Lenders or their Affiliates.

(b) The Borrower will not change the last day of its annual audit date from December 31 of each year, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30 of each year, respectively.

Section 10.16 Material Contracts. The Borrower will not amend, modify, supplement or, prior to its expiration in accordance with its terms, cancel or terminate any Material Contract, or consent to or accept any cancellation or termination of any such Material Contract prior to its expiration in accordance with its terms, if such amendment, modification, supplement, cancellation or termination would reasonably be expected to have a Material Adverse Effect.

Section 10.17 New Accounts. Without the prior written consent of the Administrative Agent, none of the Loan Parties shall open or otherwise establish any Deposit Account, Securities Account or Commodity Account, other than (x) any Deposit Account, Securities Account and Commodity Account (i) in which the Collateral Agent has a valid first-priority Lien under applicable law and (ii) that is subject to a Control Agreement and (y) Excluded Accounts (as such term is defined in the Guarantee and Collateral Agreement).

Section 10.18 Bankruptcy Remote. Neither IPCo or IPHoldCo shall at any time fail to be organized as a bankruptcy-remote entity having bylaws or an operating agreement, as applicable, in form and substance reasonably acceptable to the Majority Lenders (with the Organizational Documents in effect on the Closing Date being deemed to be reasonably acceptable), which bylaws or operating

agreement, as applicable, shall contain usual and customary provisions for (a) appointment of an independent director whose affirmative vote shall be required to commence an insolvency proceeding and (b) separateness representations and covenants. IPCo shall not at any time fail to own and/or have rights as licensee to the patents and other Intellectual Property of any form, including formulas, trade secrets, know-how, methods or processes, whether or not registered, which it owns or has licensed except for those rights which are not material to the business of the Loan Parties and their Subsidiaries and in the ordinary course of maintaining an Intellectual Property portfolio are not routinely renewed. IPCo and IPHoldCo shall not have any business activity except: (i) IPCo's sole business shall be the ownership and maintenance of the Intellectual Property used or useful in the business of the Borrower and its Subsidiaries; (ii) IPCo shall grant no Liens except under the Loan Documents and shall have no creditors except the Lenders and professional service providers (including, without limitation, attorneys, tax advisors, auditors and intellectual property service firms); (iii) IPHoldCo's sole business shall be owning 100% of the Equity Interests of IPCo and being a Guarantor hereunder; and (iv) IPHoldCo shall grant no Liens except under the Loan Documents and shall have no creditors except the Lenders. IPHoldCo shall be a wholly owned Subsidiary of the Borrower, and IPCo shall be a direct wholly owned Subsidiary of IPHoldCo. In addition, the Loan Parties shall cause IPCo to comply with all of IPCo's obligations, including IPCo's obligations to maintain its special purpose vehicle separateness and bankruptcy remote structure, and the Loan Parties shall not amend any such provisions without the prior written consent of the Majority Lenders.

Section 10.19 Excluded Subsidiary.

(a) No Loan Party will permit the aggregate amount of cash and Cash Equivalents (other than from proceeds of the Government Loan and the Trinity Equipment Financing Loan until such proceeds are utilized for their stated purpose) of the Excluded Subsidiary and the Immaterial Subsidiaries to exceed (x) \$10,000,000 or (y) such higher amount as may be required pursuant to the terms of the Government Loan for more than ten (10) consecutive Business Days without the prior written consent of the Majority Lenders (such consent not to be unreasonably withheld or delayed), unless such excess amount is transferred to a Deposit Account of a Loan Party subject to a Control Agreement within two (2) Business Days following the expiration of such ten (10) consecutive Business Day period.

(b) No Loan Party will permit the Excluded Subsidiary to be a party to any customer contracts for the sale of batteries other than the Manufacturing and Supply Agreement.

Section 10.20 Holding Company. Intermediate Holdco shall not (a) incur any Indebtedness of the type specified in clauses (a) and (b) of the definition of Indebtedness (other than the Secured Obligations), (b) own or acquire any material assets (other than the Equity Interests of its Subsidiaries, any assets incidental thereto, cash and Cash Equivalents), (c) engage in any material operations or business (other than activities incidental to being a holding company or necessary to maintain its legal existence (including the ability to incur fees, costs and expenses related to such maintenance), (d) cease to directly own all of the Equity Interests of the Excluded Subsidiary or (e) notwithstanding anything to the contrary in this Agreement, consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any other Person.

ARTICLE XI EVENTS OF DEFAULT; REMEDIES

Section 11.01 Events of Default. One or more of the following events shall constitute an "Event of Default":

(a) Payments Under Loan Documents.

(i) The Borrower shall fail to pay any principal of or premium (if any) on any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof, by acceleration or otherwise.

(ii) The Borrower shall fail to pay any interest, fee or any other amount (other than an amount referred to in Section 11.01(a)) payable under any Loan Document, when and as the same shall become due and payable and failure to pay shall continue unremedied for a period of three (3) Business Days.

(b) Breach of Warranty. Any representation or warranty made or deemed made by or on behalf of any Loan Party or any of its Subsidiaries in or in connection with any Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall have been materially incorrect when made or deemed made and, if such misrepresentation is susceptible of cure prior to the expiration of such period and such misrepresentation has not had and would not reasonably be expected to have a Material Adverse Effect, such misrepresentation is not remedied within ten (10) days after the earlier to occur of (i) any Loan Party's knowledge of such failure or (ii) receipt by the Borrower of written notice thereof from the Administrative Agent.

(c) Breach of Negative Covenants or Certain Other Covenants. Any Loan Party or any Subsidiary of any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 9.02(a), Section 9.03 (solely as to existence), Section 9.07, Section 9.10, Section 9.12, Section 9.15, Section 9.17, Section 9.18 or Article X.

(d) Breach of Certain Notice Requirements. Any Loan Party or any of its Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in Section 9.01 or Section 9.02 (other than Section 9.02(a)) of this Agreement and such failure shall continue unremedied for a period of ten (10) Business Days.

(e) Breach of Other Covenants. Any Loan Party or any of its Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in Section 11.01(a), Section 11.01(b), Section 11.01(c) or Section 11.01(d)) or any other Loan Document and such failure shall continue unremedied for a period of thirty (30) days.

(f) Cross-Default. (i) Any Loan Party or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable, after taking any applicable grace periods into account, or (ii) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the Redemption thereof or any offer to Redeem to be made in respect thereof, prior to its scheduled maturity or require such Loan Party or Subsidiary to make an offer in respect thereof.

(g) Involuntary Proceedings. An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Loan Party or any of its Subsidiaries of its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any of its Subsidiaries or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for forty-five (45) days or an order or decree approving or ordering any of the foregoing shall be entered.

(h) Voluntary Proceedings. Any Loan Party or any of its Subsidiaries shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 11.01(g), (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any of its Subsidiaries or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors

or (vi) take any action for the purpose of effecting any of the foregoing; or any stockholder, member or partner of any Loan Party or any of its Subsidiaries shall make any request or take any action for the purpose (A) of calling a meeting of the members of such Loan Party to consider a resolution to dissolve and wind-up such Loan Party's affairs or (B) of exercising or asserting rescission rights with respect to any Equity Interests of any Loan Party that it owns. Any Loan Party or any of its Subsidiaries shall become unable, admit in writing its inability or fail generally to pay its debts as they become due.

(i) Judgments. (i) One or more judgments for the payment of money in an aggregate amount in excess of \$5,000,000 or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, shall be rendered against any Loan Party or any of its Subsidiaries or any combination thereof, in each case other than a judgment which is (x) discharged within sixty (60) days or (y) the execution of which is effectively stayed within sixty (60) days and no action is legally taken by a judgment creditor or judgment creditors to attach or levy upon any assets of any Loan Party or any of its Subsidiaries to enforce any such judgment.

(j) Loan Document Unenforceable. The Loan Documents after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with their terms against any Loan Party party thereto or any other party thereto or shall be repudiated by any of them, or cease to create a valid and perfected Lien of the priority required thereby on any part of the Collateral purported to be covered thereby, except to the extent permitted by the terms of this Agreement, or a Loan Party shall so state in writing.

(k) Uninsured Losses; Proceedings Against Assets. There shall occur any uninsured damage to or loss, theft or destruction of any of the Collateral in excess of \$2,500,000 (it being understood that the amount of deductibles payable in connection with such claim shall not be included in such threshold) or the Collateral or any other of the Loan Parties' or any of their Subsidiaries' assets in excess of \$2,500,000 in the aggregate are attached, seized, levied upon or subjected to a writ or distress warrant; or such come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not cured within 30 days thereafter.

(l) Loss of Intellectual Property. To the extent a Material Adverse Effect would reasonably be expected to result therefrom (as determined by the Collateral Agent in its reasonable judgment), any Governmental Authority or other Person shall (i) revoke, terminate, suspend or adversely modify any Intellectual Property that is the subject of the IP Escrow Agreement, (ii) commence proceedings to suspend, revoke, terminate or adversely modify any Intellectual Property that is the subject of the IP Escrow Agreement and such proceedings shall not be dismissed or discharged within sixty (60) days, or (iii) schedule or conduct a hearing on the renewal of any Intellectual Property that is the subject of the IP Escrow Agreement for the continuation of any Loan Party's business and the staff of such Governmental Authority or other Person issues a report recommending the termination, revocation, suspension or material adverse modification of such Intellectual Property that is the subject of the IP Escrow Agreement.

(m) Cessation of Business. To the extent that a Material Adverse Effect could reasonably be expected to result therefrom (i) any Loan Party or any of its Subsidiaries is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting all or any material part of its business for more than thirty (30) consecutive days; or (ii) any other cessation for more than thirty (30) consecutive days of a substantial part of the business of any Loan Party or any of its Subsidiaries engaged in material operations.

(n) Insurance Policy. At any time after the execution and delivery thereof, (i) the Insurance Policy for any reason shall cease to be in full force and effect or shall be declared to be null and void or any counterparty thereto shall repudiate its obligations thereunder, or (ii) any counterparty to the Insurance Policy or any Loan Party shall contest the validity or enforceability of the Insurance Policy in writing or deny in writing that it has any further rights or obligations under the Insurance Policy.

Section 11.02 Remedies.

(a) (A) In the case of an Event of Default other than one described in Section 11.01(g) or Section 11.01(h) (other than an Event of Default described in (B) below), at any time thereafter during the continuance of such Event of Default, the Administrative Agent may, and at the request of the Majority Lenders, shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable) and (B) in the case of an Event of Default specified in Section 11.01(c) with respect to breach of Section 9.17 that is not cured within 30 days from the occurrence thereof, (i) the Commitment shall be automatically and immediately terminated and (ii) the Loans then outstanding will automatically and immediately become due and payable in whole, and in each case of the foregoing (A) and (B), the principal of the Loans so declared to be due and payable, together with accrued interest thereon, any Call Premium then applicable and all fees and other obligations of the Borrower and the Guarantors accrued hereunder and under the other Loan Documents, shall become due and payable immediately, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby waived by the Borrower and each Guarantor; and in case of an Event of Default described in Section 11.01(g) or Section 11.01(h), the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon, any Call Premium then applicable and all fees and the other obligations of the Borrower and the Guarantors accrued hereunder and under the other Loan Documents, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and each Guarantor.

Without limiting the generality of the foregoing, it is understood and agreed that (x) if, prior to the Call Premium Expiration Date, the Loans are accelerated or otherwise become due, in each case, in respect of any Event of Default (including, but not limited to, upon the occurrence of a bankruptcy or insolvency related event (including the acceleration of claims by operation of law)) or (y) upon the occurrence of the board of directors (or similar governing body or any Person having Control of any Loan Party (or any committee thereof) or of any directors (or similar governing body or any Person having Control) of any Loan Party (or any committee thereof) adopting any resolution or otherwise authorizing any action to approve any bankruptcy or insolvency related event (each of the foregoing in clauses (x) and (y) and as contemplated by the penultimate sentence of this paragraph, a "Yield Maintenance Event")), the Call Premium (if any) that would have applied if, at the time of the Loans are accelerated or otherwise become due, the Borrower had (i) repaid, prepaid, refinanced, substituted or replaced any or all of the Loans as contemplated in Sections 3.01 and/or 3.04 will also be automatically and immediately due and payable without further action or notice as though a Yield Maintenance Event had occurred and the Call Premium (if any) shall constitute part of the Secured Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of the Lenders' lost profits and investment opportunity as a result thereof (and not as a penalty). Any Call Premium payable above shall be presumed to be the liquidated damages (and not for the avoidance of doubt unmatured interest or a penalty) sustained by the Lenders as the result of payment or acceleration, as applicable, prior to the Call Premium Expiration Date and the Borrower and Guarantors agree that the Call Premium is reasonable under the circumstances currently existing. In the event the Secured Obligations are reinstated in connection with or following any Yield Maintenance Event, it is understood and agreed that the Secured Obligations shall include any Call Premium payable in accordance with the Loan Documents, including this Section 11.02. The Call Premium (if any) shall also be payable in the event the Secured Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding, deed in lieu of foreclosure or by any other similar means).

THE LOAN PARTIES EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING CALL PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. The Borrower and each other Loan Party expressly agrees (to the fullest extent that it may lawfully do so) that: (A) the Call Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably

represented by counsel; (B) the Call Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Borrower and Guarantors giving specific consideration in this transaction for such agreement to pay the Call Premium; and (D) the Borrower and each Guarantor shall each be estopped hereafter from claiming differently than as agreed to in this paragraph. The Borrower and each Guarantor expressly acknowledges that its agreement to pay the Call Premium to the Lenders as herein described is a material inducement to the Lenders to provide the Commitments and make the Loans. In the case of any Event of Default occurring by reason of any willful action or inaction taken or not taken by or on behalf of the Borrower or any Guarantor with the intention of avoiding payment of the Call Premium that the Borrower would have had to pay if the Borrower then had elected to pay the Loans prior to the Maturity Date pursuant to Section 3.01 and/or Section 3.04, an equivalent premium, without duplication, will become and be immediately due and payable to the extent permitted by law upon the acceleration of the Loans.

(b) In the case of the occurrence of an Event of Default, the Administrative Agent and the Lenders will have all other rights and remedies available at law and equity.

(c) All proceeds realized from the liquidation or other disposition of Collateral or otherwise, and any amounts received on account of the Secured Obligations, received after maturity of the Loans, whether by acceleration or otherwise, shall be applied as follows:

(i) *first*, to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the Administrative Agent and/or the Collateral Agent in such Agent's capacity as such;

(ii) *second*, pro rata to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the Lenders;

(iii) *third*, pro rata to payment of accrued interest on the Loans;

(iv) *fourth*, pro rata to payment of principal and premium outstanding on the Loans;

(v) *fifth*, pro rata to all other Secured Obligations; and

(vi) *sixth*, any excess, after all of the Secured Obligations shall have been indefeasibly paid in full in cash, shall be paid to the Borrower or as otherwise required by any Governmental Requirement.

ARTICLE XII THE AGENTS

Section 12.01 Appointment; Powers.

(a) Each of the Lenders hereby irrevocably appoints the Administrative Agent as its agent 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 and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article (excluding Section 12.10) are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any Guarantor shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent and each Lender hereby irrevocably designate and appoint the Collateral Agent as the agent with respect to the Collateral, and each of the Administrative Agent and each Lender irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this

Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto.

Section 12.02 Duties and Obligations of Agents. No Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing (the use of the term “agent” herein and in the other Loan Documents with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law; rather, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties), (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except as provided in Section 12.03, and (c) except as expressly set forth herein, no Agent shall have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, any other Loan Party or any of their Subsidiaries that is communicated to or obtained by the Person serving as Administrative Agent or Collateral Agent or any of their Affiliates in any capacity. No Agent shall be deemed to have knowledge of any Default unless and until written notice thereof is given to such Agent by the Borrower or a Lender, and 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 under any other Loan Document 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 in any other Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VII or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent or as to those conditions precedent expressly required to be to such Agent’s satisfaction, (vi) the existence, value, perfection or priority of any collateral security or the financial or other condition of any Loan Party or any Subsidiary of the Borrower or any other obligor or Guarantor, or (vii) any failure by the Borrower or any other Person (other than itself) to perform any of its obligations hereunder or under any other Loan Document or the performance or observance of any covenants, agreements or other terms or conditions set forth herein or therein. For purposes of determining compliance with the conditions specified in Article VII, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent or the Collateral Agent shall have received written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 12.03 Action by Administrative Agent or Collateral Agent. Neither the Administrative Agent nor the Collateral Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise in writing as directed by the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 13.02) and in all cases such Agent shall be fully justified in failing or refusing to act hereunder or under any other Loan Documents unless it shall (a) receive written instructions from the Majority Lenders or the Lenders, as applicable, (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 13.02) specifying the action to be taken and (b) be indemnified to its satisfaction by the Lenders against any and all liability and expenses which may be incurred by it by reason of taking or continuing to take any such action. The instructions as aforesaid and any action taken or failure to act pursuant thereto by such Agent shall be binding on all of the Lenders. If a Default has occurred and is continuing, then the Administrative Agent and/or the Collateral Agent shall take such action with respect to such Default as shall be directed by the requisite Lenders in the written instructions (with indemnities) described in this Section 12.03; provided that, unless and until the Administrative Agent and/or the Collateral Agent shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interests of the Lenders. In no event, however, shall any Agent be required to take any action which exposes such Agent to personal liability or which is contrary to this Agreement, the Loan Documents or applicable law. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Majority Lenders or the

Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 13.02), and otherwise no Agent shall be liable for any action taken or not taken by it hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith INCLUDING ITS OWN ORDINARY NEGLIGENCE, except for its own gross negligence or willful misconduct.

Section 12.04 Reliance by Administrative Agent and Collateral Agent. The Administrative Agent and the Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by them to be genuine and to have been signed or sent by the proper Person and upon advice and statements of legal counsel (including counsel to the Loan Parties), independent accountants, consultants and other experts selected by any such Agent. The Administrative Agent and/or the Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon and each of the Borrower and the Lenders hereby waives the right to dispute such Agent's record of such statement, except in the case of gross negligence or willful misconduct by such Agent. Upon request by an Agent at any time, the Lenders will confirm in writing whether an action may be taken by it (and such Agent may deem the failure to respond to any such request in a timely manner as approval). In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Agents may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by them, and shall not be liable for any action taken or not taken by them in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note as the holder thereof for all purposes hereof unless and until a written notice of the assignment or transfer thereof permitted hereunder shall have been filed with the Administrative Agent.

Section 12.05 Subagents. Either Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by such Agent. The Agents and any such sub-agent may perform any and all their duties and exercise their rights and powers through their respective Related Parties. The exculpatory provisions of the preceding Sections of this Article XII shall apply to any such sub-agent and to the Related Parties of such Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities provided for herein as well as activities as Agent. Without limiting the foregoing, following the Closing Date, the Agents may from time to time appoint one or more Lenders (or any Affiliate or Approved Fund of a Lender) as its sub-agent for the limited purposes of (i) delivering any notices or other communications on behalf of such Agents hereunder and (ii) receiving copies of any notices or other communications that are delivered to the Agents hereunder.

Section 12.06 Resignation or Removal of Agents. Any Agent may resign at any time by notifying the Lenders and the Borrower. Majority Lenders may, to the extent permitted by applicable law, remove any Agent upon thirty (30) days' notice in writing to such Agent and the Borrower. Such resignation or removal shall take effect upon the appointment of a successor Agent as provided below (or, if no successor has been appointed, on the 30th day after the relevant notice). Upon any such resignation or removal, the Majority Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after such notice of resignation or removal (the "Successor Effective Date"), then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent. With effect from the Successor Effective Date (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (ii) except for any indemnity payments owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time, if any, as a successor Agent is appointed as provided for above. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers,

privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation or removal hereunder, the provisions of this Article XII and Section 13.03 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent.

Section 12.07 Administrative Agent as Lender. The Person serving as the Administrative Agent 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 such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with Loan Party or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

Section 12.08 No Reliance. Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and each other Loan Document to which it is a party. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender 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, any related agreement or any document furnished hereunder or thereunder. No Agent shall be required to keep itself informed as to the performance or observance by the Borrower of this Agreement, the Loan Documents or any other document referred to or provided for herein or to inspect the Properties or books of the Borrower. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by an Agent hereunder, no Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrower (or any of its Affiliates) which may come into the possession of such Agent or any of their respective Affiliates. In this regard, each Lender acknowledges that Baker Botts L.L.P. is acting in this transaction as special counsel to the Agents only, except to the extent otherwise expressly stated in any legal opinion or any Loan Document. Each other party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein. In structuring, arranging or syndicating this Agreement, each Lender acknowledges and agrees that the Administrative Agent may be an agent or lender under other loans or other securities, and each Lender hereby waives any existing or future conflicts of interest associated with any of their roles in such other debt instruments.

Section 12.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party or any Subsidiary of the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under Section 13.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agents and, in the event that the Agents shall consent to the making of such payments directly to the Lenders, to pay to the

Agents any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their agents and counsel, and any other amounts due the Agents under Section 13.03.

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

Section 12.10 Authority of Collateral Agent to Release Collateral and Liens. Each Lender hereby authorizes the Collateral Agent to release any Collateral that is permitted to be sold or released pursuant to the terms of the Loan Documents. Each Lender hereby authorizes the Collateral Agent to execute and deliver to the Borrower, at the Borrower's sole cost and expense, any and all releases of Liens, termination statements, assignments or other documents reasonably requested by the Borrower in connection with any Disposition of Property to the extent such Disposition is permitted by the terms of Section 10.10 or is otherwise authorized by the terms of the Loan Documents.

Section 12.11 Acknowledgement of Lenders.

(a) Each Lender hereby agrees that (i) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (ii) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, 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 Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 12.12 shall be conclusive, absent manifest error.

(b) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (i) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (ii) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) The Borrower and each other Loan Party hereby agrees that (i) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (ii) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Secured Obligations owed by the Borrower or any other Loan Party.

(d) Each party's obligations under this Section 12.11 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Secured Obligations under any Loan Document.

Section 12.12 Credit Bidding. The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Majority Lenders, to credit bid all or any portion of the Secured Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party or other Guarantor is subject, or (b) at any other sale, foreclosure or acceptance of Collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Secured Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid by the Administrative Agent at the direction of the Majority Lenders on a ratable basis (with Secured Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid, (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Secured Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided, that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Majority Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Majority Lenders contained in Section 13.02 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Secured Obligations which were credit bid, interests, whether as equity, partnership interests, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Secured Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Secured Obligations assigned to the acquisition vehicle exceeds the amount of Secured Obligations credit bid by the acquisition vehicle or otherwise), such Secured Obligations shall automatically be reassigned to the Secured Parties pro rata with their original interest in such Secured Obligations and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of such Secured Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Secured Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the

formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

**ARTICLE XIII
MISCELLANEOUS**

Section 13.01 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to Section 13.01(b)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic communication, as follows:

- (i) if to the Borrower, to it at the following:

Eos Energy Enterprises, Inc.
3920 Park Ave.
Edison, NJ 08820
Attention: Melissa Berube
Phone: (732) 983-1753
Email: mberube@eos.com

with a copy (which shall not constitute notice) to:

Haynes and Boone LLP
30 Rockefeller Plaza
26th Floor
New York, NY 10112
Attention: Alexander Grishman
Phone: (212) 918-8965
Fax: (212) 884-8233
Email: Alexander.Grishman@haynesboone.com

- (ii) if to the Administrative Agent or the Collateral Agent, to it at the following:

Atlas Credit Partners, LLC
777 Post Oak Blvd Suite 430
Houston, TX 77056
Attention: Matthew Laterza
Telephone: (713) 859-9770
Email: mlaterza@atlascreditpartners.com

with a copy (which shall not constitute notice) to:

Baker Botts L.L.P.
2001 Ross Ave Ste 900
Dallas, TX 75201
Attention: Luke Weedon
Phone: (214) 953-6970
Facsimile: (214) 661-4970
Email: luke.weedon@bakerbotts.com

and (iii) if to any other Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire;

- (iv) if to any Subsidiary, to it at its address set forth in Schedule 1 to the Guarantee and Collateral Agreement.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II, Article III, Article IV and Article V unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. 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), 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; provided that, for both clauses (i) and (ii) above, if such notice, email 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.

(c) Any party hereto may change its address, facsimile number or email address for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 13.02 Waivers; Amendments.

(a) No failure on the part of the Administrative Agent, the Collateral Agent or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege, or any abandonment or discontinuance of steps to enforce such right, power or privilege, under any of the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any of the Loan Documents preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 13.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, the Collateral Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof nor any other Loan Document (other than the Fee Letter and as provided in Section 3.05) nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Majority Lenders or by the Borrower and the Administrative Agent with the consent of the Majority Lenders (with a copy of all amendments provided to the Administrative Agent); provided that no such agreement shall (i) increase the Commitment or the outstanding aggregate principal amount of the Loans of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, or reduce any other Secured Obligations hereunder or under any other Loan Document, without the written consent of each Lender directly and adversely affected thereby, provided that the Default Rate may be waived with the consent of the Majority Lenders, (iii) postpone the scheduled and fixed date of payment or prepayment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or any other Secured Obligations hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone or extend the Maturity Date without the written consent of each Lender affected thereby, (iv) change Section 4.01(b) or Section 4.01(c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each directly and adversely Lender, (v) release all or substantially all of the Guarantors or release all or substantially all of the

Collateral (other than as provided in Section 12.10), without the written consent of each Lender, (vi) modify the terms of Section 11.02(c) without the written consent of each Lender directly and adversely affected thereby, or (vii) change any of the provisions of this Section 13.02(b) or the definition of "Majority Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or under any other Loan Documents, without the written consent of each directly and adversely affected Lender; provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of such Agent. Notwithstanding the foregoing, (a) any Security Document may be supplemented to add additional Collateral or join additional Persons as Guarantors with the consent of the Collateral Agent, (b) the Borrower and the Administrative Agent may amend this Agreement or any other Loan Document without the consent of the Lenders in order to (i) correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error, omission or other manifest error in any Loan Document, or (ii) make administrative or operational changes or enhancements not adverse to the Lenders, and (c) the Administrative Agent and the Borrower (or other applicable Loan Party) may enter into any amendment, modification or waiver of this Agreement or any other Loan Document or enter into any agreement or instrument to effect the granting, perfection, protection, expansion or enhancement of any Lien in any Collateral or Property to become Collateral to secure the Indebtedness for the benefit of the Lenders or as required by any Governmental Requirement to give effect to, protect or otherwise enhance the rights or benefits of any Lender under the Loan Documents without the consent of any Lender.

Section 13.03 Expenses, Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Agents and their Affiliates, including the reasonable and documented fees, charges and disbursements of counsel (limited to one outside counsel, other than (x) solely in the case of a conflict of interest, one additional counsel to all affected parties, taken as a whole and (y) if reasonably necessary, one local counsel in each relevant jurisdiction of such Persons, taken as a whole) for the Agents, in connection with the Facility provided for herein, the preparation, negotiation, execution, delivery and administration (both before and after the execution hereof and including advice of counsel (limited to one outside counsel, other than (x) solely in the case of a conflict of interest, one additional counsel to all affected parties, taken as a whole and (y) if reasonably necessary, one local counsel in each relevant jurisdiction of such Persons, taken as a whole) to the Agents as to the rights and duties of the Agents and the Lenders with respect thereto) of this Agreement and the other Loan Documents and any amendments, modifications or waivers of or consents related to the provisions hereof or thereof (whether or not the Transactions contemplated hereby or thereby shall be consummated), (ii) all costs, expenses, assessments and other similar charges incurred by the Agents or any Lender in connection with any filing, registration, recording or perfection of any security interest contemplated by this Agreement or any Security Document or any other document referred to therein and (iii) all out-of-pocket expenses incurred by the Agents or any Lender, including the fees, charges and disbursements of any counsel or other consultants for the Agents or any Lender (limited to one outside counsel, other than (x) solely in the case of a conflict of interest, one additional counsel to all affected parties, taken as a whole and (y) if reasonably necessary, one local counsel in each relevant jurisdiction of such Persons, taken as a whole) to the Agents and Lenders as to the rights and duties of the Agents and the Lenders with respect thereto, in connection with the enforcement or protection of their rights in connection with this Agreement or any other Loan Document, including their rights under this Section 13.03, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans. For the avoidance of doubt, this Section 13.03(a) shall not apply with respect to any costs or expenses that are Taxes, as the indemnity and payment of Tax claims are governed exclusively by Section 5.03.

(b) The Borrower shall indemnify the Administrative Agent, the Collateral Agent, any sub-agent of the Agents, and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and defend and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, liabilities and related expenses, including the reasonable and documented fees, charges and disbursements of any counsel for any Indemnitee (limited to one outside counsel, other than (x) solely in the case of a conflict of interest, one additional counsel to all affected parties, taken as a whole and (y) if reasonably necessary, one local counsel in each relevant

jurisdiction of such Persons, taken as a whole), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or the parties to any other Loan Document of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or by any other Loan Document or any action taken in connection with this Agreement, including, but not limited to, the payment of principal, interest and fees, (ii) the failure of any Loan Party or any Subsidiary to comply with the terms of any Loan Document, including this Agreement, or with any Governmental Requirement, (iii) any inaccuracy of any representation or any breach of any warranty or covenant of the Borrower or any Guarantor or any other Loan Party set forth in any of the Loan Documents or any instruments, documents or certifications delivered in connection therewith, (iv) any Loan or the use of the proceeds therefrom, (v) the operations of the business of the Loan Parties or the Subsidiaries by such Loan Parties and Subsidiaries, (vi) any assertion that the Lenders were not entitled to receive the proceeds received pursuant to the Security Documents, (vii) any Environmental Law applicable to any Loan Party or any Subsidiary in respect of their Properties, including the presence, generation, storage, Release, Threatened Release, use, transport, disposal, arrangement of disposal or treatment of Hazardous Materials on any of their Properties, (viii) the breach or non-compliance by any Loan Party or any Subsidiary thereof with any Environmental Law applicable to any Loan Party or any Subsidiary thereof in respect of their Properties, (ix) the past ownership by any Loan Party or any Subsidiary or any of their Properties or past activity on any of their Properties which, though lawful and fully permissible at the time, has resulted in present liability, (x) the presence, use, Release, storage, treatment, disposal, generation, Threatened Release, transport, arrangement for transport or arrangement for disposal of Hazardous Materials on or at any of the Properties owned or operated by any Loan Party or any Subsidiary or any actual or alleged presence or Release of Hazardous Materials on or from any Property owned or operated by the Borrower, (xi) any liability arising under Environmental Laws related in any way to any Loan Party or any Subsidiary in respect of their Properties, or (xii) any other environmental, health or safety condition in connection with the Loan Documents, or (xiii) 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 a Loan Party and regardless of whether any Indemnitee is a party thereto, and such indemnity shall extend to each Indemnitee notwithstanding the sole or concurrent negligence of every kind or character whatsoever, whether active or passive, whether an affirmative act or an omission, including all types of negligent conduct identified in the Restatement (Second) of Torts of one or more of the Indemnitees or by reason of strict liability imposed without fault on any one or more of the Indemnitees; 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 nonappealable judgment to have resulted from the gross negligence, fraud or willful misconduct of such Indemnitee; provided, further, this Section 13.03(b) shall not apply with respect to Taxes other than any Taxes that represent fees, losses, claims, damages, etc. arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Agents under Section 13.03(a) or (b), but without affecting such payment obligations of the Borrower, each Lender severally agrees to pay to the Administrative Agent, the Collateral Agent, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Collateral Agent in its capacity as such.

(d) To the extent permitted by applicable law, the Borrower 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 or thereby, the Transactions or any Loan or the use of the proceeds thereof.

(e) All amounts due under this Section 13.03 shall be payable not later than ten (10) Business Days after demand therefor.

Section 13.04 Assignments and Participations.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void), (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 13.04 and (iii) no Lender may assign to the Borrower or an Affiliate of the Borrower all or any portion of such Lender's rights and obligations under this Agreement or all or any portion of its Commitments or the Loans owing to it hereunder nor may the Borrower or an Affiliate of the Borrower make any offer to purchase any Commitments or Loans hereunder. 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 Section 13.04(c)) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Collateral Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in Section 13.04(b)(ii), any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of the Administrative Agent and, in the absence of an Event of Default, the Borrower; provided that (A) no consent of the Administrative Agent or the Borrower shall be required for an assignment to an assignee that is a Lender (or an Affiliate or Approved Fund of a Lender) immediately prior to giving effect to such assignment and (B) the Borrower shall be deemed to have consented to any such assignment if it has failed to respond to a written request for such assignment within three (3) Business Days following the Borrower's receipt of such request;

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment 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) shall not be less than \$1,000,000 unless the Administrative Agent otherwise consent;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (which fee shall not apply to an assignment to a Lender, an Affiliate of a Lender or an Approved Fund);

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all documentation and other information with respect to the assignee that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act; and

(E) no such assignment shall be made to the Borrower, any Affiliate of the Borrower, or a natural person (or any holding company, investment vehicle, trust owned and operated for the primary benefit of a natural person).

(iii) Subject to Section 13.04(b)(iv) and the acceptance and recording thereof, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto (which, for the avoidance of doubt, shall be the date of

recordation in the Register) and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of [Section 5.01](#), [Section 5.02](#), [Section 5.03](#) and [Section 13.03](#)). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this [Section 13.04\(b\)](#) 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 13.04\(c\)](#).

(iv) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, the Commitment of and principal amount (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "[Register](#)"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent, the Collateral Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender for all purposes of this Agreement, notwithstanding notice or anything in any Loan Document to the contrary. The Register shall be available for inspection by the Borrower, the Collateral Agent and any Lender, at any reasonable time and from time to time upon reasonable prior written notice. In connection with any changes to the Register, if necessary, the Administrative Agent will reflect the revisions on [Annex I](#) and forward a copy of such revised [Annex I](#) to the Borrower and each Lender.

(c) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and all documentation and other information with respect to the assignee that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in [Section 13.04\(b\)](#) and any written consent to such assignment required by [Section 13.04\(b\)](#), the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless and until it has been recorded in the Register as provided in this [Section 13.04\(b\)](#).

(i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "[Participant](#)") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (C) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and (D) the provisions of [Section 13.04\(b\)\(iv\)](#) shall apply as if the Participant were a Lender and the sale of the participation was an assignment. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to [Section 13.02\(b\)](#) that affects such Participant. In addition, such agreement must provide that the Participant be bound by the provisions of [Section 13.03](#). The Borrower agrees that each Participant shall be entitled to the benefits of [Section 5.01](#), [Section 5.02](#) and [Section 5.03](#) (subject to the requirements and limitations therein, including the requirements under [Section 5.03\(f\)](#) (it being understood that the documentation required under [Section 5.03\(f\)](#) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to [Section 13.04\(b\)](#); provided, a Participant shall not be entitled to receive any greater payment under [Section 5.01](#), [Section 5.02](#) and [Section 5.03](#) than the applicable Lender would have been entitled to receive with respect to the participation sold to

such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 4.01(c) as though it were a Lender.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and 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 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 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 or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any central bank having jurisdiction over such Lender, and this Section 13.04(d) shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) If (i) the Administrative Agent receives payment of any portion of the amount due under the Insurance Policy in immediately available funds (the "Insurance Proceeds") under the Insurance Policy and (ii) the Administrative Agent and the Lenders receive a notice signed by the Insurers (an "Insurance Notice") that (x) confirms the full amount due under the Insurance Policy, (y) instructs the Administrative Agent to proceed with the subrogation and assignment of all Obligations as provided in this Section 13.04(e), and (z) identifies each of the Insurers that have made such payment, the identity of such Insurers' joint domestic U.S. organized designee (the Insurers or if formed such Insurers' joint domestic U.S. organized designee (collectively, as applicable, the "Designee(s)")) and such Insurers' respective allocated contribution to such amount stated in dollars, then the parties hereto (including, without limitation, the Lenders) agree that the Designee(s) are automatically subrogated to and assigned the portion of Obligations based on the percentage of insurance payment actually made (e.g. if loss payment due is one hundred (100), and the Administrative Agent only received eighty (80), then the Designee(s) will be subrogated and assigned 80% of the Obligations) as of the date of receipt of the Insurance Notice. The Administrative Agent shall provide prompt notice by e-mail to the Lenders of its receipt of the Insurance Proceeds. In furtherance of such automatic subrogation and assignment, the Administrative Agent shall without requirement for any assignment, notice or instruction, immediately and in all events within five (5) Business Days thereof, (x) distribute to the Lenders the Insurance Proceeds, and (y) following such distribution, record in the Register the assignment of the Loan to the Designee(s). Further, the Lenders agree to execute and deliver to the Administrative Agent and the Designee(s) an Assignment and Assumption reflecting such automatic assignment effective as of the date of the automatic assignment described in the first sentence of this Section 13.04(e) to the Designee(s) of the aggregate outstanding amount of all Obligations in respect of principal. Any obligations of the Insurers in this Section 13.04(e) may be satisfied by performance of the Designee(s), if any, on behalf of such Insurer. Each Insurer and their Designee(s) is a designated third-party beneficiary of this Section 13.04(e). To avoid doubt, failure of any Lender and any Designee to execute any Assignment and Assumption shall have no effect on the automatic subrogation and assignment described in this Section 13.04(e). The Lenders hereby authorize the Insurers to deliver the Insurance Notice and instructs the Administrative Agent that the Administrative Agent is entitled to conclusively rely on the Insurance Notice in the execution of the assignments of the Obligations provided for in this Section 13.04(e) and will be fully protected under Section 13.03 in doing so.

(f) Notwithstanding any other provisions of this Section 12.04, no transfer or assignment of the interests or obligations of any Lender or any grant of participations therein shall be permitted if such transfer, assignment or grant would require the Borrower and the Guarantors to file a registration statement with the SEC or to qualify the Loans under the “Blue Sky” laws of any state.

Section 13.05 Survival; Revival; Reinstatement.

(a) All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Collateral Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 5.01, Section 5.02, Section 5.03, Article XII and Section 13.03 shall survive and remain in full force and effect regardless of the consummation of the Transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement, any other Loan Document or any provision hereof or thereof.

(b) To the extent that any payments on the Secured Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then to such extent, the Secured Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the Administrative Agent’s, the Collateral Agent’s and the Lenders’ Liens, security interests, rights, powers and remedies under this Agreement and each Loan Document shall continue in full force and effect. In such event, each Loan Document shall be automatically reinstated and the Borrower shall take such action as may be reasonably requested by the Administrative Agent, the Collateral Agent and the Lenders to effect such reinstatement.

Section 13.06 Counterparts; Integration; Effectiveness.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

(b) The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, Borrowing Requests, Interest Election Requests, amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

(c) This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Agents constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. **THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR,**

CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(d) Except as provided in Section 7.01, 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 which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by fax, as an attachment to an email or other similar electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 13.07 Severability. Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 13.08 Rights of Setoff.

(a) If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations (of whatsoever kind, including obligations under Hedging Agreements) at any time owing by such Lender or Affiliate to or for the credit or the account of any Loan Party or any Subsidiary thereof against any of and all the obligations of such Loan Party or Subsidiary owed to such Lender now or hereafter existing under this Agreement or any other Loan Document, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations may be unmatured. The rights of each Lender under this Section 13.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

(b) If the Collateral Agent, any sub-agent or the custodian of the Interest Escrow Account becomes the subject of a bankruptcy, insolvency or other similar proceeding such that the Interest Escrow Account is part of the bankruptcy estate of the Collateral Agent, such sub-agent or custodian, as applicable, each Loan Party and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) or other amount held in the Interest Escrow Account against any of and all the obligations of such Agent (including, any sub-agent), Lender or Affiliate owed to such Loan Party, irrespective of whether or not such Loan Party or shall have made any demand and although such obligations may be unmatured. Any such setoff and application of funds in the Interest Escrow Account to the Secured Obligations shall reduce the Secured Obligations on a dollar-for-dollar basis. Each Loan Party agrees to notify the applicable Lender and Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 13.09 GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1401 AND SECTION 5-1402).

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE LOAN DOCUMENTS SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF

THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS.

(c) EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS SPECIFIED IN SECTION 13.01 OR SUCH OTHER ADDRESS AS IS SPECIFIED PURSUANT TO SECTION 13.01 (OR ITS ASSIGNMENT AND ASSUMPTION), SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH COPIES ARE DEPOSITED IN THE MAIL. NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY OR ANY HOLDER OF A NOTE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANOTHER PARTY IN ANY OTHER JURISDICTION.

(d) EACH PARTY HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN; (ii) CERTIFIES THAT NO PARTY HERETO NOR ANY REPRESENTATIVE OR AGENT OF COUNSEL FOR ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (iii) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 13.09.

Section 13.10 Certain Determinations. Notwithstanding anything to the contrary herein, the parties agree that if a dispute arises with respect to whether a Loan Party has complied with Prudent Industry Practices where required hereunder, the parties agree to submit such dispute to a reputable third party expert with the requisite experience in the business of the Loan Parties reasonably selected by the Administrative Agent for review and determination in accordance with procedures to be agreed by the parties.

Section 13.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 13.12 Confidentiality. Each of the Agents and Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (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, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement or any other Loan Document, (e) to the Insurers and its directors, officers, employees and agents, including accountants, legal counsel and other advisors (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), (f) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (g) subject to an agreement containing provisions substantially the same as those of this Section 13.12, 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 Hedging Agreement relating to the Borrower and its obligations, (h) with the consent of the Borrower or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 13.12 or (ii) becomes available to the Agents, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section 13.12, “Information” means all written information received from any Loan Party relating to the Loan Parties and their Subsidiaries and their businesses and shall include, without limitation, this Agreement and the terms and conditions of this Agreement, other than (A) any such information that is available to the Agents or any Lender on a nonconfidential basis prior to disclosure by any Loan Party and (B) information pertaining to this Agreement routinely used in marketing materials or provided by arrangers to data service providers, including league table providers, that serve the lending industry (it is understood, for avoidance of doubt, that the names of the Loan Parties, the amount, type, currency, interest rate and yield to maturity of the Loans, the effective date of this Agreement and the role and title of such Lender is such type of information so routinely used or provided); provided that, in the case of information received from the Borrower or any of its Subsidiaries, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 13.12 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 Lender acknowledges that information furnished to it pursuant to this Agreement or the other Loan Documents may include material non-public information concerning the Borrower and its Affiliates and their Related Parties or their respective securities, and confirms that it has developed compliance procedures regarding the use of material non-public information and that it will handle such material non-public information in accordance with those procedures and applicable law, including Federal and state securities laws. The Borrower hereby authorizes each Lender and its Affiliates, at their respective sole expense, but without any prior approval by the Borrower, to publish tombstones and give other publicity to this Agreement as each may from time to time determine in its sole discretion. The Loan Parties agree to maintain the confidentiality of the identities of the Lenders and the amounts of their respective Commitments and Loans (in each case, other than the Lender that is the signatory to this Agreement and listed on Annex I hereto); provided that the Loan Parties may disclose such information with the consent of such Lender, upon the advice of legal counsel, or as required by applicable laws or regulations or by any subpoena or similar legal process. Prior to filing any report or disclosure with the Securities Exchange Commission or releasing any press release or other similar public disclosure that, in each case, contains the name of any Lender or Affiliate of any Lender, the Loan Parties shall, except to the extent prohibited by applicable law, furnish a copy of the proposed disclosure materials to such Lender and consult in good faith with such Lender regarding any revisions it may request.

Section 13.13 Interest Rate Limitation. It is the intention of the parties hereto that each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby would be usurious as to any Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in any of the Loan Documents or any agreement entered into in connection with or as security for the Secured Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any Lender that is contracted for, taken, reserved, charged or received by such Lender under any of the Loan Documents or agreements or otherwise in connection with the Loans shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be canceled automatically and if theretofore paid shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower); and (ii) in the event that the maturity of the Loans is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such Lender as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have

been or would thereby be paid in full, refunded by such Lender to the Borrower). All sums paid or agreed to be paid to any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Lender, be amortized, prorated, allocated and spread throughout the stated term of the Loans until Payment in Full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (i) the amount of interest payable to any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Lender pursuant to this Section 13.13 and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Lender would be less than the amount of interest payable to such Lender computed at the Highest Lawful Rate applicable to such Lender, then, to the extent permitted by applicable law, the amount of interest payable to such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Lender until the total amount of interest payable to such Lender shall equal the total amount of interest which would have been payable to such Lender if the total amount of interest had been computed without giving effect to this Section 13.13.

Section 13.14 EXCULPATION PROVISIONS. EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; THAT IT HAS IN FACT READ THIS AGREEMENT AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND HAS RECEIVED THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS."

Section 13.15 No Third Party Beneficiaries. This Agreement, the other Loan Documents, and the agreement of the Lenders to make Loans hereunder are solely for the benefit of the Borrower, and no other Person (including any obligor, contractor, subcontractor, supplier or materialsman) shall have any rights, claims, remedies or privileges hereunder or under any other Loan Document against the Agents or any Lender for any reason whatsoever. There are no third party beneficiaries.

Section 13.16 USA PATRIOT ACT NOTICE. Each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower and the Guarantors, which information includes the name and address of the Borrower and the Guarantors and other information that will allow such Lender to identify the Borrower and the Guarantors in accordance with the USA PATRIOT Act.

Section 13.17 Collateral Releases.

(a) Release Upon Payment in Full. Upon Payment in Full, the Administrative Agent, at the written request and expense of the Borrower, will promptly release, reassign and transfer the Collateral to the Loan Parties pursuant to a customary payoff letter.

(b) Further Assurances. If any Property constituting the Collateral shall be sold, transferred or otherwise disposed of by any Loan Party to any unaffiliated third party in a transaction permitted by the Loan Documents, then such Property shall automatically no longer constitute Collateral under the Loan Documents and shall automatically be released from the Liens created by the Security Documents, and the Collateral Agent, at the request and sole expense of the Borrower, shall promptly execute and deliver to the Borrower or a such Loan Party all releases or other documents reasonably necessary or

desirable for the release of the Liens created by the applicable Security Document on such Collateral; provided that the Borrower shall have delivered to the Administrative Agent and the Collateral Agent, at least five (5) Business Days prior to the date of the proposed release (or such other time period as the Administrative Agent may agree), a written request for release identifying the Loan Party, together with a certification by the Borrower stating (x) that such transaction is in compliance with this Agreement and the other Loan Documents, (y) the Borrower has complied with its obligations under Section 9.01(k), if applicable, and (z) no Collateral other than the Collateral required to be released is being released.

Section 13.18 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; and
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any Resolution Authority.

[SIGNATURES BEGIN NEXT PAGE]

The parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

BORROWER:

EOS ENERGY ENTERPRISES, INC.

By: /s/ Randall Gonzales

Name: Randall Gonzales

Title: Chief Financial Officer

[Signature Page to Credit Agreement]

ADMINISTRATIVE AGENT:

ACP POST OAK CREDIT I LLC,
as Administrative Agent and Collateral Agent

By: /s/ Matthew E. Laterza
Name: Matthew E. Laterza
Title: Chief Operating Officer

[Signature Page to Credit Agreement]

LENDERS:

ACP POST OAK CREDIT I LLC, as a Lender

By: /s/ Matthew E. Laterza

Name: Matthew E. Laterza

Title: Chief Operating Officer

[Signature Page to Credit Agreement]

GUARANTEE AND COLLATERAL AGREEMENT

made by

EOS ENERGY ENTERPRISES, INC.

and each of the other Grantors (as defined herein)

in favor of

ACP POST OAK CREDIT I LLC
as Collateral Agent

Dated as of July 29, 2022

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2. Description of Investment Property
3. Filings and Other Actions Required to Perfect Security Interests
4. Legal Name, Jurisdiction of Organization and Chief Executive Office
5. Prior Names, Prior Chief Executive Office, Location of Tangible Assets
6. Description of Commercial Tort Claims
7. Accounts
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EXHIBITS

- A. Form of Patent Security Agreement
- B. Form of Trademark Security Agreement
- C. Form of Copyright Security Agreement

This GUARANTEE AND COLLATERAL AGREEMENT, dated as of July 29, 2022, is made by EOS ENERGY ENTERPRISES, INC., a Delaware corporation (the "Borrower"), each of the undersigned designated as a Grantor (the "Grantors"), and any additional Grantor party to this Agreement who may join at a later date, in favor of ACP POST OAK CREDIT I LLC, as collateral agent (in such capacity, together with its successors and permitted assigns in such capacity, the "Collateral Agent"), for the ratable benefit of the Secured Parties, including the banks and other financial institutions and entities (the "Lenders") from time to time party to the Senior Secured Term Loan Credit Agreement, dated as of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Lenders and ACP Post Oak Credit I LLC, as Administrative Agent and as the Collateral Agent.

WITNESSETH:

WHEREAS, pursuant to the Credit Agreement, the Lenders have severally agreed to make extensions of credit to the Borrower upon the terms and subject to the conditions set forth in the Credit Agreement;

WHEREAS, the Borrower and the other Grantors are engaged in related businesses, and each Grantor will derive substantial direct and indirect benefit from the making of the extensions of credit under the Credit Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement that the Grantors shall have executed and delivered this Agreement to the Collateral Agent for the benefit of the Secured Parties;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make the extensions of credit to the Borrower thereunder, each Grantor hereby agrees with the Collateral Agent, for the ratable benefit of the Secured Parties, as follows:

**ARTICLE I
DEFINITIONS**

Section 1.01 Definitions.

(a) Capitalized terms used in this Agreement (including in the preamble and recitals hereto) and not otherwise defined herein shall have the meanings specified in the Credit Agreement, and the following terms as well as all uncapitalized terms which are defined in the UCC (whether or not capitalized or uncapitalized in the same manner therein) on the date hereof are used herein as so defined: Accounts, Certificated Security, Chattel Paper, Commercial Tort Claims, Commodity Accounts, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Fixtures, General Intangibles, Goods, Instruments, Inventory, Letter-of-Credit Rights, Payment Intangibles, Proceeds, Securities, Securities Accounts, Supporting Obligations, Tangible Chattel Paper, Uncertificated Security and Vehicles.

(b) In addition to the terms defined in the Credit Agreement, the following terms shall have the following meanings:

"Account Debtor" means a Person (other than any Grantor) obligated on an Account, Chattel Paper, or General Intangible.

"Agreement" means this Guarantee and Collateral Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Assigned Agreements" means all agreements, contracts and documents, as each such agreement, contract and document may be amended, supplemented or modified and in effect from time to time, including (a) all rights of such Grantor to receive moneys due and to become due under or pursuant to the Assigned Agreements, (b) all rights of such Grantor to receive proceeds of any insurance, bond, indemnity, warranty, letter of credit or guaranty with respect to the Assigned Agreements, (c) all claims

of such Grantor for damages arising out of or for breach of or default under the Assigned Agreements, (d) all rights of such Grantor to all other amounts from time to time paid or payable under or in connection with any of the foregoing contracts, and (e) all rights of such Grantor to terminate, amend, supplement, modify or waive performance under the Assigned Agreements, to perform thereunder and to compel performance and otherwise to exercise all remedies thereunder.

“Borrower” has the meaning assigned to such term in the preamble hereto.

“Collateral” has the meaning assigned to such term in Section 3.01.

“Collateral Agent” has the meaning assigned to such term in the preamble hereto.

“Copyright License” means any agreement, whether written or oral, now or hereafter in effect, providing for the grant by any Grantor, of any right in, to or under any Copyright now owned or hereafter acquired by any Grantor, including the grant of any such rights to copy, publicly perform, display, create derivative works, distribute, and otherwise exploit any Copyright in any form or medium.

“Copyrights” means (a) all copyrights and works protectable by copyright arising under the laws of the United States, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished (including those listed in Schedule 8 hereto), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or any foreign counterpart thereof (including those listed in Schedule 8 hereto), and (b) the right to obtain all extensions and renewals thereof.

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

“Excluded Account” means any Deposit Account (a) used solely for trust, payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Loan Party’s or any of its Subsidiaries’ employees or contractors or (b) used solely for Taxes or fiduciary purposes.

“Excluded Asset” has the meaning assigned to such term in Section 3.01.

“Grantor Claims” has the meaning assigned to such term in Section 9.01.

“Grantors” has the meaning assigned to such term in the preamble hereto.

“Guarantor Obligations” means, with respect to any Guarantor, all obligations and liabilities of such Guarantor which may arise under or in connection with this Agreement (including Article II), whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including all fees and disbursements of counsel to the Collateral Agent or to the Lenders that are required to be paid by such Guarantor pursuant to the terms of this Agreement).

“Guarantors” means the collective reference to each Grantor, other than the Borrower; provided that each Grantor shall be considered a Guarantor only with respect to the Primary Obligations of any other Loan Party.

“Intellectual Property” means the collective reference to all rights, titles, interests, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks and the Trademark Licenses, trade secrets, know-how, proprietary software, and confidential and proprietary business information, and (x) any goodwill associated with any of the foregoing and (y) all rights to sue at law or in equity for any infringement, misappropriation, or other impairment thereof, including the right to receive Proceeds therefrom.

“Investment Property” means, collectively: (a) all “investment property” as such term is defined in Section 9-102(a)(49) of the UCC, (b) all “financial assets” as such term is defined Section 8-102(a)(9)

of the UCC, and (c) whether or not constituting “investment property” as so defined, all Pledged Notes and all Pledged Securities.

“Issuers” means, collectively, each issuer of a Pledged Security.

“Lenders” has the meaning assigned to such term in the preamble hereto.

“Patent License” means any agreement, whether written or oral, now or hereafter in effect, providing for the grant of any right in, to or under any Patent by any Grantor, including any right to make, have made, use, sell, offer for sale or import any invention covered in whole or in part by a Patent, now owned or hereafter acquired by any Grantor, or practice any method or process claimed by a Patent, and all rights under any such agreement.

“Patents” means (a) all letters patent of the United States, any other country or any political subdivision thereof, all reissues, reexaminations and extensions, including any of the foregoing referred to in Schedule 8 hereto, (b) all applications for letters patent of the United States or any other country and all divisionals, continuations and continuations-in-part thereof, including any of the foregoing referred to in Schedule 8 hereto, and (c) all inventions and improvements described and claimed in any of the foregoing.

“Pledged Notes” means all promissory notes listed on Schedule 2 and all other promissory notes and any other instruments evidencing Indebtedness issued to or held or owned by any Grantor while this Agreement is in effect.

“Pledged Securities” means: (a) the Equity Interests described or referred to in Schedule 2, together with any other Equity Interests of any Person (to the extent not constituting an Excluded Asset pursuant to clause (c) of such definition) and any other shares, stock certificates, options, interests or rights of any nature whatsoever in respect of such Equity Interests that may be issued or granted to, or held or acquired by, any Grantor while this Agreement is in effect and (b) (i) the certificates or instruments, if any, representing such Equity Interests, (ii) all right, title and interest of any Grantor (x) as a shareholder or member to participate in the operation or management of such Person and (y) to all dividends and distributions (cash, stock or otherwise and including during continuance of or on account of liquidation of any Person), cash, instruments, rights to subscribe, purchase or sell and all other rights and property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Equity Interests, (iii) all replacements, additions to and substitutions for any of the property referred to in this definition, including claims against third parties, (iv) the proceeds, interest, profits and other income of or on any of the property referred to in this definition and (v) all books and records relating to any of the property referred to in this definition.

“Post-Default Rate” means the per annum rate of interest provided for in Section 3.02(c) of the Credit Agreement, but in no event to exceed the Highest Lawful Rate.

“Primary Obligations” means, with respect to any Loan Party, the collective reference to the unpaid principal or premium (if any) of and interest on the Loans and all other obligations and liabilities of such Loan Party to and any and all amounts owing or to be owing by such Loan Party to the Administrative Agent, the Collateral Agent or any Lender or any other Person which may arise under, out of, or in connection with, any Loan Document or any other document made, delivered or given in connection with any of the foregoing, or paid on behalf of any Loan Party or any of their Subsidiaries by the Administrative Agent, the Collateral Agent or any Lender or any of their Affiliates, and in each case all amendments, amendments and restatements, renewals, modifications, extensions and/or rearrangements of any of the foregoing, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising (including interest accruing at the Post-Default Rate and after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower or any of its Subsidiaries, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), and whether on account of principal, interest, reimbursement obligations, fees, expenses, indemnities, costs or otherwise (including, without limitation,

all fees and disbursements of counsel to the Administrative Agent, the Collateral Agent or to the Lenders that are required to be paid by such Loan Party pursuant to the terms of any of the foregoing agreements).

“Secured Agreement” means the Credit Agreement, this Agreement, any other Security Document, any other Loan Document and any other instrument or agreement giving rise to Secured Obligations.

“Secured Obligations” means, with respect to any Grantor, the collective reference to its Primary Obligations and Guarantor Obligations.

“Secured Parties” has the meaning set forth in the Credit Agreement.

“Trademark License” means any agreement, whether written or oral, now or hereafter in effect, providing for the grant of any right in, to or under any Trademark by any Grantor, including any right to use any Trademark, now owned or hereafter acquired by any Grantor, and all rights under any such agreement.

“Trademarks” means (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other source or business identifiers (whether registered or unregistered), domain names, social media accounts, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, including any of the foregoing referred to in Schedule 8 hereof, and (b) the right to obtain all extensions and renewals thereof.

“UCC” means the Uniform Commercial Code as from time to time in effect in the State of New York.

Section 1.02 Other Definitional Provisions; References. 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”, and the word “or” is not exclusive. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The use of the words “repay” and “prepay” and the words “repayment” and “prepayment” herein shall each have identical meanings hereunder. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein 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 in the Secured Agreements), (b) except as otherwise provided herein, any reference herein to any law shall be construed as referring to such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to the restrictions contained in the Secured Agreements), (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) with respect to the determination of any time period, the word “from” means “from and including” and the word “to” means “to and including”, (f) unless otherwise specified, any reference herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (g) any reference to amounts “deposited” into or “on deposit” in any account shall be construed to include any cash equivalents or other amounts credited to such account, (h) the term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form, (i) 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 (j) all references to currencies and to amounts payable hereunder and under the other Loan Documents shall be to United States dollars. The use of the phrase “subject to” as used in connection with Excepted Liens or otherwise and the permitted existence of any Excepted Liens or any other Liens shall not be interpreted to expressly or impliedly subordinate any Liens granted in favor of the

Administrative Agent and the other Secured Parties as there is no intention to subordinate the Liens granted in favor of the Administrative Agent and the other Secured Parties. No provision of this Agreement or any other Secured Agreement shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

ARTICLE II GUARANTEE

Section 2.01 Guarantee.

(a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Collateral Agent, for the ratable benefit of the Secured Parties and each of their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Loan Parties when due (whether at the stated maturity, by acceleration or otherwise) of the Primary Obligations. This is a guarantee of payment and performance when due and not of collection, and the liability of each Guarantor is primary and not secondary.

(b) Anything herein or in any other Secured Agreement to the contrary notwithstanding, the maximum liability of each Guarantor (other than the Borrower) hereunder and under the other Secured Agreements shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal and state laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 2.02).

(c) Each Guarantor agrees that the Primary Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guarantee contained in this Article II or affecting the rights and remedies of the Collateral Agent or any Secured Party hereunder.

(d) Each Guarantor agrees that if the maturity of any of the Primary Obligations is accelerated by bankruptcy or otherwise, such maturity shall also be deemed accelerated for the purpose of this guarantee without demand or notice to such Guarantor. The guarantee contained in this Article II shall remain in full force and effect until Payment in Full, notwithstanding that from time to time during the term of the Credit Agreement no Primary Obligations may be outstanding.

(e) No payment made by the Borrower, any other Loan Party with Primary Obligations, any of the Guarantors, any other guarantor or any other Person or received or collected by the Collateral Agent or any other Secured Party from the Borrower, any other Loan Party with Primary Obligations, any of the Guarantors any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of any Primary Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of any Primary Obligations or any payment received or collected from such Guarantor in respect of any Primary Obligations), remain liable for the Primary Obligations up to the maximum liability of such Guarantor hereunder until Payment in Full.

Section 2.02 Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 4.02. The provisions of this Section 2.02 shall in no respect limit the obligations and liabilities of any Guarantor to the Collateral Agent and the Lenders, and each Guarantor shall remain liable to the Collateral Agent and the Lenders for the full amount guaranteed by such Guarantor hereunder.

Section 2.03 Payments. Each Guarantor hereby agrees and guarantees that payments hereunder will be paid to the Collateral Agent without set-off or counterclaim in dollars that constitute immediately available funds at the principal office of the Collateral Agent specified pursuant to the Credit Agreement.

Section 2.04 Guarantee Absolute and Unconditional. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Primary Obligations and notice of or proof of reliance by the Collateral Agent or any Secured Party upon the guarantee contained in this Article II or acceptance of the guarantee contained in this Article II; the Primary Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Article II; and all dealings between the Loan Parties, on the one hand, and the Collateral Agent and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Article II. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower, any other Loan Party with Primary Obligations or any of the Guarantors with respect to the Primary Obligations. Each Guarantor understands and agrees that the guarantee contained in this Article II shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (a) the validity or enforceability of the Credit Agreement or any other Secured Agreement, any of the Primary Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Collateral Agent or any Secured Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrower, any other Loan Party or any other Person against the Collateral Agent or any Secured Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower, any other Loan Party with Primary Obligations or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Loan Parties for the Primary Obligations, or of such Guarantor under the guarantee contained in this Article II, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, the Collateral Agent or any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Loan Party with Primary Obligations, any other Guarantor or any other Person or against any collateral security or guarantee for the Primary Obligations or any right of offset with respect thereto, and any failure by the Collateral Agent or any Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Loan Party with Primary Obligations, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Loan Party with Primary Obligations, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Collateral Agent or any Secured Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

Section 2.05 Reinstatement. The obligations of each Grantor under this Agreement (including, with respect to the guarantee contained in Article II and the provision of collateral herein) shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Primary Obligations is rescinded or must otherwise be restored or returned by the Collateral Agent or any other Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Loan Party, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Loan Party or any substantial part of its property, or otherwise, all as though such payments had not been made.

ARTICLE III

GRANT OF SECURITY INTEREST

Section 3.01 Grant of Security Interest. Each Grantor hereby pledges and assigns to the Collateral Agent and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in all of the following property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest and whether now existing or hereafter coming into existence (collectively, the "Collateral"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Secured Obligations:

- (1) all Accounts;
- (2) all Chattel Paper (whether Tangible Chattel Paper or Electronic Chattel Paper);
- (3) all Commercial Tort Claims set forth on Schedule 6;
- (4) all Deposit Accounts, all Commodity Accounts and all Securities Accounts;
- (5) all Documents (other than title documents with respect to Vehicles);
- (6) all General Intangibles;
- (7) all Goods (including all Inventory, Equipment and Fixtures);
- (8) all Instruments;
- (9) all Inventory;
- (10) all Investment Property;
- (11) all cash;
- (12) all letters of credit and Letter-of-Credit Rights (whether or not the letter of credit is evidenced by a writing);
- (13) all Pledged Securities and all Pledged Notes;
- (14) all Supporting Obligations;
- (15) all Fixtures;
- (16) all Intellectual Property;
- (17) all books and records pertaining to the Collateral;
- (18) all Assigned Agreements;
- (19) to the extent not otherwise included, any other property insofar as it consists of personal property of any kind or character defined in and subject to the UCC; and
- (20) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing and all collateral security, income, royalties and other payments now or hereafter due and payable with respect to, and guarantees and Supporting Obligations relating to, any and all of the Collateral and, to the extent not otherwise included, all payments of insurance (whether or not the Collateral Agent is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral, all other claims, including all cash, guarantees and other Supporting Obligations given with respect to any of the foregoing.

Notwithstanding anything herein to the contrary, in no event shall the Collateral include, and no Grantor shall be deemed to have granted a security interest in (a) any "intent to use" Trademark applications pending Under Section 1(b) of the Trademark Act for which a statement of use or an amendment to allege use has not been filed (but only until such statement or amendment is filed), solely to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of, or void, any such application or registration that issues from such intent-to-use application under United States law, (b) any of such Grantor's rights or interests in or under any Property to the extent that, and only for so long as, such grant of a security interest is prohibited by, or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any Capital Lease or purchase money obligations, in each case, to extent such Property is the direct subject of such Capital Lease or purchase money obligation; provided that any of the foregoing exclusions shall not apply if (i) such prohibition has been waived or such other party has otherwise consented to the creation hereunder of a security interest in such asset or (ii) such prohibition, consent or the term in such Capital Lease or purchase money obligation or providing for such prohibition breach, default or termination or requiring such consent is ineffective or would be rendered ineffective

under any Governmental Requirement, including pursuant to Section 9-406, 9-407 or 9-408 of Article 9 of the UCC; provided further that it is understood for avoidance of doubt that immediately upon any of the foregoing becoming or being rendered ineffective or any such prohibition, requirement for consent or term lapsing or termination or such consent being obtained, the applicable Grantor shall be deemed to have granted a Lien in all its rights, title and interests in and to such Property, (c) the Equity Interests of the Excluded Subsidiary, provided, if the Government Loan has not been executed on or prior to January 1, 2024, then such Equity Interest shall automatically cease to be Excluded Property and shall constitute Collateral hereunder, (d) proceeds received by the Collateral Agent in respect of a claim under the Insurance Policy (which for avoidance of doubt shall not be property of any Loan Party or any Subsidiary thereof) or (e) any Excluded Account (collectively, “Excluded Assets”); provided, however, “Excluded Assets” shall not include any right to receive proceeds from the sale or other disposition of Excluded Assets or any Proceeds, products, substitutes or replacements of any Excluded Assets (unless such Proceeds, products, substitutes or replacements independently constitute Excluded Assets).

Section 3.02 Transfer of Pledged Securities. All certificates and instruments (if any) representing or evidencing the Pledged Securities shall be delivered to and held pursuant hereto by the Collateral Agent or a Person designated by the Collateral Agent and, in the case of an instrument or certificate in registered form, shall be duly indorsed to the Collateral Agent or in blank by an effective indorsement (whether on the certificate or instrument or on a separate writing), and accompanied by any required transfer tax stamps to effect the pledge of the Pledged Securities to the Collateral Agent. Each Grantor shall take all such further action as necessary or as may be reasonably requested by the Collateral Agent, to permit the Collateral Agent to be a “protected purchaser” to the extent of its security interest as provided in Section 8-303 of the UCC (if the Collateral Agent otherwise qualifies as a protected purchaser).

Section 3.03 Grantors Remain Liable. Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable for all obligations under and in respect of the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Collateral Agent or any other Secured Party and (ii) each Grantor shall remain liable under each of the contracts and agreements included in the Collateral, including the Assigned Agreements and under each of the Accounts, Chattel Paper and Payment Intangibles included in the Collateral, to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any such contract or agreement or any agreement giving rise to each such Account, Chattel Paper or Payment Intangible, and neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any such contracts and agreements or any such Account, Chattel Paper or Payment Intangible (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Collateral Agent or any such other Secured Party of any payment relating to such contracts and agreements or such Account, Chattel Paper or Payment Intangible, pursuant hereto, nor shall the Collateral Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any such contracts and agreements or Account, Chattel Paper or Payment Intangible (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any such contracts and agreements or Account, Chattel Paper or Payment Intangible (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times. The exercise by the Collateral Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral, including the Assigned Agreements.

Section 3.04 Pledged Securities. The granting of the foregoing security interest does not make the Collateral Agent or any Secured Party a successor to Grantor as a partner or member in any Issuer that is a partnership, limited partnership or limited liability company, as applicable, and neither the Collateral Agent, any Secured Party, nor any of their respective successors or assigns hereunder shall be deemed to have become a partner or member in any Issuer, as applicable, by accepting this Agreement or exercising any right granted herein unless and until such time, if any, when any such Person expressly becomes a partner or member in any Issuer, as applicable, and complies with any applicable transfer provisions set forth in the charter or organizational documents relating to an applicable Pledged Security after a foreclosure thereon; provided that the foregoing shall not limit or restrict in any way the rights and

remedies of the Collateral Agent and the Secured Parties otherwise set forth herein and in the other Loan Documents, including Section 7.01.

ARTICLE IV ACKNOWLEDGMENTS, WAIVERS AND CONSENTS

Section 4.01 Acknowledgments, Waivers and Consents.

(a) Each Guarantor is a wholly owned, direct or indirect, Subsidiary of the Borrower. Each Guarantor acknowledges and agrees that the Borrower and the Guarantors are engaged in a related business, and each Guarantor will derive substantial direct and indirect benefit from the making of the extensions of credit under the Credit Agreement and from the Borrower and the other Grantors entering into the other Secured Agreements and the ongoing business of the Borrower.

(b) Each Grantor acknowledges and agrees that the obligations undertaken by it under this Agreement involve the guarantee of, and the provision of collateral security for, the Secured Obligations, which obligations consist, in part, of the obligations of Persons other than such Grantor and that such Grantor's guarantee and provision of collateral security for the Secured Obligations are absolute, irrevocable and unconditional under any and all circumstances. In full recognition and furtherance of the foregoing, each Grantor understands and agrees, to the fullest extent permitted under applicable law and except as may otherwise be expressly and specifically provided herein, that each Grantor shall remain obligated hereunder (including, with respect to the guarantee made by such Grantor hereby and the collateral security provided by such Grantor herein) and the enforceability and effectiveness of this Agreement and the liability of such Grantor, and the rights, remedies, powers and privileges of the Collateral Agent and the other Secured Parties under this Agreement and the other Secured Agreements shall not be affected, limited, reduced, discharged or terminated in any way:

(i) notwithstanding that, without any reservation of rights against any Grantor and without notice to or further assent by any Grantor, (A) any demand for payment of any of the Secured Obligations made by the Collateral Agent or any other Secured Party may be rescinded by the Collateral Agent or such other Secured Party and any of the Secured Obligations continued; (B) the Secured Obligations, the liability of any other Person upon or for any part thereof or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, increased, extended, amended, modified, accelerated, compromised, waived, surrendered or released by, or any indulgence or forbearance in respect thereof granted by, the Collateral Agent or any other Secured Party; (C) the Secured Agreements and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Collateral Agent (or the Majority Lenders, all Lenders or other requisite Secured Parties, as the case may be) may deem advisable from time to time; (D) any Grantor or any other Person may from time to time accept or enter into new or additional agreements, security documents, guarantees or other instruments in addition to, in exchange for or relative to, any Secured Agreement, all or any part of the Secured Obligations or any Collateral now or in the future serving as security for the Secured Obligations; (E) any collateral security, guarantee or right of offset at any time held by the Collateral Agent or any other Secured Party for the payment of the Secured Obligations may be sold, exchanged, waived, surrendered or released; and (F) any other event shall occur which constitutes a defense or release of sureties generally; and

(ii) without regard to, and each Grantor hereby expressly waives to the fullest extent permitted by law any defense now or in the future arising by reason of, (A) the illegality, invalidity or unenforceability of the Credit Agreement, any other Secured Agreement, any of the Secured Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Collateral Agent or any other Secured Party; (B) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by any Grantor or any other Person against the Collateral Agent or any other Secured Party; (C) the insolvency, bankruptcy arrangement, reorganization, adjustment, composition, liquidation, disability, dissolution or lack of power of any Grantor or any other Person at any time liable for the payment of all or part of the Secured Obligations or the failure of the Collateral Agent or any other

Secured Party to file or enforce a claim in bankruptcy or other proceeding with respect to any Person; or any sale, lease or transfer of any or all of the assets of any Grantor, or any changes in the shareholders of any Grantor; (D) the fact that any Collateral or Lien contemplated or intended to be given, created or granted as security for the repayment of the Secured Obligations shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other Lien, it being recognized and agreed by each of the Grantors that it is not entering into this Agreement in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectability or value of any of the Collateral for the Secured Obligations; (E) any failure of the Collateral Agent or any other Secured Party to marshal assets in favor of any Grantor or any other Person, to exhaust any collateral for all or any part of the Secured Obligations, to pursue or exhaust any right, remedy, power or privilege it may have against any Grantor or any other Person or to take any action whatsoever to mitigate or reduce any Grantor's liability under this Agreement or any other Secured Agreement; (F) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (G) the possibility that the Secured Obligations may at any time and from time to time exceed the aggregate liability of such Grantor under this Agreement; or (H) any other circumstance or act whatsoever, including any act or omission of the type described in Section 4.01(b)(i) (with or without notice to or knowledge of any Grantor), which constitutes, or might be construed to constitute, an equitable or legal discharge or defense of the Borrower for the Secured Obligations, or of such Grantor under the guarantee contained in Article II or with respect to the collateral security provided by such Grantor herein, or which might be available to a surety or guarantor, in bankruptcy or in any other instance.

(c). Each Grantor hereby waives to the extent permitted by law: (i) except as expressly provided otherwise in any Secured Agreement, all notices to such Grantor, or to any other Person, including but not limited to, notices of the acceptance of this Agreement, the guarantee contained in Article II or the provision of collateral security provided herein, or the creation, renewal, increase, extension, modification, accrual of any Secured Obligations, or notice of or proof of reliance by the Collateral Agent or any other Secured Party upon the guarantee contained in Article II or upon the collateral security provided herein, or of default in the payment or performance of any of the Secured Obligations owed to the Collateral Agent or any other Secured Party and enforcement of any right or remedy with respect thereto; or notice of any other matters relating thereto; the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in Article II and the collateral security provided herein and no notice of creation of the Secured Obligations or any extension of credit already or hereafter contracted by or extended to the Borrower need be given to any Grantor; and all dealings between the Borrower and any of the Grantors, on the one hand, and the Collateral Agent and the other Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in Article II and on the collateral security provided in this Agreement; (ii) diligence and demand of payment, presentment, protest, dishonor and notice of dishonor; (iii) any statute of limitations affecting any Grantor's liability hereunder or the enforcement thereof; (iv) all rights of revocation with respect to the Secured Obligations, the guarantee contained in Article II and the provision of collateral security herein; and (v) all principles or provisions of law which conflict with the terms of this Agreement and which can, as a matter of law, be waived.

(d) When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Grantor, the Collateral Agent or any other Secured Party may, but shall be under no obligation to, join or make a similar demand on or otherwise pursue or exhaust such rights and remedies as it may have against the Borrower, any other Grantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto, and any failure by the Collateral Agent or any other Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Grantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any Grantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Collateral Agent or any other Secured Party against any Grantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings. Neither the Collateral Agent nor

any other Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Secured Obligations or for the guarantee contained in Article II or any property subject thereto.

Section 4.02 No Subrogation, Contribution or Reimbursement. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by the Collateral Agent or any other Secured Party, no Guarantor shall be entitled to be subrogated to any of the rights of the Collateral Agent or any other Secured Party against the Borrower or any other Guarantor or any collateral security or guarantee or right of offset held by the Collateral Agent or any other Secured Party for the payment of the Secured Obligations, nor shall any Guarantor seek or be entitled to seek any indemnity, exoneration, participation, contribution or reimbursement from the Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, and each Guarantor hereby expressly waives, releases, and agrees not to exercise all such rights of subrogation, reimbursement, indemnity and contribution, in each case, until Payment in Full. Each Guarantor further agrees that to the extent that such waiver and release set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, indemnity and contribution such Guarantor may have against the Borrower, any other Guarantor or against any collateral or security or guarantee or right of offset held by the Collateral Agent or any other Secured Party shall be junior and subordinate to any rights the Collateral Agent and the other Secured Parties may have against the Borrower and such Guarantor and to all right, title and interest the Collateral Agent and the other Secured Parties may have in any collateral or security or guarantee or right of offset. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Primary Obligations shall not have been paid in full, such amount shall be held by such Guarantor in trust for the Collateral Agent and the Secured Parties, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Collateral Agent in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Collateral Agent, if required), to be applied against the Primary Obligations, whether matured or unmatured, in such order as the Collateral Agent may determine. The Collateral Agent, for the benefit of the Secured Parties, may, to the extent it has the right to do so in accordance with the terms and conditions of the Credit Agreement and the other Secured Agreements, use, sell or dispose of any item of Collateral or security as it sees fit without regard to any subrogation rights any Guarantor may have, and upon any disposition or sale, any rights of subrogation any Guarantor may have shall terminate.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

To induce the Collateral Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder and to induce the other Secured Parties to enter into other Secured Agreements, each Grantor hereby represents and warrants to the Collateral Agent and each other Secured Party that:

Section 5.01 Representations in Credit Agreement. In the case of each Guarantor, the representations and warranties set forth in Article VIII of the Credit Agreement as they relate to such Guarantor or to the Secured Agreements to which such Guarantor is a party are true and correct on and as of the date hereof, except to the extent any such representations and warranties are expressly limited to an earlier date, in which case, such representations and warranties shall continue to be true and correct as of such specified earlier date.

Section 5.02 Title; No Other Liens. Except for the security interest granted to the Collateral Agent for the ratable benefit of the Secured Parties pursuant to this Agreement and Liens permitted by Section 10.03 of the Credit Agreement, such Grantor is the legal and beneficial owner of its respective items of the Collateral free and clear of any and all Liens. No financing statement or other public notice with respect to all or any part of the Collateral is on file or of record or registered in any public office, except such as have been filed or registered in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, pursuant to this Agreement, the Security Documents or as are filed to secure Permitted Liens. No Person (other than the Collateral Agent, if applicable) has control over the Collateral.

Section 5.03 Perfected First Priority Liens. The security interests granted pursuant to this Agreement (a) upon completion of the filings and other actions specified on Schedule 3 (which, in the case of all filings and other documents referred to on said Schedule, have been delivered to the Collateral Agent in completed and, if required, duly executed form) will constitute valid perfected security interests in all of the Collateral in which a security interest may be perfected by the actions specified on Schedule 3 (it being agreed and understood no filings, registrations or other actions under the law of any jurisdiction outside of the United States shall be required under this Agreement or any other Loan Document), in favor of the Collateral Agent for the ratable benefit of the Secured Parties, as collateral security for such Grantor's obligations, enforceable in accordance with the terms hereof against all creditors of such Grantor and any Persons purporting to purchase any Collateral from such Grantor and (b) are prior and superior to all other Liens on the Collateral other than Permitted Liens.

Section 5.04 Legal Name; Jurisdiction of Organization; Chief Executive Office. On the date hereof, the correct legal name of such Grantor as it appears in its respective certificate of incorporation or any other organizational document, such Grantor's jurisdiction of organization and the location of such Grantor's chief executive office or sole place of business are, in each case, specified on Schedule 4. Except as set forth in Schedule 4, no Grantor has changed its jurisdiction of organization at any time during the past four months.

Section 5.05 Prior Names and Addresses. Schedule 5 correctly sets forth, as of the date hereof, (a) a list of all other names used by each Grantor, or any other business or organization to which each Grantor became the successor by merger, consolidation, acquisition, change in form, nature or jurisdiction of organization or otherwise at any time within the five (5) years preceding the date hereof and (b) the chief executive office of such Grantor over the last five (5) years (if different from that which is set forth in Section 5.04 above).

Section 5.06 Investment Property.

(a) Schedule 2 sets forth a complete and accurate list of all Investment Property owned by such Grantor. The shares (or such other interests) of Pledged Securities pledged by such Grantor hereunder constitute all the issued and outstanding shares (or such other interests) of all classes of the capital stock or other Equity Interests of each Issuer owned by such Grantor. All the shares (or such other interests) of the Pledged Securities have been duly and validly authorized and issued and are fully paid and nonassessable. None of the Pledged Securities is subject to the right of rescission under Governmental Requirements.

(b) To the knowledge of the applicable Grantor, each Pledged Note constitutes the legal, valid and binding obligation of the obligor with respect thereto, in each case, enforceable in accordance with its terms (subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing).

(c). Such Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property pledged by it hereunder, free of any and all Liens except Excepted Liens.

(d) No Pledged Security or other Investment Property is certificated or is a security under Section 8-103 of the UCC as of the date hereof.

(e) No consent, approval, authorization, or other action by, and no giving of notice or filing with, any Governmental Authority or any other Person is required which has not been obtained and in full force and effect for the pledge by such Grantor of the Pledged Securities or the exercise of remedies pursuant to this Agreement or for the execution, delivery and performance of this Agreement by such Grantor, and no exercise of voting rights by the Collateral Agent as contemplated by this Agreement or transfer of Pledged Securities in the manner contemplated by this Agreement or other exercise of remedies under the Loan Documents is subject to any contractual restriction, or any restriction under the organizational documents of any Grantor, including requiring any consents or other actions thereunder. None of the Pledged Securities is subject to any voting trust, shareholder agreement or voting agreement

or other agreement, right, instrument or understanding with respect to any purchase, sale, issuance, transfer, repurchase, redemption or voting agreement, other than limited liability company agreements, partnership agreements or other governing documents of the relevant Issuer.

Section 5.07 Goods. No portion of the Collateral constituting Goods with an aggregate value in excess of \$500,000 is in the possession of a bailee that has issued a negotiable or non-negotiable document covering such Collateral.

Section 5.08 Instruments and Chattel Paper. Within 10 days of the date hereof (or such longer period of time as permitted by the Collateral Agent in its sole discretion), such Grantor shall have delivered to the Collateral Agent all Collateral constituting Instruments and Chattel Paper existing on such date. Subject to the foregoing sentence, if any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument or Chattel Paper, such Instrument or Chattel Paper shall be promptly delivered to the Collateral Agent, duly indorsed in a manner satisfactory to the Collateral Agent, to be held as Collateral pursuant to this Agreement. No such Instrument or Chattel Paper shall be required to be delivered to the Collateral Agent pursuant to this Section 5.08 so long as the aggregate amount payable evidenced by all such undelivered Instruments or Chattel Papers does not exceed \$500,000.

Section 5.09 Truth of Information. All information with respect to the Collateral set forth in any schedule, certificate or other writing at any time heretofore or hereafter furnished by such Grantor to the Collateral Agent or any other Secured Party, and all other written information heretofore or hereafter furnished by such Grantor to the Collateral Agent or any other Secured Party is and will be true and correct in all material respects as of the date furnished. The place where each Grantor keeps its records concerning the Collateral is at the location specified on Schedule 4.

Section 5.10 Obligors. As of the date hereof, except as scheduled on Schedule 5.10, none of the Account Debtors on such Grantor's Accounts, Chattel Paper or Payment Intangibles is a Governmental Authority.

Section 5.11 Commercial Tort Claims. All of the Grantors' rights in any Commercial Tort Claim are listed on Schedule 6. As of the date hereof, no Grantor has rights in any Commercial Tort Claim with potential value in excess of \$500,000.

Section 5.12 Accounts. All of the Grantors' Deposit Accounts, Securities Accounts and Commodity Accounts are listed on Schedule 8.23 of the Credit Agreement.

Section 5.13 Intellectual Property.

(a) As of the date hereof, all of the Grantors' rights, interest (other than as a licensee with respect to non-material, non-exclusive inbound licenses, but including any Copyright License granting exclusive rights in or to any registered United States Copyright) in or title to, or pending applications for, any issued or registered Patent, Trademark or Copyright subject to the IP Escrow Agreement are listed on Schedule 8 hereto (collectively, the "IP Escrow Intellectual Property"). All IP Escrow Intellectual Property is solely and exclusively owned by the relevant Grantor, except as set forth on Schedule 8, and free and clear of Liens other than Permitted Liens. This Agreement is effective to create a valid and continuing security interest in such Grantors' right, interest in, or title to, or pending application for any Intellectual Property that constitutes Collateral (other than any Intellectual Property that constitutes Excluded Assets) of such Grantor.

(b) All IP Escrow Intellectual Property owned or purported to be owned by the Grantors' is valid, subsisting, unexpired and enforceable, and has not been abandoned and to the knowledge of the Grantors, no third party is infringing, misappropriating or impairing such Intellectual Property rights.

(c). Except as set forth in Schedule 8 hereto, on the date hereof, none of the Intellectual Property owned or purported to be owned by any Grantor is the subject of any exclusive licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor.

(d) To the knowledge of any Grantor, no holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or such Grantor's rights in, any Intellectual Property used in the business of any Grantors in any material respect.

(e) To the knowledge of any Grantor, no action or proceeding is pending, or threatened on the date hereof (i) seeking to limit, cancel or question the validity of any Intellectual Property owned or purported to be owned by any Grantor or such Grantor's ownership right, interest or right therein, and (ii) which, if adversely determined, would have a material effect on the value of such Intellectual Property.

Section 5.14 Inventory and Equipment. All existing Inventory and Equipment owned by such Grantor (other than such Inventory and Equipment in transit in the ordinary course of business) is located at the addresses set forth in Schedule 4.

ARTICLE VI

COVENANTS

Each Grantor covenants and agrees with the Collateral Agent and the other Secured Parties that, from and after the date of this Agreement until Payment in Full:

Section 6.01 Covenants in Credit Agreement. In the case of each Guarantor, such Guarantor shall perform and observe all covenants applicable to it in the Credit Agreement or the other Secured Agreements.

Section 6.02 Maintenance of Perfected Security Interest; Further Documentation.

(a) Such Grantor shall maintain the security interest created by this Agreement as a first priority Lien (subject to Permitted Liens) upon the Collateral; provided that Permitted Liens may exist, but no intent to subordinate the priority of the Liens created hereby is intended or inferred by such existence. Such Grantor will not create or suffer to be created or permit to exist any Lien, security interest or charge prior or junior to or on a parity with the Lien created by this Agreement upon the Collateral or any part thereof other than Permitted Liens; provided, that no such Liens shall be prior to or *pari passu* with the Liens created hereby other than Permitted Liens. Such Grantor will warrant and defend the title to the Collateral against the claims and demands of all other Persons whomsoever and will maintain and preserve the Lien created hereby (and the priority specified herein) until Payment in Full. If (i) an adverse claim be made against any part of the Collateral other than Permitted Liens or (ii) any Person, including the holder of a Permitted Lien (other than Excepted Liens), shall challenge the priority or validity of the Liens created by this Agreement, then such Grantor agrees to promptly defend against such adverse claim at such Grantor's sole cost and expense. Such Grantor further agrees that upon the occurrence of an Event of Default that is continuing, the Collateral Agent may take such other action as they deem advisable to protect and preserve their interests in the Collateral, and in such event such Grantor will indemnify the Collateral Agent against any and all reasonable and documented out of pocket costs, attorneys' fees and other expenses which it may incur in defending against any such adverse claim.

(b) At any time and from time to time, upon the reasonable written request of the Collateral Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly give, execute, deliver, indorse, file or record any and all financing statements, continuation statements, amendments, notices (including notifications to financial institutions and any other Person), contracts, agreements, assignments, certificates, stock powers or other instruments, obtain any and all governmental approvals and consents and take or cause to be taken any and all steps or acts that may be necessary or as the Collateral Agent may reasonably request to create, perfect, establish at least the priority described in Section 5.03 of, or to preserve the validity, perfection or priority of, the Liens granted by this Agreement or to enable the Collateral Agent or any other Secured Party to enforce its rights, remedies, powers and privileges under this Agreement with respect to such Liens or to otherwise obtain or preserve the full benefits of this Agreement and the rights, powers and privileges herein granted.

(c). Without limiting the obligations of the Grantors under Section 6.02(b), and subject to Section 9.18 of the Credit Agreement (i) all Deposit Accounts, Commodity Accounts and Securities Accounts of any Grantor (including the Collateral Accounts, but not including the Excluded Accounts) shall be subject to the Lien of the Collateral Agent under this Agreement and such accounts (other than any Deposit Account, Commodity Account or Securities Account located outside of the United States) shall be required to be covered by a Control Agreement (i) in the case of the Collateral Accounts and any other Deposit Accounts, Commodity Accounts and Securities Accounts (but not including any Excluded Accounts) of any Grantor in existence on the date hereof, such Control Agreement to be executed by the applicable Grantor no later than the Closing Date and (ii) in the case of any Deposit Account, Commodity Account or Securities Account (but not including any Excluded Accounts) by any Grantor opened after the Closing Date (with the prior consent of the Administrative Agent), substantially contemporaneously with (or by such later time as the Administrative Agent may agree to in its sole discretion) the opening of any such Deposit Account, Commodity Account or Securities Account.

(d) Without limiting the obligations of the Grantors under Section 6.02(b), at any time and from time to time upon the written request of the Collateral Agent such Grantor shall take or cause to be taken all actions (other than any actions (x) required to be taken by the Collateral Agent or any Lender or (y) in any jurisdiction outside of the United States or any state or territory thereof) reasonably requested by the Collateral Agent to cause the Collateral Agent to (i) have "control" (within the meaning of Sections 8-106, 9-104, 9-105, 9-106, and 9-107 of the UCC) over any Collateral constituting Electronic Chattel Paper, Investment Property (including certificated Pledged Securities), or Letter-of-Credit Rights, including using commercially reasonable efforts to execute and deliver any agreements, in form and substance reasonably satisfactory to the Collateral Agent, with securities intermediaries, issuers or other Persons required in order to establish "control", and each Grantor shall promptly notify the Collateral Agent of such Grantor's acquisition of any such Collateral, and (ii) be a "protected purchaser" (as defined in Section 8-303 of the UCC).

(e) This Section 6.02 and the obligations imposed on each Grantor hereof shall be interpreted as broadly as possible in favor of the Collateral Agent and the other Secured Parties in order to effectuate the purpose and intent of this Agreement.

Section 6.03 Maintenance of Records. Such Grantor will keep and maintain at its own cost and expense complete records of the Collateral, including a record of all payments received and all credits granted with respect to the Accounts.

Section 6.04 Further Identification of Collateral. Such Grantor will furnish to the Collateral Agent from time to time, at such Grantor's sole cost and expense, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in reasonable detail, including without limitation as required pursuant to Section 6.09(e) and requests pursuant to Section 9.11(a) of the Credit Agreement.

Section 6.05 Investment Property.

(a) If such Grantor shall become entitled to receive or shall receive any stock certificate or other instrument (including any certificate or instrument representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate or instrument issued in connection with any reorganization), option or rights in respect of the capital stock or other Equity Interests of any Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares (or such other interests) of the Pledged Securities, or otherwise in respect thereof, such Grantor shall accept the same as the agent of the Collateral Agent, hold the same in trust for the Collateral Agent and deliver the same forthwith to the Collateral Agent in the exact form received, duly indorsed by such Grantor to the Collateral Agent, if required, together with an undated stock power or other equivalent instrument of transfer acceptable to the Collateral Agent covering such certificate or instrument duly executed in blank by such Grantor, to be held by the Collateral Agent, subject to the terms hereof, as additional collateral security for the Secured Obligations. Upon the occurrence and during the continuance of an Event of Default, (i) any sums paid upon or in respect of any Investment Property upon the liquidation or dissolution of any Issuer shall be paid over to the Collateral Agent to be applied to the Secured Obligations as provided in Section 7.04, and (ii) in case any distribution of capital

shall be made on or in respect of any Investment Property or any property shall be distributed upon or with respect to any Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected security interest in favor of the Collateral Agent for the ratable benefit of the Secured Parties, be delivered to the Collateral Agent to be applied to the Secured Obligations as provided in Section 7.04. Upon the occurrence and during the continuance of an Event of Default, if any sums of money or property so paid or distributed in respect of any Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Collateral Agent, hold such money or property in trust for the Secured Parties, segregated from other funds of such Grantor, as additional Collateral for the Secured Obligations.

(b) Without the prior written consent of the Collateral Agent, such Grantor will not (i) vote to enable, or take any other action to permit, any Issuer to issue any stock or other Equity Interests of any nature or to issue any other securities or interests convertible into or granting the right to purchase or exchange for any stock or other Equity Interests of any nature of any Issuer (except pursuant to a transaction expressly permitted by the Credit Agreement), (ii) sell, assign, transfer, exchange or otherwise dispose of, or grant any option with respect to, the Investment Property or Proceeds thereof (except pursuant to a transaction expressly permitted by the Credit Agreement), (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for the security interests created by this Agreement (except pursuant to a transaction expressly permitted by the Credit Agreement) or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Collateral Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof (except as expressly permitted pursuant to Section 10.13).

(c) In the case of each Grantor which is also an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Investment Property issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Administrative Agent and the Collateral Agent promptly in writing of the occurrence of any of the events described in Section 6.05(a) with respect to the Investment Property issued by it and (iii) the terms of Section 7.01(c) and Section 7.05 shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 7.01(c) or Section 7.05 with respect to the Investment Property issued by it. In addition, each Grantor which is also either an Issuer or an owner of any Investment Property consents to the grant by each other Grantor of the security interest hereunder in favor of the Collateral Agent and to the transfer of any Investment Property to the Collateral Agent or its nominee upon the occurrence or during the continuation of an Event of Default and to the substitution of the Collateral Agent or its nominee as a partner, member or shareholder of the Issuer of the related Investment Property without the need for any further action by any Grantor or Issuer (and hereby confirms that no such action is required).

(d) Without the prior written consent of the Collateral Agent, such Grantor shall not vote to enable, consent to or take any other action to amend, terminate or waive any default under or breach of any terms of any governing document of an Issuer in any way that adversely affects the validity, perfection or priority of the Collateral Agent's security interest hereunder. With respect to any securities for purposes of Article 8 of the UCC owned by any Grantor which are securities on the date hereof or, if such Pledged Securities are owned or acquired by such Grantor after the date hereof, the Grantor shall ensure the Collateral Agent has a perfected security interest with at least the priority described in Section 5.03(b) in such security on the date hereof or promptly following the date of acquisition, as the case may be.

(e) Such Grantor shall furnish to the Collateral Agent such stock powers and other equivalent instruments of transfer as may be required by the Collateral Agent to assure the transferability of and the perfection of the security interest in the Pledged Securities as may be reasonably requested by the Collateral Agent. To the extent any interest in any Pledged Security is a "security" within the meaning of Article 8 of the Uniform Commercial Code of its jurisdiction of organization, such interest shall be represented by a certificate. No Grantor shall permit any Issuer to certificate any Pledged Security unless such Grantor substantially concurrently delivers such Pledged Securities to the Collateral Agent in the exact form received, duly indorsed by such Grantor to the Collateral Agent, if required, together with an

undated stock power or other equivalent instrument of transfer acceptable to the Collateral Agent covering such certificate or instrument duly executed in blank by such Grantor.

(f) The Pledged Securities will at all times constitute not less than 100% of the capital stock or other Equity Interests of the Issuer thereof owned by any Grantor. Upon the issuance of any new shares (or other interests) of any class of capital stock or other Equity Interests of an Issuer to a Grantor, such Equity Interests shall be pledged to the Collateral Agent pursuant to the terms hereof and the Grantor shall substantially concurrently with such issuance, deliver any such Equity Interests that are required to be pledged hereunder in the exact form received, duly indorsed by such Grantor to the Collateral Agent, if required, together with an undated stock power or other equivalent instrument of transfer acceptable to the Collateral Agent covering such certificate or instrument duly executed in blank by such Grantor.

Section 6.06 Limitations on Modifications, Waivers, Extensions of Agreements Giving Rise to Accounts. Such Grantor will not (a) amend, modify, terminate or waive any provision of any Chattel Paper, Instrument or any agreement giving rise to an Account or Payment Intangible in any manner which could reasonably be expected to materially adversely affect the collective value of the Collateral as a whole, or (b) fail to exercise promptly and diligently each and every material right which it may have under any Chattel Paper, Instrument and each agreement giving rise to an Account or Payment Intangible which could reasonably be expected to materially adversely affect the collective value of the Collateral as a whole (other than any right of termination).

Section 6.07 Instruments and Tangible Chattel Paper. If amounts payable in excess of an amount of \$500,000 under or in connection with any of the Collateral shall be or become evidenced by any Instrument or Tangible Chattel Paper, such Instrument or Tangible Chattel Paper shall be delivered to the Collateral Agent within ten (10) Business Days, duly indorsed in a manner satisfactory to the Collateral Agent, to be held as Collateral pursuant to this Agreement.

Section 6.08 Commercial Tort Claims. If such Grantor shall obtain an interest in any Commercial Tort Claim with a potential value in excess of \$500,000, such Grantor shall within twenty (20) days (or such longer period agreed by the Collateral Agent) of obtaining such interest sign and deliver documentation acceptable to the Collateral Agent granting a security interest under the terms and provisions of this Agreement in and to such Commercial Tort Claim.

Section 6.09 Intellectual Property.

(a) The Collateral Agent or its designee may (but without obligation to do so) file this Agreement (or, if applicable, such short form intellectual property security agreements (i) substantially in the form attached hereto as Exhibit A with respect to the Grantors' Patents, (ii) substantially in the form attached hereto as Exhibit B with respect to the Grantors' Trademarks or (iii) substantially in the form attached hereto as Exhibit C with respect to the Grantors' Copyrights) with the United States Copyright Office or the United States Patent and Trademark Office, as applicable.

(b) Such Grantor (either itself or through licensees) will not do any act or omit to do any act, whereby any of its Patents or any of its material Intellectual Property may become forfeited, abandoned or dedicated to the public.

(c) Such Grantor (either itself or through licensees) will not do any act that knowingly infringes the Intellectual Property rights of any other Person.

(d) Such Grantor will notify the Collateral Agent and the Secured Parties promptly if it knows, or has reason to know, that any application or registration relating to any of its material Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's ownership of, or the validity of, any of its material Intellectual Property or such Grantor's right to register the same or to own and maintain the same.

(e) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office or the United States Copyright Office, or enter into a Copyright License granting exclusive rights in a registered United States Copyright such Grantor shall report such filing or Copyright License to the Collateral Agent within thirty (30) days of such filing and include information with respect to such filing in the compliance certificate delivered pursuant to Section 9.01(c) of the Credit Agreement with respect to the fiscal quarter in which such filing occurs and such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Collateral Agent may reasonably request to evidence the Collateral Agent's and the Secured Parties' security interest in any Copyright, Patent or Trademark or such exclusive Copyright License, and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(f) Such Grantor will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of the material Intellectual Property owned or purported to be owned by each such Grantor, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability.

(g) In the event that any material Intellectual Property owned or purported to be owned by a Grantor is infringed, misappropriated, violated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Collateral Agent after it learns thereof and sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution.

ARTICLE VII

REMEDIAL PROVISIONS

Section 7.01 Pledged Securities.

(a) Unless an Event of Default shall have occurred and be continuing and the Collateral Agent shall have given notice to the relevant Grantor of the Collateral Agent's intent to exercise its corresponding rights pursuant to Section 7.01(b) (it being acknowledged and agreed that the Collateral Agent shall not be required to deliver any such notice in connection with an Event of Default under Section 11.01(f) or (g) of the Credit Agreement or if the delivery of such notice is otherwise prohibited by applicable law), each Grantor shall be permitted to receive (i) all cash dividends paid in respect of the Pledged Securities and (ii) all payments made in respect of the Pledged Notes, to the extent permitted in the Credit Agreement, and to exercise all voting, corporate and other organizational rights with respect to the Investment Property; provided, however, that no vote shall be cast or corporate or other organizational right exercised or other action taken which, in the Collateral Agent's judgment, would materially impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Secured Agreement.

(b) If an Event of Default shall occur and be continuing and the Collateral Agent shall give written notice of its intent to exercise such rights to the relevant Grantor or Grantors (it being acknowledged and agreed that the Collateral Agent shall not be required to deliver any such notice in connection with an Event of Default under Section 11.01(f) or (g) of the Credit Agreement or if the delivery of such notice is otherwise prohibited by applicable law), (i) all rights of any Grantor to receive dividends, interest and principal which such Grantor is authorized to receive pursuant to Section 7.01(a) shall cease, and all such rights shall thereupon become vested in the Collateral Agent, and the Collateral Agent shall have the right to receive any and all cash dividends, payments or other Proceeds paid in

respect of the Investment Property and make application thereof to the Secured Obligations in such order as the Collateral Agent may determine (and all dividends, payments or other Proceeds which are received by any Grantor contrary to the provisions of this Section 7.01(b) shall be held in trust for the benefit of the Collateral Agent, shall be segregated from other property or funds of such Grantor and shall be immediately delivered to the Collateral Agent in the same form as so received (with any necessary endorsement)), and (ii) the Collateral Agent or its nominee may exercise (whether or not the Collateral or any of the Investment Property has been transferred into the name of the Collateral Agent or its nominee) (A) all voting, corporate, consenting and other organizational rights pertaining to such Investment Property at any meeting of shareholders (or other equivalent body) of the relevant Issuer or Issuers or in the absence of any such meeting or otherwise (and each Grantor hereby grants to the Collateral Agent a present, irrevocable proxy, coupled with an interest and hereby constitutes and appoints the Collateral Agent as such Grantor's proxy with full power, in the same manner, to the same extent and with the same effect as if such Grantor were to do the same, to exercise such rights) and (B) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including, the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other organizational structure of any Issuer, or upon the exercise by any Grantor or the Collateral Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Collateral Agent may determine), all without liability except to account for property actually received by it, but the Collateral Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing. As further assurance of the proxy granted hereby, each Grantor shall from time to time execute and deliver to the Collateral Agent, all such additional written proxies and other instruments as the Collateral Agent shall reasonably request for the purpose of enabling the Collateral Agent to exercise the voting and other rights which it is entitled to exercise hereunder. Each Grantor hereby revokes any proxy or proxies heretofore given by such Grantor to any person or persons whatsoever and agrees not to give any other proxies in derogation hereof until this Agreement is no longer in full force and effect as hereinafter provided.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Investment Property pledged by such Grantor hereunder (and each Issuer party hereto hereby agrees) to (i) comply with any instruction received by it from the Collateral Agent in writing that (A) states that an Event of Default has occurred and is continuing and (B) is otherwise in accordance with the terms of this Agreement, without any other or further action or instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) at any time that an Event of Default exists, comply with any instruction received by it from the Collateral Agent in writing to pay any dividends or other payments with respect to the Investment Property directly to the Collateral Agent. If an Event of Default shall have occurred and be continuing, the Collateral Agent shall have the right (in its sole and absolute discretion) to register the Pledged Stock in its own name as pledgee, or the name of its nominee (as pledgee) or the name of the applicable Grantor or Issuer, endorsed or assigned in blank or in favor of the Collateral Agent.

(d) After the occurrence and during the continuation of an Event of Default, if the Issuer of any Pledged Securities is the subject of bankruptcy, insolvency, receivership, custodianship or other proceedings under the supervision of any Governmental Authority, then all rights of the Grantor in respect thereof to exercise the voting and other consensual rights which such Grantor would otherwise be entitled to exercise with respect to the Pledged Securities issued by such Issuer shall cease, and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right to exercise such voting and other consensual rights, but the Collateral Agent shall have no duty to exercise any such voting or other consensual rights and shall not be responsible for any failure to do so or delay in so doing.

(e) Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have the right to verify, by itself or by a third party designated pursuant to the IP Escrow Agreement, under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral.

Section 7.02 Collections on Accounts, Etc. The Collateral Agent may curtail or terminate the authority to collect upon the Accounts, Instruments, Chattel Paper and Payment Intangibles subject to the Collateral Agent's direction and control, at any time after the occurrence and during the continuance of an Event of Default. Upon the written request of the Collateral Agent at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify the Account Debtors that the applicable Accounts, Chattel Paper and Payment Intangibles have been assigned to the Collateral Agent for the ratable benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Collateral Agent. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent may in its own name or in the name of others communicate with the Account Debtors to verify with them to its satisfaction the existence, amount and terms of any Accounts, Chattel Paper or Payment Intangibles; provided, the Collateral Agent must provide at least three (3) days prior written notice to the Borrower of such communication unless an Event of Default is existing that is pursuant to Section 11.01(a) of the Credit Agreement.

Section 7.03 Proceeds. If required by the Collateral Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Accounts, Instruments, Chattel Paper and Payment Intangibles, when collected or received by each Grantor, and any other cash or non-cash Proceeds received by each Grantor upon the sale or other disposition of any Collateral, shall be forthwith (and, in any event, within five (5) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent if required, in a special collateral account maintained by the Collateral Agent, subject to withdrawal by the Collateral Agent for the ratable benefit of the Secured Parties only, as hereinafter provided, and, until so turned over, shall be held by such Grantor in trust for the Collateral Agent for the ratable benefit of the Secured Parties, segregated from other funds of any such Grantor. All Proceeds (including Proceeds constituting collections of Accounts, Chattel Paper, Instruments) while held by the Collateral Agent (or by any Grantor in trust for the Collateral Agent for the ratable benefit of the Secured Parties) shall continue to be collateral security for all of the Secured Obligations and shall not constitute payment thereof until applied as hereinafter provided. At such intervals as may be agreed upon by each Grantor and the Collateral Agent, or, if an Event of Default shall have occurred and be continuing, at any time at the Collateral Agent's election, the Collateral Agent shall apply all or any part of the funds on deposit in said special collateral account on account of the Secured Obligations in accordance with Section 11.02(c) of the Credit Agreement.

Section 7.04 Uniform Commercial Code and Other Remedies.

(a) If an Event of Default shall occur and be continuing, the Collateral Agent, on behalf of the Secured Parties, may exercise in its discretion, in addition to all other rights, remedies, powers and privileges granted to them in this Agreement and any other Secured Agreement, all rights, remedies, powers and privileges of a secured party under the UCC (whether the UCC is in effect in the jurisdiction where such rights, remedies, powers or privileges are asserted) or any other applicable law or otherwise available at law or equity. Without limiting the generality of the foregoing, if an Event of Default has occurred and is continuing, the Collateral Agent (or its agent), without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, license, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Collateral Agent or any other Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem appropriate, for cash or on credit or for future delivery without assumption of any credit risk. The Collateral Agent or any other Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. If an Event of Default shall occur and be continuing, each Grantor further agrees, at the Collateral Agent's request, to assemble the Collateral and make it available to the Collateral Agent at places which the Collateral Agent shall reasonably select, whether at such Grantor's premises or elsewhere. Any such sale or transfer by the Collateral Agent either to itself or to any other Person shall be absolutely free from any claim of right by Grantor, including any equity or right of redemption, stay or

appraisal which Grantor has or may have under any rule of law, regulation or statute now existing or hereafter adopted. Upon any such sale or transfer, the Collateral Agent shall have the right to deliver, assign and transfer to the purchaser or transferee thereof the Collateral so sold or transferred. The Collateral Agent shall apply the net proceeds of any action taken by it pursuant to this Section 7.04, after deducting all reasonable, documented costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Collateral Agent and the other Secured Parties hereunder, including reasonable out-of-pocket attorneys' fees and disbursements, to the payment in whole or in part of the Secured Obligations, in accordance with Section 11.02(c) of the Credit Agreement, and only after such application and after the payment by the Collateral Agent of any other amount required by any provision of law, including Section 9-615 of the UCC, need the Collateral Agent account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Collateral Agent or any other Secured Party arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least ten (10) Business Days before such sale or other disposition.

(b) In the event that the Collateral Agent elects not to sell the Collateral, the Collateral Agent retains its rights to dispose of or utilize the Collateral or any part or parts thereof in any manner authorized or permitted by law or in equity, and to apply the proceeds of the same towards payment of the Secured Obligations. The Collateral Agent may appoint any Person as agent to perform any act or acts necessary or incidental to any sale or transfer of the Collateral.

(c) Upon the occurrence and during the continuation of an Event of Default the Collateral Agent, without notice to any Grantor (except as required by applicable law) and at such times as the Collateral Agent in its sole judgment may determine, exercise any or all of any Grantor's rights in, to and under, or in any way connected to, the Collateral (including the performance of any Grantor's obligations, and the exercise of any Grantor's rights and remedies, under the Assigned Agreements) and give written notice of sole control or any other instruction under any Control Agreement and take any action therein with respect to such Collateral.

Section 7.05 Private Sales of Pledged Securities.

(a) Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all the Pledged Securities, by reason of certain prohibitions contained in the Securities Act of 1933 (as amended, the "Securities Act") and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Securities for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so. Each Grantor agrees to do or cause to be done all such acts as may reasonably be necessary to make such sale or sales of all or any portion of the Pledged Securities pursuant to this Section 7.05 valid and binding and in compliance with any and all other applicable Governmental Requirements. Each Grantor further agrees that a breach of any of the covenants contained in this Section 7.05 will cause irreparable injury to the Collateral Agent and the other Secured Parties, that the Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 7.05 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants.

Section 7.06 Waiver; Deficiency. To the extent permitted by applicable law, each Grantor waives and agrees not to assert any rights or privileges which it may acquire under the UCC or any other applicable law. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other

disposition of the Collateral are insufficient to pay its Secured Obligations and the fees and disbursements of any attorneys employed by the Collateral Agent or any other Secured Party to collect such deficiency.

Section 7.07 Non-Judicial Enforcement. The Collateral Agent may enforce its rights hereunder without prior judicial process or judicial hearing, and to the extent permitted by law, each Grantor expressly waives any and all legal rights which might otherwise require the Collateral Agent to enforce its rights by judicial process.

Section 7.08 Grant of Intellectual Property License. Solely for the purpose of enabling the Collateral Agent to exercise the rights and remedies under this Article VII, until the Payment in Full, each Grantor hereby grants to the Collateral Agent, to the extent permitted by applicable law and by the terms and conditions of any applicable license, sub-license or other agreement, for the benefit of the Collateral Agent and the Secured Parties, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, license or sublicense, during the continuance of an Event of Default, any Intellectual Property rights included in the Collateral, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof, and any other physical or tangible media embodying same.

Section 7.09 Assigned Agreements.

(a) Upon the request of the Collateral Agent, at any time after the occurrence and the continuance of an Event of Default pursuant to Section 11.01(a) of the Credit Agreement, each Grantor shall notify the parties to any Assigned Agreement that such Assigned Agreement has been assigned to the Collateral Agent for the benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Collateral Agent.

(b) At any time after the occurrence and the continuance of an Event of Default by any Grantor in the performance of any of its material obligations under any Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under any such Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable another party of such Assigned Agreement to terminate or suspend its performance under such Assigned Agreement, the Collateral Agent may (but shall not be obligated to), with prior written notice to such Grantor (it being acknowledged and agreed that the Collateral Agent shall not be required to deliver any such notice in connection with an Event of Default under Section 11.01 (a), (c) (to the extent such default occurred as a breach of Article X), (g) or (h) of the Credit Agreement or if the delivery of such notice is otherwise prohibited by applicable law), cause the performance of such obligations, and the fees, costs and expenses (including documented fees and expenses of outside counsel) of the Collateral Agent incurred in connection therewith shall be payable by or on behalf of such Grantor, together with interest thereon at the rate applicable to ABR Loans, or the Post-Default Rate from the date of payment by the Collateral Agent to the date reimbursed by the relevant Grantor, and shall constitute Secured Obligations hereunder.

Section 7.10 Company Remains Obligated. No sale or other disposition of all or any part of the Collateral pursuant to Article VII shall be deemed to relieve any Grantor of its obligations under any Loan Document except to the extent the proceeds thereof are applied to the payment of such obligations.

Section 7.11 Purchase of Collateral. The Collateral Agent or any other Secured Party may be a purchaser of the Collateral or any part thereof or any right or interest therein at any sale thereof, whether pursuant to foreclosure, power of sale or otherwise hereunder and the Collateral Agent may apply the purchase price to the payment of the applicable Secured Obligations. Any purchaser of all or any part of the Collateral shall, upon any such purchase, acquire good title to the Collateral so purchased, free of the Liens created by this Agreement.

ARTICLE VIII

THE COLLATERAL AGENT

Section 8.01 Collateral Agent's Appointment as Attorney-in-Fact, Etc.

(a) Each Grantor hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all reasonably appropriate action and to execute any and all documents and instruments which may be reasonably necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Collateral Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) pay or discharge taxes and Liens (including Indebtedness secured by a Lien) levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(ii) execute and deliver, and have recorded or filed, any and all agreements, documents, instruments and papers to evidence the Collateral Agent's and the Secured Parties' security interest in any Collateral, including with respect to any Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby, and take any other action to evidence and maintain the Collateral Agent's and the Secured Parties' security interest in any Collateral and the perfection and priority thereof;

(iii) execute, in connection with any sale provided for in Section 7.04 or Section 7.05, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral;

(iv) (A) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct; (B) take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Account, Instrument, General Intangible, Chattel Paper or Payment Intangible or with respect to any other Collateral, and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for the purpose of collecting any and all such moneys due under any Account, Instrument or General Intangible or with respect to any other Collateral whenever payable; (C) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (D) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (E) receive, change the address for delivery, and open and dispose of mail addressed to any Grantor, and to execute, assign and indorse negotiable and other instruments for the payment of money, documents of title or other evidences of payment, shipment or storage for any form of Collateral on behalf of and in the name of any Grantor; (F) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (G) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (H) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Collateral Agent may deem appropriate; and (I) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and do, at the Collateral Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Collateral Agent deems necessary to protect, preserve or realize upon the Collateral and the Collateral Agent's and the other Secured

Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do; and

(v) cure any default by any Grantor, or maintain any of the Grantor's rights, interests or titles, under any contract, license or permit (including any Assigned Agreement) including by providing notices of extensions or any other notices to counterparties under the Customer Contracts.

Anything in this Section 8.01(a) to the contrary notwithstanding, the Collateral Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 8.01(a) (other than Section 8.01(a)(ii)) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein within the applicable grace periods, the Collateral Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The documented expenses and costs of the Collateral Agent incurred in connection with actions undertaken as provided in this Section 8.01, together with interest thereon at the rate applicable to ABR Loans, or during the continuance of an Event of Default, the Post-Default Rate from the date of payment by the Collateral Agent to the date reimbursed by the relevant Grantor, shall be payable jointly and severally by such Grantor to the Collateral Agent on demand, and shall constitute Secured Obligations hereunder.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue and in compliance hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released. Each Grantor hereby acknowledges and agrees that the Collateral Agent shall have no fiduciary duties to such Grantor in acting pursuant to this power of attorney and each Grantor hereby waives any claims or rights of a beneficiary of a fiduciary relationship hereunder.

Section 8.02 Duty of Collateral Agent. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as the Collateral Agent deals with similar property for its own account and shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which comparable secured parties accord comparable collateral. Neither the Collateral Agent, any other Secured Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Collateral Agent and the other Secured Parties hereunder are solely to protect the Collateral Agent's and the other Secured Parties' interests in the Collateral and shall not impose any duty upon the Collateral Agent or any other Secured Party to exercise any such powers. The Collateral Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct, in each case, as determined by a final and non-appealable judgment in a court of competent jurisdiction. To the fullest extent permitted by applicable law, the Collateral Agent shall be under no duty whatsoever to make or give any presentment, notice of dishonor, protest, demand for performance, notice of non-performance, notice of intent to accelerate, notice of acceleration, or other notice or demand in connection with any Collateral or the Secured Obligations, or to take any steps necessary to preserve any rights against any Grantor or other Person or ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not it has or is deemed to have knowledge of such matters. Each Grantor, to the extent permitted by applicable law, waives any right of marshaling in respect of any and all Collateral, and waives any right to require the Collateral Agent or any other Secured Party to proceed against any Grantor or other Person, exhaust any Collateral or enforce any other remedy which

the Collateral Agent or any other Secured Party now has or may hereafter have against each Grantor, any Grantor or other Person.

Section 8.03 Filing of Financing Statements. Pursuant to the UCC and any other applicable law, each Grantor authorizes the Collateral Agent, its counsel or its representative, at any time and from time to time, to file or record financing statements, continuation statements, amendments thereto and other filing or recording documents or instruments with respect to the Collateral without the signature of such Grantor in such form and in such offices as the Collateral Agent reasonably determines appropriate to perfect or maintain the perfection of the security interests of the Collateral Agent under this Agreement. Additionally, each Grantor authorizes the Collateral Agent, its counsel or its representative, at any time and from time to time, to file or record such financing statements that describe the collateral covered thereby as “all assets of the Grantor”, “all personal property of the Grantor” or words of similar effect. In no event shall the above authorizations be deemed to be obligations. Nothing herein shall relieve any Grantor of its primary obligation to file such financing statements or impose a duty on the Administrative Agent or the Collateral Agent to file such financing statements.

Section 8.04 Authority of Collateral Agent. Each Grantor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Grantors, the Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

ARTICLE IX

SUBORDINATION OF INDEBTEDNESS

Section 9.01 Subordination of All Grantor Claims. As used herein, the term “Grantor Claims” shall mean all debts and obligations of any Grantor to any other Grantor, whether such debts and obligations now exist or are hereafter incurred or arise, or whether the obligation of the debtor thereon be direct, contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such debts or obligations be evidenced by note, contract, open account, or otherwise, and irrespective of the Person or Persons in whose favor such debts or obligations may, at their inception, have been, or may hereafter be created, or the manner in which they have been or may hereafter be acquired by. After the occurrence and during the continuation of an Event of Default, no Grantor shall receive or collect, directly or indirectly, from any obligor in respect thereof any amount upon the Grantor Claims.

Section 9.02 Claims in Bankruptcy. In the event of receivership, bankruptcy, reorganization, arrangement, debtor’s relief or other insolvency proceedings involving any Grantor, the Collateral Agent on behalf of the Secured Parties shall have the right to prove their claim in any proceeding, so as to establish their rights hereunder and receive directly from the receiver, trustee or other court custodian, dividends and payments which would otherwise be payable upon Grantor Claims. Each Grantor hereby assigns such dividends and payments to the Collateral Agent for the benefit of the Secured Parties for application against the Secured Obligations as provided under Section 11.02 of the Credit Agreement. Should any Agent or Secured Party receive, for application upon the Secured Obligations, any such dividend or payment which is otherwise payable to any Grantor, and which, as between such Grantor, shall constitute a credit upon the Grantor Claims, then upon Payment in Full, the intended recipient shall become subrogated to the rights of the Collateral Agent and the other Secured Parties to the extent that such payments to the Collateral Agent and the other Secured Parties on the Grantor Claims have contributed toward the liquidation of the Secured Obligations, and such subrogation shall be with respect to that proportion of the Secured Obligations which would have been unpaid if the Collateral Agent and the other Secured Parties had not received dividends or payments upon the Grantor Claims.

Section 9.03 Payments Held in Trust. In the event that notwithstanding Section 9.01 and Section 9.02, any Grantor should receive any funds, payments, claims or distributions which is prohibited by such Sections, then it agrees: (a) to hold in trust for the Collateral Agent and the other Secured Parties an amount equal to the amount of all funds, payments, claims or distributions so received segregated from the other funds of such Grantor and (b) that it shall upon receipt, pay them promptly to the Collateral Agent in the exact form agreed (duly endorsed by such Grantor to the Collateral Agent, if required), for the benefit of the Secured Parties; and each Grantor covenants promptly to pay the same to the Collateral Agent.

Section 9.04 Liens Subordinate. Each Grantor agrees that, until Payment in Full, any Liens securing payment of the Grantor Claims shall be and remain inferior and subordinate to any Liens securing payment of the Secured Obligations, regardless of whether such encumbrances in favor of such Grantor, the Collateral Agent or any other Secured Party presently exist or are hereafter created or attach. Prior to Payment in Full, without the prior written consent of the Collateral Agent, no Grantor shall (a) exercise or enforce any creditor's right it may have against any debtor in respect of the Grantor Claims, or (b) foreclose, repossess, sequester or otherwise take steps or institute any action or proceeding (judicial or otherwise, including without limitation the commencement of or joinder in any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any Lien held by it.

Section 9.05 Notation of Records. All promissory notes and all accounts receivable ledgers or other evidence of the Grantor Claims accepted by or held by any Grantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under the terms of this Agreement.

ARTICLE X

MISCELLANEOUS

Section 10.1 Waiver. No failure on the part of the Collateral Agent or any other Secured Party to exercise and no delay in exercising, and no course of dealing with respect to, any right, remedy, power or privilege under any of the Secured Agreements shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any of the Secured Agreements preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. The exercise by the Collateral Agent of any one or more of the rights, powers and remedies herein shall not be construed as a waiver of any other rights, powers and remedies, including, any rights of set-off.

Section 10.2 Notices. All notices and other communications provided for herein shall be given in the manner and subject to the terms of Section 13.01 of the Credit Agreement; provided that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 1.

Section 10.03 Payment of Expenses, Indemnities, Etc.

(a) Each Grantor, jointly and severally, agrees to pay or promptly reimburse the Collateral Agent and each other Secured Party for all documented out-of-pocket advances, charges, costs and expenses (including, without limitation, all documented out-of-pocket costs and expenses of holding, preparing for sale and selling, collecting or otherwise realizing upon the Collateral and all reasonable, documented out-of-pocket attorneys' fees, legal expenses and court costs incurred by any Secured Party in connection with the exercise of its respective rights and remedies hereunder), including, without limitation, any documented out-of-pocket advances, charges, costs and expenses that may be incurred in any effort to enforce any of the provisions of this Agreement or any obligation of any Grantor in respect of the Collateral or in connection with (i) the preservation of the Lien of, or the rights of the Collateral Agent under this Agreement, (ii) any actual or attempted sale, lease, disposition, exchange, collection, compromise, settlement or other realization in respect of, or care of, the Collateral, including all such documented costs and expenses incurred in any bankruptcy, reorganization, workout or other similar

proceeding, or (iii) collecting against such Grantor under the guarantee contained in Article II or otherwise enforcing or preserving any rights under this Agreement and the other Secured Agreements to which such Grantor is a party.

(b) Each Grantor jointly and severally agrees to pay, and to save the Collateral Agent and the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) Each Grantor jointly and severally agrees to pay, and to save the Collateral Agent and the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent any Grantor would be required to do so pursuant to Section 13.03 of the Credit Agreement.

(d) Any such amounts payable as provided hereunder shall be additional Secured Obligations secured hereby and by the other Security Documents. All amounts for which any Grantor is liable pursuant to this Section 10.03 shall be due and payable by such Grantor to the Secured Parties not later than ten (10) Business Days after written demand therefor.

Section 10.04 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 13.02 of the Credit Agreement.

Section 10.05 Successors and Assigns. This Agreement shall be binding upon the successors and permitted assigns of each Grantor and shall inure to the benefit of the Collateral Agent and the other Secured Parties and their successors and permitted assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent.

Section 10.06 Invalidity. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 10.07 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by email or facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.

Section 10.08 Survival; Reinstatement. The obligations of the parties under Section 10.03 shall survive notwithstanding Payment in Full. To the extent that any payments on the Secured Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then to such extent, the Secured Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the Collateral Agent's and the other Secured Parties' Liens, security interests, rights, powers and remedies under this Agreement and each Security Document shall continue in full force and effect. In such event, each Security Document shall be automatically reinstated and each Grantor shall take such action as may be reasonably requested by the Collateral Agent and the other Secured Parties to effect such reinstatement.

Section 10.09 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 10.10 No Oral Agreements. The Secured Agreements embody the entire agreement and understanding between the parties and supersede all other agreements and understandings between such parties relating to the subject matter hereof and thereof. **THIS AGREEMENT AND THE OTHER SECURED AGREEMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

Section 10.11 Governing Law; Submission to Jurisdiction.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1401 AND SECTION 5-1402).

(b) SECTIONS 13.09(B)-(D) OF THE CREDIT AGREEMENT (JURISDICTION CONSENT TO SERVICE OF PROCESS; WAIVER OF JURY TRIAL) ARE HEREBY INCORPORATED HEREIN BY REFERENCE AND SHALL APPLY TO THIS AGREEMENT *MUTATIS MUTANDIS*.

Section 10.12 Acknowledgments. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Secured Agreements to which it is a party;

(b) neither the Collateral Agent nor any other Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Secured Agreements, and the relationship between the Grantors, on the one hand, and the Collateral Agent and the other Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Secured Agreements or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Grantors and the Lenders.

(d) each of the parties hereto specifically agrees that it has a duty to read this Agreement and the Security Documents and agrees that it is charged with notice and knowledge of the terms of this Agreement and the Security Documents; that it has in fact read this Agreement and is fully informed and has full notice and knowledge of the terms, conditions and effects of this Agreement; that it has been represented by independent legal counsel of its choice throughout the negotiations preceding its execution of this Agreement and the Security Documents; and has received the advice of its attorney in entering into this Agreement and the Security Documents; and that it recognizes that certain of the terms of this Agreement and the Security Documents result in one party assuming the liability inherent in some aspects of the transaction and relieving the other party of its responsibility for such liability. **EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT AND THE SECURITY DOCUMENTS ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS."**

(e) Each Grantor warrants and agrees that each of the waivers and consents set forth in this Agreement are made voluntarily and unconditionally after consultation with outside legal counsel and with full knowledge of their significance and consequences, with the understanding that events giving rise to any defense or right waived may diminish, destroy or otherwise adversely affect rights which such Grantor otherwise may have against the Borrower, any other Grantor, the Secured Parties or any other Person or against any collateral. If, notwithstanding the intent of the parties that the terms of this Agreement shall control in any and all circumstances, any such waivers or consents are determined to be

unenforceable under applicable law, such waivers and consents shall be effective to the maximum extent permitted by law.

Section 10.13 Set-Off. In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without notice to any Grantor, any such notice being expressly waived by each Grantor to the extent permitted by applicable law, upon any Secured Obligations becoming due and payable by any Grantor (whether at the stated maturity, by acceleration or otherwise), to apply to the payment of such Secured Obligations, by setoff or otherwise, any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, any Affiliate thereof or any of their respective branches or agencies to or for the credit or the account of such Grantor. Each Lender agrees promptly to notify the relevant Grantor and the Collateral Agent after any such application made by such Lender, provided that the failure to give such notice shall not affect the validity of such application.

Section 10.14 Releases.

(a) Release Upon Payment in Full. If Payment in Full has occurred, the Liens and security interests of the Collateral Agent in the Collateral granted hereby shall be automatically released and the Collateral Agent, at the written request and sole expense of the Borrower, will promptly deliver any documents necessary, or reasonably requested by a Loan Party, to evidence the release, reassignment and transfer of the Collateral to the Loan Parties.

(b) Further Assurances. If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor in a transaction permitted by the Credit Agreement and such Collateral shall no longer constitute or be required to be Collateral under the Loan Documents, then the Collateral Agent, at the request and sole expense of such Grantor, shall promptly execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral; provided that the Borrower shall have delivered to the Collateral Agent, at least five (5) Business Days prior to the date of the proposed release (or such other time period as the Collateral Agent may agree), a written request for release identifying the relevant Collateral, together with a certification by the Borrower stating (i) that such transaction is in compliance with this Agreement and the other Secured Agreements and (ii) no Collateral other than the Collateral required to be released is being released.

Section 10.15 Acceptance. Each Grantor hereby expressly waives notice of acceptance of this Agreement, acceptance on the part of the Collateral Agent and the other Secured Parties being conclusively presumed by their request for this Agreement and delivery of the same to the Collateral Agent.

[Signature pages follow.]

IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

BORROWER:

EOS ENERGY ENTERPRISES, INC.

By: /s/ Randall Gonzales
Name: Randall Gonzales
Title: Chief Financial Officer

[Signature Page to Guarantee and Collateral Agreement]

GUARANTORS AND OTHER GRANTORS:

EOS ENERGY ENTERPRISES INTERMEDIATE HOLDINGS, LLC

By: /s/ Randall Gonzales

Name: Randall Gonzales

Title: Chief Financial Officer

EOS ENERGY STORAGE LLC

By: /s/ Randall Gonzales

Name: Randall Gonzales

Title: Chief Financial Officer

EOS SERVICES LLC

By: /s/ Randall Gonzales

Name: Randall Gonzales

Title: Chief Financial Officer

EOS ENERGY TECHNOLOGY HOLDINGS, LLC

By: /s/ Carlos Restrepo

Name: Carlos Restrepo

Title: President

EOS INGENUITY LAB, LLC

By: /s/ Carlos Restrepo

Name: Carlos Restrepo

Title: President

EOS ENTERPRISE HOLDINGS, LLC

By: /s/ Carlos Restrepo

Name: Carlos Restrepo

Title: President

[Signature Page to Guarantee and Collateral Agreement]

Acknowledged and Agreed to as
of the date hereof by:

COLLATERAL AGENT:

ACP POST OAK CREDIT I LLC

By: /s/ Matthew E. Laterza

Name: Matthew E. Laterza

Title: Chief Operating Officer

[Signature Page to Guarantee and Collateral Agreement]

For release



Date August 1, 2022
Contacts Investors: ir@eose.com
Media: media@eose.com

Eos Energy Enterprises, Inc. Secures \$85 million Term Loan Credit Facility to Fund Growth

Company permitted to make request for additional \$15 million, subject to conditions

EDISON, N.J.— Eos Energy Enterprises, Inc. (NASDAQ: EOSE) (“Eos”), a leading provider of safe, scalable, efficient, and sustainable zinc-based energy storage systems, today announced it has closed an \$85 million senior secured term loan facility with Atlas Credit Partners (“ACP”).

“We are excited to partner with ACP on this transaction which increases our financial flexibility,” said Joe Mastrangelo, Chief Executive Officer of Eos. “This capital allows us to fast-track our manufacturing capacity expansion to accelerate the shift to clean energy and to deliver against our \$460 million orders backlog.”

The growth of the Company’s orders backlog, which now stands at 1.9 GWh, is being driven in part by the recognition from customers of the simplicity and flexibility of Eos’ energy storage systems that are made in the USA.

“It is an honor and privilege to partner with Eos,” said Drew Mallozzi, Managing Partner of ACP. “The Company has a proven technology with a strong management team and is building a capital efficient and scalable manufacturing model that ACP believes is poised to capture one of the largest secular growth opportunities that we have identified in the energy industry.”

After closing costs and other expenses, the funding will provide capital for the Company’s continued manufacturing capacity expansion, development of next generation energy storage systems and services, and for general corporate purposes. The financing consists of a four-year, non-amortizing term loan that bears interest at a variable rate of SOFR plus 8.5%. The Credit Agreement also permits the Company to make a one-time request for an additional commitment of up to \$15 million, subject to lender consent.

About Eos

Eos Energy Enterprises, Inc. is accelerating the shift to clean energy with positively ingenious solutions that transform how the world stores power. Our breakthrough Znyth™ aqueous zinc battery was designed to overcome the limitations of conventional lithium-ion technology. Safe, scalable, efficient, sustainable —

Eos. Positively ingenious.

Please consider the environment before printing.

and manufactured in the U.S. — it's the core of our innovative systems that today provide utility, industrial, and commercial customers with a proven, reliable energy storage alternative. Eos was founded in 2008 and is headquartered in Edison, New Jersey. For more information about Eos (NASDAQ: EOSE), visit eose.com.

About Atlas Credit Partners

Atlas Credit Partners is a Houston, Texas based investment firm focused on credit oriented capital solutions in partnership with management teams.

Forward-Looking Statements

This press release includes certain statements that may constitute "forward-looking statements" within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include, but are not limited to, statements regarding our anticipated use of proceeds from the senior secured term loan facility, statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions. The words "anticipate," "believe," "continue," "could," "estimate," "expect," "intends," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "would" and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Factors which may cause actual results to differ materially from current expectations include, but are not limited to: changes adversely affecting the business in which we are engaged; our ability to forecast trends accurately; our ability to generate cash, service indebtedness and incur additional indebtedness; our ability to develop efficient manufacturing processes to scale and to forecast related costs and efficiencies accurately; fluctuations in our revenue and operating results; competition from existing or new competitors; the failure to convert firm order backlog to revenue; risks associated with security breaches in our information technology systems; risks related to legal proceedings or claims; risks associated with changes in federal, state, or local laws; risks associated with potential costs of regulatory compliance; risks associated with changes to U.S. trade policies; risks resulting from the impact of global pandemics, including the novel coronavirus, Covid-19; and risks related to adverse changes in general economic conditions. The forward-looking statements contained in this press release are also subject to additional risks, uncertainties, and factors, including those more fully described in Eos's most recent filings with the Securities and Exchange Commission, including Eos's most recent Annual Report on Form 10-K and subsequent reports on Forms 10-Q and 8-K. Further information on potential risks that could affect actual results will be included in the subsequent periodic and current reports and other filings that Eos makes with the Securities and Exchange Commission from time to time. Moreover, Eos operates in a very competitive and rapidly changing environment, and new risks and uncertainties may emerge that could have an impact on the forward-looking statements contained in this press release. Forward-looking statements speak only as of the date they are made. Readers are cautioned not to put undue reliance on forward-looking statements, and, except as required by law, Eos assumes no obligation and does not intend to update or revise these forward-looking statements, whether as a result of new information, future events, or otherwise.

