

REFINITIV

# DELTA REPORT

## 10-Q

RFIL - R F INDUSTRIES LTD

10-Q - JANUARY 31, 2024 COMPARED TO 10-Q - JULY 31, 2023

The following comparison report has been automatically generated

TOTAL DELTAS	3911
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 CHANGES	220
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 DELETIONS	566
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 ADDITIONS	3125
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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Form 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended **July 31, 2023** **January 31, 2024**

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number: **000-13301**

**RF INDUSTRIES, LTD.**

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of incorporation or organization)

88-0168936

(I.R.S. Employer Identification No.)

**16868 Via Del Campo Court, Suite 200**

**San Diego, California**

(Address of principal executive offices)

92127

(Zip Code)

**(858) 549-6340**

(Registrant's telephone number, including area code)

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, \$0.01 par value per share

RFIL

NASDAQ Global Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files.)  
Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☐  
Non-accelerated filer ☒ Smaller reporting company ☒  
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. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act): Yes ☐ No ☒

The number of shares of the issuer's Common Stock, par value \$0.01 per share, outstanding as of September 14, 2023 March 18, 2024 was 10,289,891. 10,495,548.

Part I. FINANCIAL INFORMATION

Item 1: Financial Statements

RF INDUSTRIES, LTD. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(In thousands, except share and per share amounts)

	July 31, 2023 (Unaudited)		October 31, 2022 (Note 1)	
	January 31, 2024 (Unaudited)	October 31, 2023 (Note 1)		
<b>ASSETS</b>				
<b>CURRENT ASSETS</b>				
Cash and cash equivalents	\$ 4,063	4,488	\$ 4,532	4,897
Trade accounts receivable, net of allowance for doubtful accounts credit losses of \$224 \$265 and \$126, \$244, respectively	9,293	8,307	14,812	10,277

Inventories	20,204	17,971	21,054	18,730
Other current assets	1,280	2,139	5,849	2,136
<b>TOTAL CURRENT ASSETS</b>	<b>34,840</b>	<b>32,905</b>	<b>46,247</b>	<b>36,040</b>
Property and equipment:				
Equipment and tooling	4,764	4,811	4,497	4,796
Furniture and office equipment	5,491	5,759	3,447	5,631
	10,255	10,570	7,944	10,427
Less accumulated depreciation	5,287	5,714	4,771	5,503
<b>Total property and equipment, net</b>	<b>4,968</b>	<b>4,856</b>	<b>3,173</b>	<b>4,924</b>
Operating lease right of use <b>right-of-use</b> assets, net	11,961	15,315	13,480	15,689
Goodwill		8,085		8,085
Amortizable intangible assets, net	14,017	13,173	15,296	13,595
Non-amortizable intangible assets		1,174		1,174
Deferred tax assets	2,734	3,344	1,816	2,494
Other assets		277	295	277
<b>TOTAL ASSETS</b>	<b>\$ 78,056</b>	<b>79,129</b>	<b>\$ 89,566</b>	<b>82,278</b>

**Item 1: Financial Statements** (continued)

RF INDUSTRIES, LTD. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(In thousands, except share and per share amounts)

	July 31,	October 31,	January 31,	October 31,
	2023	2022	2024	2023
	(Unaudited)	(Note 1)	(Unaudited)	(Note 1)
<b><u>LIABILITIES AND STOCKHOLDERS' EQUITY</u></b>				
<b>CURRENT LIABILITIES</b>				
Accounts payable	\$ 2,702	\$ 5,652	\$ 2,466	\$ 3,201
Accrued expenses	4,507	8,814	4,595	4,572
Revolving credit facility	1,000	-		
Line of credit			500	1,000
Current portion of Term Loan	2,424	2,424	2,424	2,424
Current portion of operating lease liabilities	1,418	1,887	1,338	1,314
Income taxes payable	-	759		
<b>TOTAL CURRENT LIABILITIES</b>	<b>12,051</b>	<b>19,536</b>	<b>11,323</b>	<b>12,511</b>

Operating lease liabilities	14,276	15,025	19,034	19,284
Term Loan, net of current portion of debt issuance cost	11,325	13,136		
Term Loan, net of debt issuance cost			10,117	10,721
<b>TOTAL LIABILITIES</b>	<b>37,652</b>	<b>47,697</b>	<b>40,474</b>	<b>42,516</b>
<b>COMMITMENTS AND CONTINGENCIES</b>				
<b>STOCKHOLDERS' EQUITY</b>				
Common stock - authorized 20,000,000 shares of \$0.01 par value; 10,289,891 and 10,193,287 shares issued and outstanding at July 31, 2023 and October 31, 2022, respectively	103	102		
Common stock - authorized 20,000,000 shares of \$0.01 par value; 10,495,548 and 10,343,223 shares issued and outstanding at January 31, 2024 and October 31, 2023, respectively			105	104
Additional paid-in capital	25,878	25,118	26,341	26,087
Retained earnings	14,423	16,649	12,209	13,571
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>40,404</b>	<b>41,869</b>	<b>38,655</b>	<b>39,762</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 78,056</b>	<b>\$ 89,566</b>	<b>\$ 79,129</b>	<b>\$ 82,278</b>

See Notes to Unaudited Condensed Consolidated Financial Statements.

**Item 1: Financial Statements** (continued)

RF INDUSTRIES, LTD. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(UNAUDITED)  
(In thousands, except share and per share amounts)

	Three Months Ended July 31,		Nine Months Ended July 31,		Three Months Ended January 31,	
	2023	2022	2023	2022	2024	2023
Net sales	\$ 15,652	\$ 23,842	\$ 56,294	\$ 62,265	\$ 13,458	\$ 18,343
Cost of sales	11,828	16,594	41,263	44,853	10,155	13,257
Gross profit	3,824	7,248	15,031	17,412	3,303	5,086
Operating expenses:						
Engineering	690	791	2,535	2,101	769	961
Selling and general	5,144	5,369	15,186	13,838	4,619	5,294
Total operating expenses	5,834	6,160	17,721	15,939	5,388	6,255

Operating (loss) income	(2,010)	1,088	(2,690)	1,473		
Operating loss					(2,085)	(1,169)
Other expense	(117)	(177)	(342)	(280)	(108)	(153)
(Loss) income before (benefit) provision for income taxes	(2,127)	911	(3,032)	1,193		
(Benefit) provision for income taxes	(482)	140	(806)	196		
Loss before benefit for income taxes					(2,193)	(1,322)
Benefit from income taxes					(831)	(160)
Consolidated net (loss) income	<u>\$ (1,645)</u>	<u>\$ 771</u>	<u>\$ (2,226)</u>	<u>\$ 997</u>		
Consolidated net loss					<u>\$ (1,362)</u>	<u>\$ (1,162)</u>
(Loss) earnings per share:						
Loss earnings per share:						
Basic	<u>\$ (0.16)</u>	<u>\$ 0.08</u>	<u>\$ (0.22)</u>	<u>\$ 0.10</u>	<u>\$ (0.13)</u>	<u>\$ (0.11)</u>
Diluted	<u>\$ (0.16)</u>	<u>\$ 0.08</u>	<u>\$ (0.22)</u>	<u>\$ 0.10</u>	<u>\$ (0.13)</u>	<u>\$ (0.11)</u>
Weighted average shares outstanding:						
Basic	<u>10,290,265</u>	<u>10,127,244</u>	<u>10,267,652</u>	<u>10,100,767</u>	<u>10,410,580</u>	<u>10,222,540</u>
Diluted	<u>10,290,265</u>	<u>10,238,932</u>	<u>10,267,652</u>	<u>10,233,209</u>	<u>10,410,580</u>	<u>10,222,540</u>

See Notes to Unaudited Condensed Consolidated Financial Statements.

**Item 1: Financial Statements** (continued)

RF INDUSTRIES, LTD. AND SUBSIDIARIES  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(UNAUDITED)  
(In thousands, except share amounts)

	For the Three Months Ended July 31, 2023					
	Common Stock		Additional Paid-in Capital		Retained Earnings	Total
	Shares	Amount				
Balance, May 1, 2023	10,290,377	\$ 103	\$ 25,634	\$ 16,068	\$	41,805
Stock-based compensation expense	-	-	246	-		246

Tax withholding related to vesting of restricted stock	(486 )	-	(2 )	-	(2 )
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Consolidated net loss	-	-	-	(1,645 )	(1,645 )
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Balance, July 31, 2023	10,289,891	\$	103	\$	25,878	\$	14,423	\$	40,404
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**For the Nine Months Ended July 31, 2023**

	Common Stock		Additional			Total
	Shares	Amount	Paid-in Capital	Retained Earnings		
Balance, November 1, 2022	10,193,287	\$ 102	\$ 25,118	\$ 16,649	\$ 41,869	
Exercise of stock options	45,000	-	85	-	85	
Stock-based compensation expense	-	-	687	-	687	
Issuance of restricted stock	54,092	1	-	-	1	
Tax withholding related to vesting of restricted stock	(2,488 )	-	(12 )	-	(12 )	
Consolidated net loss	-	-	-	(2,226 )	(2,226 )	

Balance, July 31, 2023	10,289,891	\$	103	\$	25,878	\$	14,423	\$	40,404
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**For the Three Months Ended January 31, 2024**

	Additional					
	Common Stock		Paid-in Capital	Retained Earnings	Total	
	Shares	Amount				
Balance, November 1, 2023	10,343,223	\$ 104	\$ 26,087	\$ 13,571	\$ 39,762	
Stock-based compensation expense	-	-	255	-	255	
Issuance of restricted stock	152,325	1	(1 )	-	-	
Consolidated net loss	-	-	-	(1,362 )	(1,362 )	
Balance, January 31, 2024	10,495,548	\$ 105	\$ 26,341	\$ 12,209	\$ 38,655	

**For the Three Months Ended January 31, 2023**

Additional

	Common Stock		Paid-in Capital	Retained Earnings	Total
	Shares	Amount			
Balance, November 1, 2022	10,193,287	\$ 102	\$ 25,118	\$ 16,649	\$ 41,869
Exercise of stock options	45,000	-	85	-	85
Stock-based compensation expense	-	-	212	-	212
Issuance of restricted stock	54,092	1	-	-	1
Tax withholding related to vesting of restricted stock	(1,312 )	-	(7 )	-	(7 )
Consolidated net loss	-	-	-	(1,162 )	(1,162 )
Balance, January 31, 2023	10,291,067	\$ 103	\$ 25,408	\$ 15,487	\$ 40,998

**Item 1: Financial Statements** (continued)

RF INDUSTRIES, LTD. AND SUBSIDIARIES

**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**

(UNAUDITED)

(In thousands, except share amounts)

**For the Three Months ended July 31, 2022**

	Common Stock		Paid-In Capital	Retained Earnings	Total
	Shares	Amount			
Balance, May 1, 2022	10,118,685	\$ 102	\$ 24,648	\$ 15,427	\$ 40,177
Exercise of stock options	37,927	-	93	-	93
Stock-based compensation expense	-	-	191	-	191
Tax withholding related to vesting of restricted stock	(421 )	-	(3 )	-	(3 )
Consolidated net income	-	-	-	771	771
Balance, July 31, 2022	10,156,191	\$ 102	\$ 24,929	\$ 16,198	\$ 41,229

**For the Nine Months ended July 31, 2022**

	Common Stock		Paid-In Capital	Retained Earnings	Total
	Shares	Amount			
Balance, November 1, 2021	10,058,571	\$ 101	\$ 24,301	\$ 15,201	\$ 39,603



Exercise of stock options	60,854	1	149	-	150
Stock-based compensation expense	-	-	498	-	498
Issuance of restricted stock	39,666	-	-	-	-
Tax withholding related to vesting of restricted stock	(2,900 )	-	(19 )	-	(19 )
Consolidated net income	-	-	-	997	997
Balance, July 31, 2022	10,156,191	\$ 102	\$ 24,929	\$ 16,198	\$ 41,229

See Notes to Unaudited Condensed Consolidated Financial Statements.

**Item 1: Financial Statements** (continued)

RF INDUSTRIES, LTD. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(UNAUDITED)  
(In thousands)

	Nine Months Ended July 31,		Three Months Ended January 31,	
	2023	2022	2024	2023
OPERATING ACTIVITIES:				
Consolidated net (loss) income	\$ (2,226)	\$ 997		
Consolidated net loss			\$ (1,362)	\$ (1,162)
Adjustments to reconcile consolidated net (loss) income to net cash provided by (used in) operating activities:				
Adjustments to reconcile consolidated net loss to net cash provided by operating activities:				
Bad debt expense	82	13	4	64
Depreciation and amortization	1,795	1,155	633	541
Stock-based compensation expense	687	498	255	212
Amortization of debt issuance cost	7	4	2	2
Tax payments related to shares cancelled for vested restricted stock awards	(12)	(19)	-	(7)
Deferred income taxes	(918)	126	(851)	(136)
Changes in operating assets and liabilities:				
Trade accounts receivable	5,438	229	1,967	843

Inventories	850	(3,980)	759	117
Other current assets	4,570	(1,006)	(3)	2,665
Right of use assets	300	78		
Other long-term assets	18	(224)		
<b>Right-of-use assets</b>			<b>148</b>	<b>383</b>
Accounts payable	(2,950)	1,464	(734)	(803)
Accrued expenses	(4,307)	1,261	22	(3,246)
Income taxes payable	(760)	-	-	1,133
<b>Other current liabilities</b>			<b>-</b>	<b>283</b>
<b>Net cash provided by operating activities</b>	<b>2,574</b>	<b>596</b>	<b>840</b>	<b>889</b>
<b>INVESTING ACTIVITIES:</b>				
Capital expenditures	(2,311)	(430)	(143)	(1,130)
Purchase of Microlab, net of cash acquired (\$33)	-	(24,442)		
<b>Net cash used in investing activities</b>	<b>(2,311)</b>	<b>(24,872)</b>	<b>(143)</b>	<b>(1,130)</b>
<b>FINANCING ACTIVITIES:</b>				
Proceeds from exercise of stock options	86	149	-	85
Debt issuance cost	-	(32)		
Revolving credit facility	1,000	-		
<b>Line of credit payments</b>			<b>(500)</b>	<b>-</b>
Term Loan payments	(1,818)	(808)	(606)	(606)
Term Loan	-	17,000		
<b>Net cash (used in) provided by financing activities</b>	<b>(732)</b>	<b>16,309</b>		
<b>Net cash used in financing activities</b>			<b>(1,106)</b>	<b>(521)</b>
<b>Net decrease in cash and cash equivalents</b>	<b>(469)</b>	<b>(7,967)</b>	<b>(409)</b>	<b>(762)</b>
Cash and cash equivalents, beginning of period	4,532	13,053	4,897	4,532
Cash and cash equivalents, end of period	<u>\$ 4,063</u>	<u>\$ 5,086</u>	<u>\$ 4,488</u>	<u>\$ 3,770</u>
Supplemental cash flow information – income taxes paid	<u>\$ 19</u>	<u>\$ 223</u>	<u>\$ (12)</u>	<u>\$ -</u>

See Notes to Unaudited Condensed Consolidated Financial Statements.

RF INDUSTRIES, LTD. AND SUBSIDIARIES  
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

**Note 1 – Unaudited interim condensed consolidated financial statements**

Our accompanying unaudited condensed consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and with the instructions to Form 10-Q. Accordingly, they do not include all of the information and footnotes required by GAAP for

complete financial statements. In the opinion of management, all adjustments, which are normal and recurring, have been included for a fair statement of the financial position. Information included in the condensed consolidated balance sheet as of **October 31, 2022** **October 31, 2023** has been derived from, and certain terms used herein are defined in, the audited consolidated financial statements of RF Industries, Ltd. as of **October 31, 2022** **October 31, 2023** included in our Annual Report on Form 10-K ("Form 10-K") for the year ended **October 31, 2022** **October 31, 2023** that was previously filed with the Securities and Exchange Commission ("SEC"). Operating results for the **nine** **three** months ended **July 31, 2023** **January 31, 2024** are not necessarily indicative of the results that may be expected for the year ended **October 31, 2023** **October 31, 2024**. The unaudited condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and footnotes thereto included in our Form 10-K.

Our accompanying unaudited condensed consolidated financial statements have been prepared assuming that the Company will continue as a going concern, which contemplates continuity of operations, realization of assets, and satisfaction of liabilities in the ordinary course of business. The propriety of using the going-concern basis is dependent upon, among other things, the achievement of future profitable operations, the ability to generate sufficient cash from operations and potential other funding sources, in addition to cash on-hand along with the current Credit Facility (as defined below), to meet its obligations as they become due.

Although we have incurred operating losses during the **nine** **three** months ended **July 31, 2023** **January 31, 2024**, we have implemented certain cost-cutting measures to reduce our operating expenses and to help drive positive operating cash flow and increase liquidity. Our plan includes consolidating facilities and recognizing the related operating efficiencies and synergies in our production operations. The Company intends to continue to pursue additional continuous improvement and cost reduction measures, as well as organic growth in revenue and profitability.

Management believes that these actions will enable **As of January 31, 2024**, the Company **was in compliance with the covenants contained in the Loan Agreement, dated as of February 25, 2022 (as amended, the "Loan Agreement"), between the Company and Bank of America, N.A. (the "Bank"), under which the Bank had provided the Company with a \$17 million term loan (the "Term Loan") and a \$3 million revolving credit facility (the "Revolving Credit Facility" and together with the Term Loan, the "Credit Facility"). In January 2024, given the economic conditions and the associated impact on earnings, the Company entered into Amendment No.2 to continue the Loan Agreement to modify the financial covenants in order to avoid a potential covenant violation during the fiscal quarter ending January 31, 2024. In February 2024, the Company entered into Amendment No. 3 to the Loan Agreement to further modify certain financial covenants in order to avoid potential violations. The amendments effect changes to certain provisions and covenants in the Loan Agreement as a going concern through at least 12 months noted in Note 12.**

**On March 15, 2024, the Company entered into the EBC Credit Agreement (as defined below), pursuant to which proceeds from initial drawings under the date these unaudited condensed consolidated financial statements are available EBC Credit Facilities (as defined below) were used to be issued. repay in full outstanding obligations under the Loan Agreement. The Loan Agreement was terminated upon entry into the EBC Credit Agreement.**

### ***Principles of consolidation***

The accompanying unaudited condensed consolidated financial statements for the periods ended on or before January 31, 2022 include the accounts of RF Industries, Ltd. and our four wholly-owned subsidiaries: Cables Unlimited, Inc. ("Cables Unlimited"), Rel-Tech Electronics, Inc. ("Rel-Tech"), C Enterprises, Inc. ("C Enterprises"), and Schroff Technologies International, Inc. ("Schrofftech"). The unaudited condensed consolidated financial statements for the three and nine months ended July 31, 2023 include the accounts of RF Industries, Ltd. and our five wholly-owned subsidiaries: Cables Unlimited, Inc. ("Cables Unlimited"), Rel-Tech Electronics, Inc. ("Rel-Tech"), C Enterprises, Inc. ("C Enterprises"), Schroff Technologies International, Inc. **Ltd.** ("Schrofftech"), and Microlab/FXR LLC ("Microlab"). Microlab is a **wholly-owned subsidiary that subsidiaries of** RF Industries, Ltd. acquired on March 1, 2022. For periods on or before January 31, 2022, references

herein to the “Company”, “we”, “us”, or “our” shall refer to RF Industries, Ltd., Cables Unlimited, Rel-Tech, C Enterprises, and Schrofftech and for all periods after January 31, 2022, reference to the “Company”, “we”, “us”, or “our” shall refer to RF Industries, Ltd., Cables Unlimited, Rel-Tech, C Enterprises, Schrofftech and Microlab. All intercompany balances and transactions have been eliminated in consolidation.

#### **Fair value measurement**

We measure at fair value certain financial assets and liabilities. Fair value is defined as the price that would be received to sell an asset or transfer a liability in an orderly transaction between market participants at the measurement date. GAAP specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect our market assumptions. These two types of inputs have created the following fair-value hierarchy:

Level 1— Quoted prices for identical instruments in active markets;

Level 2— Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets; and

Level 3— Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

As of **July 31, 2023** **January 31, 2024** and **October 31, 2022** **October 31, 2023**, the carrying amounts reflected in the accompanying unaudited condensed consolidated balance sheets for cash and cash equivalents, accounts receivable, and accounts payable approximated their carrying value due to their short-term nature.

#### **Recent accounting standards**

##### **Recently issued accounting pronouncements not yet adopted:**

In June 2016, the Financial Accounting Standards Board (“FASB”) issued ASU **Accounting Standard Update (ASU) 2016-13, Financial Instruments—Credit Losses**, which requires a financial asset (or a group of financial assets) measured at amortized cost basis to be presented at the net amount expected to be collected. The allowance for credit losses is a valuation account that is deducted from the amortized cost basis of the financial asset(s) to present the net carrying value at the amount expected to be collected on the financial asset. The guidance is effective for fiscal years beginning after December 15, 2019. In November 2019, the FASB issued ASU 2019-10, **Financial Instruments—Credit Losses (Topic 326)**, which pushes back the effective date for public business entities that are smaller reporting companies, as defined by the SEC, to fiscal years beginning after December 15, 2022. Early **The guidance was effective for the Company beginning on November 1, 2023 and the adoption of this standard had no material impact on the Company’s condensed consolidated financial statements or related disclosures.**

##### **Recently issued accounting pronouncements not yet adopted:**

In November 2023, the FASB issued ASU 2023-07, **Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures**, which expands annual and interim disclosure requirements for reportable segments, primarily through enhanced disclosures about significant segment expenses. ASU 2023-07 **is effective for our annual periods beginning January 1, 2024, and for interim periods beginning January 1, 2025, with early adoption permitted.** We are currently

evaluating the impact potential effect that the adoption of this new updated standard will have on our unaudited condensed consolidated financial statements. statement disclosures.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures* to expand the disclosure requirements for income taxes, specifically related to the rate reconciliation and income taxes paid. ASU 2023-09 is effective for our annual periods beginning January 1, 2025, with early adoption permitted. We are currently evaluating the potential effect that the updated standard will have on our financial statement disclosures.

## Note 2— Business acquisition

On March 1, 2022, the Company completed its purchase (the "Purchase Transaction") of 100% of the issued and outstanding membership interests of Microlab, a New Jersey limited liability company, from Wireless Telecom Group, Inc, a New Jersey corporation (the "Seller") pursuant to the Membership Interest Purchase Agreement (the "Purchase Agreement") dated December 16, 2021, with the Seller. The consideration for the Purchase Transaction was \$24,250,000, subject to certain post-closing adjustments as set forth in the Purchase Agreement. The purchase price was paid in cash at the closing. The Company funded \$17 million of the cash purchase price from the funds obtained under the Term Loan (as defined in Note 13) and paid the remaining amount of the cash purchase price with cash on hand. During the three months ended July 31, 2022, we paid an additional \$225,000 in purchase consideration as a result of certain post-closing adjustments relating to net working capital.

The acquisition was accounted for with the acquisition method of accounting. The acquired assets and assumed liabilities have been recorded at their estimated fair values. We determined the estimated fair values with the assistance of appraisals or valuations performed by an independent third-party specialist. Microlab designs and manufactures high-performance radio frequency and microwave products enabling signal distribution and deployment of in-building DAS (distributed antenna systems), wireless base stations and small cell networks. The Microlab acquisition further diversifies and strengthens the portfolio of products that we offer to the market and allows us to provide a more complete solution to our customers in key market segments. All manufacturing operations are performed at Microlab's facilities in New Jersey.

The acquisition closed on March 1, 2022, accordingly, subsequent to March 1, 2022, Microlab's financial results have been included in the results of the RF Connector and Cable Assembly ("RF Connector") segment as well as in the condensed consolidated statements of operations. The Company expects the goodwill recorded to be deductible for income tax purposes. Acquired amortizable intangible assets are being amortized on a straight-line basis over their estimated useful lives ranging from one to 15 years. Total costs, as of October 31, 2022, related to the acquisition of Microlab were approximately \$1.3 million and have been expensed as incurred and categorized in selling and general expenses.

The following table summarizes the components of the purchase price at fair values at March 1, 2022:

Cash consideration paid at closing	\$	24,250,000
Post-closing adjustment		225,000
Total consideration transferred	\$	24,475,000

The following table summarizes the allocation of the preliminary purchase price at fair value at March 1, 2022:

Current assets	\$	6,620,000
Property and equipment		198,000
Intangible assets		13,840,000
Goodwill		5,617,000
Noninterest-bearing liabilities		(1,800,000 )
Net assets acquired at fair value	\$	24,475,000

The following unaudited pro forma financial information presents the combined operating results of the Company and Microlab as if the acquisition had occurred as of the beginning of the earliest period presented. Pro forma data is subject to

various assumptions and estimates and is presented for informational purposes only. This pro forma data does not purport to represent or be indicative of the consolidated operating results that would have been reported had the transaction been completed as described herein, and the data should not be taken as indicative of future consolidated operating results.

Unaudited pro forma financial information assuming the acquisition of Microlab as of November 1, 2021 is presented in the following table:

	Three Months Ended July 31,		Nine Months Ended July 31,	
	2023	2022	2023	2022
Revenue	\$ 15,652	\$ 23,842	\$ 56,294	\$ 68,369
Net (loss) income	(1,645 )	771	(2,226 )	1,510
(Loss) Earnings per share				
Basic	\$ (0.16 )	\$ 0.08	\$ (0.22 )	\$ 0.15
Diluted	\$ (0.16 )	\$ 0.08	\$ (0.22 )	\$ 0.15
Basic	10,290,265	10,127,244	10,267,652	10,100,767
Diluted	10,290,265	10,238,932	10,267,652	10,233,209

### Note 3 – Concentrations of credit risk

Financial instruments that potentially subject us to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. We maintain our cash and cash equivalents with high-credit quality financial institutions. At July 31, 2023 January 31, 2024, we had cash and cash equivalent balances in excess of federally insured limits in the amount of approximately \$2.9 million \$3.7 million.

Sales from each customer that were 10% or greater of net sales were as follows:

	Three Months Ended July 31,		Nine Months Ended July 31,	
	2023	2022	2023	2022
Wireless provider	*	16 %	13 %	23 %
Distributor A	12 %	*	*	*

  

	Three Months Ended January 31,	
	2024	2023
Wireless provider	-	15 %

For the three months ended July 31, 2023 January 31, 2024, a distributor customer no customers accounted for 12% 10% or more of net sales and 12% of total net accounts receivable balance, and a sales. For the three months ended January 31, 2023, one wireless carrier customer accounted for less than 10% of net sales. For the nine months ended July 31, 2023, the same wireless carrier customer accounted for 13% 15% of net sales and 4% of total net accounts receivable balance; for the three months ended July 31, 2022, it accounted for 16% of net sales and 19% of total net accounts receivable balance; for the nine months ended July 31, 2022, it accounted for 23% of net sales and 19% of total net accounts receivable balance. We also have another For the three months ended January 31, 2024, we had two distributor customer customers whose sales were less than 10% of our net sales but for which we had an 11% 10% each of total net accounts receivable balance for both the three and nine months ended July 31, 2023; customers; for the three and nine months ended July 31,

2022 January 31, 2023, it both customers accounted for 5% less than 10% of net sales and 7% each of total net account receivable balance. Although these customers have been significant customers of the Company, the written agreements with these customers do not have any minimum purchase obligations and these customers could stop buying our products at any time and for any reason. A reduction, delay or cancellation of orders from these customers or the loss of these customers could significantly reduce our future revenues and profits.

#### Note 43 – Inventories and major vendors

Inventories, consisting of materials, labor and manufacturing overhead, are stated at the lower of cost or net realizable value. Cost has been determined using the weighted average cost method. Inventories consist of the following (in thousands):

	July 31, 2023	October 31, 2022
Raw materials and supplies	\$ 14,107	\$ 15,238
Work in process	510	439
Finished goods	5,587	5,377
Totals	\$ 20,204	\$ 21,054
	January 31, 2024	October 31, 2023
Raw materials and supplies	\$ 12,456	\$ 12,957
Work in process	435	439
Finished goods	5,080	5,334
Totals	\$ 17,971	\$ 18,730

For the three months ended July 31, 2023 January 31, 2024, a no single vendor accounted for 10% or more of inventory purchases. For the three months ended July 31, 2022 January 31, 2023, the same vendor two vendors accounted for 17% 12% and 10% of inventory purchases. For the nine months ended July 31, 2023, this vendor accounted for 17% of inventory purchases and it accounted for 28% of inventory purchases for the nine months ended July 31, 2022. We have arrangements with this vendor to purchase products based on purchase orders that we periodically issue.

#### Note 54 – Other current assets

Other current assets consist of the following (in thousands):

	July 31, 2023	October 31, 2022
Employee retention credit ("ERC")	\$ 176	\$ 1,636
Prepaid taxes	30	-

Prepaid expense	665	972
Reimbursement for tenant improvements	-	2,810
Other	409	431

Totals	\$ 1,280	\$ 5,849
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Pursuant to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), eligible employers are able to claim an ERC, which is a refundable tax credit against certain employment taxes. If the employer's employment tax deposits are not sufficient to cover the credit, the employer may get an advance payment from the Internal Revenue Service (IRS). The period assessed for eligibility of the ERC is on a calendar year basis. As of July 31, 2023, the remaining portion of the ERC that we have not yet received is included as other receivables in other current assets.

	January 31, 2024	October 31, 2023
Prepaid taxes	630	642
Prepaid expense	1,104	953
Deposits	259	374
Other	146	167
Totals	\$ 2,139	\$ 2,136

#### Note 65 – Accrued expenses and other current liabilities

Accrued expenses consist of the following (in thousands):

	July 31, 2023	October 31, 2022	January 31, 2024	October 31, 2023
Wages payable	\$ 2,163	\$ 3,634	\$ 2,172	\$ 2,461
Accrued receipts	1,050	2,136	1,224	1,131
Other accrued expenses	1,294	1,847	1,199	980
Tenant improvements payable	-	1,197		
Totals	\$ 4,507	\$ 8,814	\$ 4,595	\$ 4,572

Accrued receipts represent purchased inventory for which invoices have not been received.

#### Note 76 – Loss per share

Basic loss per share is computed by dividing net loss by the weighted average number of common shares outstanding during the period. Diluted earnings per share is computed by dividing net income by the weighted average number of common shares outstanding increased by the effects of assuming that other potentially dilutive securities (such as stock options) outstanding during the period had been exercised and the treasury stock method had been applied. During the three and nine months ended July 31, 2023 **January 31, 2024**, we reported a net loss, and in periods with a net loss, the basic



loss per share equals the diluted loss per share as all common stock equivalents are excluded from the per share calculation due to their anti-dilutive effect. Potentially issuable securities that are out-of-the-money totaled 814,154 1,068,022 and 471,464 749,488 shares for the three months ended July 31, 2023 January 31, 2024 and 2022, respectively, and 750,967 and 482,889 shares for the nine months ended July 31, 2023 and 2022, 2023, respectively, and were excluded from the calculation of diluted per share amounts because of their anti-dilutive effect.

The following table summarizes the computation of basic and diluted weighted average shares outstanding:

	Three Months Ended July 31,		Nine Months Ended July 31,		Three Months Ended January 31,	
	2023	2022	2023	2022	2024	2023
Weighted average shares outstanding for basic earnings per share	10,290,265	10,127,244	10,267,652	10,100,767	10,410,580	10,222,540
Add effects of potentially dilutive securities-assumed exercise of stock options	-	111,688	-	132,442	-	-
Weighted average shares outstanding for diluted earnings per share	10,290,265	10,238,932	10,267,652	10,233,209	10,410,580	10,222,540

#### Note 87 – Stock-based compensation and equity transactions

On January 10, 2022 January 11, 2023, we granted a total of 39,666 54,092 shares of restricted stock and 106,001 108,181 incentive stock options to one manager and three officers. officers, respectively. The shares of restricted stock and incentive stock options vest over four years as follows: (i) one-quarter of the restricted shares and options vested on January 10, 2023; January 10, 2024 and (ii) the remaining restricted shares and options shall vest in 12 equal quarterly installments over the next three years. Also on January 11, 2023, we granted another manager 50,000 incentive stock options. As of October 31, 2023, the 50,000 incentive stock options granted to the manager were cancelled and forfeited as the manager was no longer employed. All incentive stock options expire 10 years from the date of grant.

On January 10, 2023 August 29, 2023, we granted one employee 10,000 incentive stock options. These options vested with respect to 2,500 shares on the date of grant, and the remaining shares vests in equal installments thereafter on each of the next three anniversaries of August 29, 2023. The options expire 10 years from the date of grant.

On November 1, 2023, we granted 15,202 shares of restricted stock to one officer in lieu of cash compensation. The shares of restricted stock vest over one year as follows: (i) one-quarter of the restricted shares on January 31, 2024 and (ii) the remaining restricted shares shall vest in three equal quarterly installments.

On January 11, 2024, we granted a total of 54,092 110,099 shares of restricted stock and 108,181 220,001 incentive stock options to one manager and three officers. officers, respectively. The shares of restricted stock and incentive stock options vest over four years as follows: (i) one-quarter of the restricted shares and options shall vest on January 10, 2024; January 11, 2025 and (ii) the remaining restricted shares and options shall vest in 12 equal quarterly installments over

the next three years. Also on January 10, 2023, we granted another manager 50,000 incentive stock options. These options shall vest in five equal installments on each of the next five anniversaries of January 10, 2023, the grant date. All incentive stock options expire 10 years from the date of grant.

No other shares or options were granted to company **Company** employees during the three and nine months ended **July 31, 2023** **January 31, 2024** and **2022**, **2023**.

The weighted average fair value of employee stock options that were granted during the **nine three** months ended **July 31, 2023** **January 31, 2024** and **2022**, **2023** was estimated to be **\$3.21** **\$1.76** and **\$3.77**, **\$3.21**, respectively, per share, using the Black-Scholes option pricing model with the following assumptions:

	Nine Months Ended July 31,		2024	2023
	2023	2022		
Risk-free interest rate	3.76 %	1.47 %	4.00 %	3.76 %
Dividend yield	0.00 %	0.00 %	0.00 %	0.00 %
Expected life of the option (in years)	7.01	7.00	7.01	7.00
Volatility factor	54.30 %	53.36 %	53.32 %	54.30 %

Expected volatilities are based on historical volatility of our stock price and other factors. We used the historical method to calculate the expected life of the **2023** **2024** and **2022**, **2023** option grants. The expected life represents the period of time that options granted are expected to be outstanding. The risk-free rate is based on the U.S. Treasury rate with a maturity date corresponding to the options' expected life. The dividend yield is based upon the historical dividend yield.

#### Company stock option plans

Descriptions of our stock option plans are included in Note 9 to our audited financial statements included in our Annual Report on Form 10-K for the year ended **October 31, 2022** **October 31, 2023**. A summary of the status of the options granted under our stock option plans as of **July 31, 2023** **January 31, 2024** and the changes in options outstanding during the **nine three** months then ended is presented in the table that follows:

	Shares	Weighted Average Exercise Price
Outstanding at November 1, 2022	691,005	\$ 5.87
Options granted	158,181	\$ 5.46
Options exercised	(45,000 )	\$ 1.90
Options cancelled	-	\$ -
Options outstanding at July 31, 2023	804,186	\$ 6.01
Options exercisable at July 31, 2023	471,466	\$ 6.34
Options vested and expected to vest at July 31, 2023	798,697	\$ 6.02

Outstanding at November 1, 2023	754,186	\$	6.04
Options granted	220,001	\$	3.01
Options exercised	-	\$	-
Options cancelled	-	\$	-
Options outstanding at January 31, 2024	974,187	\$	5.24
Options exercisable at January 31, 2024	540,259	\$	6.14
Options vested and expected to vest at January 31, 2024	968,720	\$	5.25

Weighted average remaining contractual life of options outstanding as of July 31, 2023 January 31, 2024: 6.68 7.20 years

Weighted average remaining contractual life of options exercisable as of July 31, 2023 January 31, 2024: 5.65 5.85 years

Weighted average remaining contractual life of options vested and expected to vest as of July 31, 2023 January 31, 2024: 6.69 7.20 years

Aggregate intrinsic value of options outstanding at July 31, 2023 January 31, 2024: \$124,280 \$82,980

Aggregate intrinsic value of options exercisable at July 31, 2023 January 31, 2024: \$80,120 \$51,260

Aggregate intrinsic value of options vested and expected to vest at July 31, 2023 January 31, 2024: \$122,285 \$82,242

As of July 31, 2023 January 31, 2024, \$866,591 \$929,464 and \$528,229 \$913,226 of expenses with respect to nonvested stock options and restricted shares, respectively, has yet to be recognized but is expected to be recognized over a weighted average period of 2.74 3.0 and 1.30 1.3 years, respectively.

#### Stock option expense

During the three months ended July 31, 2023 January 31, 2024 and 2022, 2023, stock-based compensation expense totaled \$246,000 \$255,000 and \$191,000, \$212,000, respectively, and was classified in selling and general expense. During the nine months ended July 31, 2023 and 2022, stock-based compensation expense totaled \$687,000 and \$498,000, respectively, and was classified in selling and general expenses.

#### Note 98 – Segment information

We aggregate operating divisions into two reporting segments that have similar economic characteristics primarily in the following areas: (1) the nature of the product and services; (2) the nature of the production process; (3) the type or class of customer for their products and services; (4) the methods used to distribute their products or services; and (5) if applicable, the nature of the regulatory environment. Based upon this evaluation, as of July 31, 2023 January 31, 2024, we had two reportable segments – RF Connector and Cable Assembly (“RF Connector”) segment and Custom Cabling Manufacturing and Assembly (“Custom Cabling”) segment.

On August 1, 2023, C Enterprises moved and transitioned its physical operations into the RF Connector office in San Diego, CA. Given the synergies in consolidating both the operating divisions into one building, C Enterprises has now been included in the RF Connector segment. Further, since the acquisition of C Enterprises in 2019, the customer base for the

division has shifted more towards distribution as opposed to direct to end customer which is more aligned with the RF Connector segment. The segment change of including C Enterprise as part of the RF Connector segment was made retroactive to the beginning of our fiscal year starting November 1, 2022 and reclassified for fiscal 2022 for comparative purposes. Prior to the transition, C Enterprises was included in the Custom Cabling segment.

The RF Connector segment consists of ~~two~~three divisions and the Custom Cabling segment consists of ~~four~~three divisions. The six divisions that met the quantitative thresholds for segment reporting are the RF Connector and Cable Assembly division ("RF Connector division"), Cables Unlimited, Rel-Tech, C Enterprises, Schrofftech, and Microlab. While each segment has similar products and services, there was little overlapping of these services to their customer base. The biggest difference in segments is in the channels of sales: sales of ~~or~~ product and services for the RF Connector segment were primarily through the distribution channel, while the Custom Cabling segment sales were through a combination of distribution and direct to the end user. ~~customer.~~

Management identifies segments based on strategic business units that are, in turn, based along market lines. These strategic business units offer products and services to different markets in accordance with their customer base and product usage. For segment reporting purposes, the RF Connector, ~~C Enterprises~~ and Microlab divisions constitutes the RF Connector segment, and the Cables Unlimited, Rel-Tech, C Enterprises, and Schrofftech divisions constitute the Custom Cabling segment.

We ~~As reviewed by our chief operating decision maker, we~~ evaluate the performance of each segment based on income or loss before income taxes. We charge depreciation and amortization directly to each division within the segment. Accounts receivable, inventory, property and equipment, right of use ~~right-of-use~~ assets, goodwill and intangible assets are the only assets identified by segment. Except as discussed above, the accounting policies for segment reporting are the same for the Company as a whole.

All of our operations are conducted in the United States; however, we derive a portion of our revenue from export sales. We attribute sales to geographic areas based on the location of the customers. The following table presents the sales by geographic area for the three and nine months ended ~~July 31, 2023~~ January 31, 2024 and ~~2022~~ 2023 (in thousands):

	Three Months Ended July 31,		Nine Months Ended July 31,		Three Months Ended January 31,	
	2023	2022	2023	2022	2024	2023
United States	\$ 13,955	\$ 19,925	\$ 50,967	\$ 56,292	\$ 12,060	\$ 16,104
Foreign Countries:						
Canada	703	2,218	1,875	3,179	882	584
Italy	300	1,214	1,692	1,387	31	1,098
Mexico	-	29	3	106	3	1
All Other	694	456	1,757	1,301	482	556
	<u>1,697</u>	<u>3,917</u>	<u>5,327</u>	<u>5,973</u>	<u>1,398</u>	<u>2,239</u>
Totals	<u>\$ 15,652</u>	<u>\$ 23,842</u>	<u>\$ 56,294</u>	<u>\$ 62,265</u>	<u>\$ 13,458</u>	<u>\$ 18,343</u>

Net sales, ~~income~~ (loss) income before ~~provision~~ (benefit) provision for income taxes and other related segment information for the three months ended ~~July 31, 2023~~ January 31, 2024 and ~~2022~~ 2023 are as follows (in thousands):

	RF Connector  and Cable Assembly		Custom Cabling Manufacturing and Assembly		Corporate	Total		
2023								
Net sales	\$	7,799	\$	7,853	\$ -	\$ 15,652		
(Loss) income before benefit for income taxes		(1,103 )		(713 )	(311 )	(2,127 )		
Depreciation and amortization		488		143	-	631		
Total assets		49,175		20,528	8,353	78,056		
2022								
Net sales	\$	10,495	\$	13,347	\$ -	\$ 23,842		
Income (loss) before provision for income taxes		988		600	(677 )	911		
Depreciation and amortization		390		147	-	537		
Total assets		48,351		26,553	12,291	87,195		
Net sales, (loss) income before (benefit) provision for income taxes and other related segment information for the nine months ended July 31, 2023 and 2022 are as follows (in thousands):								
	RF Connector  and Cable Assembly	Custom Cabling Manufacturing and Assembly	Corporate	Total	RF Connector  and Cable Assembly	Custom Cabling Manufacturing and Assembly	Corporate	Total
2023								
2024								
Net sales	\$ 25,507	\$ 30,787	\$ -	\$ 56,294	\$ 8,807	\$ 4,651	\$ -	\$ 13,458
(Loss) income before benefit from income taxes	(1,162)	(823)	(1,047)	(3,032)				
Loss before benefit for income taxes					(1,729)	(261)	(203)	(2,193)
Depreciation and amortization	1,359	436	-	1,795	513	120	-	633
Total assets	49,175	20,528	8,353	78,056	52,214	16,667	10,248	79,129
2022								

2023														
Net sales	\$	21,928	\$	40,337	\$	-	\$ 62,265	\$	11,720	\$	6,623	\$	-	\$ 18,343
Income														
(loss) before														
benefit from		1,621		1,721		(2,149)		1,193						
income														
taxes														
Income														
(loss) before														
provision for								115		(790)		(647)	(1,322)	
income														
taxes														
Depreciation														
and		720		435		-	1,155	415		126		-	541	
amortization														
Total assets		48,351		26,553		12,291	87,195	56,678		19,261		9,201	85,140	

#### Note 109 – Income taxes

We use an estimated annual effective tax rate, which is based on expected annual income, statutory tax rates and tax planning opportunities available in the various jurisdictions in which we operate, to determine its quarterly provision (benefit) provision for income taxes. Certain significant or unusual items are separately recognized in the quarter in which they occur and can be a source of variability in the effective tax rates from quarter to quarter.

We recorded income tax (benefits) provisions/benefits of (\$482,000)\$831,000 and \$140,000\$160,000 for the three months ended July 31, 2023 January 31, 2024 and 2022, 2023, respectively. The effective tax rate was 22.7%37.6% for the three months ended July 31, 2023 January 31, 2024, compared to 15.4%12.3% for the three months ended July 31, 2022. For the nine months ended July 31, 2023 and 2022, we recorded income tax (benefits) provisions of (\$806,000) and \$196,000, respectively. The effective tax rate was 26.6% for the nine months ended July 31, 2023, compared to 16.4% for the nine months ended July 31, 2022 January 31, 2023. The change in the effective tax rate for the nine months ended July 31, 2023 compared is primarily due to the nine months ended July 31, 2022 was primarily driven by stock-based compensation windfall/shortfalls and the Company's full year forecasted financial loss.

We had \$168,000\$245,000 and \$121,000\$178,000 of unrecognized tax benefits, as of July 31, 2023 January 31, 2024 and October 31, 2022 October 31, 2023, respectively. The unrecognized tax benefits, if recognized, would result in a net tax benefit of \$164,000\$226,000 as of July 31, 2023 January 31, 2024.

The Company assesses all positive and negative evidence in determining if, based on the weight of such evidence, a valuation allowance is required to be recorded against the deferred tax assets as of January 31, 2024. The Company has concluded that the positive evidence of indefinite lived nature of certain tax attributes on hand, and cumulative pre-tax book income on a rolling twelve-quarter basis outweigh the negative evidence of recent losses. Accordingly, the Company has not provided for additional valuation allowance as of January 31, 2024. The realization of the deferred tax assets is contingent upon the Company's ability to generate sufficient future taxable income. In the event that negative evidence outweighs positive evidence in future periods, the Company may need to record additional valuation allowance, which could have a material impact on our financial position.

## Note 11 10 – Intangible assets

Intangible assets consist of the following as of January 31, 2024 and 2023 (in thousands):

	July 31, 2023	October 31, 2022	January 31, 2024	October 31, 2023
Amortizable intangible assets:				
Non-compete agreement (estimated life 5 years)	\$ 423	\$ 423	\$ 423	\$ 423
Accumulated amortization	(367)	(334)	(389)	(378)
	<u>56</u>	<u>89</u>	<u>34</u>	<u>45</u>
Customer relationships (estimated lives 7 - 15 years)	6,058	6,058	6,058	6,058
Accumulated amortization	(3,364)	(3,074)	(3,558)	(3,461)
	<u>2,694</u>	<u>2,984</u>	<u>2,500</u>	<u>2,597</u>
Backlog (estimated life 1 - 2 years)	327	327	327	327
Accumulated amortization	(327)	(313)	(327)	(327)
	<u>-</u>	<u>14</u>	<u>-</u>	<u>-</u>
Patents (estimated life 10 - 14 years)	368	368	368	368
Accumulated amortization	(167)	(143)	(184)	(176)
	<u>201</u>	<u>225</u>	<u>184</u>	<u>192</u>
Tradenname (estimated life 15 years)	1,700	1,700	1,700	1,700
Accumulated amortization	(161)	(76)	(217)	(189)
	<u>1,539</u>	<u>1,624</u>	<u>1,483</u>	<u>1,511</u>
Proprietary Technology (estimated life 10 years)	11,100	11,100	11,100	11,100
Accumulated amortization	(1,573)	(740)	(2,128)	(1,850)
	<u>9,527</u>	<u>10,360</u>	<u>8,972</u>	<u>9,250</u>
Totals	<u>\$ 14,017</u>	<u>\$ 15,296</u>	<u>\$ 13,173</u>	<u>\$ 13,595</u>
Non-amortizable intangible assets:				
Trademarks	<u>\$ 1,174</u>	<u>\$ 1,174</u>	<u>\$ 1,174</u>	<u>\$ 1,174</u>

Amortization expense for the nine three months ended July 31, 2023 January 31, 2024 and the year ended October 31, 2022 October 31, 2023 was \$1,279,000 \$422,000 and \$1,282,000, \$1,701,000, respectively. As of July 31, 2023 January 31, 2024, the weighted-average amortization period for the amortizable intangible assets is 8.78 8.05 years.

## Note 12 11 – Commitments

We adopted ASU 2016-02 on November 1, 2019, and elected the practical expedient modified retrospective method whereby the lease qualification and classification was carried over from the accounting for leases under ASC 840. The lease contracts for the corporate headquarters, RF Connector division manufacturing facilities, Cables Unlimited, Rel-Tech, and C Enterprises commenced prior to the effective date of November 1, 2019, and were determined to be operating leases. All

other new contracts have been assessed for the existence of a lease and for the proper classification into operating leases. The rate implicit in the leases was undeterminable and, therefore, the discount rate used in all lease contracts is our incremental borrowing rate.

We have operating leases for corporate offices, manufacturing facilities, and certain storage units. Our leases have remaining lease terms of one year to three years, some of which include options to extend the leases for up to **five** **ten** years. A portion of our operating leases are leased from K&K Unlimited, a company controlled by Darren Clark, the former owner and current President of Cables Unlimited, to whom we make rent payments totaling \$16,000 per month.

We also have other operating leases for certain equipment. The components of our facilities and equipment operating lease expenses for the periods ended July 31, 2023 **ending January 31, 2024** and **2022** **2023** were as follows (in thousands):

	Three Months Ended July 31,		Nine Months Ended July 31,	
	2023	2022	2023	2022
Operating lease cost	\$ 663	\$ 477	\$ 2,129	\$ 1,048

  

	Three Months Ended January 31,	
	2024	2023
Operating lease cost	\$ 737	\$ 762
Short-term lease cost	-	-

Other information related to leases was as follows (in thousands):

	July 31, 2023	October 31, 2022
Supplemental Cash Flows Information		
ROU assets obtained in exchange for lease obligations:		
Operating leases	\$ 281	\$ 13,352
Weighted Average Remaining Lease Term		
Operating leases (in months)	110.12	113.72
Weighted Average Discount Rate		
Operating leases	3.77 %	3.75 %

  

	January 31, 2024	October 31, 2023
Supplemental Cash Flows Information		
ROU assets obtained in exchange for lease obligations:		
Operating leases	\$ -	\$ 6,479
Weighted Average Remaining Lease Term		
Operating leases (in months)	112.00	114.26



# Weighted Average Discount Rate

Operating leases	6.97 %	6.96 %
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Future minimum lease payments under non-cancellable leases as of **July 31, 2023** **January 31, 2024** were as follows:

Year ending October 31,	Operating Leases	Operating Leases
2023 (excluding nine months ended July 31, 2023)	\$ 551	
2024	2,036	
2024 (excluding three months ended January 31, 2024)		\$ 1,814
2025	1,796	2,827
2026	1,835	2,877
2027	1,874	2,929
2028		2,997
Thereafter	10,619	14,878
Total future minimum lease payments	18,711	28,322
Less imputed interest	(3,017)	(7,950)
Total	\$ 15,694	\$ 20,372

Reported as of July 31, 2023	Operating Leases	
Reported as of January 31, 2024		Operating Leases
Other current liabilities	\$ 1,418	\$ 1,338
Operating lease liabilities	14,276	19,034
Total	\$ 15,694	\$ 20,372

As of **July 31, 2023** **January 31, 2024**, operating lease ROU right-of-use asset was **\$12.0 million** **\$15.3 million** and operating lease liability totaled \$15.7 million, \$20.4 million, of which **\$1.4 million** **\$1.3 million** is classified as current. There were no finance leases as of **July 31, 2023** **January 31, 2024**.

On July 11, 2023 The Schrofftech facilities, consisting of one building for a total of 7,000 square feet, is leased by RF Industries, Ltd. under a lease that was renewed effective February 1, 2024, we entered into a Third Amendment to Lease (the "Amendment") with Sorrento West Properties (the "Lessor"), amending that certain AIRCRE Standard Industrial/Commercial Single-Tenant Lease - Net, dated as of December 28, 2021, between the Company and Lessor, under which we lease from Lessor industrial and commercial space located at 16868 Via Del Campo Court, San Diego, California (the "Premises") **for one year expiring January 31, 2025**. The Amendment provides for an increase in tenant improvements by an additional \$1,000,000 (the "Additional TIA") and requires funding of **aggregate monthly rental payment under** the Additional TIA beginning October 1, 2023, provided certain conditions are met as further set forth in the Amendment. The primary purpose of the Additional TIA **new lease currently** is to cover the costs and expenses for the construction, fit-out and furnishing of the adjacent vacant office spaces located at the Premises, which will be subject to the Managed Client Agreement with RGN-MCA San Diego II, LLC (the "Managed Client Agreement") and managed services arrangement, as previously disclosed. In consideration for the Additional TIA, the Amendment provides for an increase in monthly base rent, effective commencing as of October 1, 2023. The conditions set forth in the Amendment include a finalized build-out budget. The budget for the construction, fit-out and furnishings of the vacant office for RGN-MCA San Diego II, LLC has not been finalized, and we have

a right to terminate the Managed Client Agreement should the budget exceed an amount agreed upon. Therefore, we have not reflected this Amendment in our financials as of July 31, 2023, or included it in our disclosure tables. \$4,607 per month.

#### Note 13 12 – Term Loan and Line of credit

In February 2022, we entered into a loan agreement (the “Loan Agreement”) providing for a revolving line of credit (the “Revolving Credit Facility”) in the amount of \$3.0 million and a \$17.0 million term loan (the “Term Loan”, and together with the Revolving Credit Facility, the “Credit Facility”) with Bank of America, N.A. (the “Bank”). Amounts outstanding under the Revolving Credit Facility shall bear interest at a rate of 2.0% plus the Bloomberg Short-Term Bank Yield Index Rate. The maturity date of the Revolving Credit Facility is March 1, 2024. The Company drew down the entire amount of the Term Loan on March 1, 2022. The primary interest rate for Term Loan is 3.76% per annum. The maturity date of the Term Loan is March 1, 2027.

Borrowings under the Credit Facility are secured by a security interest in certain assets of the Company and are subject to certain loan covenants. The Credit Facility requires the maintenance of certain financial covenants, including: (i) consolidated debt to EBITDA ratio not to exceed 3.00 to 1.00; 1.00 (the “Debt Test”); (ii) consolidated fixed charge coverage ratio of at least 1.25 to 1.00; 1.00 (the “FCCR Test”); and (iii) consolidated minimum EBITDA of at least \$600,000 for the discrete quarter ended January 31, 2022. In addition, the Credit Facility contains customary affirmative and negative covenants.

As of July 31, 2023, we were not in compliance with the consolidated debt to EBITDA ratio nor were we in compliance with the consolidated fixed charge coverage ratio covenants (the “Defaults”). On September 12, 2023, we entered into Amendment No. 1 and Waiver to the Loan Agreement (the “Loan Amendment” (“Loan Amendment No. 1”) with the Bank, which, among other matters, provided for a temporary one-time waiver of our failure to comply with (i) the Defaults, Debt Test for the period ended July 31, 2023 and (ii) the FCCR Test for the period ended July 31, 2023. Loan Amendment No. 1 also waived testing for compliance with the consolidated debt to EBITDA ratio Debt Test and the consolidated fixed charge coverage ratio minimum covenants FCCR Test for the quarterly periods ending October 31, 2023, January 31, 2024, April 30, 2024 and July 31, 2024. Further, pursuant to the Loan Amendment No. 1, we are were required to maintain (i) (a) until September 21, 2023, minimum liquidity (week-end cash balance plus availability from the Revolving Credit Facility) of \$4.0 million, and (b) from September 22, 2023 and thereafter, liquidity equal to the greater of (1) \$4.0 million or (2) 80% of the liquidity that had been forecast for this date at the fourth week of the forecast; forecast and (ii) minimum EBITDA of (\$400,000), \$500,000, \$1.0 million, and \$1.0 million for the quarters ending October 31, 2023, January 31, 2024, April 30, 2024, and July 31, 2024, respectively.

On January 26, 2024, we entered into Amendment No. 2 to the Loan Agreement (“Loan Amendment No. 2”) with the Bank, which, among other matters, eliminated the requirement to maintain minimum EBITDA of \$500,000 for the quarter ending January 31, 2024. Under Loan Amendment No. 2, the line of credit available to the Company under the Revolving Credit Facility was lowered from \$3.0 million to \$500,000. Further, Loan Amendment No. 2 required that we maintain from September 22, 2023 and thereafter, liquidity of at least \$2.0 million, rather than the greater of \$4.0 million or 80% of the forecast liquidity as was required under Loan Amendment No. 1. Under Loan Amendment No. 2, the Company was required to pay an additional fee equal to 1% of the collective outstanding principal balances of the Revolving Credit Facility and Term Loan if the Credit Facility was not repaid in full on or before March 1, 2024. This additional fee, if applicable, would be due on March 2, 2024. Further, Loan Amendment No. 2 required that the Company make an additional principal payment of \$1.0 million on the Term Loan on March 1, 2024, in addition to the existing monthly payments due on the Term Loan. In connection

with Loan Amendment No. 2, we paid the Bank a \$500,000 paydown on the Revolving Credit Facility, thereby reducing the outstanding balance from \$1.0 million to \$500,000.

On February 29, 2024, we entered into Amendment No. 3 to the Loan Agreement ("Loan Amendment No. 3") with the Bank, which, among other matters, defers the requirement that the Company make an additional principal payment of \$1.0 million on the Term Loan, from March 1, 2024, as was required under Loan Amendment No. 2, to April 1, 2024. Further, Loan Amendment No. 3 reduces the additional fee the Company is required to pay the Bank on March 2, 2024 from 1% of the collective outstanding principal balances of the Revolving Credit Facility and Term Loan as of March 1, 2024 as required under Loan Amendment No. 2, to 0.50% of the collective outstanding principal balances of the Revolving Credit Facility and Term Loan as of March 1, 2024. Additionally, Loan Amendment No. 3 requires the Company to pay the Bank a fee equal to 0.50% of the collective outstanding principal balances of the Revolving Credit Facility and Term Loan as of March 1, 2024, if the Credit Facility is not repaid in full on or before April 2, 2024 (the "April 2024 Fee"). The April 2024 Fee, if applicable, will be due on April 2, 2024. Under Loan Amendment No. 3, the Company must continue to maintain liquidity of at least \$2.0 million and pay the current remaining outstanding balance of \$500,000 on the Revolving Credit Facility by March 1, 2024, as required under Loan Amendment No. 2. As of July 31, 2023 January 31, 2024, we have borrowed \$13,768,000 \$12,556,000 under the Term Loan and \$1.0 million \$500,000 from the Revolving Credit Facility.

The foregoing summary description of On March 15, 2024, we entered into the EBC Credit Agreement (as defined below) and used proceeds from the initial drawings under the EBC Credit Facilities (as defined below) to repay in full outstanding obligations under the Loan Amendment is qualified Agreement and to pay fees, premiums, costs and expenses, including fees payable in its entirety by reference to connection with the complete text of EBC Credit Agreement. The Loan Agreement was terminated upon entry into the Loan Amendment, a copy of which is included as Exhibit 10.3 and is incorporated herein by reference.

EBC Credit Agreement.

#### Note 14 13 – Cash dividend and declared dividends

We did not pay any dividends during the three or nine months ended July 31, 2023 January 31, 2024, nor did we pay any dividends during the three or nine months ended July 31, 2022 January 31, 2023.

#### Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations

*This report contains forward-looking statements. These statements relate to future events or our future financial performance. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "except," "plan," "anticipate," "believe," "estimate," "predict," "potential" or "continue," the negative of such terms or other comparable terminology. These statements are only predictions. Actual events or results may differ materially.*

*Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Moreover, neither the Company, nor any other person, assumes responsibility for the accuracy and completeness of the forward-looking statements. We are under no obligation to update any of the forward-looking statements after the filing of this Quarterly Report on Form 10-Q to conform such statements to actual results or to changes in its expectations.*

*The following discussion should be read in conjunction with our unaudited condensed consolidated financial statements and the related notes and other financial information appearing elsewhere in this Form 10-Q. Readers are also urged to carefully review and consider the various disclosures made by the Company which attempt to advise interested parties of the factors which affect our business, including without limitation the disclosures made under the*

caption "Management's Discussion and Analysis of Financial Condition and Results of Operations," under the caption "Risk Factors," and the audited consolidated financial statements and related notes included in our Annual Report filed on Form 10-K for the year ended **October 31, 2022** **October 31, 2023** and other reports and filings made with the Securities and Exchange Commission.

#### Critical Accounting Policies

Our unaudited condensed consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The preparation of these unaudited condensed consolidated financial statements requires us to make significant estimates and judgments that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosure of contingent assets and liabilities. We evaluate our estimates, including those related to bad debts, inventory reserves, earn-out liabilities, and contingencies on an ongoing basis. We base our estimates on historical experience and on various other assumptions that are believed to be appropriate under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

#### Inventories

Inventories are stated at the lower of cost or net realizable value, with cost determined using the weighted average cost method of accounting. Certain items in inventory may be considered obsolete or excess and, as such, we periodically review our inventories for excess and slow-moving **slow moving** items and make provisions as necessary to properly reflect inventory value. Because inventories have, during the past few years, represented up to one-fourth of our total assets, any reduction in the value of our inventories would require us to take write-offs that would affect our net worth and future earnings.

#### Allowance for Doubtful Accounts **Credit Losses**

Our accounts receivable arise primarily from sales on credit to customers. We record **establish** an allowance for doubtful **credit losses** to present the net amount of accounts receivable expected to be collected. The allowance is determined by using the loss-rate method, which requires an estimation of loss rates based upon our assessment **historical loss experience** adjusted for factors that are relevant to determining the expected collectability of various factors. We consider accounts receivable. Some of these factors include macroeconomic conditions that correlate with historical loss experience, **delinquency trends**, aging behavior of receivables and credit and liquidity quality indicators for industry groups, customer classes or individual customers. During the age of **three months ended January 31, 2024**, we considered the accounts receivable balance, credit quality of our customers, current and expected future economic and market conditions and other factors **concluded** that may affect a customer's ability **no material adjustment to pay**. **Credit Losses was required as of January 31, 2024.**

#### Long-Lived Assets Including Goodwill

We assess property, plant and equipment and intangible assets, which are considered definite-lived assets, for impairment. Definite-lived assets are reviewed when there is evidence that events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. We measure recoverability of these assets by comparing the carrying amounts to the future undiscounted cash flows the assets are expected to generate. If property and equipment and intangible assets are considered to be impaired, the impairment to be recognized equals the amount by which the carrying value of the asset exceeds its fair market value.

We amortize our intangible assets with definite useful lives over their estimated useful lives and review these assets for impairment.

We test our goodwill and trademarks and indefinite-lived assets for impairment at least annually or more frequently if events or changes in circumstances indicate these assets may be impaired. These events or circumstances require significant judgment and could include a significant change in the business climate, legal factors, operating performance indicators, competition and sale or disposition of all or a portion of a division. This analysis requires significant judgments, including estimation of future cash flows, which is dependent on internal forecasts, estimation of the long-term rate of growth for our business, estimation of the useful life over which cash flows will occur, and determination of our weighted average cost of capital.

As of July 31, 2023, we performed an impairment test analysis for Schrofftech. As noted above, we test our goodwill, trademarks, and indefinite-lived intangible assets for impairment at least annually, which we have traditionally done in the fourth quarter, or on an interim basis when events or changes in circumstances suggest these assets may be impaired. Impairment is measured as the excess of the carrying value of the goodwill or indefinite-lived intangible asset over its fair value.

Impairment may result from a number of factors, including performance deterioration, negative cash flows from operations and/or changes in anticipated future cash flows, changes in business plans, adverse economic or market conditions, or other factors beyond our control. The amount of any impairment must be expensed as a charge to operations. Schrofftech's three and nine-months results ended July 31, 2023 triggered an impairment analysis. Schrofftech was acquired on November 4, 2019 for a total purchase price of \$5.3 million, consisting of cash consideration of \$4.0 million and \$1.3 million in earn-out, of which none was earned. As of July 31, 2023, Schrofftech has a carrying value of \$3.2 million, of which includes \$1.1 million in goodwill, \$0.5 million in non-amortizable intangible assets and \$1.6 million in net amortizable intangible assets. The analysis performed included a blend of the income approach (discounted cash flow method) and market approach (guideline public company method) to reach a fair value of equity in excess of the fair value to the carrying amount.

The analysis performed in blending the income approach and the market approach incorporates several significant judgments and assumptions about projected revenue growth, future operating margins and discount rates. There are inherent uncertainties related to these assumptions and our judgment in applying them to the impairment analysis. Changes in certain events or circumstances could result in changes to our estimated fair values, and may result in future write-downs to the carrying values of these assets. Impairment charges could adversely affect our financial results, financial ratios and could limit our ability to obtain financing in the future.

#### *Income Taxes*

We record a tax provision (benefit) for the anticipated tax consequences of the reported results of operations. Income taxes are accounted for under the asset and liability method, under which deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial reporting and tax bases of assets and liabilities, and for operating losses and tax credit carryforwards. Deferred tax assets and liabilities are measured using the currently enacted tax rates as of the date of the unaudited condensed consolidated financial statements that apply to taxable income in effect for the years in which those tax assets are expected to be realized or settled. We record a valuation allowance to reduce deferred tax assets to the amount that is believed more likely than not to be realized.

The calculation of the tax provision involves significant judgment in estimating the impact of uncertainties in the application of GAAP and complex tax laws. Resolution of these uncertainties in a manner inconsistent with management's expectations could have a material impact on our financial condition and operating results.

## Stock-based Compensation

We use the Black-Scholes model to value the stock option grants. This valuation is affected by our stock price as well as assumptions regarding a number of inputs which involve significant judgments and estimates. These inputs include the expected term of employee stock options, the expected volatility of the stock price, the risk-free interest rate and expected dividends.

## Overview

RF Industries, Ltd. (together with subsidiaries, the “Company,” “we”, “us”, or “our”) is a national manufacturer and marketer of interconnect products and systems, including high-performance components such as RF connectors and adapters, dividers, directional couplers and filters, coaxial cables, data cables, wire harnesses, fiber optic cables, custom cabling, energy-efficient cooling systems and integrated small cell enclosures. Through our manufacturing and production facilities, we provide a wide selection of interconnect products and solutions primarily to telecommunications carriers and equipment manufacturers, wireless and network infrastructure carriers and manufacturers and to various original equipment manufacturers (“OEMs”) in several market segments. We also design, engineer, manufacture and sell energy-efficient cooling systems and integrated small cell solutions and related components.

We operate through two reporting segments: (i) the RF Connector and Cable Assembly (“RF Connector”) segment, and (ii) the Custom Cabling Manufacturing and Assembly (“Custom Cabling”) segment. The RF Connector segment primarily designs, manufactures, markets and distributes a broad range of RF connector, adapter, coupler, divider, and cable products, including coaxial passives and cable assemblies that are used in telecommunications and information technology, OEM markets and other end markets. The Custom Cabling segment designs, manufactures, markets and distributes custom copper and fiber cable assemblies, complex hybrid fiber optic and power solution cables, electromechanical wiring harnesses wiring harnesses for a broad range of applications in a diverse set of end markets, energy-efficient cooling systems for wireless base stations and remote equipment shelters and custom designed, pole-ready 4G and 5G small cell integrated enclosures.

For the **nine three** months ended **July 31, 2023** **January 31, 2024**, revenues from the Custom Cabling segment were generated from the sale of fiber optics cable, copper cabling, custom patch cord assemblies, and wiring harnesses, which collectively accounted for **55%** **35%** of the Company's total sales. Revenues from the RF Connector segment were generated from the sales of RF connector **Connector** products and cable assemblies and accounted for **45%** **65%** of total sales for the **nine three** months ended **July 31, 2023** **January 31, 2024**. The RF Connector segment mostly sells standardized products regularly used by customers and, therefore, has a more stable revenue stream. On the other hand, the Custom Cabling segment mostly designs, manufactures, and sells customized cabling and wireless-related equipment under larger purchase orders. Accordingly, the Custom Cabling segment is more dependent upon larger orders and its revenues can therefore be more volatile than the revenues of the RF Connector segment.

Our corporate headquarters are located at 16868 Via Del Campo Court, Suite 200, San Diego, CA 92127. Our phone number is (858) 549-6340.

## Liquidity and Capital Resources

Historically, we have been able to fund our liquidity and other capital requirements from funds we generated from operations. However, we have incurred **an** operating losses **loss** during the three and nine months ended **July 31, 2023** **January 31, 2024**. During the period, we have implemented certain cost-cutting measures to reduce our operating expenses and to help drive positive operating cash flow and increase liquidity. Our plan includes consolidating facilities and

recognizing the related operating efficiencies and synergies in our production operations. We intend to continue to pursue additional continuous improvement and cost reduction measures, as well as organic growth in revenue and profitability.

As of ~~July 31, 2023~~ January 31, 2024, we had a total of ~~\$4.1 million~~ \$4.5 million of cash and cash equivalents compared to a total of ~~\$4.5 million~~ \$4.9 million of cash and cash equivalents as of ~~October 31, 2022~~ October 31, 2023. As of ~~July 31, 2023~~ January 31, 2024, we had working capital of ~~\$22.8 million~~ \$21.6 million and a current ratio of approximately 2.9:1 with current assets of ~~\$34.8 million~~ \$32.9 million and current liabilities of ~~\$12.1 million~~ \$11.3 million. We believe that the amount of cash remaining plus the amount available to us under the Revolving Credit Facility, will be sufficient to fund our anticipated liquidity needs.

As of ~~July 31, 2023~~ January 31, 2024, we had ~~\$17.2 million~~ \$16.2 million of backlog, compared to ~~\$27.8 million~~ \$16.1 million as of ~~October 31, 2022~~ October 31, 2023. The decrease in backlog relates primarily to shipments made against orders for our hybrid fiber cables. Since purchase orders are submitted from customers based on the timing of their requirements, our ability to predict orders in future periods or trends in future periods is limited. Furthermore, purchase orders may be subject to cancellation from customers, although we have not historically experienced material cancellations of purchase orders.

In the ~~nine~~ three months ended ~~July 31, 2023~~ January 31, 2024, we generated ~~\$2.6 million~~ \$0.8 million of cash in our operating activities. This net inflow of cash is primarily related to an increase in other current assets of \$4.6 million, the collections of accounts receivable of ~~\$5.4 million~~ \$2.0 million, \$1.8 million \$0.8 million from inventories, \$0.6 million from depreciation and amortization, and \$0.7 million \$0.3 million from stock-based compensation expense. ~~expense and \$0.1 million from right of use assets.~~ The cash usage was primarily due to accrued expenses of \$4.3 million and our ~~the~~ net loss of \$2.2 million. The cash generated by other current assets represents \$4.6 million ~~\$1.4 million~~, which primarily consists ~~deferred income taxes~~ of \$2.8 million \$0.9 million and payments on accounts payable of reimbursement for tenant improvements and \$1.5 million received from ERC. ~~\$0.7 million.~~

During the ~~nine~~ three months ended ~~July 31, 2023~~ January 31, 2024, we also spent ~~\$2.3 million~~ \$0.1 million on capital expenditures, and \$1.8 million ~~\$0.6 million~~ in Term Loan payments. The cash used in operating activities ~~payments~~ and the amounts spent ~~\$0.5 million payments~~ on capital expenditures were partially offset by \$0.1 million of proceeds received from the exercise of stock options. As noted above, we also drew \$1.0 million from the Revolving Credit Facility as of July 31, 2023, primarily to fund leasehold improvements to the new corporate headquarters. ~~Facility.~~

Our goal to expand and grow our business both organically and through acquisitions may require material additional capital equipment. In the past, we have purchased all additional equipment, or financed some of our equipment and furnishings requirements through capital leases. At this time, we have not identified any additional capital equipment purchases that would require significant additional leasing or capital expenditures during the next 12 months. We also believe that based on our current financial condition, our current backlog of unfulfilled orders, and our anticipated future operations, we would be able to finance our expansion, if necessary.

From time to time, we may undertake acquisitions of other companies or product lines in order to diversify our product and solutions offerings and customer base. Conversely, we may undertake the disposition of a division or product line due to changes in our business strategy or market conditions. Acquisitions may require the outlay of cash, which may reduce our liquidity and capital resources while dispositions may increase our cash position, liquidity and capital resources. Since our goal is to continue to expand our operations and accelerate our growth through future acquisitions, we may use some of our current capital resources to fund acquisitions we may undertake in the future.



## Results of Operations

Three Months Ended July 31, 2023 January 31, 2024 vs. Three Months Ended July 31, 2022 January 31, 2023

Net sales for the three months ended July 31, 2023 January 31, 2024 (the "fiscal 2023 2024 quarter") decreased by 34% 26.2%, or \$8.1 million \$4.8 million, to \$15.7 million \$13.5 million as compared to the three months ended July 31, 2022 January 31, 2023 (the "fiscal 2022 2023 quarter"). Net sales for the fiscal 2023 2024 quarter at the Custom Cabling segment decreased by \$5.4 million \$1.9 million, or 40.6% 28.8%, to \$7.9 million \$4.7 million, compared to \$13.3 million \$6.6 million in the fiscal 2022 2023 quarter. The decrease was primarily the result of a \$2.5 million decrease in sales of hybrid fiber cables to wireless carrier customers and a decrease in sales of small cell products and systems to customers in the Tier-1 wireless ecosystem. at Cables Unlimited. Net sales for the fiscal 2023 2024 quarter at the RF Connector segment decreased by \$2.7 million \$2.9 million, or 25.7% 24.8%, to \$7.8 million \$8.8 million as compared to \$10.5 million \$11.7 million in the fiscal 2022 2023 quarter, primarily due to a decrease in sales related to lower levels of inventory being kept on hand at our distributor customers based on seasonality and the lower carrier capital expenditure environment, and fewer carrier projects involving approved RF components.

Gross profit for the fiscal 2023 2024 quarter decreased by \$3.4 million \$1.8 million to \$3.8 million \$3.3 million, and gross margins decreased to 24.4% 24.5% of sales compared to 30.4% 27.7% of sales in the fiscal 2022 2023 quarter. The decreases in gross profit and gross margins were primarily related to the overall decrease in sales.

Engineering expenses decreased by \$0.1 million to \$0.7 million in the fiscal 2023 quarter compared \$0.2 million to \$0.8 million in the fiscal 2022 2024 quarter compared to \$1.0 million in the fiscal 2023 quarter. The decrease was the result of headcount reduction and other cost savings initiatives. Engineering expenses represent costs incurred relating to the ongoing research and development of current and new products.

Selling and general expenses decreased by \$0.3 million \$0.7 million to \$5.1 million (32.9% \$4.6 million (34.3% of sales) compared to \$5.4 million (22.5% \$5.3 million (28.9% of sales) in the third first quarter last year primarily due to a decrease in variable compensation related to commissions and bonuses as a result of the lower sales. sales along with cost savings relating to reduced office and IT. We also incurred a one-time charge of \$194,000 (related \$0.1 million relating to consulting spend and inventory appraisal in the move of our C Enterprises and Microlab divisions, and including system implementation charges and severance) compared to acquisition-related expenses and a one-time charge of \$114,000 (including professional fees, system implementation charges and severance). fiscal 2024 quarter.

For the fiscal 2023 2024 quarter, the Custom Cabling segment had pretax loss of \$0.7 million \$0.3 million and the RF Connector segment had a pretax loss of \$1.1 million \$1.7 million, as compared to \$0.6 million income \$0.8 million loss and \$1 million \$0.1 million income, respectively, for the comparable quarter last year. The pretax loss at the Custom Cabling segment was due to the decrease in sales of hybrid fiber cables to wireless carrier customers and a decrease in sales of small cell products and systems to customers in the Tier-1 wireless ecosystem. The decrease in the pretax net income at the RF Connector segment was primarily due to the decrease in Microlab sales related to carrier projects involving approved RF components.

For fiscal 2023 and 2022 quarters, we recorded income tax (benefit) provision of (\$482,000) and \$140,000, respectively. The effective tax rate was 22.7% for the fiscal 2023 quarter, compared to 15.4% for the fiscal 2022 quarter. The change in the effective tax rate from the fiscal 2022 quarter to fiscal 2023 quarter was primarily driven by the increased benefit from research and development credits and the Company's full year forecasted financial loss.

For the fiscal 2023 quarter, net loss was \$1.6 million and fully diluted loss per share was \$0.16, compared to a net income of \$0.8 million and fully diluted earnings per share of \$0.08 for the fiscal 2022 quarter. For the fiscal 2023 quarter, the diluted weighted average shares outstanding was 10,290,265 as compared to 10,238,932 for the fiscal 2022 quarter.

Nine Months Ended July 31, 2023 vs. Nine Months Ended July 31, 2022



Net sales for the nine months ended July 31, 2023 (the "fiscal 2023 nine-month period") of \$56.3 million decreased by 9.6%, or \$6.0 million, compared to the nine months ended July 31, 2022 (the "fiscal 2022 nine-month period"). The decrease in net sales is attributable to the Custom Cabling segment, which decreased by \$9.5 million, or 23.6%, to \$30.8 million compared to \$40.3 million in the fiscal 2022 nine-month period, primarily related to wireless carrier network deployment slowdowns across the industry in 2023 impacting both our hybrid fiber sales and our small cell and direct air cooling products. Net sales for the fiscal 2023 nine-month period at the RF Connector segment increased by \$3.6 million, or 16.4%, to \$25.5 million compared to \$21.9 million in the fiscal 2022 nine-month period. The increase was primarily the result of the Microlab acquisition on March 1, 2022.

Gross profit for the fiscal 2023 nine-month period decreased by \$2.4 million to \$15.0 million and gross margins decreased to 26.7% of sales from 28.0% of sales in the fiscal 2022 nine-month period. The decreases in gross profit and gross margins were primarily related to the overall decrease in sales.

Engineering expenses increased by \$0.4 million to \$2.5 million for the fiscal 2023 nine-month period compared to \$2.1 million in the fiscal 2022 nine-month period. The increase was primarily due to additional engineering expenses during the fiscal 2023 nine-month period related to the engineering efforts associated with our integrated systems products and three full quarters of Microlab. Engineering expenses represent costs incurred relating to the ongoing research and development of new products.

Selling and general expenses increased by \$1.4 million to \$15.2 million (27.0% of sales) compared to \$13.8 million (22.2% of sales) in the nine-month period last year. Microlab, which was acquired on March 1, 2022, accounted for \$3.6 million of the selling and general expenses, as compared to \$2.0 million for the same period last fiscal year. The increase at Microlab was offset by decreases in variable compensation related to commissions and bonus as a result of the lower sales overall. We also incurred one-time charges totaling \$0.8 million related to an additional rent expense of \$444,000 (of which \$387,000 was non-cash) related to lease accounting, \$213,000 in facility move expenses, severance of \$75,000 and \$45,000 in ERP system implementations in the fiscal 2023 nine-month period compared to acquisition related expenses and other one-time charges (including attorney fees, due diligence and broker fees) which accounted for \$1.6 million for the fiscal 2022 nine-month period.

For the fiscal 2023 nine-month period, we recorded a pretax loss for the Custom Cabling segment of \$0.8 million and a pretax loss for the RF Connector segment of \$1.2 million, as compared to \$1.7 million and \$1.6 million of income, respectively, for the comparable nine-month period last year. The pretax loss at the Custom Cabling segment was primarily due to the decrease in sales of hybrid fiber cables to our wireless carrier customers and a decrease in sales of small cell products and systems to customers in the Tier-1 wireless ecosystem. **customers**. The decrease in the pretax net income at the RF Connector segment was primarily due to the decrease in sales related to **lower levels of inventory being kept on hand at our distributor customers based on seasonality and the lower carrier capital expenditure environment, and fewer carrier projects involving approved RF components**.

For the fiscal **2024 and 2023 and 2022 nine-month periods, quarters**, we recorded income tax (benefit) provision **benefit** of (\$806,000) **\$831,000** and \$196,000, **\$160,000**, respectively. The effective tax rate was 26.6% **37.9% for the fiscal 2024 quarter, compared to 12.1%** for the fiscal 2023 nine-month period, compared to 16.4% for the fiscal 2022 nine-month period. **quarter**. The change in **the effective tax rate for from the fiscal 2024 quarter to fiscal 2023 and 2022 nine-month periods quarter** was primarily driven by stock-based compensation windfall/shortfalls and the Company's full year forecasted financial loss. **results**.

For the fiscal 2023 nine-month period, **2024 quarter**, net loss was **\$2.2 million** **\$1.4 million** and fully diluted loss per share was \$0.22 as **\$0.13**, compared to a net income **loss** of **\$1.0 million** **\$1.2 million** and fully diluted earnings per share of **\$0.10** **\$0.11** for the fiscal 2022 nine-month period. **2023 quarter**. For the fiscal 2023 nine-month period, **2024 quarter**, the diluted weighted average shares outstanding was **10,267,652** **10,410,580** as compared to **10,223,209** **10,222,540** for the fiscal 2022 nine-month period. **2023 quarter**.

### Item 3. Quantitative and Qualitative Disclosures about Market Risk

Not applicable. As a “smaller reporting company” as defined by Item 10 of Regulation S-K, the Company is not required to provide the information required under this Item.

### Item 4. Controls and Procedures

#### Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(e)) that are designed to assure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

In designing and evaluating the disclosure controls and procedures, we recognize that any controls and procedures, no matter how well designed and operated, can provide reasonable assurance only of achieving the desired control objectives, and we necessarily are required to apply our judgment in weighing the costs and benefits of possible new or different controls and procedures. Limitations are inherent in all control systems, so no evaluation of controls can provide absolute assurance that all control issues and any fraud have been detected. Because of the inherent limitations, we regularly review our system of internal control over financial reporting and make changes to our processes and systems to improve controls and increase efficiency, and to maintain an effective internal control environment. Changes may include such activities as implementing new, more efficient systems, consolidating activities, and migrating processes.

As required by Exchange Act Rule 13a-15(b), as of the end of the period covered by this report, we, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures. Based on this evaluation, we our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at a reasonable assurance level as of that date. January 31, 2024.

#### Changes in Internal Control Over Financial Reporting

During the third first quarter of fiscal 2023, 2024, there were no changes in the internal control over financial reporting as such term is defined in Rule 13a-15(f) of the Exchange Act, that materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

## Part II. OTHER INFORMATION

### Item 1. Legal Proceedings

From time to time, we may become involved in various lawsuits and legal proceedings which arise in the ordinary course of business. Litigation is subject to inherent uncertainties, and an adverse result in these or other matters may arise from time to time that may harm our business. As of the date of this report, we are not subject to any proceeding that is not in the ordinary course of business or that is material to the financial condition of our business.

## Item 1A. Risk Factors

Our business, financial condition and operating results are affected by a number of factors, whether currently known or unknown, including risks specific to us or our industry, as well as risks that affect businesses in general. In addition to the information and risk factors set forth in this Quarterly Report on Form 10-Q, you should carefully consider the factors discussed in Part I, Item 1A, "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended **October 31, 2022** **October 31, 2023**, filed with the SEC on **January 24, 2023** **January 29, 2024**. The risks disclosed in such Annual Report and in this Quarterly Report could materially adversely affect our business, financial condition, cash flows, or results of operations and thus our stock price. We believe there have been no material changes in our risk factors from those disclosed in the Annual Report. However, additional risks and uncertainties not currently known or which we currently deem to be immaterial may also materially adversely affect our business, financial condition, or results of operations.

These risk factors may be important to understanding other statements in this Quarterly Report and should be read in conjunction with the unaudited condensed consolidated financial statements and related notes in Part I, Item 1, "Financial Statements" and Part I, Item 2, "Management's Discussion and Analysis of Financial Condition and Results of Operations" of this Quarterly Report on Form 10-Q. Because of such risk factors, as well as other factors affecting the Company's financial condition and operating results, past financial performance should not be considered to be a reliable indicator of future performance, and investors should not use historical trends to anticipate results or trends in future periods.

## Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

The following table sets forth information regarding the shares **Unregistered Sales of common stock cancelled, and deemed to have been repurchased, during the three months ended July 31, 2023 in connection with employee tax withholding for shares of restricted stock that vested under our 2020 Equity Incentive Plan: Securities**

Period	Total number of shares purchased	Average price paid per share	Total number of shares purchased as part of publicly announced plans or programs	Approximate dollar value of shares that may yet be purchased under the plans or programs
May 2023	-	\$ -	-	\$ -
June 2023	-	\$ -	-	\$ -
July 2023	486	\$ 4.07	-	\$ -

None.

## Issuer Purchases of Equity Securities

None.

## Item 3. Defaults upon Senior Securities

None.

## Item 4. Mine Safety Disclosures

None. **Not applicable.**

## Item 5. Other Information

#### Waiver and Amendment Amendments to Loan Agreement

On September 12, 2023 January 26, 2024, we entered into Loan Amendment No. 12, which, among other matters, eliminated the requirement to maintain minimum EBITDA of \$500,000 for the quarter ending January 31, 2024. Under Loan Amendment No. 2, the line of credit available to the Company under the Revolving Credit Facility was lowered from \$3.0 million to \$500,000. Further, Loan Amendment No. 2 required that we maintain from September 22, 2023 and Waiver thereafter, liquidity of at least \$2.0 million, rather than the greater of \$4.0 million or 80% of the forecast liquidity as was required under Loan Amendment No. 1. Under Loan Amendment No. 2, the Company was required to pay an additional fee equal to 1% of the collective outstanding principal balances of the Revolving Credit Facility and Term Loan if the Credit Facility was not repaid in full on or before March 1, 2024. This additional fee, if applicable, would be due on March 2, 2024. Further, Loan Amendment No. 2 requires that the Company make an additional principal payment of \$1.0 million on the Term Loan on March 1, 2024, in addition to the existing monthly payments due on the Term Loan. In connection with Loan Amendment No. 2, we paid the Credit Facility Lender a \$500,000 paydown on the Revolving Credit Facility, thereby reducing the outstanding balance from \$1.0 million to \$500,000.

On February 29, 2024, we entered into Loan Amendment No. 3, which, among other matters, defers the requirement that the Company make an additional principal payment of \$1.0 million on the Term Loan, from March 1, 2024, as was required under Loan Amendment No. 2, to April 1, 2024. Further, Loan Amendment No. 3 reduces the additional fee the Company is required to pay the Bank on March 2, 2024 from 1% of the collective outstanding principal balances of the Revolving Credit Facility and Term Loan as of March 1, 2024 as required under Loan Amendment No. 2, to 0.50% of the collective outstanding principal balances of the Revolving Credit Facility and Term Loan as of March 1, 2024. Additionally, Loan Amendment No. 3 requires the Company to pay the Bank a fee equal to 0.50% of the collective outstanding principal balances of the Revolving Credit Facility and Term Loan as of March 1, 2024, if the Credit Facility is not repaid in full on or before April 2, 2024 (the "April 2024 Fee"). The April 2024 Fee, if applicable, will be due on April 2, 2024. Under Loan Amendment No. 3, the Company must continue to maintain liquidity of at least \$2.0 million and pay the current remaining outstanding balance of \$500,000 on the Revolving Credit Facility by March 1, 2024, as required under Loan Amendment No. 2.

#### EBC Credit Agreement

On March 15, 2024, the Company entered into a loan and security agreement (the "EBC Credit Agreement"), with each of the subsidiaries of the Company (together with the Company, the "Borrowers"), the lenders party thereto, and Eclipse Business Capital LLC, as administrative agent (the "Agent"). All obligations of the Borrowers under the EBC Credit Agreement are, subject to certain limited exceptions, secured by substantially all of the assets of the Company.

The EBC Credit Agreement provides for (i) a senior secured revolving loan facility of up to \$15.0 million (the "EBC Revolving Loan Facility") and (ii) a senior secured revolving credit facility of up to \$1.0 million (the "EBC Additional Line" and, together with the EBC Revolving Loan Facility, the "EBC Credit Facilities") (with a \$3.0 million swingline loan sublimit). Availability of borrowings under the EBC Credit Facilities will be based upon a borrowing base formula and periodic borrowing base certifications valuing certain of the accounts receivable and inventories of the Borrowers, as reduced by certain reserves, if any.

On March 15, 2024, the Borrowers borrowed the \$11.9 million under the EBC Credit Facilities. Proceeds from the initial drawings under the EBC Credit Facilities were used to repay in full outstanding obligations under the Loan Agreement dated as of February 25, 2022, (the "Loan Amendment") with Bank of America, N.A. (the "Bank"). The (as defined above) and to pay fees, premiums, costs and expenses, including fees payable in connection with the EBC Credit Agreement. Borrowings under the EBC Revolving Loan Amendment, among Facility after the closing date may be used for working capital and general corporate purposes.

In the absence of an Event of Default (as defined in the EBC Credit Agreement) or certain other matters, provided for a one-time waiver of our failure to maintain (i) consolidated debt to EBITDA ratio not exceeding 3.00 to 1.00 (the "Debt Test"), measured as events (including the inability of the last day Agent to determine the secured overnight financing rate "SOFR"),

borrowings under (a) the EBC Revolving Loan Facility accrue interest at a rate of the one-month term SOFR reference rate plus an adjustment of 0.11448% ("Adjusted Term SOFR") plus 5.00%, and (b) the EBC Additional Line accrue interest at a rate of Adjusted term SOFR plus 6.50%, in each calendar quarter, case subject to a floor of 2.00% for Adjusted Term SOFR. The Borrowers will be required to pay a commitment fee for the period ended July 31, 2023; and (ii) consolidated fixed charge coverage ratio of at least 1.25 to 1.00 (the "FCCR Test"), measured as unused portion of the last day EBC Revolving Loan Facility of each calendar quarter, for 0.50% per annum. In addition to the period ended July 31, 2023. The Loan Amendment also waives testing for compliance with foregoing unused commitment fee, the Debt Test and FCCR Test for the quarterly periods ending October 31, 2023, January 31, 2024, April 30, 2024, and July 31, 2024, with the Debt Test and FCCR Test resuming with the period ending October 31, 2024, and continuing thereafter on a trailing 12-month basis. Further, Borrower is required to pay certain other administrative fees pursuant to the Loan Amendment, we are required to terms of the EBC Credit Agreement.

The Borrowers must maintain (i) (a) until September 21, 2023, a minimum liquidity (week-end cash outstanding balance plus availability from of \$8.0 million under the revolving line of credit) of \$4.0 million, and (b) from September 22, 2023 and thereafter, liquidity equal EBC Credit Facilities. Any borrowing under the EBC Credit Facilities will generally be repaid to the greater of (1) \$4.0 million or (2) 80% extent that the outstanding amounts exceed the lesser of the liquidity that was forecast for this maximum facility amount (less any applicable reserves) and the borrowing base. Any amounts repaid may be reborrowed, subject to borrowing base availability, until the maturity date at on (i) with respect to the fourth week EBC Revolving Loan Facility, March 15, 2027 and (ii) with respect to the EBC Additional Line, June 13, 2024.

To the extent the Borrowers prepay the amount outstanding under the EBC Credit Facilities and terminate the EBC Credit Facilities prior to 30 days before the scheduled maturity date, such prepayment will be subject to a prepayment penalty between 1.00% and 3.00% of the forecast; then-outstanding committed amounts, depending on the timing of the prepayment.

The EBC Credit Agreement contains certain customary representations and (ii) minimum EBITDA of (\$400,000), \$500,000, \$1.0 million, warranties, and \$1.0 million notice requirements for the quarters ending October 31, 2023, January 31, 2024, April 30, 2024, occurrence of specific events such as the occurrence of any event of default or pending or threatened litigation. The EBC Credit Agreement contains certain customary restrictive covenants regarding indebtedness, liens, fundamental changes, investments, restricted payments, disposition of assets, transactions with affiliates, hedging transactions, certain prepayments of indebtedness, amendments to organizational documents and July 31, 2024, respectively. The effectiveness sale and leaseback transactions. In addition, the EBC Credit Agreement restricts the ability of the Loan Amendment is conditioned upon, Borrowers to incur more than \$2.5 million of capital expenditures in any 12-month period.

The EBC Credit Agreement contains certain customary events of default, which include (subject to grace periods in certain instances) the failure to make payments when due thereunder, the material inaccuracy of representations or warranties, failure to observe or perform certain covenants, cross-defaults, bankruptcy and insolvency-related events, certain judgments, certain ERISA-related events, failure of any lien created in connection with the EBC Credit Agreement to be valid and perfected (subject to certain exceptions) and effected, the uninsured loss of inventory, and the occurrence of a change in control of any of the Borrowers. If an event of default has occurred and continues beyond any applicable cure period, all outstanding obligations under the EBC Credit Agreement may be accelerated or the commitments may be terminated, among other things, our payment remedies. Additionally, the lenders are not obligated to fund any new borrowing under the EBC Credit Agreement while an event of a waiver fee of \$50,000, and each guarantor's execution of a consent to the Loan Amendment and reaffirmation of its obligations under its respective guaranty. default is continuing.

The foregoing summary description of the Loan Amendment EBC Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the complete full text of the Loan Amendment, a copy of EBC Credit Agreement, which is included attached as Exhibit 10.3 to this Quarterly Report on Form 10-Q and is incorporated herein by reference. reference herein.

Upon the entry into the EBC Credit Agreement, the Loan Agreement was terminated.

#### Insider Trading Arrangements

During the quarterly period ended [July 31, 2023](#) [January 31, 2024](#), no director or officer adopted or terminated any Rule 10b5-1 trading arrangement, and/or any non-Rule 10b5-1 trading arrangement (as such terms are defined pursuant to Item 408(a) of Regulation S-K).

## Item 6. Exhibits

### Exhibit

#### Number

[3.1](#) [10.1](#) [Amended Amendment No. 2 To Loan Agreement, dated January 26, 2024, between Bank of America, N.A. and Restated Bylaws of RF Industries, Ltd Ltd. \(incorporated by reference to our Quarterly Annual Report on Form 10-Q 10-K filed with the SEC on \[June 14, 2023\]\(#\) \[January 29, 2024\]\(#\)\).](#)

[10.1](#) [10.2](#) [Third Amendment No. 3 to Lease by and Loan Agreement, dated February 29, 2024, between Sorrento West Properties, Inc. Bank of America, N.A. and RF Industries, Ltd., dated July 11, 2023 \(incorporated \(incorporated by reference to our Current Report on Form 8-K filed with the SEC on \[July 13, 2023\]\(#\) \[March 1, 2024\]\(#\)\).](#)

[10.2](#) [Managed Client Agreement between RF Industries, Ltd. and RGN-MCA San Diego II, LLC, dated June 27, 2023 \(incorporated by reference to our Current Report on Form 8-K filed with the SEC on July 13, 2023\).](#)

[10.3](#) [Amendment No. 1 Loan and Waiver to Loan Security Agreement, between Bank of America, N.A. dated March 15, 2024, by and among RF Industries, Ltd., dated September 12, 2023, its subsidiaries, the lenders and Eclipse Business Capital LLC.](#)

[31.1](#) [Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)

[31.2](#) [Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)

[32.1](#) [Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)

[32.2](#) [Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)

[101.INS](#) Inline XBRL Instance Document.

[101.SCH](#) Inline XBRL Taxonomy Schema.

[101.CAL](#) Inline XBRL Taxonomy Extension Calculation Linkbase.

[101.DEF](#) Inline XBRL Taxonomy Extension Definition Linkbase.

[101.LAB](#) Inline XBRL Taxonomy Extension Label Linkbase.

[101.PRE](#) Inline XBRL Taxonomy Extension Presentation Linkbase.

SIGNATURES

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 thereunto duly authorized.

RF INDUSTRIES, LTD.

Date: September 14, 2023 March 18, 2024

By: /s/ Robert Dawson

Robert Dawson  
President and Chief Executive Officer  
(Principal Executive Officer)

Date: September 14, 2023 March 18, 2024

By: /s/ Peter Yin

Peter Yin  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

2422

Exhibit 10.3

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AMENDMENT NO. 1 LOAN AND WAIVER TO LOAN SECURITY AGREEMENT

Dated as of March 15, 2024

by and among

RF INDUSTRIES, LTD.,

CABLES UNLIMITED, INC.,

REL-TECH ELECTRONICS, INC.,

C ENTERPRISES, INC.,

SCHROFF TECHNOLOGIES INTERNATIONAL, INC.,

MICROLAB/FXR LLC,

any other Borrower party hereto from time to time,

as Borrowers,

any other Guarantor party hereto from time to time,

as Guarantors,

collectively, as the Loan Parties,

the Lenders from time to time party hereto,

and

ECLIPSE BUSINESS CAPITAL LLC,

as Agent

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## Perfection Certificate

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## Loan and Security Agreement

This Amendment No. 1 Loan and Waiver Security Agreement (as it may be amended, restated, amended and restated, or otherwise modified from time to time, this "**Agreement**") is entered into on March 15, 2024, by and among **RF INDUSTRIES, LTD.**, a Nevada corporation ("**RFI**"), **CABLES UNLIMITED, INC.**, a New York corporation ("**Cables**"), **REL-TECH ELECTRONICS, INC.**, a Connecticut corporation ("**Rel-Tech**"), **C ENTERPRISES, INC.**, a California corporation ("**C Enterprises**"), **SCHROFF TECHNOLOGIES INTERNATIONAL, INC.**, a Rhode Island corporation ("**Schroff**"), and **MICROLAB/FXR LLC**, a New Jersey limited liability company ("**Microlab**"; together with RFI, Cables, Rel-Tech, C Enterprises and Schroff, each a "**Borrower**" and together with any other Borrower party hereto from time to time, collectively, the "**Borrowers**"), and together with any Guarantor party hereto from time to time (each a "**Guarantor**" and collectively, the "**Guarantors**"), the Lenders party hereto from time to time and **ECLIPSE BUSINESS CAPITAL LLC**, as agent for the Lenders (in such capacity, "**Agent**"). The Annexes, Schedules and Exhibits to this Agreement, (the "**Amendment**" as well as the Perfection Certificate attached to this Agreement, are an integral part of this Agreement and are incorporated herein by reference.

1. DEFINITIONS.

1.1. Certain Defined Terms.

Unless otherwise defined herein, the following terms are used herein as defined in the UCC: Accounts, Account Debtor, As-Extracted Collateral, Certificated Security, Chattel Paper, Commercial Tort Claims, Debtor, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Farm Products, Financing Statement, Fixtures, General Intangibles, Goods, Health-Care-Insurance Receivables, Instruments, Inventory, Letter-of-Credit Rights, Money, Payment Intangible, Proceeds, Secured Party, Securities Accounts, Security Agreement, Supporting Obligations and Tangible Chattel Paper.

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

"**ABLSOFT**" means the electronic and/or internet-based system approved by Agent for the purpose of making notices, requests, deliveries, communications and for the other purposes contemplated in this Agreement or otherwise approved by Agent, whether such system is owned, operated or hosted by Agent, any of its Affiliates or any other Person.

"**Accounts Advance Rate**" means the percentage set forth in Section 1(b)(i) of Annex I.

"**Additional Availability Amount**" means, solely during the Additional Availability Period, an amount, as of any date of determination during the Additional Availability Period, the Dollar Equivalent Amount as of such date of determination equal to the lesser of (a) \$1,000,000 and (b) the sum of (i) ten percent (10%) of Eligible Accounts plus (ii) five percent (5%) of the NOLV of Eligible Inventory (with Eligible Accounts and Eligible Inventory determined in (i) and (ii) using the most recent Borrowing Base Calculation). Solely during the Additional Availability Period, all Revolving Loans outstanding from time to time (up to the Additional Availability Amount at such time) shall be deemed issued in respect of the Additional Availability Amount.

"**Additional Availability Period**" means from the Closing Date through the date that is 90 days following the Closing Date.

"**Adjusted Borrowing Base**" means the Borrowing Base, without giving effect to clauses (c) and (d) of the definition of Borrowing Base.

"**Adjusted Term SOFR**" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; **provided**, that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

"**Advance Rates**" means, collectively, the Accounts Advance Rate and the Inventory Advance Rate.

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

"**Affiliate**" means, with respect to any Person, any other Person in control of, controlled by, or under common control with the first Person, and any other Person who has a substantial interest, direct or indirect, in the first Person or any of its Affiliates, including, any officer or director of the first Person or any of its Affiliates (and if that Person is an individual, any member of the immediate family (including parents, siblings, spouse, children, stepchildren, nephews, nieces and grandchildren) of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is controlled by any such member or trust); **provided**, that neither Agent, any Lender nor any of their respective Affiliates shall be deemed an "**Affiliate**" of any Borrower for any purposes of this Agreement. For

the purpose of this definition, a **"substantial interest"** shall mean the direct or indirect legal or beneficial ownership of more than ten (10%) percent of any class of equity or similar interest.

**"Agent"** has the meaning set forth in the preamble to this Agreement, and includes any successor agent appointed in accordance with Section 14.6.

**"Agent Fee Letter"** means that certain fee letter agreement dated as of September 12, 2023 the Closing Date between Agent and Loan Parties, as amended and in effect from time to time.

**"Agent Professionals"** means attorneys, accountants, appraisers, auditors, business valuation experts, liquidation agents, collection agencies, auctioneers, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Agent.

**"Agent-Related Persons"** means Agent, together with its Affiliates, officers, directors, employees, members, managers, attorneys, and agents.

**"Agreement"** and **"this Agreement"** has the meaning set forth in the preamble to this Agreement.

**"Anti-Corruption Laws"** means laws, rules, and regulations of any jurisdiction applicable to any Loan Party or its Subsidiaries from time to time concerning or relating to bribery or corruption.

**"Applicable Law"** means all applicable laws, rules, regulations and binding governmental requirements having the force and effect of law applicable to the Person in question or any of its property or assets, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

**"Applicable Percentage"** has the meaning set forth in Section 3.2(e)(i).

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

**"Approved Fund"** means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business, in each case that is administered, managed, advised or underwritten 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.

**"Assignee"** has the meaning set forth in Section 15.9(a).

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

**"Assignment of Claims Act"**, means the Assignment of Claims Act of 1940, as amended, currently codified at 31 U.S.C. 3727 and 41 U.S.C. 6305, and includes the prior historically referenced Federal Anti-Claims Act (31 U.S.C. 3727) and the Federal Anti-Assignment Act (41 U.S.C. 6305).

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

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

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

**"Base Rate"** means, for any day, the greatest of (a) the Floor plus one percent (1.0%), (b) the Federal Funds Rate in effect on such day plus ½%, (c) Term SOFR in effect on such day, plus one percent (1.0%), **provided**, that this clause (c) shall not be applicable during any period in which Term SOFR is unavailable or unascertainable, and (d) the rate of interest announced, from time to time, within Wells Fargo Bank, N.A. at its principal office in San Francisco as its "prime rate" in effect on such day, with the understanding that the "prime rate" is one of Wells Fargo Bank, N.A.'s base rates (not necessarily the lowest of such rates) and serves as the basis upon which **effective** rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo Bank, N.A. may designate (or, if such rate ceases to be so published, as quoted from such other generally available and recognizable source as Agent may select in its Permitted Discretion).

**"Base Rate Loan"** means any Loan which bears interest at or by reference to the Base Rate.

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**"Base Rate Term SOFR Determination Day"** has the meaning specified therefor in the definition of "Term SOFR".

**"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 3.6(d).

**"Benchmark Replacement"** means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Agent and Borrower Representative giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; **provided** that if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement shall be deemed to be the Floor 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 Agent and Borrower Representative giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

**"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 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 such Benchmark (or such component thereof) continues to be provided on such date.

**"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 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 such Benchmark (or such component thereof);

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(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 Board of Governors, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide 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 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 such Benchmark (or such component thereof) are not, or as of September 12, 2023 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.

**"Benchmark Transition Start Date"** means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is between Bank a public statement or publication of America, N.A. (the "Bank") information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

**"Benchmark Unavailability Period"** means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.6(d) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.6(d).

**"Blocked Account"** has the meaning set forth in Section 6.1.

**"Board of Directors"** means, (a) with respect to any corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (b) with respect to a partnership, the board of directors of the general partner of the partnership, (c) with respect to a limited liability company, the managing member or members or any controlling committee, board of managers, or board of directors of such company or the sole member or the managing member thereof, and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

**"Board of Governors"** means the FRB.

**"Borrower"** and **"Borrowers"** has the meaning set forth in the preamble to this Agreement.

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**"Borrower Representative"** means RF Industries, Ltd., a Nevada corporation, in such capacity pursuant to the provisions of Section 2.11, or any permitted successor Borrower Representative selected by Borrowers and approved by Agent.

**"Borrowing Base"** means, as of any date of determination, the Dollar Equivalent Amount as of such date of determination of the sum of the following:

(a) the aggregate amount of Eligible Accounts multiplied by the respective Accounts Advance Rate, plus



(b) the lesser of (i) cost or market value of Eligible Inventory multiplied by the applicable Inventory Advance Rate(s) and (ii) NOLV of Eligible Inventory multiplied by the applicable Inventory Advance Rate(s), but in no event to exceed the Inventory Sublimit(s), plus

(c) solely during the Additional Availability Period, the Additional Availability Amount, minus

(d) all Reserves which Agent has established pursuant to Section 2.1(b) (including those to be established in connection with any requested Revolving Loan).

**"Borrowing Base Calculation"** means a calculation of the Borrowing Base, in form and substance satisfactory to Agent, utilizing information certified by the Borrowers and provided to Agent in electronic format in the Borrowing Base portal tab in ABLSoft.

**"Business"** has the meaning set forth in Section 7.33.

**"Business Day"** means a day other than a Saturday or, Sunday or any other day on which Agent or the Federal Reserve Bank of New York is closed.

**"Capital Expenditures"** means all expenditures which, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of Loan Parties, but excluding expenditures made in connection with the acquisition, replacement, substitution or restoration of assets to the extent financed (a) from insurance proceeds (or other similar recoveries) paid on account of the loss of or damage to the assets being replaced or restored or (b) with cash awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced.

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

**"Cash Equivalents"** mean, collectively, (a) marketable, direct obligations of the United States Government or its agencies and backed by the full faith and credit of the United States, maturing within one hundred eighty (180) days the date of purchase, (b) commercial paper issued by corporations, each of which shall (i) have a consolidated net worth of at least \$250,000,000 and (ii) conduct substantially all of its business in the United States, which commercial paper will mature within one hundred eighty (180) days from the date of the original issue thereof and is rated "P-1" or better by Moody's or "A-1" or better by S&P, (c) certificates of deposit maturing within two hundred and seventy (270) days of the date of purchase and issued by a US national or state bank having deposits totaling more than \$500,000,000, and whose short-term debt is rated "P-1" or better by Moody's or "A-1" or better by S&P, and (d) up to \$100,000 per institution and up to \$1,000,000 in the aggregate in (i) short-term obligations issued by any local commercial bank or trust company located in those areas where the Loan Party conducts its business, whose deposits are insured by the Federal Deposit Insurance Corporation, or (ii) commercial bank-insured money market funds, or any combination of the types of investments described in this clause (d).

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**"CFC"** means a "controlled foreign corporation" as defined in Section 957 of the Code in which any Loan Party or direct or indirect owner of a Loan Party is a "United States shareholder" within the meaning of Section 951(b) of the Code.

**"Change of Control"** means each occurrence of any of the following:

(a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof), of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower Representative;

(b) the Borrower Representative shall cease to have beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of 100% of the aggregate voting or economic power of the Equity Interests of each other Loan Party (other than in connection with any transaction permitted pursuant to Section 8.7(d)), free and clear of all Liens other than Permitted Liens;

(c) the adoption by the stockholders of the Borrower Representative of a plan or proposal for the liquidation or dissolution of the Borrower Representative.

**"Closing Date"** means March 15, 2024.

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

**"Collateral"** means all property and interests in property in or upon which a security interest, mortgage, pledge or other Lien is granted pursuant to this Agreement or the other Loan Documents, including all of the property of each Loan Party described in Section 5.1 (but which in no event shall include any Excluded Collateral).

**"Collateral Access Agreement"** means any agreement, in form and substance reasonably satisfactory to Agent, of any landlord, lessor, warehouseman, processor, consignee or other Person (i) in possession of or having ownership rights or interests in, any of the Collateral in favor of Agent for the benefit of the Lenders waiving or subordinating Liens or certain other rights or interests such Person may hold in regard to the property of any of the Loan Parties and providing Agent access to its Collateral (without requiring the cure any defaults of Loan Parties), and/or (ii) granting access or providing occupancy rights (without requiring the cure any defaults of Loan Parties), in favor of Agent for the benefit of the Lenders, for a sufficient time for the purpose of disposing of Collateral located at such property in a manner determined by Agent in its Permitted Discretion, providing such estoppel statements and leasehold mortgagee protections as Agent shall reasonably request.

**"Collections"** has the meaning set forth in Section 6.1.

**"Commitment"** means the Revolving Loan Commitment.

**"Commitment Schedule"** means the Commitment Schedule attached hereto as Annex III.

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**"Competitor"** means any Person who is a bona fide competitor of the Borrowers identified in writing to Agent prior to the Closing Date, as such list of bona fide competitors may be updated by the Borrower Representative (by furnishing such updates to Agent in writing) from time to time thereafter.

**"Compliance Certificate"** means a compliance certificate substantially in the form of Exhibit F hereto to be signed by a Responsible Officer.

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

**"Conforming Changes"** means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day" 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 3.6(d) and other technical, administrative or operational matters) that Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**"Credit Bid"** has the meaning set forth in Section 14.9.

**"Data Protection Laws"** means any and all applicable foreign or domestic (including U.S. federal, state and local), statutes, ordinances, orders, rules, regulations, judgments, governmental approvals, or any other requirements of Governmental Authorities relating to the privacy, security, notification of breaches or confidentiality of personal data (including individually identifiable information) and other sensitive information.

**"Debtor Relief Laws"** means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws, including corporate laws (to the extent the relief sought under such corporate laws

relates to or involves the compromise, settlement, adjustment or arrangement of debt), of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

**"Default"** means any event or circumstance which with notice or passage of time, or both, would constitute an Event of Default if that event or circumstance were not cured or removed within an applicable grace or cure period.

**"Default Rate"** has the meaning set forth in Section 3.1.

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**"Defaulting Lender"** means any Lender that (a) has failed, within one Business Day of the date required to be funded or paid, to (i) fund any portion of its Loans, unless such Lender notifies Agent and Borrower Representative in writing that such failure is the result of Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied or waived, or (ii) pay over to Agent or any other Lender any other amount required to be paid by it hereunder, (b) has notified Borrower Representative or Agent in writing to the effect that it does not intend to comply with any of its funding obligations under this Agreement or generally under other agreements in which it or its parent commits to extend credit, (c) has failed, within two Business Days after request by Agent, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans under this Agreement, **provided**, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon Agent's receipt of such certification in form and substance satisfactory to Agent, (d) had an involuntary proceeding commenced or an involuntary petition filed seeking (i) liquidation, reorganization or other relief in respect of such Lender or its parent or its or its parent's debts, or of a substantial part of its or its parent's 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 such Lender or its parent or for a substantial part of its or its parent's assets, or (e) shall have or whose parent shall have (i) voluntarily commenced any proceeding or filed 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) consented to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (d) of this definition, (iii) applied for or consented to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for it or a substantial part of its assets, (iv) filed an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) made a general assignment for the benefit of creditors, (vi) become the subject of a Bail-in Action, or (vii) taken any action for the purpose of effecting any of the foregoing.

**"Dilution"** means, as of any date of determination, a percentage, based upon the experience of the immediately prior twelve (12) months, that is the result of dividing the Dollar Equivalent Amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to a Borrower's Accounts during such period by (b) such Borrower's billings with respect to Accounts during such period.

**"Dilution Reserve"** has the meaning set forth in Section 1(b)(i) of Annex I.

**"Disqualified Equity Interests"** means any Equity Interests which, by their terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise, or are redeemable at the option of the holder thereof (other than for Qualified Equity Interests), in whole or in part, on or prior to one hundred eighty-one (181) days following the Maturity Date at the time such Equity Interest is issued, (b) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests that would constitute Disqualified Equity Interests, in each case at any time on or prior to one hundred eighty-one (181) days following the Maturity Date at the time such Equity Interest is issued, (c) contains any mandatory repurchase obligation which may come into effect prior to the Maturity Date or (d) provides for the scheduled payments of dividends in cash on or prior to one hundred eighty-one (181) days following the Maturity Date at the time such Equity Interest is issued.

**"Dividends"** means any direct or indirect distribution, dividend, or payment of cash or other property of any kind to any Person on account of any Equity Interests of a Loan Party.

**"Division"** in reference to any Person which is an entity (but not any natural person), means the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Company Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other Applicable Law with respect to any corporation, limited liability company, partnership or other entity. The word **"Divide"** when capitalized, shall have a correlative meaning.

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

**"Dollars"** or **"\$"** means United States Dollars.

**"Domestic Subsidiary"** means any Subsidiary of a Loan Party that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia

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

**"Early Termination Fee"** has the meaning set forth in Section 3.2(e).

**"EBITDA"** means, for the applicable period, for the Loan Parties on a consolidated basis, the sum of (a) Net Income, plus (b) Interest Expense deducted in the calculation of such Net Income, plus (c) taxes on income, whether paid, payable or accrued, deducted in the calculation of such Net Income, plus (d) depreciation expense deducted in the calculation of such Net Income, plus (e) amortization expense deducted in the calculation of such Net Income, plus (f) any other non-cash charges that have been deducted in the calculation of such Net Income, minus (g) any other non-cash gains that have been added in the calculation of such Net Income.

**"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.

**"Eligible Account"** means, at any time of determination and subject to the criteria below, an Account of a Borrower, which was generated and billed by a Borrower in the Ordinary Course of Business, and which Agent, in its Permitted Discretion, deems to be an Eligible Account. The net amount of an Eligible Account at any time shall be the face amount of such Eligible Account as originally billed minus all customer deposits, unapplied cash collections and other Proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Agent's option, be calculated on shortest terms), credits, allowances or excise Taxes of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time. Without limiting the generality of the foregoing, the following Accounts shall not be Eligible Accounts:

- (i) the Account Debtor or any of its Affiliates is a Loan Party or an Affiliate of any Loan Party;

(ii) it remains unpaid longer than the earlier to occur of (A) the number of days after the original **invoice date** set forth in Section 4(a) of Annex I or (B) the number of days after the original **invoice due date** set forth in Section 4(b) of Annex I;

(iii) the Account Debtor or its Affiliates are past any of the applicable dates referenced in clause (ii) above on other Accounts owing to a Borrower comprising more than twenty-five percent (25%) of all of the Accounts owing to a Borrower by such Account Debtor or its Affiliates;

(iv) all Accounts owing by the Account Debtor or its Affiliates (excluding the Account Debtor Graybar Electric Company, Inc. ("**Graybar**")) represent more than fifteen percent (15%) of all other Accounts; **provided**, that Accounts which are deemed to be ineligible solely by reason of this clause (iv) shall be considered Eligible Accounts to the extent of the amount thereof which does not exceed fifteen percent (15%) of all other Accounts;

(v) all Accounts owing by Graybar or its Affiliates represent more than twenty percent (20%) of all other Accounts; **provided**, that Accounts which are deemed to be ineligible solely by reason of this clause (v) shall be considered Eligible Accounts to the extent of the amount thereof which does not exceed twenty percent (20%) of all other Accounts;

(vi) a covenant, representation or warranty contained in this Agreement or any other Loan Document with respect to such Account (including any of the representations set forth in Section 7.4) has been breached in any material respect (except where such covenant, representation or warranty is already qualified by Material Adverse Effect, materiality or similar qualifications, in which case such covenant, representation or warranty has been breached or is inaccurate in any respect);

(vii) the Account is subject to any contra relationship, counterclaim, dispute deposit, or set-off; **provided**, that Accounts which are deemed to be ineligible by reason of this clause (vii) shall be considered ineligible only to the extent of such applicable contra relationship, counterclaim, dispute or set-off;

(viii) the Account Debtor's chief executive office or principal place of business is located outside of the United States and Canada, unless the Account is supported by a letter of credit or credit insurance satisfactory to Agent in its Permitted Discretion;

(ix) it is payable in a currency other than Dollars;

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(x) it (a) is not absolutely owing to a Borrower or (b) arises from a sale on a bill-and-hold, guaranteed sale, sale-or-return, sale-on-approval, consignment, retainage or any other repurchase or return basis or (c) consist of progress billings or other advance billings that are due prior to the completion of performance by a Borrower of the subject contract for goods or services;

(xi) the Account Debtor is the United States of America or any state or political subdivision (or any department, agency or instrumentality thereof), unless such Borrower has complied with the Assignment of Claims Act or other applicable similar state or local law in a manner reasonably satisfactory to Agent;

(xii) it is not at all times subject to Agent's duly perfected, first-priority security interest;

(xiii) it is subject to any Lien other than a Permitted Lien (solely of the type specified in subclauses (a), (h) or (r) of the definition thereof);

(xiv) it is evidenced by Chattel Paper, Promissory Note or an Instrument of any kind (unless such Chattel Paper or Instrument is delivered to Agent in accordance with Section 5.2) or has been reduced to judgment;

(xv) the Account Debtor's total indebtedness to Borrowers exceeds the amount of any credit limit established by Borrowers or Agent or the Account Debtor is otherwise deemed not to be creditworthy by Agent in its Permitted Discretion; **provided**, that Accounts which are deemed to be ineligible solely by reason of this clause (xv) shall be considered Eligible Accounts to the extent the amount of such Accounts does not exceed the lower of such credit limits;

(xvi) there are facts or circumstances existing, or which could reasonably be anticipated to occur, which could reasonably be expected to result in a material adverse change in the Account Debtor's financial condition

or materially impair or delay the collectability of all or any portion of such Account;

(xvii) Agent has not been furnished with all documents and other information pertaining to such Account which Agent has reasonably requested, or which any Borrower is obligated to deliver to Agent, pursuant to this Agreement;

(xviii) any Borrower has made an agreement with the Account Debtor to extend the time of payment thereof beyond the time periods set forth in clause (ii) above;

(xix) any Borrower has posted a surety or other bond in respect of the contract or transaction under which such Account arose;

(xx) the Account Debtor is subject to any proceeding seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar Applicable Law or is subject to any Sanctions or any specially designated nationals list maintained by OFAC or any Governmental Authority;

(xxi) the sale giving rise to such Account is on cash in advance or cash on delivery terms;

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(xxii) any Accounts of Account Debtors against whom the materialmen, laborers or suppliers of any of the Loan Parties have Liens;

(xxiii) Accounts that have not been earned by performance or do not represent bona fide amounts due to the Borrower from an Account Debtor;

(xxiv) which (i) does not arise from the sale of goods or performance of services in the Ordinary Course of Business, (ii) is not evidenced by a customer statement or other documentation satisfactory to the Agent which has been sent to the Account Debtor or (iii) relates to payments of interest;

(xxv) the goods giving rise to such Account have been sold by a Borrower to the Account Debtor outside such Borrower's Ordinary Course of Business or the services giving rise to such Account have been performed by Borrower outside such Borrower's Ordinary Course of Business;

(xxvi) Accounts with respect to which (A) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (B) the services giving rise to such Account have not been performed and billed to the Account Debtor;

(xxvii) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(xxviii) which is owed by an Account Debtor that (a) is a Sanctioned Person or (b) has sold all or substantially all of its assets;

(xxix) which is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than such Borrower has or has had an ownership interest in such goods, or which indicates any party other than such Borrower as payee or remittance party; or

(xxx) the Account Debtor on such Accounts is located in any jurisdiction which adopts a statute or other requirement that any Person that obtains business from within such jurisdiction or is otherwise subject to such jurisdiction's Tax law must file a "Business Activity Report" (or other applicable report) or make any required filings in a timely manner in order to enforce its claims in such jurisdiction's courts or arising under such jurisdiction's laws; **provided**, that such Accounts shall nonetheless be Eligible Accounts if such Borrower has filed a "Business Activity Report" (or other applicable report or required filing).

**"Eligible Excess Inventory"** means, at any time of determination, Inventory owned by Borrower currently on hand in an amount in excess of the quantity of Inventory of a like-kind sold in the prior twelve (12) months, which Agent, in its Permitted Discretion, deems to be Eligible Excess Inventory.

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**"Eligible Inventory"** means, at any time of determination and subject to the criteria below, Inventory owned by Borrower consisting of finished goods, merchantable and readily saleable in the Borrower's Ordinary Course of Business



which Agent, in its Permitted Discretion, deems to be Eligible Inventory. Without limiting the generality of the foregoing, the following Inventory will not be Eligible Inventory:

- (i) it consists of work-in-progress, raw materials, spare or replacement parts, subassemblies, packaging and shipping materials, manufacturing supplies, samples, prototypes, or displays or display items;
- (ii) it is not in good, new and saleable condition;
- (iii) it is slow-moving, obsolete, damaged, not salable at prices approximating at least the cost of such Inventory in the Ordinary Course of Business, perishable, shopworn, contaminated, unmerchantable, returned, rejected, discontinued or repossessed;
- (iv) it is in the possession of a processor, consignee or bailee, or located on premises leased or subleased to a Borrower, or on premises subject to a mortgage in favor of a Person other than Agent, unless such processor, consignee, bailee or mortgagee or the lessor or sublessor of such premises, as the case may be, has executed and delivered all documentation which Agent shall require to evidence the subordination or other limitation or extinguishment of such Person's rights with respect to such Inventory and Agent's right to gain access thereto (including, a Collateral Access Agreement) within fifteen (15) of the Closing Date (or such extended time period as agreed to by Agent in writing in its sole discretion); **provided**, that, at the election of Agent in its sole discretion, this clause (iv) may be waived with respect to Inventory located on a premises for which Agent has established a rent or other similar Reserve satisfactory to Agent in its sole discretion;
- (v) it consists of fabricated parts, spare parts, restrictive or custom items, supplies used or consumed in a Borrower's business, packaging materials, shipping materials, or bill and hold goods;
- (vi) it fails to meet all material standards imposed by any Governmental Authority;
- (vii) it does not conform in all material respects to any covenants, warranties and representations applicable to Eligible Inventory set forth in this Agreement and each other Loan Document (except where such covenant, warranty or representation is already qualified by Material Adverse Effect, materiality or similar qualifications, in which case, it does not conform in all respects);
- (viii) it is not at all times subject to Agent's duly perfected, first priority security interest;
- (ix) it is subject to any Lien other than a Permitted Lien solely of the type specified in subclauses (a) and (d) of the definition thereof;
- (x) it is purchased or manufactured pursuant to a license agreement that is not assignable to each of Agent and its transferees;
- (xi) it is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party (A) from which a Borrower has received written notice of an unresolved dispute in respect of any such agreement relating to the use of such license by Borrower or (B) which would require the payment of fees or royalties to, or the consent of, the licensor under such agreement for any sale or other disposition of such Inventory by Agent, unless Agent has imposed a Reserve for the payment of any such fees or royalties;

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- (xii) it is situated at a location not listed in Section 1(c) of the Perfection Certificate or other location of which Agent has been notified as required by Section 7.8 (or it is in-transit other than in transit between a Borrower's facilities);
- (xiii) it has been sold but not yet delivered;
- (xiv) it is not subject to a Borrower having actual and exclusive possession thereof (either directly or through a bailee or agent of a Borrower);
- (xv) it is not insured as required by this Agreement;
- (xvi) it is not reflected in the details of a current perpetual inventory report, which report shall be satisfactory to Agent in its Permitted Discretion;
- (xvii) it is held on consignment, or subject to a deposit or down payment;
- (xviii) it is not subject to the Borrower having good, valid and marketable title thereto;
- (xix) it has been acquired from a Sanctioned Person;

(xx) it is the subject of a bill of lading or other document of title, except for documents of title with respect to Inventory stored at a warehouse or with another bailee, so long as (i) such bill of lading or other document of title is (x) negotiable, (y) made to the order of Agent and (z) is in the possession of Agent or its agent, bailee or other designee, and (ii) such warehouseman or other bailee has entered into an agreement with Agent regarding access, handling and lien priority with respect to such Inventory in form and substance satisfactory to Agent in its Permitted Discretion;

(xxi) it is subject to any agreement whereby the seller, vender, or supplier has retained any title to such Inventory or the right to repurchase such Inventory;

(xxii) it is reflected in the Borrowers' perpetual inventory in an aggregate amount that exceeds the amount thereof in the general ledger;

(xxiii) in which any Person other than such Borrower shall (i) have any direct or indirect ownership, interest or title or (ii) be indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein; or

(xxiv) it is located outside of the continental United States or Canada.

**"Enforcement Action"** means any action to enforce any Obligations or Loan Documents or to exercise any rights or remedies relating to any Collateral, whether by judicial action, selfhelp, notification of Account Debtors, setoff or recoupment, credit bid, deed in lieu of foreclosure, action in any proceeding seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar Applicable Law or otherwise.

**"Environmental Laws"** means any and all applicable current and future laws relating to (a) protection of natural resources, wildlife and the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment including ambient air, surface, water, ground water, or land and (b) human health and safety as affected by Hazardous Materials and all analogous state laws and regulation.

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

**"Environmental Permits"** means any and all permits, licenses, registrations, notifications, exemptions and any other authorization required under any applicable Environmental Law.

**"Equity Interests"** means, as applied to any Person, any capital stock, membership interests, partnership interests, limited liability company interests or other equity interests of such Person, regardless of class or designation, and all warrants, options, purchase rights, conversion or exchange rights, voting rights, calls or claims of any character with respect thereto.

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

**"ERISA Affiliate"** means, with respect to any Loan Party, any trade or business (whether or not incorporated) under common control with such Loan Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code and Section 302 of ERISA).

**"ERISA Event"** means: (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a **"substantial employer"** as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent, or in critical or endangered status; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of



ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Loan Party or any ERISA Affiliate.

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

**"Event of Default"** has the meaning set forth in Section 11.1.

**"Excess Availability"** means the amount, as determined by Agent in its Permitted Discretion, calculated at any date, equal to the sum of (a) the lesser of (i) the Maximum Revolving Facility Amount minus Reserves established against the Maximum Revolving Facility Amount, minus, and (ii) the Borrowing Base, minus (b) the sum of (i) the outstanding balance of all Revolving Loans and Swingline Loans plus (ii) fees and expenses which are due and payable by any Borrower under this Agreement but which have not been paid or charged to the Loan Account; **provided**, that if any of the Loan Limits for Revolving Loans is exceeded as of the date of calculation, then Excess Availability shall be zero.

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

**"Excluded Collateral"** means any of the following:

(a) the voting Equity Interests of any Excluded Subsidiary of a Loan Party, in each case, in excess of 65% of the issued and outstanding voting Equity Interests of any such Person;

(b) motor vehicles and other assets subject to certificates of title (other than to the extent perfection of the security interest in such assets is accomplished solely by the filing of a UCC financing statement);

(c) any Restricted Accounts (other than any deposit accounts described in clauses (d) or (e) of the definition of "Restricted Accounts");

(d) any intent-to-use United States trademark application for which an amendment to allege use or statement of use has not been filed or, if filed, has not been deemed in conformance with 15 U.S.C. §1051(a) or examined and accepted by the United States Patent and Trademark Office (**provided**, that each such intent-to-use application shall be considered Collateral immediately and automatically upon such acceptance);

(e) any contract, lease, license, permit or other General Intangible, any asset embodying rights, priorities or privileges granted under such contracts, leases, licenses, permits or General Intangibles or any property subject to a purchase money security interest or similar arrangement which by its terms cannot be pledged or transferred by such Loan Party, or to the extent that granting a security interest therein would violate, invalidate or result in a breach or default under such contract, lease, license, permit, General Intangible or purchase money arrangement or create a right of acceleration, modification, termination or cancellation in favor of any other party thereto (other than any Loan Party) (in each case after giving effect to Sections 9-406(d), 9-407(a), 9-408(a) or 9-409 of the UCC (or any successor provision or provisions) or any other Applicable Law) (but excluding any contract, lease, license, permit or other General Intangible, any asset embodying rights, priorities or privileges granted under such contracts, leases, licenses, permits or General Intangibles or any property that relate to an Account Debtor and affect any Accounts);

(f) any assets owned on or acquired after the Closing Date, to the extent that, and for so long as, the granting of a security interest in such assets would violate or is prohibited by Applicable Law or requires a consent not obtained of any Governmental Authority pursuant to such Applicable Law (in each case after giving effect to Sections 9-406(d), 9-407(a), 9-408(a) or 9-409 of the UCC (or any successor provision or provisions) or any other Applicable Law) (but excluding any contract, lease, license, permit or other General Intangible, any asset embodying rights, priorities or privileges granted under such contracts, leases, licenses, permits or General Intangibles or any property that relate to an Account Debtor and affect any Accounts);

(g) any assets as to which Agent and Borrower Representative shall determine that the costs and burdens of obtaining a security interest therein outweigh the benefit to the Lenders of the security afforded thereby (but excluding any

asset with respect to an Account Debtor that affect any Accounts);

(h) equipment owned by any Loan Party on the date hereof or hereafter acquired that is subject to a Lien securing purchase money Indebtedness or capital leases permitted to be incurred pursuant to clause (b) of the definition of Permitted Liens only to the extent that such equipment is subject to documentation that prohibits additional liens on such equipment; **provided**, that such equipment shall only constitute Excluded Collateral so long as the debt secured by such equipment is outstanding; and

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(i) any assets owned by an Excluded Subsidiary of any Loan Party;

**provided**, that Excluded Collateral shall not include any Proceeds, substitutions or replacements of any Excluded Collateral referred to in clauses (a) through (i) above (unless solely to the extent such Proceeds, substitutions or replacements would constitute Excluded Collateral referred to in clauses (a) through (i) above);

**"Excluded Subsidiary"** means any Subsidiary that is (a) a CFC, (b) a Foreign Subsidiary owned, directly or indirectly, by a Foreign Subsidiary described in clause (a) of this definition, (c) a Domestic Subsidiary owned directly or indirectly, by a Foreign Subsidiary described in clause (a) of this definition or (d) any Subsidiary that has no material assets other than the equity interests or equity and debt interests of one or more Subsidiaries described in clause (a) of this definition. Subsidiary constitute an Excluded Subsidiary; provided in each case, a Protected Foreign Subsidiary shall not constitute an Excluded Subsidiary.

**"Excluded Taxes"** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of Agent or any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof); (b) in the case of a Non-U.S. Recipient (as defined in Section 13(e)), U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Non-U.S. Recipient with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which Non-U.S. Recipient becomes a party to this Agreement or acquires a participation, except in each case to the extent that, pursuant to Section 13 amounts with respect to such Taxes were payable to such Non-U.S. Recipient assignor (or Lender granting such participation) immediately before such assignment or grant of participation; (c) United States federal withholding Taxes that would not have been imposed but for such Recipient's failure to comply with Section 13(e) (except where the failure to comply with Section 13(e) was the result of a change in law, ruling, regulation, treaty, directive, or interpretation thereof by a Governmental Authority after the date the Recipient became a party to this Agreement or a Participant) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

**"FATCA"** means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

**"FIRREA"** means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

**"Fiscal Year"** means the fiscal year of the Loan Parties which ends on **October 31** of each year.

**"Fixed Charge Coverage Ratio"** means, with respect to any twelve-month period, the ratio of (a) EBITDA for such period, minus Unfinanced Capital Expenditures of the Loan Parties for such period, to (b) Fixed Charges for such period.

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**"Fixed Charges"** means, for the period in question, on a consolidated basis (and without duplication), the sum of (a) all principal payments scheduled to be made during or with respect to such period in respect of Indebtedness of the Loan Parties, plus (b) all Interest Expense of the Loan Parties for such period paid in cash attributable to such period, plus (c) all Taxes of the Loan Parties paid for such period, plus (d) all cash distributions (including Tax Distributions, if applicable), Dividends, redemptions and other cash payments made during such period with respect to equity securities or Subordinated Debt issued by any Loan Party.

**"Floor"** means a per annum rate equal to 2.00%.

**"Foreclosed Loan Party"** has the meaning set forth in Section 2.12(d).

**"Foreign Subsidiary"** means any Subsidiary of a Loan Party that does not constitute a Domestic Subsidiary.

**"FRB"** means the Board of Governors of the Federal Reserve System or any successor thereto.

**"Funding Account"** has the meaning set forth in Section 2.3(a).

**"GAAP"** means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession) which are applicable to the circumstances as of the date of determination, in each case consistently applied.

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

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

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

**"Guarantor" or "Guarantors"** has the meaning set forth in the preamble to this Agreement and includes any Loan Party other than a Borrower.

**"Guarantor Payment"** has the meaning set forth in Section 2.12(f)(i).

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**"Hazardous Materials"** means (a) any explosive or radioactive substances or wastes, (b) any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under, or that would reasonably be expected to give rise to liability under, any applicable Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, and (c) any coal ash, coal combustion by-products or waste, boiler slag, scrubber residue or flue desulphurization residue ("**CCR**"), except that CCR beneficially re-used shall not be considered a Hazardous Material.

**"Indebtedness"** means (without duplication), with respect to any Person, (a) all obligations or liabilities of such Person, contingent or otherwise, for borrowed money, (b) all obligations of such Person represented by promissory notes, bonds, debentures or the like, or on which interest charges are customarily paid, (c) all liabilities secured by any Lien on such Person's property owned or acquired, whether or not such liability shall have been assumed by such Person, (d) all obligations of such Person under conditional sale or other title-retention agreements relating to property or assets purchased by such Person, (e) all obligations of such Person to pay earn-outs (to the extent such obligation become a liability on the balance sheet of such Person in accordance with GAAP) or issued or assumed as the deferred purchase price of property or services (excluding (i) trade payables which are less than ninety days past the invoice date, accrued expenses and intercompany liabilities permitted under this Agreement, in each case to the extent incurred in the Ordinary Course of Business and (ii) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of property or services to satisfy unperformed obligations of the seller of such property or provider of such services), (f) all Capitalized Leases of such Person appearing as a liability on its balance sheet in accordance with GAAP, (g) all obligations (contingent or otherwise) of such Person as an account party or applicant in respect of letters of credit and bankers' acceptances or in respect of financial or other hedging obligations, (h) all Equity Interests issued by such Person subject to

repurchase or redemption at any time on or prior to the Scheduled Maturity Date (valued at, in the case of redeemable preferred Equity Interests, the greater of the voluntary liquidation preference and the involuntary liquidation preference of such Equity Interests plus accrued and unpaid dividends), other than voluntary repurchases or redemptions that are at the sole option of such Person, (i) all principal outstanding under any synthetic lease, off-balance sheet loan or similar financing product of such Person and (j) all Guaranties, endorsements (other than for collection in the Ordinary Course of Business) and other contingent obligations of such Person in respect of the obligations of others.

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

**"Intellectual Property"** means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, (a) patents, patent licenses, patent applications, industrial designs, utility models, statutory invention registrations and all inventions claimed or disclosed therein and all improvements thereto, (b) trademarks, trademark licenses trademark applications, service marks, domain names, trade dress, logos, designs, slogans, trade names, business names, corporate names and other source identifiers, whether registered or unregistered, together, in each case, with the goodwill symbolized thereby, (c) all confidential and proprietary information, including, without limitation, know-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including, without limitation, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, and all other intellectual, industrial and intangible property of any type, including, without limitation, industrial designs and mask works, (d) all registrations and applications for registration for any of the foregoing, including, without limitation, those registrations and applications for registration at the U.S. Patent and Trademark Office (the "Borrower" "USPTO") or the U.S. Copyright Office (the "USCO") set forth in Section 4 of the Perfection Certificate (as such Section 4 may be supplemented from time to time pursuant to the terms of this Agreement), together with all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations thereof and (e) all rights to sue at law or in equity for any infringement or other impairment of the foregoing, including the right to receive all proceeds and damages therefrom or pertaining thereto.

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**"Interest Expense"** means, for the applicable period, for the Loan Parties on a consolidated basis, total interest expense (including interest attributable to Capitalized Leases in accordance with GAAP) and fees with respect to outstanding Indebtedness.

**"Inventory Advance Rate"** means the percentage(s) set forth in Section 1(b)(ii) of Annex I.

**"Inventory Sublimit"** means the amount(s) set forth in Section 1(d) of Annex I.

**"Investment"** in any Person mean, as of any date of determination,:

(a) any payment or contribution, or commitment to make a payment or contribution, in or to such Person including property contributed or committed to be contributed to such Person for or in connection with its acquisition of any stock, bonds, notes, indebtedness, debentures, partnership or other ownership interest or any other security of such Person;

(b) any payment or contribution, or commitment to make a payment or contribution, for all or any substantial part of the assets, business or property of such Person (or of any division, operating unit or business line of such other Person);

(c) any loan, advance or other extension of credit or guaranty of or other surety obligation with respect to the Equity Interests, Indebtedness or other obligations of, or any contributions to the capital of, or for the benefit of, such Person; and

(d) any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

In determining the aggregate amount of Investments outstanding at any particular time, (A) a guaranty (or other surety obligation) shall be valued at not less than the principal outstanding amount of the primary obligation; (B) returns of capital

(but only by repurchase, redemption, retirement, repayment, liquidating dividend or liquidating distribution) shall be deducted; (C) earnings, whether as dividends, interest or otherwise, shall not be deducted; and (D) decreases in the market value shall not be deducted unless such decreases are computed in accordance with GAAP.

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

**"Issuers"** means the collective reference to each issuer of Investment Property.

**"Lender"** means each Person listed on the Commitment Schedule and any other Person that shall have become a Lender hereunder pursuant to an Assignment and Assumption, other than any such Person that ceases to be a Lender hereunder pursuant to an Assignment and Assumption. Unless the context expressly provides otherwise, "Lender" shall include the Swingline Lender.

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**"Lien"** means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest or other security arrangement and any other preference, priority, or preferential arrangement in the nature of a security interest of any kind or nature whatsoever, including any conditional sale contract or other title-retention agreement, the interest of a lessor under a Capitalized Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing; **provided**, that in no event shall an operating lease that is not required to be accounted for as a financing lease or Capital Lease on the balance sheet and the income statement in accordance with GAAP be deemed to constitute a "Lien".

**"Loan Account"** has the meaning set forth in Section 3.4.

**"Loan Documents"** means, collectively, this Agreement (including the Perfection Certificate(s) and all other attachments, annexes and exhibits hereto), the Agent Fee Letter and all notes, guaranties, security agreements, mortgages, Borrowing Base Calculations, Compliance Certificates, other certificates, pledge agreements, Collateral Access Agreements, Lock Box and Blocked Account agreements, the Subordinated Debt Subordination Agreement and all other agreements, documents and instruments now or hereafter executed or delivered by any Borrower, any Loan Party, or any Other Obligor in connection with, or to evidence the transactions contemplated by, this Agreement.

**"Loan Guaranty"** means the obligations of Loan Parties pursuant to Section 12.

**"Loan Limits"** means, collectively, the Loan Limits for Revolving Loans set forth in Section 1 of Annex I and all other limits on the amount of Loans set forth in this Agreement.

**"Loan Party"** means, individually, each Borrower, and each other Guarantor, or any Subsidiary; and **"Loan Parties"** means, collectively, each Borrower, Guarantor and all other Subsidiaries. **provided**, that no Excluded Subsidiary shall be a "Loan Party".

**"Loans"** means, collectively, the Revolving Loans (including any Protective Advances and Overadvances) and the Swingline Loans.

**"Lock Box"** has the meaning set forth in Section 6.1.

**"Material Adverse Effect"** means any event, act, omission, condition or circumstance which has or could reasonably be expected to have a material adverse effect on any of (a) the operations, business, assets, properties, financial condition or operating results of the Loan Parties taken as a whole, (b) the ability of the Loan Parties, taken as a whole, to fully and timely perform any of their obligations under any Loan Document to which they are parties, (c) the rights and remedies of any Agent or any Lender under any Loan Document, or (d) the validity, perfection or priority of a Lien in favor of Agent for the benefit of the Lenders on any of the Collateral.

**"Material Contract"** means has the meaning set forth in Section 7.18.

**"Maturity Date"** means the earliest of (i) Scheduled Maturity Date, (ii) the Termination Date, and (iii) such earlier date as the Obligations are accelerated in accordance with the terms of this Agreement (including pursuant to Section 11.2).

**"Maximum Lawful Rate"** has the meaning set forth in Section 3.5.

**"Maximum Liability"** has the meaning set forth in Section 12.9.

**"Maximum Revolving Facility Amount"** means the amount set forth in Section 1(a) of Annex I.

**"Minimum Excess Availability Amount"** means, as of any date of determination, an amount equal to the greater of (a) \$1,000,000 and (b) ten percent (10%) of the Adjusted Borrowing Base.

**"Minimum Outstanding Amount"** means Loans in an aggregate principal amount equal to \$8,000,000.

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

**"Net Income"** means, for the applicable period, for the Loan Parties on a consolidated basis, as applicable, the net income (or loss) of the Loan Parties on a consolidated basis, as applicable, for such period, excluding any gains or non-cash losses from dispositions, any extraordinary gains or extraordinary non-cash losses (as such "extraordinary" items are determined in accordance with GAAP immediately prior to the adoption by FASB of Accounting Standards Update No. 2015-01, Income Statement—Extraordinary and Unusual Items (Subtopic 225-20), Simplifying Income Statement Presentation by Eliminating the Concept of Extraordinary items) and any gains or non-cash losses from discontinued operations, individually or of the Loan Parties on a consolidated basis, as applicable, for such period.

**"NOLV"** means the applicable net orderly liquidation value as determined by the most current third-party appraisal report, performed by an appraisal firm retained by Agent for such appraisal project with respect to the Eligible Inventory, and in form and substance acceptable to Agent.

**"Non-Consenting Lender"** has the meaning set forth in Section 15.5(b).

**"Non-Paying Guarantor"** has the meaning set forth in Section 12.10.

**"Non-U.S. Recipient"** has the meaning set forth in Section 13(e)(ii).

**"Notice of Borrowing"** has the meaning set forth in Section 2.3.

**"Obligations"** means all present and future Loans, advances, debts, liabilities, fees, costs, expenses, obligations, guaranties, covenants, duties and indebtedness at any time owing by any Borrower or any Loan Party to Agent and/or Lenders, whether evidenced by this Agreement, any other Loan Document, whether arising from an extension of credit, guaranty, indemnification or otherwise, whether direct or indirect (including those acquired by assignment and any participation by any Lender in any Borrower's or Loan Party's indebtedness owing under the Loan Documents), whether direct or indirect (including those acquired by assumption), absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, contractual or tortious, liquidated or unliquidated, and including interest, fees, costs, expenses and indemnities arising before or after the commencement of a proceeding under the Bankruptcy Code or any similar statute whether or not a claim for post-filing or post-petition interest, fees, costs, expenses, indemnities or other amounts is allowable or allowed in such proceeding. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior to and after the commencement of any proceeding under the Bankruptcy Code or any similar statute.

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

**"Ordinary Course of Business"** means, in respect of any transaction involving any Person, the ordinary course of business of such Person, as conducted by such Person as of the Closing Date and any practices that are utilized to improve past practices or to conform with customary operating procedures for a similar business, as reasonably determined by such Person.

**"Other Obligor"** means any guarantor, endorser, acceptor, surety or other Person liable on, or with respect to, any of the Obligations or who is the owner of any property which is security for any of the Obligations other than any Loan Party.

**"Other Taxes"** means all present or future stamp, excise, value added, court or documentary, property, excise, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.



**"Overadvances"** has the meaning set forth in Section 2.2(b).

**"Paid in Full", "Pay in Full", "Paying in Full" or "Payment in Full"** means, with respect to any Obligations, (i) the payment in full in cash (or other consideration acceptable to the recipient thereof) of all such Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) and (ii) the termination or expiration of all of the Commitments.

**"Participant"** has the meaning set forth in Section 15.10.

**"Paying Guarantor"** has the meaning set forth in Section 12.10.

**"Payment Conditions"** means as to the making of any such relevant payment, the satisfaction as of the making of each such payment and after giving pro forma effect thereto, of each of the following conditions: (a) no Default or Event of Default exists or has occurred and is continuing; (b) the Fixed Charge Coverage Ratio is greater than 1.25:1.00 (recomputed as of the last day of the most recent month for which the monthly financial statements of Loan Parties and the related Compliance Certificate have been or are required to have been delivered to Agent under this Agreement, for the twelve consecutive calendar month period then ended, and assuming such payment is paid on the last day of such period), (c) (i) pro forma Average Excess Availability for the consecutive 30-day period immediately preceding such payment shall be equal to or greater than fifteen percent (15%) of Maximum Revolving Facility Amount (assuming such payment and any Loan made to finance such payment shall have occurred on the first day of such period) and (ii) pro forma Excess Availability immediately after giving effect to such payment shall be equal to or greater than fifteen percent (15%) of Maximum Revolving Facility Amount, and (d) Agent shall have received a certificate, signed by a Responsible Officer of Borrower Representative, certifying satisfaction of the conditions set forth in clauses (a) through (c) of this definition at least two (2) Business Days prior to the date of the payment, in each case with reasonably detailed supporting calculations and otherwise in form and substance reasonably acceptable to Agent.

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

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

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

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

**"Perfection Certificate"** means the Perfection Certificate attached to this Agreement as of the Closing Date, together with any updates thereto as contemplated by this Agreement or otherwise permitted, required or requested by Agent from time to time.

**"Periodic Term SOFR Determination Day"** has the meaning specified therefor in the definition of "Term SOFR".

**"Permitted Discretion"** means a determination made by Agent in good faith and in the exercise of reasonable (from the perspective of an asset-based secured lender) business judgment.

**"Permitted Indebtedness"** means:

- (a) the Obligations;
- (b) the Indebtedness (other than the Subordinated Debt) existing on the date hereof described in Section 7 of the Perfection Certificate; in each case along with extensions, refinancings, modifications, amendments and restatements thereof; **provided**, that (i) the principal amount thereof is not increased without the prior written consent of the Agent, (ii) if secured by a Permitted Lien, no additional collateral beyond that existing as of the Closing Date is granted to secure such Indebtedness; (iii) if such Indebtedness is subordinated to any or all of the Obligations,

the applicable subordination terms shall not be modified without the prior written consent of Agent and (iv) the terms thereof are not modified to impose more burdensome terms upon any Loan Party;

(c) Capitalized Leases and purchase-money Indebtedness secured by Permitted Liens in an aggregate amount not exceeding \$1,000,000 at any time outstanding;

(d) Indebtedness incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;

(e) [reserved];

(f) the Subordinated Debt owing by Borrower at any time outstanding and then solely to the extent the Subordinated Debt is subject to, and permitted by, the Subordinated Debt Subordination Agreement.

(g) Indebtedness consisting of unpaid insurance premiums owing to insurance companies and insurance brokers incurred in connection with the financing of insurance premiums in the Ordinary Course of Business;

(h) Guaranties in the Ordinary Course of Business of the obligations of suppliers, customers, lessors, franchisees, licensees and other trade creditors of any Loan Party and any other Guaranties permitted by Section 8.2;

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(i) endorsements for collection, deposit or negotiation and warranties of products or services, in each case incurred in the Ordinary Course of Business;

(j) Indebtedness arising as a direct result of judgments, orders, awards or decrees against any Loan Party, in each case not constituting an Event of Default;

(k) unsecured Indebtedness representing any Taxes subject to Permitted Protest;

(l) Indebtedness consisting of promissory notes issued by any Loan Party to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests permitted by Section 8.4; **provided**, that such Indebtedness shall be unsecured and subject to the Subordinated Debt Subordination Agreement;

(m) [reserved];

(n) Indebtedness in respect of workers' compensation claims, self-insurance obligations, performance bonds, surety appeal or similar bonds and completion guarantees provided in the Ordinary Course of Business;

(o) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the Ordinary Course of Business; **provided**, that such Indebtedness is extinguished within three (3) Business Days of incurrence;

(p) Indebtedness incurred in the Ordinary Course of Business to finance insurance premiums;

(q) Indebtedness in respect of netting services, overdraft protection and other similar arrangements in connection with deposit or securities accounts in the Ordinary Course of Business;

(r) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards"), or cash management services, in each case, incurred in the Ordinary Course of Business;

(s) unsecured contingent liabilities arising with respect to customary indemnification provisions or deferred purchase price adjustments in connection with any Investment permitted hereunder or in connection with any asset sale or other dispositions permitted hereunder;

(t) [reserved];

(u) other unsecured Indebtedness in an aggregate principal amount not exceeding \$1,000,000 at any time outstanding (excluding (i) Indebtedness of any Loan Party to any Subsidiary or Affiliate that is not a Loan Party and (ii) Indebtedness owing among Loan Parties);

(v) accrual of interest, accretion or amortization of original issue discount, or the payment of interest in kind, in each case, on Indebtedness that otherwise constitutes Permitted Indebtedness; and



(w) obligations, including contingent obligations to reimburse drawings, under letters of credit issued other than pursuant to the Loan Documents, provided that the total amount of such obligations, including the undrawn amount of such letters of credit, shall not exceed \$500,000.

**"Permitted Liens"** means:

- (a) Liens securing the Obligations;
- (b) purchase-money security interests in specific items of Equipment and Liens securing Capitalized Leases to the extent constituting Permitted Indebtedness described under clause (b) of the definition of Permitted Indebtedness;
- (c) Liens for unpaid Taxes, fees, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) do not have priority over Agent's Liens and the underlying Taxes, fees, assessments, or charges or levies are the subject of Permitted Protests;
- (d) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, or laborers, incurred in the Ordinary Course of Business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests;
- (e) Liens which constitute banker's liens, rights of set-off, or similar rights as to deposit accounts or other funds maintained with a bank or other financial institution (but only to the extent such banker's liens, rights of set-off or other rights are in respect of customary service charges relative to such deposit accounts and other funds, and not in respect of any loans or other extensions of credit by such bank or other financial institution to any Loan Party);
- (f) cash deposits or pledges of an aggregate amount not to exceed \$500,000 to secure the payment of worker's compensation, unemployment insurance, or other social security benefits or obligations, public or statutory obligations, surety or appeal bonds, bid or performance bonds, or other obligations of a like nature incurred in the Ordinary Course of Business;
- (g) judgment Liens (other than for the payment of fees, Taxes, assessments, levies or other governmental charges) in respect of judgments that do not constitute an Event of Default;
- (h) [reserved];
- (i) Liens on assets of the Loan Parties existing as of the Closing Date which (i) are set described on Schedule 1.1(a) attached hereto and (ii) any modification, replacement, refinancing, renewal or extension of any Lien referenced in clause (i) hereof; **provided**, the principal amount of the Indebtedness secured by such Liens shall not be extended, renewed, refunded or refinanced other than in accordance with clause (b) of the definition of Permitted Indebtedness;
- (j) deposits and pledges of cash securing obligations incurred in respect of (i) the performance of bids, tenders, leases, contracts (other than for the payment of money) and statutory obligations or (ii) obligations on surety or appeal bonds, but only to the extent such deposits or pledges are made or otherwise arise in the Ordinary Course of Business and secure obligations not past due;

(k) easements, zoning restrictions, covenants, restrictions, conditions, declarations, development agreements and similar encumbrances on real property and minor irregularities in the title thereto and minor survey defects that do not (i) secure obligations for the payment of money or (ii) materially impair the value of such property or its use by a Loan Party or any of its Subsidiaries in the Ordinary Course of Business;

(l) licenses, sublicenses, leases or subleases granted in the Ordinary Course of Business to other Persons not materially interfering with the conduct of the business of the Loan Parties or any of their Subsidiaries;

(m) precautionary financing statement filings regarding operating leases;

(n) Liens in favor of insurers securing Indebtedness of the type described in and permitted by Section 8.1(f); **provided**, that such Liens attach solely to returned premiums in respect of such insurance policies and

the proceeds of such policies;

(o) pledges or deposits of money securing contracts (other than contracts for the payment of money) or leases or subleases to which a Loan Party or any of its Subsidiaries is a party as lessee made in the Ordinary Course of Business which do not interfere with the Ordinary Course of Business of a Loan Party or any of its Subsidiaries;

(p) Liens of counterparties attaching solely to cash earnest money deposits made by Loan Parties or their Subsidiaries in connection with any letter of intent or purchase agreement entered into with respect to Capital Expenditures permitted hereunder;

(q) in the case of real property that constitutes a leasehold interest, any Lien to which the fee simple interest (or any superior leasehold interest) is subject; and

(r) other Liens which do not secure Indebtedness for borrowed money in an aggregate amount not to exceed \$500,000 at any time outstanding; **provided**, that such Liens are junior in priority to Agent's security interest in Collateral and (ii) subject to an intercreditor agreement in form and substance satisfactory to Agent.

**"Permitted Protest"** means the right of any Loan Party or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), Taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or payment obligations (other than for borrowed money); **provided**, that (a) a reserve with respect to such obligation is established on such Loan Party's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by such Loan Party or its Subsidiary, as applicable, in good faith, and (c) Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent's Liens.

**"Permitted Tax Distributions"** means, with respect to any Loan Party that is a pass-through entity for federal income tax purposes for the applicable taxable year, any dividend or distribution to the holders of such Loan Party's stock or other Equity Interests to permit such holders to pay federal income taxes and relevant state and local income taxes on such holders that is imposed on them under applicable law with respect to the taxable income of such Loan Party allocated to them for such taxable year; **provided however**, the maximum amount of such dividends and distributions that may be made with respect to such taxable year by such Loan Party shall not exceed (A) the product of (i) the federal taxable income of such Loan Party, net of prior period federal taxable losses to the extent not previously taken into account hereunder, for such taxable year (and determined taking into account all relevant deductions available under the Code for such taxable year to, or with respect to the operations of, such Loan Party, and any amortization and depreciation deductions arising from adjustments under Sections 734 and 743 of the Code if relevant as if such adjustments were at the entity level of such Loan Party) and (ii) the highest combined federal, state and local income marginal income tax rate for the applicable tax year applicable to any such equity holder (taking into account any special tax rate based on the character or source of all or a part of the taxable income of the Loan Party and any deduction for state and local income taxes in determining federal taxable income to the extent the limitation in Section 164(b)(6) of the Code does not apply to such taxable year) **less** (B) the sum of (i) the amount of any taxes paid by such Loan Party directly to a taxing authority on benefit of any such equity holders to the extent not reimbursed by such equity holders to such Loan Party during such taxable year and (ii) the aggregate amount of federal, state, and local income tax credits available to such equity holders during such taxable year under applicable law to the extent derived solely from the operations or assets of such Loan Party.

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

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

**"Pledged Equity"** means the Equity Interests listed on Sections 1(f) and 1(g) of the Perfection Certificate, together with any other Equity Interests, certificates, options, or rights or instruments of any nature whatsoever in respect of the equity interests of any Person that may be issued or granted to, or held by, any Loan Party while this Agreement is in effect, and including, to the extent attributable to, or otherwise related to, such pledged Equity Interests, all of such Loan Party's (a) interests in the profits and losses of each Issuer, (b) rights and interests to receive Dividends or distributions of each Issuer's assets and properties and (c) control rights, authority and powers, and all status rights of each Loan Party as a member, equity holder or shareholder, as applicable, of each Issuer of such pledged Equity Interests and any rights and interests, if any, to participate in the management of each Issuer related to such pledged Equity Interests.

**"Pro Rata Share"** means with respect to all matters relating to any Lender the percentage obtained by dividing (i) the Commitment (or if the aggregate Commitments have been terminated, total outstanding principal of Revolving Loans) of that Lender by (ii) the aggregate Commitments of all Lenders (or if the aggregate Commitments have been terminated, total outstanding principal of Revolving Loans), in each case as any such percentages may be adjusted by assignments pursuant to an Assignment and Assumption.

**"Protective Advances"** has the meaning set forth in Section 2.2(a).

**"Protected CFC"** means any CFC that has only "United States shareholders" that (i) are "domestic corporations" (within the meaning Code Section 7701(a)(30)) classified as "C" corporations for all purposes of the Code and (ii) with respect to which Borrower Representative determines in good faith in consultation with the Agent are eligible for and can take (x) the dividends received deduction under Section 245A of the Code with respect to any and all dividends actually received from such CFC and (y) a complete offset and reduction pursuant to Treasury Regulations Section 1.956-1(a)(2) against any and all otherwise taxable inclusions under Sections 951(a)(1)(B) and 956 of the Code pursuant to Treasury Regulations Section 1.956-1.

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**"Protected Foreign Subsidiary"** means any Foreign Subsidiary (i) that is treated for federal income tax purposes as a disregarded entity of a Loan Party which is a United States person within the meaning of Section 7701(a)(30) of the Code and that does not own directly or indirectly own any equity in a CFC, other than solely Protected CFCs or (ii) that is a Protected CFC.

**"Qualified Equity Interests"** mean, with respect to any Person, all Equity Interests of such Person that are not Disqualified Equity Interests.

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

**"Register"** has the meaning set forth in Section 15.9(c).

**"Released Parties"** has the meaning set forth in Section 10.1.

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

**"Relevant Percentage"** has the meaning set forth in Section 12.10.

**"Replacement Lender"** has the meaning set forth in Section 3.6(c).

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

**"Required Lenders"** means at any time Lenders (other than Defaulting Lenders) then holding at least fifty-one (51%) percent of the sum of the aggregate Commitment then in effect.

**"Rescindable Amount"** means, any such payment Agent makes for the account of the Lenders as to which Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies: (1) the Loan Parties have not in fact made such underlying payment; (2) Agent has made a payment in excess of the amount so paid by the Loan Parties (whether or not then owed); or (3) Agent has for any reason otherwise erroneously made such payment.

**"Reserves"** has the meaning set forth in Section 2.1(b).

**"Responsible Officer"** means the chief executive officer, the president, the chief financial officer or the treasurer of Borrower Representative, or any other officer having substantially the same authority and responsibility.

**"Restricted Accounts"** means (a) any deposit account the funds in which shall be used solely to fund payroll and tax obligations of the Loan Parties, so long as all such funds shall be deposited in such accounts (i) no more than three Business Days prior to the date on which such funds shall be used to pay such payroll and tax obligations and (ii) in amounts not to exceed such tax and payroll obligations in the Loan Parties' reasonable discretion, (b) any deposit account the funds in which shall be used solely to segregate 401(k) contributions or contributions to an employee stock purchase plan and other health and benefit plan, in each case in accordance with any Applicable Laws (collectively, "Segregated Benefit Plan Funds"), so long as all funds shall be deposited in such accounts in amounts not to exceed all payment obligations in respect of such Segregated Benefit Plan Funds in the Loan Parties' reasonable discretion, (c) any deposit account the funds in which consist solely of funds held by the Loan Parties on behalf of or in trust for the benefit of any third party that is not an Affiliate of the Loan Parties, and (d) any deposit account that is a zero balance account with an individual intra-day balance not exceeding \$50,000 at any time and when combined with all other zero balance accounts, with an aggregate intra-day balance not exceeding \$100,000 at any time (and sweeps no less frequently than on each Business Day into a Restricted Account of the type in the preceding clauses (a)–(c) or into a deposit account that is not a Restricted Account and is subject to a deposit account control agreement in favor of Agent).

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**"Restricted Payment"** means (a) Dividends, (b) loans to any Affiliate by any Loan Party or Subsidiary thereof, (c) any payment of management, consulting, investment banking or similar fees payable by any Loan Party or any Subsidiary of a Loan Party to any Affiliate of a Loan Party or such Subsidiary and (d) any redemption, purchase, retirement, defeasance, acquisition, sinking fund or similar payment or any claim of rescission with respect to any Equity Interest of any Loan Party or Subsidiary thereof.

**"Restricted Purchase"** means any payment on account of the purchase, redemption, or other acquisition or retirement of any shares of Equity Interests of a Loan Party or a Subsidiary thereof.

**"Restrictive Agreement"** means an agreement (other than a Loan Document) that conditions or restricts the right of any Loan Party to incur or repay Indebtedness, to grant Liens on any assets, to declare or make Dividends, to modify, extend or renew any agreement evidencing Indebtedness, or to repay any intercompany indebtedness.

**"Revolving Loan Commitment"** means (a) as to any Lender, the aggregate commitment of such Lender to make Revolving Loans as set forth in the Commitment Schedule or in the most recent Assignment and Assumption to which it is a party (as adjusted to reflect any assignments as permitted hereunder) and (b) as to all Lenders, the aggregate commitment of all Lenders to make Revolving Loans, which aggregate commitment shall be in an amount equal to the Maximum Revolving Facility Amount.

**"Revolving Loans"** has the meaning set forth in Section 2.1(a).

**"Sanctioned Country"** means at any time, a country, region or territory which is itself the subject or target of any Sanctions (as of the date of this agreement, the Crimea region of Ukraine, Cuba, Iran, North Korea, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic and Syria).

**"Sanctioned Person"** means at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the Government of Canada, the United Nations Security Council, the European Union or any European Union member state, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

**"Sanctions"** means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the Government of Canada, the United Nations Security Council, the European Union or His Majesty's Treasury of the United Kingdom or other relevant sanctions authority.

**"Scheduled Maturity Date"** means the date set forth in Section 5 of Annex 1.

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

**"Settlement"** has the meaning set forth in Section 2.4(c).

**"Settlement Date"** has the meaning set forth in Section 2.4(c).

**"SOFR"** means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

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

**"SOFR Loan"** means any Loan that bears interest at a rate determined by reference to Adjusted Term SOFR (other than pursuant to clause (c) of the definition of "Base Rate").

**RECITALS** **"Stated Rate"** has the meaning set forth in Section 3.5.

A. The Bank **"Subordinated Debt"** means Indebtedness incurred by a Loan Party that is expressly subordinate and junior in right of payment to the Borrower payment in full of all Obligations, and is on terms (including amount, maturity, interest, fees, repayment, covenants and subordination) approved by and satisfactory to Agent.

**"Subordinated Debt Documents"** means any notes, loan agreements or other documents governing Subordinated Debt.

**"Subordinated Debt Subordination Agreement"** means any subordination agreement entered into by a certain Loan Agreement dated holder of Subordinated Debt in favor of Agent and Lenders, which shall be in form and substance acceptable to Agent.

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

**"Swingline Lender"** means Eclipse Business Capital SPV, LLC, in its capacity as February 25, 2022 (together with any previous amendments, "Agreement") lender of Swingline Loans hereunder.

**"Swingline Loans"** has the meaning set forth in Section 2.4(a).

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

#### **AGREEMENT**

1. **Definitions.** Capitalized terms used but not defined in this Amendment shall have **"Term SOFR"** means, for any calendar month, the meaning given to them in the Agreement.

2. **Amendments.** The Agreement is hereby amended as follows:

2.1 Paragraph 2.4(b) is amended in its entirety to read as follows:

"(b) The 'BSBY Daily Floating Rate' is a fluctuating rate of interest which can change on each banking day. The rate will be adjusted on each banking day to equal the BSBY Screen Term SOFR Reference Rate for U.S. Dollar deposits a tenor of one month on the day (such day, the **"Periodic Term SOFR Determination Day"**) that is two (2) U.S. Government Securities Business Days prior to the date commencement of determination for a one such calendar month, term beginning on that date; provided that if 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 a tenor of one month has not been published on such determination date by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then the

rate Term SOFR will be the BSBY Screen Term SOFR Reference Rate for a tenor of one month as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for a tenor of one month was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days immediately prior thereto. 'BSBY Screen Rate' means the Bloomberg Short-Term Bank Yield Index rate ('BSBY') administered by Bloomberg Index Services Limited and published on the applicable Bloomberg screen page (or to such other commercially available source providing such quotations as may be designated by the Bank from time to time). 'U.S. Government Securities Business Day' means any banking day, except any banking day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable. If at any time the BSBY Daily Floating Rate is less than zero, such rate shall be deemed to be zero for the purposes of this Agreement."

2.2 Paragraph 5.5 is amended in its entirety to read as follows:

"5.5 Banking Days.

Unless otherwise provided in this Agreement, a banking day is a day other than a Saturday, Sunday or other day on which commercial banks are authorized to close, or are in fact closed, in the state where the Bank's lending office is located, and, if such day relates to amounts bearing interest at a Reference Rate, in New York City. All payments and disbursements which would be due or which are received on a day which is not a banking day will be due or applied, as applicable, on the next banking day." Periodic Term SOFR Determination Day.

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2.3 Paragraph 5.8 is amended in its entirety "Term SOFR Adjustment" means a percentage equal to read as follows:

"5.8 Successor Rate 0.11448% (11.448 basis points).

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Agent in its reasonable discretion).

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

"Termination Date" means the date on which all of the Obligations have been Paid in Full.

"UCC" means, at any given time, the Uniform Commercial Code as adopted and in effect at such time in the State of New York or other applicable jurisdiction.

"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 applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.



**"Unfinanced Capital Expenditures"** means, for any period, Capital Expenditures made during such period which are not financed from the proceeds of any Indebtedness (other than the Revolving Loans; it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolving Loans, such Capital Expenditures shall be deemed Unfinanced Capital Expenditures).

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

**"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.

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## 1.2. Accounting Terms and Determinations.

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

Notwithstanding anything to the contrary contained in the paragraph above or the definitions of Capital Expenditures or Capitalized Leases, only those leases (assuming for purposes hereof that such leases were in existence on January 1, 2015) that would have constituted Capitalized Leases or financing leases in conformity with GAAP on January 1, 2015, shall be considered Capitalized Leases or financing leases hereunder, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith (other than the financial statements delivered pursuant to this Agreement; **provided** that all such financial statements delivered to Agent and Lenders in accordance with the terms of this Agreement shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect on January 1, 2015, with respect to such leases).

**1.3. Rates.** Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate index thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted

pursuant to Section 3.6(d), will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, 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. Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to a Borrower. Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided for by any such information source or service.

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#### 1.4. Other Definitional Provisions and References.

References in this Agreement (a 'Reference Rate' to "**Articles**", "**Sections**", "**Annexes**", "**Exhibits**" or "**Schedules**" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "**Include**", "**includes**" and "**including**" shall be deemed to be followed by "**without limitation**". "**Or**" shall be construed to mean "**and/or**". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "**from**" or "**through**" any date mean, unless otherwise specified, "**from and including**" or "**through and including**", respectively. No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. Unless otherwise specified herein, references to any agreement, instrument or document (a) shall include all schedules, exhibits, annexes and other attachments thereto and (b) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein or in any other Loan Document). The words "**asset**" and "**property**" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. Unless otherwise specified herein Dollar (\$) baskets set forth in the representations and warranty, covenants and event of default provisions of this Agreement (and other similar baskets) are calculated as of each date of measurement by the Dollar Equivalent Amount thereof as of such date of measurement. Reference to a Loan Party's "knowledge" or similar concept means actual knowledge of a senior officer, or knowledge that a senior officer could have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter. . In determining whether any individual event could result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then-existing events could result in a Material Adverse Effect.

## 2. LOANS.

### 2.1. Amount of Loans

(a) **Revolving Loans.** Subject to the terms and conditions of this Agreement, each Lender with a Revolving Loan Commitment will severally (and not jointly), from time to time prior to the Maturity Date, at Borrower Representative's request, make revolving loans to Borrowers ("**Revolving Loans**"); **provided**, that after giving effect to each such Revolving Loan and Swingline Loans, (A) the outstanding balance of all Revolving Loans and Swingline



Loans plus fees and expenses which are due and payable by Borrower under this Agreement but which have not been paid or charged to the Loan Account will not exceed the lesser of (x) the Maximum Revolving Facility Amount minus the amount of Reserves established against the Maximum Revolving Facility Amount and (y) the Borrowing Base, (B) the sum of each Lender's outstanding balance of Revolving Loans will not exceed such Lender's Revolving Loan Commitment and (C) none of the other Loan Limits for Revolving Loans will be exceeded. All Revolving Loans shall be made in and repayable in Dollars.

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(b) **Reserves.** Agent may, with concurrent written notice to Borrower Representative, from time to time establish and revise reserves against the Borrowing Base and the Maximum Revolving Facility Amount in such amounts and of such types as Agent deems appropriate in its Permitted Discretion (collectively, "**Reserves**" and individually, a "**Reserve**") to reflect (i) events, conditions, contingencies or risks which affect or may affect (A) the Collateral or its value, or the enforceability, perfection or priority of the security interests and other rights of Agent in the Collateral or (B) the assets or business prospects of any Borrower or any Loan Party (including the Dilution Reserve), (ii) Agent's good faith concern that any Collateral report or financial information furnished by or on behalf of any Borrower or any Loan Party to Agent is or may have been incomplete, inaccurate or misleading in any material respect, (iii) any fact or circumstance which Agent determines in good faith constitutes, or could reasonably be expected to constitute, a Default or Event of Default, (iv) past due Taxes, (v) past due amounts owing to sub-contractors or (vi) any other events or circumstances which Agent determines in good faith make the establishment or revision of a Reserve prudent. In no event shall the establishment of a Reserve in respect of a particular actual or contingent liability obligate Agent to make advances to pay such liability or otherwise obligate Agent with respect thereto.

(c) **Minimum Utilization.** Subject to the mandatory payment requirements of this Agreement, until the Maturity Date, Borrowers (i) shall maintain an outstanding principal amount of the Loans in a minimum principal amount equal to the Minimum Outstanding Amount at all times and (ii) shall not be permitted to voluntarily repay the Loans if any such payment would result in the outstanding principal amount of the Loans being less than the Minimum Outstanding Amount; provided that, notwithstanding anything herein to the contrary, Borrowers shall not at any time be deemed to be in breach of this Section 2.1(c) for failing to maintain the Minimum Outstanding Amount as a result of application of the payments to the Obligations in accordance with Sections 6.1 and 6.2 hereof; **provided** that Borrowers shall re-borrow an amount sufficient to comply with this Section 2.1(c) as soon as they may do so pursuant to Section 2.1(a). Notwithstanding the foregoing sentence, however, Borrowers shall be required to repay the Loans if and to the extent such repayment is required under Section 2.5, even if such payment would result in the outstanding principal amount of Loans falling below the Minimum Outstanding Amount; **provided** that Borrowers shall re-borrow an amount sufficient to comply with this Section 2.1(c) as soon as they may do so pursuant to Section 2.1(a).

## 2.2. **Protective Advances; Overadvances.**

(a) Notwithstanding any contrary provision of this Agreement or any other Loan Document, at any time (i) after the occurrence and during the continuance of a Default or Event of Default or (ii) that any of the other applicable conditions precedent set forth in Section 4 or otherwise are not satisfied, Agent is authorized by each Borrower and each Lender, from time to time, in Agent's Permitted Discretion, to make such Revolving Loans to, or for the benefit of, any Borrower, as Agent in its Permitted Discretion deems necessary or desirable (1) to maintain, preserve or protect the Collateral, or any portion thereof, or (2) to enhance the likelihood of repayment of the Obligations (the Revolving Loans described in this Section 2.2 shall be referred to as "**Protective Advances**"). Notwithstanding any contrary provision of this Agreement or any other Loan Document, Agent may disburse the proceeds of any Protective Advance to any Borrower or to such other Person(s) as Agent determines in its Permitted Discretion. All Protective Advances shall be payable immediately upon demand. Notwithstanding the foregoing, (i) the aggregate amount of all Protective Advances outstanding at any time shall not exceed an amount equal to ten percent (10%) of the Maximum Revolving Facility Amount (without giving effect to any Reserves established against the Maximum Revolving Facility Amount) and (ii) after giving effect to any such Protective Advances, the outstanding

balance of all Protective Advances, Revolving Loans and Swingline Loans will not exceed the Maximum Revolving Facility Amount.

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(b) Notwithstanding any contrary provision of this Agreement, at the request of Borrower Representative, Agent may in its sole discretion (but with absolutely no obligation), make Revolving Loans to any Borrower, on behalf of the Lenders with a Revolving Loan Commitment, in amounts that exceed Excess Availability (any such excess Revolving Loans are herein referred to herein, collectively, as "**Overadvances**"); **provided**, that, no Overadvance shall result in a Default or Event of Default due to any Borrower's failure to comply with Section 2.1(a) for so long as such Overadvance remains outstanding in accordance with the terms of this paragraph, but solely with respect to the amount of such Overadvance. Overadvances may be made even if the conditions precedent set forth in Section 4.2 have not been satisfied. The authority of Agent to make Overadvances is limited to an aggregate amount not to exceed **an amount equal to ten percent (10%) of the Maximum Revolving Facility Amount** (without giving effect to any established against the Maximum Revolving Facility Amount) at any time. No Overadvance may remain outstanding for more than thirty (30) days and no Overadvance shall cause any Lender's outstanding balance of Revolving Loans to exceed its Revolving Loan Commitment. Required Lenders may, at any time, revoke Agent's authorization to make Overadvances, **provided** that any such revocation must be in writing and shall become effective prospectively upon Agent's receipt thereof.

(c) Upon the making of any Protective Advance or Overadvance (whether before or after the occurrence of a Default or Event of Default), each Lender with a Revolving Loan Commitment shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance or Overadvance, as applicable, in proportion to its Pro Rata Share of the Revolving Loan Commitment. Agent may, at any time, require the applicable Lenders to fund their participations. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance or Overadvance, as applicable, purchased hereunder, Agent shall promptly distribute to such Lender, such Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral received by Agent in respect of such Loan. Each Lender acknowledges and agrees that (i) Agent may elect to fund a Protective Advance or Overadvance through one or more of its Affiliates (including, without limitation, Eclipse Business Capital SPV, LLC) on behalf of Agent for administrative convenience and (ii) any such funding shall constitute a Protective Advance or Overadvance, as applicable, as if made by Agent subject to the terms and conditions of this Agreement.

### 2.3. Notice of Borrowing; Manner of Revolving Loan Borrowing.

(a) Borrower Representative shall request each Revolving Loan by submitting such request by ABLSoft (or, if requested by Agent, by delivering, in writing or by an Approved Electronic Communication, a Notice of Borrowing substantially in the form of Exhibit A hereto) (each such request a "**Notice of Borrowing**"). Subject to the terms and conditions of this Agreement, Agent shall, except as provided in Section 2.2, deliver the amount of the Revolving Loan requested in the Notice of Borrowing for credit to any account of Borrower as Borrower Representative may specify at a bank acceptable to Agent (**provided**, that such account must be one identified on Section 3 of the Perfection Certificate and approved by Agent as an account to be used for funding of Loan proceeds) (any such account, a "**Funding Account**") by wire transfer of immediately available funds (i) on the same day if the Notice of Borrowing is received by Agent on or before 11:00 a.m. Central Time on a Business Day or (ii) on the immediately following Business Day if the Notice of Borrowing is received by Agent after 11:00 a.m. Central Time on a Business Day or on a day that is not a Business Day. Agent shall charge to the Revolving Loan Agent's usual and customary fees for the wire transfer of each Loan.

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

of the requested borrowing. Each Lender shall make each Revolving Loan to be made by such Lender hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 p.m., Central Time, to the account of Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Pro Rata Share. Unless Agent shall have received notice from a Lender prior to the proposed date of any borrowing that such Lender will not make available to Agent such Lender's share of such borrowing, Agent may assume that such Lender has made (or will make) such share available on such date in accordance with this Section and may, in reliance upon such assumption, make available to Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable borrowing available to Agent, then the applicable Lender and Borrowers severally agree to pay to Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to Borrowers to but excluding the date of payment to Agent, at the interest rate applicable to such Revolving Loans. If such Lender pays such amount to Agent, then such amount shall constitute such Lender's Revolving Loan included in such borrowing.

#### 2.4. **Swingline Loans.**

(a) Agent, Swingline Lender and the Lenders agree that in order to facilitate the administration of this Agreement and the other Loan Documents, promptly after Borrower Representative requests a Revolving Loan, the Swingline Lender may elect to have the terms of this Section 2.4 apply to such borrowing request by advancing, on behalf of the Lenders with a Revolving Loan Commitment and in the amount requested, same day funds to Borrowers (each such Loan made solely by the Swingline Lender pursuant to this Section 2.4 is referred to in this Agreement as a "**Swingline Loan**"), with settlement among them as to the Swingline Loans to take place on a periodic basis as set forth in Section 2.4(c). Each Borrower hereby authorizes the Swingline Lender to, and Swingline Lender shall, subject to the terms and conditions set forth herein (but without any further written notice required), deliver the amount of the Swingline Loan requested to the applicable Funding Account (i) on the same day if the Notice of Borrowing is received by Agent on or before 11:00 a.m. Central Time on a Business Day or (ii) on the immediately following Business Day if the Notice of Borrowing is received by Agent after 11:00 a.m. Central Time on a Business Day or on a day that is not a Business Day. The aggregate amount of Swingline Loans outstanding at any time shall not exceed \$3,000,000. Swingline Lender shall not make any Swingline Loan if the requested Swingline Loan exceeds Excess Availability (before giving effect to such Swingline Loan).

(b) Upon the making of a Swingline Loan (whether before or after the occurrence of a Default and regardless of whether a Settlement has been requested with respect to such Swingline Loan), each Lender with a Revolving Loan Commitment shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Swingline Lender, without recourse or warranty, an undivided interest and participation in such Swingline Loan in proportion to its Pro Rata Share of the Revolving Loan Commitment. The Swingline Lender may, at any time, require the applicable Lenders to fund their participations in any such Swingline Loan. From and after the date, if any, on which any Lender is required to fund its participation in any Swingline Loan purchased hereunder, Agent shall promptly distribute to such Lender, such Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral received by Agent in respect of such Swingline Loan.

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(c) Agent, on behalf of Swingline Lender, shall request settlement (a "**Settlement**") with respect to Swingline Loans with the Lenders holding a Revolving Loan Commitment on at least a weekly basis or on any date that Agent elects, by notifying the applicable Lenders of such requested Settlement by facsimile, telephone, or e-mail no later than 12:00 p.m. Central Time on the date of such requested Settlement (the "**Settlement Date**"). Each applicable Lender (other than the Swingline Lender) shall transfer the amount of such Lender's Pro Rata Share of the outstanding principal amount of the Swingline Loan with respect to which Settlement is requested to Agent, to such account of Agent as Agent may designate, not later than 2:00 p.m., Central Time, on such Settlement Date. Settlements may occur during the existence of a Default and whether or not the applicable conditions precedent set forth in Section 4.2 have then been satisfied. Such amounts transferred to Agent shall be applied against the amounts of the Swingline Lender's Swingline Loans and, together with such Swingline Lender's Pro Rata Share of such

Swingline Loan, shall constitute Revolving Loans of such Lenders, respectively. If any such amount is not transferred to Agent by any applicable Lender on such Settlement Date, the Swingline Lender shall be entitled to recover such amount on demand from such Lender together with interest thereon.

**2.5. Repayments.**

(a) **Revolving Loans.** If at any time for any reason whatsoever (including as a result of currency fluctuations) (i) the outstanding balance of all Revolving Loans exceeds the lesser of (x) the Maximum Revolving Facility Amount minus Reserves established against the Maximum Revolving Facility Amount and (y) the Borrowing Base, (ii) any of the Loan Limits for Revolving Loans are exceeded or (iii) Excess Availability is less than the Minimum Excess Availability Amount unless the Loan Parties are in compliance with Section 9.1, then, in each case, Borrowers will immediately pay to Agent an amount equal to such excess or deficiency, as applicable.

(b) **Reserved..**

(c) **Maturity Date Payments.** All remaining outstanding monetary Obligations (including, all accrued and unpaid fees described in Section 3.2) shall be Payable in Full on the Maturity Date.

**2.6. Prepayments / Voluntary Termination / Application of Prepayments.**

(a) **Reserved**

(b) **Reserved**

(c) **Reserved.**

(d) **Voluntary Termination of Loan Facilities.** Borrower Representative may, on at least thirty days prior written notice received by Agent, permanently terminate the Loan facilities by repaying all of the remaining outstanding Obligations, including all remaining principal, interest and fees with respect to the Revolving Loans, and an Early Termination Fee in the amount specified in Section 3.2(e). From and after such date of termination, neither Agent nor any Lender shall have any obligation whatsoever to extend any additional Loans, and its Revolving Loan Commitment hereunder shall be terminated.

(e) **Reserved.**

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**2.7. Obligations Unconditional.**

(a) The payment and performance of all Obligations shall constitute the absolute and unconditional obligations of each Loan Party, and shall be independent of any defense or right of set-off, recoupment or counterclaim that any Loan Party or any other Person might otherwise have against Agent, any Lender or any other Person. All payments required by this Agreement or the Bank makes other Loan Documents shall be made in Dollars (unless payment in a different currency is expressly provided otherwise in the applicable Loan Document) and paid in cash free of any deductions or withholdings for any taxes or other amounts and without abatement, diminution or set-off. If any Loan Party is required by Applicable Law to make such a deduction or withholding from a payment under this Agreement or under any other Loan Document, such Loan Party shall pay to Agent such additional amount as shall be necessary to ensure that, after the making of such deduction or withholding, Agent receives (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made. Each Loan Party shall (a) pay when due the full amount of any deduction or withholding that it is required to make by law, to the relevant authority within the payment period set by Applicable Law and (b) promptly after any such payment, deliver to Agent an original (or certified copy) official receipt issued by the relevant authority in respect of the amount withheld or deducted or, if the relevant authority does not issue such official receipts, such other evidence of payment of the amount withheld or deducted as is reasonably acceptable to Agent.

(b) If, at any time and from time to time after the Closing Date (or at any time before or after the Closing Date with respect to the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith), (a) any change in any existing law, regulation, treaty or directive applicable to the Agent, any Lender or the Loan Parties or in the interpretation or application thereof, (b) any new law, regulation, treaty or directive enacted or application thereof that is applicable to

the Agent, any Lender or the Loan Parties or (c) compliance by Agent with any legally enforceable request or directive from any Governmental Authority, central bank or comparable agency (i) subjects Agent or any Lender to any material tax, levy, impost, deduction, assessment, charge or withholding of any kind whatsoever with respect to any Loan Document, or changes the basis of taxation of payments to Agent or any Lender of any amount payable thereunder (except for net income taxes, or franchise taxes imposed in lieu of net income taxes, imposed generally by federal, state, local or other taxing authorities with respect to interest or fees payable hereunder or under any other Loan Document or changes in the rate of tax on the overall net income of Agent, any Lender or their respective members) or (ii) imposes, modifies or deems applicable any reserve (including any reserve imposed by the FRB, but excluding any reserve included in the determination of the Adjusted Term SOFR), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by Agent or any Lender or imposes on Agent or any Lender any other condition affecting its SOFR Loans or its obligation to incorporate make SOFR Loans, the result of which is to materially increase the cost to (or to impose a material cost on) Agent or adopt any Lender of making or maintaining any SOFR Loan or (iii) imposes on Agent or any Lender any other material condition or increased cost in connection with the transactions contemplated thereby or participations therein, and the result of any of the foregoing is to materially increase the cost to Agent or any Lender of making or continuing any Loan, then, in each such case, Borrowers shall promptly pay to Agent or such Lender, when notified in writing to do so by Agent or such Lender, any additional amounts necessary to compensate Agent or such Lender, on an after-tax basis, for such additional cost or reduced amount as determined by Agent or such Lender in Agent's or such Lender's Permitted Discretion. Each such notice of additional amounts payable pursuant to this Section 2.7(b) submitted by Agent or any Lender, as applicable, to Borrower Representative shall, absent manifest error, be final, conclusive and binding for all purposes.

(c) Section 2.7(a) shall remain operative even after the Termination Date and shall survive the Payment in Full of all of the Loans.

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**2.8. Reversal of Payments.** To the extent that any payment or payments made to or received by Agent or any Lender pursuant to this Agreement or any other Loan Document are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to any trustee, receiver or other Person under any state, federal or other bankruptcy or other such Applicable Law, then, to the extent thereof, such amounts (and all Liens, rights and remedies relating thereto) shall be revived as Obligations (secured by all such Liens) and continue in full force and effect under this Agreement and under the other Loan Documents as if such payment or payments had not been received by Agent or such Lender. This Section 2.8 shall remain operative even after the Termination Date and shall survive the Payment in Full of all of the Loans.

**2.9. Notes.** The Loans and Commitments shall, at the request of any Lender, be evidenced by one or more promissory notes in form and substance reasonably satisfactory to such Lender. However, if such Loans are not so evidenced, such Loans may be evidenced solely by entries upon the books and records maintained by Agent.

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

(a) Unused Line Fees pursuant to Section 3.2(c) shall cease to accrue on the unfunded portion of the Revolving Loan Commitment of such Defaulting Lender;

(b) Any amount payable to a Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise) shall, in lieu of being distributed to such Defaulting Lender, be retained by Agent in a segregated account and, subject to any applicable requirements of law, be applied at such time or times as may be determined by Agent (i) first, to the payment of any amounts owing by such Defaulting Lender to Agent hereunder, (ii) second, to the funding of any Revolving Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Agent, (iii) third, if so determined by Agent and Borrowers, held in such account as cash collateral for future funding obligations of the Defaulting Lender under this Agreement, (iv) fourth, pro rata, to the payment of any amounts owing to Borrowers or the Lenders as a result of any judgment of a court of competent jurisdiction obtained by Borrowers or any Lender against such Defaulting Lender as

a result of such Defaulting Lender's breach of its obligations under this Agreement, and (v) fifth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; **provided**, that if such payment is made at a time when the conditions set forth in Section 4.2 are satisfied, such payment shall be applied solely to prepay the Loans of all Revolving Lenders that are not Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans, or reimbursement obligations owed to, any Defaulting Lender.

(c) No Defaulting Lender shall have any right to approve or disapprove any amendment, waiver, consent or any other action the Lenders or the Required Lenders have taken or may take hereunder, **provided** that any waiver, amendment or modification requiring the consent of all Lenders or each directly affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender.

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## 2.11. Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to (i) request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, (ii) deliver Notices of Borrowing, and Borrowing Base Calculations, (iii) give instructions with respect to the disbursement of the proceeds of the Loans, (iv) give and receive all other notices and consents hereunder or under any of the other Loan Documents and (v) take all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Loan Documents. Agent may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.11. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower requested on behalf of a Borrower hereunder, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent and Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Loan Documents.

(d) Any notice, election, representation, warranty, covenant, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor Borrower Representative). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the resigning Borrower Representative and the term "Borrower Representative" shall mean such successor Borrower Representative for all purposes of this Agreement and the other Loan Documents, and the resigning or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

## 2.12. Joint and Several Liability

(a) Joint and Several. Each Borrower hereby agrees that such Borrower is jointly and severally liable for the full and prompt payment in cash (whether at stated maturity, by acceleration or otherwise) and performance of, all Obligations owed or hereafter owing to Agent and Lenders by each other Borrower. Each Borrower agrees that its obligation hereunder shall not be discharged until Payment in Full, of the Obligations has



occurred, and that its obligations under this Section 2.12 shall be absolute and unconditional, irrespective of, and unaffected by,

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(i) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this Agreement, any other Loan Document or any other agreement, document or instrument to which any Loan Party is or may become a party;

(ii) the absence or delay of any action to enforce this Agreement (including this Section 2.12) or any other Loan Document or the waiver or consent by Agent or any Lender with respect to any of the provisions thereof;

(iii) the existence, value or condition of, or failure to perfect Agent's Lien against, any security for the Obligations or any action, or the absence of any action, by Agent in respect thereof (including the release of any such security);

(iv) the insolvency of any Loan Party or Other Obligor; or

(v) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor.

(b) Waivers by Borrowers. Each Borrower expressly waives all rights it may have now or in the future under any statute, or at common law, or at law or in equity, or otherwise, to compel Agent to marshal assets or to proceed in respect of the Obligations against any other Loan Party or Other Obligor, any other party or against any security for the payment and performance of the Obligations before proceeding against, or as a condition to proceeding against, such Borrower. It is agreed among each Borrower, Agent and Lenders that the foregoing waivers are of the essence of the transaction contemplated by this Agreement and the other Loan Documents and that, but for the provisions of this Section 2.12 and such waivers, Agent and Lenders would decline to enter into this Agreement.

(c) Benefit of Joint and Several Obligations. Each Borrower agrees that the provisions of this Section 2.12 are for the benefit of Agent and Lenders and their successors, transferees, endorsees and permitted assigns, and nothing herein contained shall impair, as between any other Borrower, Agent and any Lender, the obligations of such other Borrower under the Loan Documents.

(d) Subordination of Subrogation, Etc. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, each Loan Party hereby expressly and irrevocably subordinates to payment of the Obligations any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off and any and all defenses available to a surety, guarantor or accommodation co-obligor with respect to any other Loan Party or any Other Obligor until the Obligations are Paid in Full. Each Borrower acknowledges and agrees that this subordination is intended to benefit Agent and Lenders and shall not limit or otherwise affect such Borrower's liability hereunder or the enforceability of this Section 2.12, and that Agent and Lenders and their successors and permitted assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 2.12(d).

(e) Election of Remedies. If Agent may, under Applicable Law, proceed to realize its benefits under any of the Loan Documents giving Agent a Lien upon any Collateral, whether owned by any Borrower or by any other Person, either by judicial foreclosure or by non-judicial sale or enforcement, Agent may, at its sole option, determine which of its remedies or rights it may pursue without affecting any of its rights and remedies under this Section 2.12. If, in the exercise of any of its rights and remedies, Agent shall forfeit any of its rights or remedies, including its right to enter a deficiency judgment against any Borrower or any other Person, whether because of any Applicable Laws pertaining to "election of remedies" or the like, each Borrower hereby consents to such action by Agent and waives any claim based upon such action, even if such action by Agent shall result in a full or partial loss of any rights of subrogation that each Borrower might otherwise have had but for such action by Agent.

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(f) Contribution with Respect to Guaranty Obligations.

(i) To the extent that any Borrower shall make a payment under this Section 2.12 of all or any of the Obligations (other than Loans made to that Borrower for which it is primarily liable) (a "**Guarantor Payment**") that, taking into account all other Guarantor Payments then previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payment in the same proportion that such Borrower's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Borrowers as determined immediately prior to the making of such Guarantor Payment, then, following Payment in Full (but in no event prior to Payment in Full), such Borrower shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(ii) As of any date of determination, the "**Allocable Amount**" of any Borrower shall be equal to the maximum amount of the claim that could then be recovered from such Borrower under this Section 2.12 without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(iii) This Section 2.12(f) is intended only to define the relative rights of Borrowers and nothing set forth in this Section 2.12(f) is intended to or shall impair the obligations of Borrowers, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement, including Section 2.12(a). Nothing contained in this Section 2.12(f) shall limit the liability of any Borrower to pay the Loans made directly or indirectly to that Borrower and accrued interest, fees and expenses with respect thereto for which such Borrower shall be primarily liable.

(iv) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of each Borrower to which such contribution and indemnification is owing.

(v) The rights of the indemnifying Borrowers against other Loan Parties under this Section 2.12(f) shall be exercisable upon the Payment in Full.

(g) **Liability Cumulative.** The liability of Borrowers and each other Loan Parties under this Section 2.12 is in addition to and shall be cumulative with all liabilities of each Borrower and each other Loan Party to Agent and Lenders under this Agreement and the other Loan Documents to which such Borrower or such other Loan Party is a party or in respect of any Obligations or obligation of the other Borrowers and the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

(h) **Foreclosed Loan Party.** Notwithstanding the foregoing or anything to the contrary contained in this Agreement, no Loan Party may exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and may not proceed or seek recourse against or with respect to any property or asset of, any other Loan Party (the "**Foreclosed Loan Party**"), including after Payment in Full of the Obligations and the occurrence of the Termination Date, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Equity Interests of such Foreclosed Loan Party whether pursuant to this Agreement or otherwise.

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### 3. **INTEREST AND FEES; LOAN ACCOUNT.**

#### 3.1. **Interest; Minimum Interest.**

(a) **Interest.** All Loans and other monetary Obligations shall bear interest at the interest rate(s) set forth in Section 3 of Annex I, and accrued interest shall be payable (a) on the first day of each month in arrears, (b) upon a prepayment of the Loan in accordance with Section 2.6 and (c) on the Maturity Date; **provided**, that after the occurrence and during the continuation of an Event of Default, all Loans and other monetary Obligations may, at the option of Agent or the discretion of the Required Lenders, bear interest at a rate per annum equal to



twopercantage points (2.00%) in excess of the rate otherwise applicable thereto (the "**Default Rate**"), and all such interest shall be payable on demand. Changes in the interest rate index shall be effective as of the first day of each month based on the Adjusted Term SOFR or Base Rate, as applicable, in effect on such date. Subject to Section 3.6 and so long as no Event of Default shall have occurred and be continuing, all Loans shall constitute SOFR Loans. Upon the occurrence and during the continuance of an Event of Default, at the election of Agent or Required Lenders, all Loans shall constitute Base Rate Loans. Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the Adjusted Term SOFR.

(b) **Minimum Interest.** Solely for purposes of calculating interest pursuant to this Section 3.1, if on any day the aggregate outstanding principal balance of the Loans is less than the Minimum Outstanding Amount on such day, then interest for such day shall be calculated and accrue as if the aggregate outstanding principal balance of the Loans on such day is equal to the Minimum Outstanding Amount with the difference being charged at the interest rate applicable to Revolving Loans.

**3.2. Fees.** Borrowers shall pay Agent the fees set forth in the Agent Fee Letter on the dates provided therefor, which fees are in addition to all fees and other sums payable by Borrowers or any other Person to Agent under this Agreement or under any other Loan Document.

**3.3. Computation of Interest and Fees.** All interest and fees shall be calculated daily on the outstanding monetary Obligations based on the actual number of days elapsed in a year of 360 days.

**3.4. Loan Account; Monthly Accountings.** Agent shall maintain a loan account for Borrowers reflecting all outstanding Loans, along with interest accrued thereon and such other items reflected therein (the "**Loan Account**"), and shall provide Borrower Representative with a monthly accounting reflecting the activity in the Loan Account, viewable by Borrowers on ABLSoft. Each accounting shall be deemed correct, accurate and binding on Borrowers and an account stated (except for reverses and reapplications of payments made and corrections of errors discovered by Agent), unless Borrower Representative notifies Agent in writing to the contrary within thirty days after such account is rendered, describing the nature of any alleged errors or omissions. Notwithstanding the foregoing, Agent's failure to maintain the Loan Account or to provide any such accounting shall not affect the legality or binding nature of any of the Obligations. Interest, fees and other monetary Obligations due and owing under this Agreement may, in Agent's discretion, be charged to the Loan Account, and will thereafter be deemed to be Revolving Loans and will bear interest at the same rate as other Revolving Loans.

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

principal balance of the Loans or to other Obligations (other than interest) payable hereunder, and if no such principal or other Obligations are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate divided by the number of days in the year in which such calculation is made.

### **3.6. Certain Provisions Regarding SOFR Loans; Replacement of Lenders.**

(a) **Inadequate or Unfair Basis.** If Agent or any Lender reasonably determines (which determination shall be binding and conclusive on Borrowers) that, by reason of circumstances affecting the interbank market or otherwise, adequate and reasonable means do not exist for ascertaining the applicable Adjusted Term SOFR, then Agent or such Lender shall promptly notify Borrower Representative (and Agent, if applicable) thereof and, so long as such circumstances shall continue, (i) Agent and/or such Lender shall be under no obligation to make any SOFR Loans and (ii) on the last day of the current calendar month, each SOFR Loan shall, unless then Paid in Full, automatically convert to a Base Rate Loan.

(b) **Change in Law.** If, after the Closing Date, any change in, or the adoption of any new, law, treaty or regulation, or any change in the interpretation of any Applicable Law or regulation by any Governmental Authority charged with the administration thereof, would make it (or in the good faith judgment of Agent or the applicable Lender cause a substantial question as to whether it is) unlawful for Agent or such Lender to make, maintain or fund SOFR Loans, then Agent or such Lender shall promptly notify Borrower Representative and, so long as such circumstances shall continue, (i) Agent or such Lender shall have no obligation to make any SOFR Loan and (ii) on the last day of the current calendar month for each SOFR Loan (or, in any event, on such earlier date as may be required by the relevant law, regulation or interpretation), such SOFR Loan shall, unless then Paid in Full, automatically convert to a Base Rate Loan.

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(c) If any Borrower becomes obligated to pay additional amounts to any Lender pursuant to Section 2.7(b), or any Lender gives notice of the occurrence of any circumstances described in Section 2.7(b), or if Lender becomes a Defaulting Lender, Borrowers may designate another Person engaged in the making of commercial loans in the ordinary course of business which is acceptable to Agent in its sole discretion (such other Person being called a "**Replacement Lender**") to purchase the Loans and Commitments of such Lender and such Lender's rights hereunder, without recourse to or warranty by, or expense to, such Lender, for a purchase price equal to the outstanding principal amount of the Loans payable to such Lender plus any accrued but unpaid interest on such Loans and all accrued but unpaid fees owed to such Lender and any other amounts payable to such Lender under this Agreement, and to assume all the obligations of such Lender hereunder, and, upon such purchase and assumption (pursuant to an Assignment and Assumption), such Lender shall no longer be a party hereto or have any rights hereunder (other than rights with respect to indemnities and similar rights applicable to such Lender prior to the date of such purchase and assumption) and shall be relieved from all obligations to Borrowers hereunder, and the Replacement Lender shall succeed to the rights and obligations of such Lender hereunder.

(d) **Benchmark Replacement Setting.**

(i) **Benchmark Replacement.**

(A) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, Agent and Borrower Representative may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such Reference Rate in credit agreements, then amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the Bank may replace fifth (5th) Business Day after Agent has posted such Reference Rate proposed amendment to all affected Lenders and Borrower Representative so long as Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with an alternate interest rate index and adjustment, if a Benchmark Replacement pursuant to this Section 3.6(d) will occur prior to the applicable as reasonably selected by the Bank, giving due consideration to any evolving or

then existing conventions for such interest rate index and adjustment (any such successor interest rate index, as adjusted, the 'Successor Rate') **Benchmark Transition Start Date**.

(B) **Benchmark Replacement Conforming Changes**. In connection with the use, administration, adoption or implementation of any Successor Rate, the Bank a **Benchmark Replacement Agent** will have the right to make **Conforming Changes** from time to time in good faith to make any conforming, technical, administrative or operational changes to this Agreement as may be appropriate to reflect the adoption and administration thereof and, notwithstanding anything to the contrary herein or in any other loan document, **Loan Document**, any amendments to this Agreement implementing such conforming changes **Conforming Changes** will become effective upon notice to the Borrower without any further action or consent of the any other parties hereto. If at **party to this Agreement or** any time any Successor Rate is less than zero, such rate shall be deemed to be zero for the purposes of this Agreement." **other Loan Document**.

2.4 The following is hereby added (C) **Notices; Standards for Decisions and Determinations**. Agent will promptly notify Borrower Representative and the Lenders of (1) the implementation of any Benchmark Replacement and (2) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Agent will promptly notify Borrower Representative of the removal or reinstatement of any tenor of a Benchmark pursuant to the Agreement as a new Paragraph 8.2(b):

"(b) Within 45 days after month end, monthly and year-to-date financial statements for the Borrower. These financial statements **Section 3.6(d)(i)(D)**. Any determination, decision or election that may be Borrower-prepared."

2.5 The following is hereby added **made by Agent or, if applicable, any Lender (or group of Lenders)** pursuant to this **Section 3.6(d)**, including any determination with respect to a tenor, rate or adjustment or of the Agreement as a new Paragraph 8.2(c):

"(c) Within 5 days after each week end, a 4-week cash flow projection. This report **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 Borrower prepared."

2.6 Paragraph 8.5 is amended **made** in its entirety to read as follows:

"8.5 **Minimum EBITDA**.

To maintain at least the amounts indicated for each period specified below:

<u>Period</u>	<u>Amount</u>
For the quarter ending October 31, 2023	(\$400,000.00)
For the quarter ending January 31, 2024	\$500,000.00
For the quarter ending April 30, 2024	\$1,000,000.00
For the quarter ending July 31, 2024	\$1,000,000.00

'EBITDA' means net income, less income or plus loss from discontinued operations and unusual and infrequent items, including non-recurring expenses related to acquisition, (agreed to at the **their** sole discretion of the Bank), plus non-cash stock compensation, plus income taxes, plus interest expense, plus depreciation, depletion, and amortization." **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 3.6(d)**.

2.7 The following is hereby added (D) **Unavailability of Tenor of Benchmark.**

Notwithstanding anything to the Agreement contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (1) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (I) 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 Agent in its reasonable discretion or (II) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a new Paragraph 8.24: 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 Agent may modify the definition of "Term SOFR" (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 (2) if a tenor that was removed pursuant to clause (1) above either (I) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (II) 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 Agent may modify the definition of "Term SOFR" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

"8.24 **Minimum Liquidity**(E) **Benchmark Unavailability Period.** Upon Borrower

Representative's receipt of notice of the commencement of a Benchmark Unavailability Period, (1) Borrower Representative may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, Borrower Representative will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans and (2) any outstanding affected SOFR Loans will be deemed to have been converted to Base Rate Loans at the end of the applicable calendar month. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an available tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

(a) Until September 21, 2023, (ii) **No Requirement of Matched Funding.** Anything to

maintain Liquidity the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to match fund any Obligation as to which interest accrues at least \$4,000,000.00. Adjusted Term SOFR or the Term SOFR Reference Rate.

3.7. **Term SOFR Conforming Changes.**

(b) From September 22, 2023

In connection with the use or administration of Term SOFR, Agent will have the right to make Conforming Changes from time to time and, thereafter, to maintain Liquidity equal notwithstanding anything to the greater of (i) \$4,000,000.00 contrary herein or (ii) 80% of the amount of Liquidity that had been forecast for this date when this was the fourth week of the forecast defined in 8.2 (c).

This covenant to be measured each week upon receipt of the 4-week cash flow projection, at which time the prior week-end Liquidity any other Loan Document, any amendments implementing such **Conforming Changes** will be tested.

'Liquidity' for each week is defined as the Ending Cash Balance plus the amount of borrowing availability under Facility 1.

'Ending Cash Balance' is defined as week-end cash balance as shown on the Borrower's 4-week cash forecast."

**3 Waiver of Specified Defaults.** The Borrower is currently in default under the terms of the Agreement as a result of (i) failure of the Borrower to maintain on a consolidated basis a Fixed Charge Coverage Ratio of at least 1.25:1.0 (the "FCCR Test"), measured as of the last day of each calendar quarter, for the period ended July 31, 2023, and (ii) failure of the Borrower to maintain on a consolidated basis a ratio of Funded Debt to EBITDA not exceeding 3.00:1.0 (the "FD Test"), measured as of the last day of each calendar quarter, for the period ended July 31, 2023 (collectively, the "Specified Defaults"). The Bank hereby agrees (i) to waive the Specified Defaults and (ii) waive testing of the FCCR Test and the FD Test for the periods ending October 31, 2023, January 31, 2024, April 30, 2024 and July 31, 2024, with the FCCR Test and the FD Test resuming with the period ending October 31, 2024 and thereafter on a trailing 12-month basis. The waiver set forth above has been granted solely for the purposes described in this paragraph on a one-time basis. No other approval, become effective without any further action or consent forbearance, waiver, modification or amendment to the Agreement is implied or granted.

**4. Effectiveness of Waiver.** This waiver applies only to the Specified Defaults and shall be effective only to the extent specifically set forth herein and shall not (a) be construed as a waiver of any breach, default or event of default other than the Specified Defaults, (b) be construed as a waiver of any covenant testing other than the FCCR Test and the FD Test for the periods set forth above, (c) affect the right of the Bank party to demand compliance by the Borrower with all terms and conditions of the Agreement and all documents executed in connection therewith (collectively with the Agreement, the "Loan Documents") except as specifically waived by this Amendment, (d) be deemed a waiver of any transaction or future action on the part of the Borrower requiring the Bank's consent or approval under the Agreement or Loan Documents, or (e) except as waived hereby, be deemed or construed to be a waiver or release of, or a limitation upon, the Bank's exercise of any rights or remedies under the Agreement or any other Loan Document, whether arising as a consequence Document. Agent will promptly notify Borrower Representative and the Lenders of the effectiveness of any default Conforming Changes in connection with the use or administration of Term SOFR.

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#### **4. CONDITIONS PRECEDENT.**

##### **4.1. Conditions to Initial Loans.**

Each Lender's obligation to fund the initial Loans under this Agreement is subject to the following conditions precedent (as well as any other conditions set forth in this Agreement or any other Loan Document), all of which must be satisfied in a manner acceptable to Agent (and as applicable, pursuant to documentation which in each case is in form and substance acceptable to Agent):

(a) each Loan Party shall have duly executed and/or delivered, or, as applicable, shall have caused such other applicable Persons to have duly executed and or delivered, to Agent such agreements, instruments, documents, proxies, financial statements, projections, lien searches, legal opinions, title insurances, assessments, appraisals, and certificates as Agent may require, including such other agreements, instruments, documents, proxies, financial statements, projections, lien searches, legal opinions, title insurance, assessments, appraisals, and certificates listed on the closing checklist attached hereto as Exhibit B;

(b) Agent shall have completed its business and legal due diligence pertaining to the Loan Parties and their respective businesses and assets, with results thereof satisfactory to Agent in its Permitted Discretion;

(c) each Lender's obligations and commitments under this Agreement shall have been approved by such Lender's Credit Committee;

(d) after giving effect to such Loans, as well as to the payment of all trade payables older than sixty days past due and the consummation of all transactions contemplated hereby to occur on the Closing Date, closing costs and any book overdraft, Excess Availability shall be no less than \$2,000,000;

(e) since October 31, 2023, no event shall have occurred which has had, or could reasonably be expected to have, a Material Adverse Effect on any Loan Party; and

(f) Borrowers shall have paid to Agent all fees due on the date hereof, and shall have paid or reimbursed Agent for all of default which Agent's reasonable and documented out-of-pocket costs, charges and expenses incurred through the Closing Date (and in connection herewith, Borrowers hereby irrevocably authorizes Agent to charge such fees, costs, charges and expenses as Revolving Loans).

**4.2. Conditions to all Loans.** No Lender shall be obligated to fund any Loans, unless the following conditions are satisfied:

(a) Borrower Representative shall have provided to Agent such information as Agent may now exist require in order to determine the Borrowing Base (including the items set forth in Section 7.15(a), (b) and (c) (as applicable)), as of such borrowing or otherwise, all issue date, after giving effect to such rights and remedies hereby being expressly reserved. All terms and conditions Loans;

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(b) each of the representations and warranties set forth in this Agreement and in the other Loan Documents remain unchanged.

**5. Representations and Warranties.** When the Borrower signs this Amendment, the Borrower represents and warrants to the Bank that: (a) there is no event which is, or with notice or lapse of time or both would shall be a default under the Agreement except those events, if any, that have been disclosed in writing to the Bank or waived in writing by the Bank; (b) the representations and warranties in the Agreement are true as of the date of this Amendment as if made on the date of this Amendment; (c) this Amendment does not conflict with any law, agreement, or obligation by which the Borrower is bound; (d) if the Borrower is a business entity or a trust, this Amendment is within the Borrower's powers, has been duly authorized, and does not conflict with any of the Borrower's organizational papers; (e) as of the date of this Amendment and throughout the term of the Agreement, no Borrower or guarantor, if any, is (1) an employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (2) a plan or account subject to Section 4975 of the Internal Revenue Code of 1986 (the "Code"); (3) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code; or (4) a "governmental plan" within the meaning of ERISA; and (f) as of the date of this Amendment, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects. "Beneficial Ownership Certification" means material respects (except where such representation or warranty is already qualified by Material Adverse Effect, materiality or similar qualifications, in which case such representation or warranty shall be true and correct) as of the date such Loan is made (or, to the extent any representations or warranties are expressly made solely as of an earlier date, such representations and warranties shall be true and correct in all material respects (except where such representation or warranty is already qualified by material Adverse Effect, materiality or similar qualification in which such representation or warranty shall be true and correct) as of such earlier date), both before and after giving effect thereto;

(c) no Default or Event of Default shall be in existence, both before and after giving effect thereto; and

(d) no event shall have occurred or circumstance shall exist that has or could reasonably be expected to have a certification regarding beneficial ownership required Material Adverse Effect.

Each request by Borrowers for funding of a Loan shall constitute a representation by each Borrower that the Beneficial Ownership Regulation foregoing conditions are satisfied on the date of such request and on the date of such funding or issuance. As an additional condition to any funding, issuance or grant, Agent shall have received such other information, documents, instruments and agreements as it deems appropriate in connection therewith in its Permitted Discretion.

## **5. COLLATERAL.**

**5.1. Grant of Security Interest.** To secure the full payment and performance of all of the Obligations, each Loan Party hereby collaterally assigns to Agent and grants to Agent, for itself and on behalf of the Lenders, a continuing security interest in all property of each Loan Party, whether tangible or intangible, real or personal, now or hereafter owned, existing, acquired or arising and wherever now or hereafter located, and whether or not eligible for lending purposes, including: (a) all Accounts (whether or not Eligible Accounts) and all Goods whose sale, lease or other disposition by any Loan Party has given rise to Accounts and have been returned to, or repossessed or stopped in transit by, any Loan Party; (b) all Chattel Paper



(including Electronic Chattel Paper), Instruments, Documents, and General Intangibles (including all patents, patent applications, trademarks, trademark applications, trade names, trade secrets, goodwill, copyrights, copyright applications, registrations, licenses, software, franchises, customer lists, Tax refund claims, claims against carriers and shippers, guaranty claims, contracts rights, payment intangibles, security interests, security deposits and rights to indemnification); (c) all Inventory (whether or not Eligible Inventory); (d) all Goods (other than Inventory), including Equipment, and Fixtures; (e) all Investment Property, including all rights, privileges, authority, and powers of each Loan Party as an owner or as a holder of Pledged Equity, including all economic rights, all control rights, authority and powers, and all status rights of each Loan Party as a member, equity holder or shareholder, as applicable, of each Issuer and any rights related to any Loan Parties' capital account within the Issuer in respect of Investment Property; (f) all Deposit Accounts, bank accounts, deposits, money and cash; (g) all Letter-of-Credit Rights; (h) all Commercial Tort Claims, including those listed in Section 2 of the Perfection Certificate (if any); (i) all Supporting Obligations; (j) all life insurance policies; (k) all leases; (l) [Reserved]; (m) [Reserved]; (n) all tax returns or refunds, (o) any other property of any Loan Party now or hereafter in the possession, custody or control of Agent or any agent or any parent, Affiliate or Subsidiary of Agent, any Lender or any Participant with Lender in the Loans, for any purpose (whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise); and (p) all additions and accessions to, substitutions for, and replacements, products and Proceeds of the foregoing property, including proceeds of all insurance policies insuring the foregoing property (including hazard, flood and credit insurance), and all of each Loan Party's books and records relating to any of the foregoing and to any Loan Party's business. Notwithstanding any of the provisions set forth in this Agreement to the contrary, nothing in this Agreement shall constitute a grant of a security interest in, and the Collateral shall not include, any Excluded Collateral.

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**5.2. Possessory Collateral.** Promptly, but in any event no later than ten (10) days after any Loan Party's receipt of any portion of the Collateral evidenced by an agreement, Instrument or Document, including any Tangible Chattel Paper and any Investment Property consisting of certificated securities, but excluding (a) checks received in the ordinary course of business and (b) negotiable Collateral with a fair market value in each individual case in excess of \$250,000 or in the aggregate in excess of \$750,000, such Loan Party shall deliver the original thereof to Agent together with an appropriate endorsement or other specific evidence of assignment thereof to Agent (in form and substance reasonably acceptable to Agent). If an endorsement or assignment of any such items shall not be made for any reason, Agent is hereby irrevocably authorized, as attorney and agent-in-fact (coupled with an interest) for each Loan Party, to endorse or assign the same on such Loan Party's behalf.

**5.3. Further Assurances.** Each Loan Party shall, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver (or cause each other applicable Person to take, execute, acknowledge and deliver) all such further acts (including the filing and recording of financing statements, Mortgages, and Intellectual Property security agreement filings at the United States Patent and Trademark Office or United States Copyright Office), documents (including the Related Mortgaged Property Documents), agreements and instruments as may from time to time be necessary or desirable or as Agent may from time to time reasonably require in order to (a) carry out the intent and purposes of the Loan Documents and the transactions contemplated thereby, (b) establish, create, preserve, protect and perfect a first priority lien (subject only to Permitted Liens) in favor of Agent in all the Collateral (wherever located) and in all Pledged Equity, (c) cause each Subsidiary of Borrower to guaranty all of the Obligations, all pursuant to documentation that is in form and substance reasonably satisfactory to Agent and (d) facilitate the collection of the Collateral. Without limiting the foregoing, each Loan Party shall, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver to Agent (or cause each such other applicable Person to take, executed, acknowledge and deliver) all promissory notes, security agreements, subordination and intercreditor agreements and other agreements, Mortgages, instruments and documents, Collateral Access Agreements with landlords, mortgagees and processors and other bailees, subordination and intercreditor agreements and other agreements, instruments and documents, in each case in form and substance reasonably acceptable to Agent, as Agent may reasonably request from time to time to perfect, protect and maintain Agent's security interests in the Collateral, including the required priority thereof, and to fully carry out the transactions contemplated by the Loan Documents.

**5.4. UCC Financing Statements.** Each Loan Party authorizes Agent to file, transmit or communicate, as applicable, from time to time, UCC Financing Statements, along with amendments and modifications thereto, in all filing offices selected by Agent, listing such Loan Party as the Debtor and Agent as the Secured Party, and describing the collateral covered thereby in such manner as Agent may elect, including using descriptions such as "all personal property of debtor" or "all assets of debtor," or words of similar effect, in each case without such Loan Party's signature. Each Loan Party also hereby ratifies its authorization for Agent to have filed, in any filing office, any Financing Statements filed prior to the date hereof.

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## **6. Conditions CERTAIN PROVISIONS REGARDING ACCOUNTS, INVENTORY, COLLECTIONS AND APPLICATIONS OF PAYMENTS.**

**6.1. Lock Boxes and Blocked Accounts.** This Amendment Each Loan Party hereby represents and warrants that all Deposit Accounts and all other depository and other accounts maintained by each Loan Party as of the Closing Date are described in Section 3 of the Perfection Certificate, which description includes for each such account the name of the Loan Party maintaining the account, the name of the financial institution at which the account is maintained, the account number and the purpose of the account. After the Closing Date, no Loan Party shall open any new Deposit Account or any other depository or other account (other than Restricted Accounts) without the prior written consent of Agent and without updating Section 3 of the Perfection Certificate to reflect such Deposit Account or other account. No Deposit Account or other account of any Loan Party shall at any time constitute a Restricted Account other than accounts expressly indicated on Section 3 of the Perfection Certificate as being Restricted Accounts (and each Loan Party hereby represents and warrants that each such account shall at all times meet the requirements set forth in the definition of Restricted Account to qualify as a Restricted Account). Each Loan Party will, at its expense, establish (and revise from time to time as Agent may reasonably require in its Permitted Discretion) procedures acceptable to Agent, in Agent's reasonable discretion, for the collection of checks, wire transfers and all other proceeds of all of such Loan Party's Accounts and other Collateral ("**Collections**"), which shall include (a) directing all Account Debtors to send all Account proceeds directly to a post office box designated by Agent either in the name of such Loan Party (but as to which Agent has exclusive access) or, at Agent's option, in the name of Agent (a "**Lock Box**") and (b) depositing all Collections received by such Loan Party into one or more bank accounts maintained in the name of such Loan Party (but as to which Agent has exclusive access) or, at Agent's option, in the name of Agent (each, a "**Blocked Account**"), under an arrangement reasonably acceptable to Agent with a depository bank reasonably acceptable to Agent, pursuant to which all funds deposited into each Blocked Account are to be effective when transferred to Agent in such manner, and with such frequency, as Agent shall specify, and/or (c) a combination of the Bank receives foregoing. Each Loan Party agrees to execute, and to cause its depository banks and other account holders to execute, such Lock Box and Blocked Account control agreements and other documentation as Agent shall reasonably require from time to time in connection with the following items, foregoing, all in form and content substance reasonably acceptable to Agent, and in any event such arrangements and documents must be in place on the Bank: date hereof with respect to accounts in existence on the date hereof, or prior to any such account being opened with respect to any such account opened after the date hereof, in each case excluding Restricted Accounts. Prior to the Closing Date, Borrowers shall deliver to Agent a complete and executed Authorized Accounts form regarding each Borrower's operating account(s) into which the proceeds of Loans are to be paid in the form of Exhibit D annexed hereto.

**6.1.6.2. Application of Payments.** All amounts paid to or received by Agent in respect of monetary Obligations, from whatever source (whether from any Borrower or any other Loan Party pursuant to such other Loan Party's guaranty of the Obligations, any realization upon any Collateral or otherwise) shall have executed and delivered be applied by Agent to the Obligations in such order as Agent may elect, and absent such election shall be applied as follows:

- (i) **FIRST**, to reimburse Agent for all reasonable and documented out-of-pocket costs and expenses, and all indemnified losses, incurred by Agent which are reimbursable to Agent in accordance with this



Agreement or any of the other Loan Documents;

(ii) **SECOND**, to any accrued but unpaid interest on any Protective Advances and the Additional Availability Amount;

(iii) **THIRD**, to the outstanding principal of any Protective Advances and the Additional Availability Amount;

(iv) **FOURTH**, to any accrued but unpaid fees owing to Agent and Lenders under this Agreement and/or any other Loan Documents;

(v) **FIFTH**, to any unpaid accrued interest on the Obligations;

(vi) **SIXTH**, to the outstanding principal of the Loans; and

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

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For purposes of determining the Borrowing Base, such amounts will be credited to the Loan Account and reduce gross Accounts in the Borrowing Base Calculation upon Agent's receipt of an advice from Agent's Bank (set forth in Section 4 of Annex I) that such items have been credited to Agent's account at Agent's Bank (or upon Agent's deposit thereof at Agent's Bank in the case of payments received by Agent in kind), in each case subject to final payment and collection. However, for purposes of computing interest on the Obligations, such items shall be deemed applied by Agent three (3) Business Days after Agent's receipt of advice of deposit thereof at Agent's Bank; provided, that if such payment is received after 2:00 p.m. Central Time on any Business Day, such payment shall be deemed received on the following Business Day and deemed applied three (3) Business Days after such date.

**6.3. Notification; Verification.** Agent or its designee may, from time to time: (a) whether or not a Default or Event of Default has occurred, verify directly with the Account Debtors of the Loan Parties (or by any manner and through any medium Agent considers advisable) the validity, amount and other matters relating to the Accounts and Chattel Paper of the Loan Parties, by means of mail, telephone or otherwise, either in the name of the applicable Loan Party or Agent or such other name as Agent may choose; (b) whether or not a Default or Event of Default has occurred, notify Account Debtors of the Loan Parties that Agent has a security interest in the Accounts of the Loan Parties; each such notification to be sent on the letterhead of such Loan Party and substantially in the form of Exhibit E annexed hereto; and (c) following the occurrence and during the continuance of a Default or Event of Default, demand, collect or enforce payment of any Accounts and Chattel Paper (but without any duty to do so) and, in furtherance of the foregoing, each Loan Party hereby authorizes Account Debtors to make payments directly to Agent and to rely on notice from Agent without further inquiry. Agent may on behalf of each Loan Party endorse all items of payment received by Agent that are payable to such Loan Party for the purposes described above.

**6.4. Power of Attorney.**

Without limiting any of Agent's and the other Lenders' other rights under this Agreement or any other Loan Document (including Section 11.3 hereof), effective as of the Closing Date, each Loan Party hereby grants to Agent an irrevocable power of attorney, coupled with an interest, authorizing and permitting Agent (acting through any of its officers, employees, attorneys or agents), at Agent's option but without obligation, with or without notice to such Loan Party, and at each Loan Party's expense, to do any or all of the following, in such Loan Party's name or otherwise:

- (a) at any time, after the occurrence and during the continuance of an Event of Default,
- (i) execute on behalf of such Loan Party any documents that Agent may, in its sole discretion, deem advisable in order to perfect, protect and maintain Agent's security interests, and priority thereof, in the Collateral and to fully consummate all the transactions contemplated by this Agreement and the other Loan Documents (including such Financing Statements and continuation Financing Statements, and amendments or other modifications thereto, as Agent shall deem necessary or appropriate) and to notify Account Debtors of the Loan Parties in the manner contemplated by Section 6.3, (ii) endorse such Loan Party's name on all checks and other forms of remittances received by Agent, (iii) pay any sums required on account of such Loan Party's Taxes or to secure the release of any

Liens therefor, (iv) pay any amounts necessary to obtain, or maintain in effect, any of the insurance described in Section 7.14, (v) receive and otherwise take control in any manner of any cash or non-cash items of payment or Proceeds of Collateral, (vi) receive, open and dispose of all mail addressed to such Loan Party at any post office box or lockbox maintained by Agent for such Loan Party or at any other business premises of Agent and (vii) endorse or assign to Agent on such Loan Party's behalf any portion of Collateral evidenced by an agreement, Instrument or Document if an endorsement or assignment of any such items is not made by such Loan Party pursuant to Section 5.2; and

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

Any and all sums paid, and any and all costs, expenses, liabilities, obligations and reasonable attorneys' fees (including internal counsel, one (1) external counsel, and as necessary, one (1) local counsel in each guarantor relevant jurisdiction) of Agent with respect to the foregoing shall be added to and become part of the Obligations, shall be payable on demand, and shall bear interest at a rate equal to the highest interest rate applicable to any of the Obligations. Each Loan Party agrees that Agent's rights under the foregoing power of attorney and any of Agent's other rights under this Agreement or the other Loan Documents shall not be construed to indicate that Agent or any Lender is in control of the business, management or properties of any Loan Party. The foregoing power of attorney shall not be revocable and shall have executed a duration from the Closing Date until the date the Obligations have been Paid in Full.

**6.5. Disputes.** Each Loan Party shall promptly notify Agent of all disputes or claims relating to its Accounts and delivered Chattel Paper in excess of \$250,000. Each Loan Party agrees that it will not, without Agent's prior written consent, compromise or settle any of its Accounts or Chattel Paper for less than the full amount thereof, grant any extension of time for payment of any of its Accounts or Chattel Paper, release (in whole or in part) any Account Debtor or other person liable for the payment of any of its Accounts or Chattel Paper or grant any credits, discounts, allowances, deductions, return authorizations or the like with respect to any of its Accounts or Chattel Paper; except (unless otherwise directed by Agent during the existence of a Default or an Event of Default) such Loan Party may take any of such actions in the Ordinary Course of Business consistent with past practices, **provided**, that Borrower Representative promptly reports the same to Agent.

**6.6. Invoices.** At Agent's request, each Loan Party will cause all invoices and statements that it sends to Account Debtors or other third parties to be marked and authenticated, in a manner reasonably satisfactory to Agent, to reflect Agent's security interest therein and payment instructions (including, but not limited to, in a manner to meet the requirements of Section 9-404(a)(2) of the UCC).

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**6.7. Inventory.**

(a) **Returns.** No Loan Party will accept returns of any Inventory from any Account Debtor except in the Ordinary Course of Business. In the event the value of returned Inventory in any one calendar month exceeds \$200,000(collectively for all Loan Parties), Borrower Representative will immediately notify Agent (which notice shall specify the value of all such returned Inventory, the reasons for such returns, and the locations and the condition of such returned Inventory).

(b) **Third Party Locations.** No Loan Party will, without Agent's prior written consent, at any time, store any Inventory with any warehouseman or other third party other than as set forth in Section 1(d) of the Perfection Certificate.

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

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

(e) **Eligibility.** As of each date reported by any Borrower, all Inventory which such Borrower has then reported to Agent as then being Eligible Inventory shall comply with the criteria for eligibility set forth in the definition of Eligible Inventory.

## 7. REPRESENTATIONS, WARRANTIES AND AFFIRMATIVE COVENANTS.

To induce Agent and the Lenders to enter into this Agreement, each Loan Party represents, warrants and covenants as follows (it being understood and agreed that (a) each such representation and warranty (i) will be made as of the date hereof and be deemed remade as of each date on which any Loan is made (except to the Bank extent any such representation or warranty expressly relates only to any earlier or specified date, in which case such representation or warranty will be made as of such earlier or specified date) and (ii) shall not be affected by any knowledge of, or any investigation by, Agent or any Lender and (b) each such covenant shall continuously apply with respect to all times commencing on the Consent date hereof and Reaffirmation attached hereto, continuing until the Termination Date):

6.2 If 7.1. **Existence and Authority.** Each Loan Party is (a) duly organized, validly existing and in good standing under the Borrower laws of its jurisdiction of organization (which jurisdiction is identified in Section 1(a) of the Perfection Certificate) and (b) is qualified to do business in each jurisdiction in which the operation of its business requires that it be qualified (which each such jurisdiction is identified in Section 1(a) of the Perfection Certificate) , except with respect to this clause (b), where the failure to qualify, individually or any guarantor in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Each Loan Party has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is anything other than a natural person, evidence that party and to carry out the transactions contemplated thereby. The execution, delivery and performance by the Borrower and/or such guarantor each Loan Party of this Amendment Agreement and any instrument or agreement required under this Amendment all of the other Loan Documents to which such Loan Party is a party have been duly authorized, and validly authorized, (a) do not violate (i) such Loan Party's Governing Documents (ii) any Applicable Law, except, with respect to this clause (ii), where any such violation, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (iii) any Material Contract to which a Loan Party is a party or by which a Loan Party or any of its property is bound or (iv) any court order which is binding upon any Loan Party or its property, (b) do not constitute grounds for acceleration of any Indebtedness or obligation under any contract which is binding upon any Loan Party or its property, and (c) do not require the consent of any Person which has not yet been obtained, except, with respect to this clause (c), where the failure to obtain such consent, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Each Loan Party shall preserve and maintain all of its leases, licenses, permits, franchises qualifications, and rights that are necessary and desirable in the Ordinary Course of Business, except where the failure so maintain, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. No Loan Party is required to obtain any government approval, consent, or authorization from, or to file any declaration or statement with, any Governmental Authority in connection with or as a condition to the execution, delivery or performance of any of the Loan Documents, except for any approvals, consents, authorizations or filings that have been obtained or made

and are in full force and effect on the Closing Date. This Agreement and each of the other Loan Documents have been duly executed and delivered by, and are enforceable against, each of the Loan Parties who have signed them, in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditor's rights generally or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). Section 1(f) of the Perfection Certificate sets forth the ownership of each Loan Party and their Subsidiaries (and specifically identifies as an "Excluded Subsidiary" any Subsidiary that shall be an Excluded Subsidiary under this Agreement).

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**7.2. Names; Trade Names and Styles.** The name, type of entity and location of organization of each Loan Party set forth on Section 1(b) of the Perfection Certificate is its correct and complete legal name as of the date hereof, and no Loan Party has used any other name at any time in the past five years, or at any time will use any other name, in any Tax filing made in any jurisdiction. Listed in Section 1(b) of the Perfection Certificate are all prior names used by each Loan Party at any time in the past five years and all of the present and prior trade names used by any Loan Party at any time in the past five years. Borrower Representative shall give Agent at least thirty days' prior written notice (and will deliver an updated Section 1(b) of the Perfection Certificate to reflect the same) before it or any other Loan Party changes its legal name or does business under any other name.

**6.3 Payment7.3. Title to Collateral; Third Party Locations; Permitted Liens** Each Loan Party has, and at all times will continue to have, good and legal title to all of the Collateral necessary for the conduct of its business. The Collateral now is, and at all times will remain, free and clear of any and all Liens, except for Permitted Liens. Agent now has, and will at all times continue to have, a first priority perfected and enforceable security interest in all of the Collateral (for the avoidance of doubt, other than any Excluded Collateral), subject only to the Permitted Liens, and each Loan Party will at all times defend Agent and the Collateral against all claims of others. None of the Collateral which is Equipment is, or will at any time, be affixed to any real property in such a manner, or with such intent, as to become a fixture. Except for leases or subleases as to which Borrowers have delivered to Agent a Collateral Access Agreement (unless waived by Agent; **provided**, that such waiver may be conditioned upon Agent establishing a rent or other similar Reserve satisfactory to Agent in its Permitted Discretion), no Loan Party is or will be a lessee or sublessee under any real property lease or sublease. Except for warehouses as to which Borrowers have delivered to Agent a Collateral Access Agreement (unless waived by Agent; **provided**, that such waiver may be conditioned upon Agent establishing a rent or other similar Reserve satisfactory to Agent in its Permitted Discretion), no Loan Party is or will at any time be a bailor of any Goods at any warehouse or otherwise. Prior to causing or permitting any Collateral to at any time be located upon premises in which any third party (including any landlord, consignee, warehouseman, or otherwise) has an interest, Borrower Representative shall notify Agent and the applicable Loan Party shall cause each such third party to execute and deliver to Agent a Collateral Access Agreement (unless waived by Agent; **provided**, that such waiver may be conditioned upon Agent establishing a rent or other similar Reserve satisfactory to Agent in its Permitted Discretion). Each applicable Loan Party will keep at all times in full force and effect, and will comply at all times in all material respects with the terms of, any lease of real property where any of the Collateral now or in the future may be located subject to Permitted Protests.

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**7.4. Accounts and Chattel Paper.** As of each date reported by Borrowers, all Accounts which any Borrower has then reported to Agent as then being Eligible Accounts comply with the criteria for eligibility set forth in the respective definition of Eligible Accounts. All such Accounts, and all Chattel Paper owned by any Loan Party, are genuine and in all respects what they purport to be, arise out of a completed, bona fide and unconditional and non-contingent sale and delivery of goods or rendition of services by a Borrower in the Ordinary Course of Business and in accordance with the terms and conditions of all purchase orders, contracts or other documents relating thereto, each Account Debtor thereunder had the capacity to contract at the time any contract or other document giving rise to such Accounts and Chattel Paper were executed, and the transactions giving rise to such Accounts and Chattel Paper comply in all material respects with all Applicable Laws and governmental rules and regulations.

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

**7.6. Capitalization; Investment Property.**

(a) No Loan Party, directly or indirectly, owns, or shall at any time own, any Equity Interest of any other Person except as set forth in Sections 1(f) and 1(g) of the Perfection Certificate, which Sections list all Investment Property owned by each Loan Party as of the Closing Date, or as permitted by Section 8.5.

(b) None of the Pledged Equity has been issued or otherwise transferred in violation in any material respect of the Securities Act, or other Applicable Laws of any jurisdiction to which such issuance or transfer may be subject. The Pledged Equity pledged by each Loan Party hereunder constitutes all of the issued and outstanding Equity Interests of each Issuer owned by such Loan Party.

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

(d) Each Loan Party has caused each Issuer to amend or otherwise modify its Governing Documents, books, records, and related agreements, documents and instruments, as applicable, to reflect the rights and interests of Agent hereunder, and to the extent required to enable and empower Agent to exercise and enforce its rights and remedies hereunder in respect of the Pledged Equity and other Investment Property.

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(e) Each Loan Party will take any and all actions reasonably required and requested by Agent, from time to time, to (i) cause Agent to obtain control (as such term is defined in the applicable UCC) of any Investment Property in a manner reasonably acceptable to Agent and (ii) obtain from any Issuers and such other Persons as Agent shall specify, for the benefit of Agent, written confirmation of Agent's exclusive control over such Investment Property and take such other actions as Agent may request to perfect Agent's security interest in any Investment Property. For purposes of this Section 7.6, Agent shall have exclusive control of Investment Property if (A) pursuant to Section 5.2, such Investment Property consists of certificated securities and the applicable Loan Party delivers such certificated securities to Agent (with all appropriate endorsements), (B) such Investment Property consists of uncertificated securities and either (x) the applicable Loan Party delivers such uncertificated securities to Agent or (y) the Issuer thereof agrees, pursuant to documentation in form and substance reasonably satisfactory to Agent, that it will comply with instructions originated by Agent without further consent by the Borrower applicable Loan Party and (C) such Investment Property consists of security entitlements and either (x) Agent becomes the entitlement holder thereof or (y) the appropriate securities intermediary agrees, pursuant to documentation in form and substance reasonably satisfactory to Agent, that it will comply with entitlement orders originated by Agent without further consent by the applicable Loan Party. Each Loan Party that is a waiver fee limited liability company or a partnership hereby represents and warrants that it has not, and at no time will, elect pursuant to the provisions of Section 8-103 of the UCC to provide that its equity interests are securities governed by Article 8 of the UCC.

(f) No Loan Party owns, or has any present intention of acquiring, any "**margin security**" or any "**margin stock**" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System (herein called "**margin security**" and "**margin stock**"). None of the proceeds of the Loans will be used, directly or indirectly, for the purpose of purchasing or carrying, or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry, any margin security or margin stock or for any other

purpose which might constitute the transactions contemplated hereby a "**purpose credit**" within the meaning of said Regulations T, U or X, or cause this Agreement to violate any other regulation of the Board of Governors of the Federal Reserve System or the Exchange Act, or any rules or regulations promulgated under such statutes.

(g) No Loan Party shall vote to enable, or take any other action to cause or to permit, any Issuer to issue any 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 Equity Interests of any nature of any Issuer.

(h) No Loan Party shall take, or fail to take, any action that would in any manner impair the enforceability of Agent's Lien on any of the Investment Property, or any of Agent's rights or remedies under this Agreement or any other Loan Document with respect to any of the Investment Property.

(i) In the case of any Loan Party which is an Issuer, such Issuer agrees that the terms of Section 11.3(g)(iii) shall apply to such Loan Party with respect to all actions that may be required of it pursuant to such Section 11.3(g)(iii) regarding the Investment Property issued by it.

(j) Each Loan Party has made all capital contributions heretofore required to be made to the respective Issuer in respect of any Investment Property constituting limited liability company interests and no additional capital contributions are required to be made in respect of the respective limited liability company interests.

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#### **7.7. Commercial Tort Claims; Letter-of-Credit Rights.**

(A) No Loan Party has any Commercial Tort Claims pending as of the Closing Date other than those listed in Section 2 of the Perfection Certificate, and each Loan Party shall promptly (but in any case, no later than five Business Days thereafter) notify Agent in writing upon incurring or otherwise obtaining a Commercial Tort Claim after the date hereof against any third party with a value reasonably expected to exceed \$250,000 or in the amount of \$50,000.00, aggregate to exceed \$500,000. Such notice shall constitute such Loan Party's authorization to amend such Section 2 to add such Commercial Tort Claim and shall automatically be deemed to amend such Section 2 to include such Commercial Tort Claim.

**6.4 Payment (B)** No Loan Party has any Letter-of-Credit Rights as of the Closing Date other than those listed in Section 8 of the Perfection Certificate, and each Loan Party shall promptly (but in any case, no later than ten (10) Business Days thereafter) notify Agent in writing upon acquiring any Letter-of-Credit Rights after the Closing Date with an aggregate stated amount of \$500,000 or more, and, at the written request of Agent, such Loan Party shall promptly (and in any event within ten (10) Business Days after Agent's request (or such longer period as Agent may agree in its discretion)) either (i) arrange for the issuer and any confirmer of the applicable letter of credit to consent to an assignment to Agent of the proceeds of any drawing under such letter of credit or (ii) arrange for Agent to become the transferee beneficiary of such letter of credit, with Agent agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied as provided in this Agreement.

**7.8. Jurisdiction of Organization; Location of Collateral.** Sections 1(c) and 1(d) of the Perfection Certificate set forth (a) each place of business of each Loan Party (including its chief executive office), (b) all locations where all Inventory, Equipment, and other Collateral owned by each Loan Party and having a value in excess of \$100,000 is kept and (c) whether each such Collateral location and place of business (including each Loan Party's chief executive office) is owned by a Loan Party or leased (and if leased, specifies the complete name and notice address of each lessor). No Collateral is located outside the United States or in the possession of any lessor, bailee, warehouseman or consignee, except as expressly indicated in Sections 1(c) and 1(d) of the Perfection Certificate or to the extent having a value of less than \$100,000. Each Loan Party will give Agent at least thirty (30) days' prior written notice before changing its jurisdiction of organization, opening any additional place of business, changing its chief executive office or the location of its books and records, or moving any of the Collateral to a location other than one of the locations set forth in Sections 1(c) and 1(d) of the Perfection Certificate, and will execute and deliver all Financing Statements, Collateral Access Agreement, mortgages, and all other agreements, instruments and documents which Agent shall require in connection therewith prior to making such



change, all in form and substance reasonably satisfactory to Agent. Without the prior written consent of Agent, no Loan Party will at any time (i) change its jurisdiction of organization or (ii) allow any Collateral to be located outside of the continental United States of America.

#### **7.9. Financial Statements and Reports; Solvency.**

(a) All financial statements delivered to Agent and Lenders by or on behalf of any Loan Party have been, and at all times will be, prepared in conformity with GAAP and fairly reflect in all material respects the financial condition of each Loan Party covered thereby, at the times and for the periods therein stated.

(b) As of the date hereof (after giving effect to the Loans to be made on the date hereof, and the consummation of the transactions contemplated hereby), and as of each other day that any Loan is made (after giving effect thereof), (i) the fair saleable value of all of the assets and properties of each Loan Party, on a consolidated basis, exceeds the aggregate liabilities and Indebtedness of each such Loan Party (including contingent liabilities), (ii) each Loan Party, individually, is solvent and the Loan Parties, on a consolidated basis, are able to pay their debts as they come due, (iii) the Loan Parties, on a consolidated basis, have sufficient capital to carry on its business as now conducted and as proposed to be conducted, (iv) no Loan Party is contemplating either the liquidation of all or any substantial portion of its assets or property, or the filing of any petition under any state, federal, or other bankruptcy or insolvency law and (v) no Loan Party has knowledge of any Person contemplating the filing of any such petition against any Loan Party.

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**7.10. Tax Returns and Payments; Pension Contributions.** Each Loan Party has timely filed all tax returns and reports required by Applicable Law, has timely paid all applicable Taxes, assessments, deposits and contributions owing by such Loan Party and will timely pay all such items in the future as they became due and payable. Each Loan Party may, however, defer payment of any contested Taxes pursuant to a Permitted Protest; **provided**, that such Loan Party (a) notifies Agent in writing of the commencement of, and any material development in, the proceedings and (b) posts bonds or takes any other steps required to keep the contested Taxes from becoming a Lien upon any of the Collateral. No Loan Party is aware of any claims or adjustments proposed for any prior tax years that could result in additional taxes becoming due and payable by any Loan Party. Each Plan is in compliance in all material respects with, and has been operated in accordance with, the applicable provisions of ERISA, the Code and other Applicable Laws. Each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or opinion letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Borrower Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each Loan Party, nothing has occurred that would prevent or cause the loss of such tax-qualified status. There are no pending or, to the best knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to result in liabilities individually or in the aggregate in excess of \$100,000 of any Loan Party. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in liabilities individually or in the aggregate of any Loan Party in excess of \$100,000. No ERISA Event has occurred, and no Loan Party is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan, in each case that could reasonably be expected to result in liabilities individually or in the aggregate in excess of \$100,000. Each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained, in each case except as could not reasonably be expected to result in liabilities individually or in the aggregate to the Loan Parties in excess of \$100,000. As of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is sixty percent (60%) or higher and no Loan Party knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below sixty percent (60%) as of the most recent valuation date. No Loan Party or any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which

have become due that are unpaid, except as could not reasonably be expected to result in liabilities individually or in the aggregate to the Loan Parties in excess of \$100,000. No Loan Party or any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA except as could not reasonably be expected to result in liabilities individually or in the aggregate to the Loan Parties in excess of \$100,000. No Pension Plan has been terminated by the plan administrator thereof or by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan, except as could not reasonably be expected to result in liabilities individually or in the aggregate to the Loan Parties in excess of \$100,000.

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#### **7.11. Compliance with Laws; Intellectual Property; Licenses.**

(a) Each Loan Party has complied, and will continue at all times to comply, in all material respects with all provisions of all Applicable Laws and regulations, including those relating to the ownership of real or personal property, the conduct and licensing of each Loan Party's business, the payment and withholding of Taxes, ERISA and other employee matters, and safety and Environmental Laws.

(b) No Loan Party has received written notice of default or violation, or is in default or violation, with respect to any judgment, order, writ, injunction, decree, demand or assessment issued by any court or any federal, state, local, municipal or other Governmental Authority relating to any aspect of any Loan Party's business, affairs, properties or assets. No Loan Party has received written notice of or been charged with, or is, to the knowledge of any Loan Party, under investigation with respect to, any violation in any material respect of any provision of any Applicable Law.

(c) No Loan Party owns any registered or pending Intellectual Property, except as set forth in Section 4 of the Perfection Certificate. Except as set forth in Section 4 of the Perfection Certificate, none of the Intellectual Property owned by any Loan Party is the subject of any licensing or franchise agreement pursuant to which such Loan Party is the licensor or franchisor. Each Loan Party shall promptly (but in any event within thirty (30) days thereafter) notify Agent in writing of any additional registered or pending Intellectual Property rights acquired or arising after the Closing Date and shall submit to Agent a supplement to Section 4 of the Perfection Certificate to reflect such additional rights; **provided**, that such Loan Party's failure to do so shall not impair Agent's security interest therein. Each Loan Party shall execute a separate security agreement granting Agent a security interest in such Intellectual Property (whether owned on the Closing Date or thereafter), in form and substance reasonably acceptable to Agent and suitable for registering such security interest in such Intellectual Property with the United States Patent and Trademark Office and/or United States Copyright Office, as applicable; **provided**, that such Loan Party's failure to do so shall not impair Agent's security interest therein. Each Loan Party owns or has, and will at all times continue to own or have, the valid right to use all material patents, trademarks, copyrights, software, computer programs, equipment designs, network designs, equipment configurations, technology and other Intellectual Property necessary for the conduct of such Loan Party's business, and each Loan Party is in compliance, and will continue at all times to comply, in all material respects with all licenses, user agreements and other such agreements regarding the use of Intellectual Property. No Loan Party has any knowledge that, or has received any written notice claiming that, any of such Intellectual Property materially infringes upon or violates the rights of any other Person. To any Loan Party's knowledge, there is no third party Intellectual Property licensed to a Loan Party that is necessary for, or critical to, the manufacture, sale or distribution of any products or services of any Loan Party, and no licensed third party Intellectual Property is necessary for Agent to exercise its rights to enforce Agent's Liens with respect to the Collateral, including the right to dispose of it, during the existence of an Event of Default.

(d) Each Loan Party has and will continue at all times to have, all federal, state, local and other licenses and permits required to be maintained in connection with such Loan Party's business operations, and all such licenses and permits are valid and in full force and effect, except for any licenses or permits the failure of which to maintain or be in full force and effect, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Each Loan Party has, and will continue at all times to have, complied with the requirements of such licenses and permits in all material respects, and has received no written notice of any pending or threatened



proceedings for the suspension, termination, revocation or limitation thereof. No Loan Party is aware of any facts or conditions that could reasonably be expected to cause or permit any of such licenses or permits to be voided, revoked or withdrawn.

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**7.12. Litigation.** Section 1(e) of the Perfection Certificate discloses all claims, proceedings, litigation or investigations pending or (to the best of each Loan Party's knowledge) threatened in writing against any Loan Party as of the Closing Date which could reasonably be expected to result in any judgment against or liability of such Loan Party in excess of \$250,000 (other than a money judgment or judgments fully covered (except for customary deductibles, copayments, or self-insured retentions in an amount not to exceed \$100,000 individually or \$250,000 in the aggregate) by insurance as to which the insurance company has accepted coverage) individually or in the aggregate with respect to all Loan Parties. There is no claim, suit, litigation, proceeding or investigation pending or (to the best of each Loan Party's knowledge) threatened in writing against or affecting any Loan Party in any court or before any Governmental Authority (or any basis therefor known to any Loan Party) which may result, either separately or in the aggregate, in liability in excess of \$250,000 for the Loan Parties, in any Material Adverse Effect, or in any material impairment in the ability of any Loan Party to carry on its business in substantially the same manner as it is now being conducted.

**7.13. Use of Proceeds.** All proceeds of all Loans shall be used by Borrowers solely (a) with respect to Loans made on the Closing Date, to repay in full their indebtedness owing to Bank of America, N.A., (b) to pay the fees, costs, and expenses and attorneys' fees (including allocated costs for in-house legal services) incurred by the Bank in connection with this Amendment, the other Loan Documents and the transactions contemplated hereby and thereby, (c) for Borrowers' working capital and general corporate purposes and (d) for such other purposes as specifically permitted pursuant to the terms of this Agreement. All proceeds of all Loans will be used solely for lawful business purposes.

**7.14. Insurance.**

(a) Each Loan Party will at all times carry property, liability and other insurance, with insurers reasonably acceptable to Agent, in such form and amounts, and with such deductibles and other provisions, as Agent shall reasonably require, but in any event, in such amounts and against such risks as is usually carried by companies engaged in similar business and owning similar properties in the same general areas in which such Loan Party operates, and each Borrower will provide Agent with evidence reasonably satisfactory to Agent that such insurance is, at all times, in full force and effect. A true and complete listing of such insurance as of the Closing Date, including issuers, coverages and deductibles, is set forth in Section 5 of the Perfection Certificate. Each property insurance policy shall name Agent as lender loss payee and mortgagee, if applicable, and shall contain a lender's loss payable endorsement, and a mortgagee endorsement, if applicable, and each liability insurance policy shall name Agent as an additional insured, and each business interruption insurance policy shall be collaterally assigned to Agent, all in form and substance reasonably satisfactory to Agent. All policies of insurance shall provide that they may not be cancelled or changed without at least thirty (30) days' (or, with respect to nonpayment of premiums, ten (10) days') prior written notice to Agent, and shall otherwise be in form and substance reasonably satisfactory to Agent. Borrower Representative shall advise Agent promptly of any policy cancellation, non-renewal, reduction, or material amendment with respect to any insurance policies maintained by any Loan Party or any receipt by any Loan Party of any notice from any insurance carrier regarding any intended or threatened cancellation, non-renewal, reduction or material amendment of any of such policies, and Borrower Representative shall promptly deliver to Agent copies of all notices and related documentation received by any Loan Party in connection with the same.

(b) Borrower Representative shall deliver to Agent no later than fifteen (15) days prior to the expiration of any then current insurance policies, insurance certificates evidencing renewal of all such insurance policies required by this Section 7.14. Borrower Representative shall deliver to Agent, upon Agent's request, certificates evidencing such insurance coverage in such form as Agent shall specify.

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(c) IF ANY LOAN PARTY AT ANY TIME OR TIMES HEREAFTER SHALL FAIL TO OBTAIN OR MAINTAIN ANY OF THE POLICIES OF INSURANCE REQUIRED ABOVE (AND PROVIDE EVIDENCE THEREOF TO AGENT) OR TO PAY ANY PREMIUM RELATING THERETO, THEN AGENT, WITHOUT WAIVING OR RELEASING ANY OBLIGATION OR DEFAULT BY ANY BORROWER HEREUNDER, MAY (BUT SHALL BE UNDER NO OBLIGATION TO) OBTAIN AND MAINTAIN SUCH POLICIES OF INSURANCE AND PAY SUCH PREMIUMS AND TAKE SUCH OTHER ACTIONS WITH RESPECT THERETO AS AGENT DEEMS ADVISABLE UPON NOTICE TO BORROWER REPRESENTATIVE. SUCH INSURANCE, IF OBTAINED BY AGENT, MAY, BUT NEED NOT, PROTECT ANY LOAN PARTY'S INTERESTS OR PAY ANY CLAIM MADE BY OR AGAINST ANY LOAN PARTY WITH RESPECT TO THE COLLATERAL. SUCH INSURANCE MAY BE MORE EXPENSIVE THAN THE COST OF INSURANCE ANY LOAN PARTY MAY BE ABLE TO OBTAIN ON ITS OWN AND MAY BE CANCELLED ONLY UPON THE APPLICABLE LOAN PARTY PROVIDING EVIDENCE THAT IT HAS OBTAINED THE INSURANCE AS REQUIRED ABOVE. ALL SUMS DISBURSED BY AGENT IN CONNECTION WITH ANY SUCH ACTIONS, INCLUDING COURT COSTS, EXPENSES, OTHER CHARGES RELATING THERETO AND REASONABLE INTERNAL AND EXTERNAL ATTORNEY COSTS, SHALL CONSTITUTE LOANS HEREUNDER, SHALL BE PAYABLE ON DEMAND BY LOAN PARTIES TO AGENT AND, UNTIL PAID, SHALL BEAR INTEREST AT THE HIGHEST RATE THEN APPLICABLE TO LOANS HEREUNDER.

**7.15. Financial, Collateral and Other Reporting / Notices.** Each Loan Party has kept, and will at all times keep, adequate records and books of account with respect to its business activities and the Collateral in which proper entries are made in accordance with GAAP reflecting all its financial transactions. The information provided in the Perfection Certificate is correct and complete in all respects. Each Loan Party will cause to be prepared and furnished to Agent, in each case in a form and in such detail as is reasonably acceptable to Agent the following items (the items to be provided under this Section 7.15 shall be delivered to Agent by posting on ABLSoft or, if requested by Agent, by another form of Approved Electronic Communication or in writing):

(a) **Annual Financial Statements.** Not later than ninety (90) days after the close of each Fiscal Year, unqualified, audited financial statements of each Loan Party as of the end of such Fiscal Year, including balance sheet, income statement, and statement of cash flow for such Fiscal Year, in each case on a consolidated and consolidating basis, certified by a firm of independent certified public accountants of recognized standing selected by Loan Parties but acceptable to Agent, together with a copy of any management letter issued in connection therewith. Concurrently with the delivery of such financial statements, Borrower Representative shall deliver to Agent a Compliance Certificate, indicating whether (i) Loan Parties are in compliance with each of the covenants specified in Section 9, and setting forth a detailed calculation of such covenants and (ii) any Default or Event of Default is then in existence;

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(b) **Interim Financial Statements.** Not later than thirty (30) days after the end of each month hereafter (forty-five (45) days after the end of the months ending January 31, April 30, July 31 and October 31 of each year), including the last month of each Fiscal Year, unaudited interim financial statements of each Loan Party as of the end of such month and of the portion of such Fiscal Year then elapsed, including balance sheet, income statement, statement of cash flow, and results of their respective operations during such month and the then-elapsed portion of the Fiscal Year, together with comparative figures for the same periods in the immediately preceding Fiscal Year and the corresponding figures from the budget for the Fiscal Year covered by such financial statements, in each case on a consolidated and consolidating basis, certified by the principal financial officer of Borrower Representative as prepared in accordance with GAAP and fairly presenting the consolidated financial position and results of operations (including management discussion and analysis of such results) of each Loan Party for such month and period subject only to changes from ordinary course year-end audit adjustments and except that such statements need not contain footnotes. Concurrently with the delivery of such financial statements, Borrower Representative shall deliver to Agent a Compliance Certificate, indicating whether (i) Borrowers are in compliance with each of the

covenants specified in Section 9, and setting forth a detailed calculation of such covenants, and (ii) any Default or Event of Default is then in existence;

(c) **Borrowing Base / Collateral Reports / Insurance Certificates / Perfection Certificates / Other Items.** The Borrowing Base Calculation, information and items described on Annex II hereto by the respective dates set forth therein. All information provided by Borrowers to Agent in each Borrowing Base Calculation (i) shall be certified to be true and correct in all respects and based on information contained in the Borrowers' financial records, (ii) shall be in accordance with the representations, warranties, agreements and covenants for such information in this Agreement as to the determination of the Borrowing Base and (iii) may be utilized for the determination and calculation of the Borrowing Base. Agent may from time to time adjust such Borrowing Base Calculation to the extent any such information or calculation does not comply with this Agreement;

(d) **Projections, Etc.** Not later than October 31<sup>st</sup> of each Fiscal Year, monthly business projections for the following Fiscal Year for the Loan Parties on a consolidated and consolidating basis, which projections shall include for each such period Borrowing Base projections, profit and loss projections, balance sheet projections, income statement projections and cash flow projections;

(e) **Shareholder Reports, Etc.** Promptly after the sending or filing thereof, as the case may be, copies of any proxy statements, financial statements or reports which each Loan Party has made available to its shareholders and copies of any regular, periodic and special reports or registration statements which any Loan Party files with the Securities and Exchange Commission or any Governmental Authority which may be substituted therefor, or any national securities exchange;

(f) **ERISA Reports.** Copies of any annual report to be filed pursuant to the requirements of ERISA in connection with each plan subject thereto promptly upon request by Agent and in addition, each Loan Party shall promptly notify Agent upon having knowledge of any ERISA Event;

(g) **Tax Returns.** Each federal and state income tax return filed by any Loan Party or Other Obligor promptly (but in no event later than ten days following the filing of such return), together with such supporting documentation as is supplied to the applicable tax authority with such return and proof of payment of any amounts owing with respect to such return;

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(h) **Notification of Certain Changes.** Promptly (and in no case later than the earlier of (i) three Business Days after the occurrence of any of the following and (ii) such other date that such information is required to be delivered pursuant to this Agreement or any other Loan Document) notification to Agent in writing of (A) the occurrence of any Default or Event of Default, (B) the occurrence of any event that has had, or could reasonably be expected to have, a Material Adverse Effect, (C) [reserved], (D) any investigation, action, suit, proceeding or claim (or any material development with respect to any existing investigation, action, suit, proceeding or claim) relating to any Loan Party, any officer or director of a Loan Party, the Collateral or which may result in a Material Adverse Effect, (E) any material loss or damage to the Collateral, (F) any event or the existence of any circumstance that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect, any Default, or any Event of Default, or which would make any representation or warranty previously made by any Loan Party to Agent untrue in any material respect or constitute a material breach if such representation or warranty was then being made, (G) the receipt of written notice received from any Person regarding any actual or alleged breaches of any Material Contract or termination or threat to terminate any Material Contract or any material amendment to or modification of a Material Contract, or the execution of any new Material Contract by any Loan Party and (H) any change in any Loan Party's certified independent accountant. In the event of each such notice under this Section 7.15(h), Borrower Representative shall give notice to Agent of the action or actions that each Loan Party has taken, is taking, or proposes to take with respect to the event or events giving rise to such notice obligation; and

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

**7.16. Litigation Cooperation.** Should any third-party suit, regulatory action, or any other judicial, administrative, or similar proceeding be instituted by or against Agent or any Lender with respect to any Collateral or in any manner relating to any Loan Party, this Agreement, any other Loan Document or the transactions contemplated hereby, each Loan Party shall, without expense to Agent or any Lender, use commercially reasonable efforts to make available each Loan Party, such Loan Party's officers, employees and agents, and any Loan Party's books and records, without charge, to the extent that Agent or such Lender may reasonably deem them necessary in order to prosecute or defend any such suit or proceeding.

**7.17. Maintenance of Collateral, Etc.** Each Loan Party will maintain all of the Collateral in good working condition, ordinary wear and tear excepted, and no Loan Party will use the Collateral for any unlawful purpose.

**7.18. Material Contracts.** Except as expressly disclosed in Section 1(h) of the Perfection Certificate, no Loan Party is (a) a party to any contract which has had or could reasonably be expected to have a Material Adverse Effect or (b) in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (x) any contract to which it is a party or by which any of its assets or properties is bound, which default, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or result in liabilities in excess of \$250,000 or (y) any Material Contract. Except for the contracts and other agreements listed in Section 1(h) of the Perfection Certificate, no Loan Party is party, as of the Closing Date, to any (i) collective bargaining agreements or other labor agreements covering any employees of any Loan Party, (ii) agreements for managerial, consulting or similar services to which any Loan Party is a party or by which it is bound, (iii) agreements regarding any Loan Party, its assets or operations or any investment therein to which any of its equity holders is a party, (iv) patent licenses, trademark licenses, copyright licenses or other lease or license agreements to which any Loan Party is a party, either as lessor or lessee, or as licensor or licensee, (v) distribution, marketing or supply agreements to which any Loan Party is a party, (vi) customer agreements to which any Loan Party is a party (in each case with respect to any contract of the type described in the preceding clauses (i), (iii), (iv), (v) and (vi) requiring payments of more than \$250,000 in the aggregate in any Fiscal Year), (vii) partnership agreements to which any Loan Party is a partner, limited liability company agreements to which any Loan Party is a member or manager, or joint venture agreements to which any Loan Party is a party, (viii) real estate leases, or (ix) any other contract to which any Loan Party is a party, in each case with respect to this clause (ix) the breach, nonperformance or cancellation of which, could reasonably be expected to have a Material Adverse Effect; (each such contract and agreement, described in the preceding clauses (i) to (x), a "**Material Contract**").

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

**7.20. No Material Adverse Change.** Since October 31, 2023 no event has occurred which has had, or could reasonably be expected to have, a Material Adverse Effect.

**7.21. Full Disclosure.** Excluding projections and other forward-looking information, pro forma financial information and information of a general economic or industry nature, no written report, notice, certificate, information or other statement delivered or made (including, in electronic form) by or on behalf of any Loan Party, any Other Obligor or any of their respective Affiliates to Agent or Lender in connection with this Agreement or any other Loan Document contains or will at any time contain any untrue statement of a material fact, or omits or will at any time omit to state any material fact necessary to make any statements contained herein or therein not misleading in any material respect. Except for matters of a general economic or political nature which do not affect any Loan Party or any Other Obligor uniquely, there is no fact presently known to any Loan Party which has not been disclosed to Agent, which has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Any projections and other forward-looking information and pro forma financial information contained in such materials were prepared in good faith based upon assumptions that were believed by such Loan Party to be reasonable at the time prepared and at the time furnished in light of conditions and facts then known (it being recognized that such projections and other forward-looking information and pro forma financial information are not to be viewed as facts and that actual results during the period or periods covered by any such projections or information may differ from the projected results, and such differences may be material).

**7.22. Sensitive Payments.** No Loan Party (a) has made or will at any time make any contributions, payments or gifts to or for the private use of any governmental official, employee or agent where either the payment or the purpose of such

contribution, payment or gift is illegal under the Applicable Laws of the United States or the jurisdiction in which made or any other applicable jurisdiction, (b) has established or maintained or will at any time establish or maintain any unrecorded fund or asset for any purpose or made any false or artificial entries on its books, (c) has made or will at any time make any payments to any Person with the intention that any part of such payment was to be used for any purpose other than that described in the documents supporting the payment or (d) has engaged in or will at any time engage in any "**trading with the enemy**" or other transactions violating any rules or regulations of the Office of Foreign Assets Control or any similar Applicable Laws, rules or regulations.

**7.23. Subordinated Debt.**

(a) Borrower Representative has furnished Agent a true, correct and complete copy of each of the Subordinated Debt Documents. No statement or representation made in any of the Subordinated Debt Documents by any Borrower or any other Loan Party or, to any Borrower Representative's knowledge, any other Person, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading in any material respect as of the time that such statement or representation is made. Each of the representations and warranties of the Loan Parties set forth in each of the Subordinated Debt Documents are true and correct in all respects. No portion of the Subordinated Debt is, or at any time shall be, (i) secured by any assets of any of the Loan Parties or any other Person or any equity issued by any of the Loan Parties or any other Person (except to the extent expressly permitted by the Subordinated Debt Subordination Agreement) or (ii) guaranteed by any Person (except to the extent expressly permitted by the Subordinated Debt Subordination Agreement).

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(b) The provisions of the Subordinated Debt Subordination Agreement are enforceable against each holder of the Subordinated Debt. Each Borrower and each other Loan Party acknowledges that Agent is entering into this Agreement and extending credit and making the Loans in reliance upon the Subordinated Debt Subordination Agreement and this Section 7.23. All Obligations constitute senior Indebtedness entitled to the benefits of the subordination provisions contained in the Subordinated Debt Documents.

**7.24. Access to Collateral, Books and Records.** At reasonable times and with advance written notice to the applicable Loan Party (unless an Event of Default exists, in which case no such notice shall be required), Agent and its representatives or agents shall have the right to inspect the Collateral and to examine and copy each Loan Party's books and records. Each Loan Party agrees to give Agent access to any or all of such Loan Party's, and each of its Subsidiaries', premises to enable Agent to conduct such inspections and examinations. Such inspections and examinations shall be at Borrowers' expense and the charge therefor shall be \$1,500 per person per day (or such higher amount as shall represent Agent's then current standard charge), plus reasonable and documented out-of-pocket expenses; **provided**, that, notwithstanding the foregoing or anything else contained herein to the contrary, the Borrowers shall be required to pay for no more than two (2) such inspections and/or examinations per calendar year unless an Event of Default occurs, in which case such limitations shall not apply. Agent may, at Borrowers' expense, use each Loan Party's personnel, computer and other equipment, programs, printed output and computer readable media, supplies and premises for the collection, sale or other disposition of Collateral to the extent Agent, in its sole discretion, deems appropriate.

**7.25. Appraisals.** Each Loan Party will permit Agent and each of its representatives or agents to conduct appraisals and valuations of the Collateral at such times and intervals as Agent may designate (including any appraisals that may be required to comply with FIRREA). Such appraisals and valuations shall be at Borrowers' expense; **provided**, that, notwithstanding the foregoing or anything else contained herein to the contrary, the Borrowers shall be required to pay for no more than two (2) such appraisals and/or valuations per calendar year unless an Event of Default occurs, in which case such limitations shall not apply.

**7.26. [Reserved].**

**7.27. Interrelated Businesses.** Loan Parties make up a related organization of various entities constituting a single economic and business enterprise so that Loan Parties share an identity of interests such that any benefit received by any one of them benefits the others. Subject to any terms and conditions of this Agreement, from time to time each of the

Loan Parties may render services to or for the benefit of the other Loan Parties, purchase or sell and supply goods to or from or for the benefit of the others, make loans, advances and provide other financial accommodations to or for the benefit of the other Loan Parties (including inter alia, the payment by such Loan Parties of creditors of the other Loan Parties and guarantees by such Loan Parties of indebtedness of the other Loan Parties and provides administrative, marketing, payroll and management services to or for the benefit of the other Loan Parties). Loan Parties have the same centralized accounting and legal services, certain common officers, directors and managers and generally do not provide stand-alone consolidating financial statements to creditors.

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**7.28. [Reserved].**

**7.29. Investment Company Act.** No Loan Party or any Subsidiary is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

**7.30. Anti-Corruption Laws and Sanctions.** The Borrower Representative has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower Representative, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower Representative, its Subsidiaries and their respective officers and employees, to the knowledge of the Borrower Representative its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower Representative, its Subsidiaries or any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower Representative, any agent of the Borrower Representative or its Subsidiaries that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No borrowing of any Loans, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

**7.31. Labor Matters.** No Loan Party is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against any Loan Party or any of its Subsidiaries, or to the knowledge of each Loan Party, threatened against any of them and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against any Loan Party or any of its Subsidiaries or to the knowledge of each Loan Party, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving any Loan Party or any of its Subsidiaries, and (c) to the knowledge of each Loan Party, no union representation question existing with respect to the employees of any Loan Party or any of its Subsidiaries and, to the knowledge of each Loan Party, no union organization activity that is taking place, except (with respect to any matter specified in clause(a), (b) or (c) above, either individually or in the aggregate) such could not reasonably be expected to have a Material Adverse Effect.

**7.32. Cybersecurity and Data Protection.**

(a) The information technology systems used in the business of the Borrower Representative and its Subsidiaries operate and perform in all material respects as required to permit Borrower Representative and its Subsidiaries to conduct their business as presently conducted. Neither Borrower Representative, nor any of its Subsidiaries, nor to the knowledge of the Loan Parties, any vendor of Borrower Representative or any of its Subsidiaries, has suffered any data breaches that (i) have resulted in any unauthorized access, acquisition, use, control, disclosure, destruction, or modification of any information subject to Data Protection Laws or any material Intellectual Property of Borrower Representative and its Subsidiaries, or (ii) have resulted in unauthorized access to, control of, or disruption of the information technology systems of Borrower Representative or any of its Subsidiaries.

(b) Except as would not cause or could not be reasonably expected to result in, individually or in the aggregate, a Material Adverse Effect, (i) Borrower Representative and its Subsidiaries have implemented and maintain a reasonable enterprise-wide privacy and information security program with plans, policies and procedures for privacy, physical and cyber security, disaster recovery, business continuity and incident response, including reasonable and appropriate administrative, technical and physical safeguards to protect information subject to Data Protection Laws and the information technology systems of Borrower Representative and each of its Subsidiaries from any unauthorized access, use, control, disclosure, destruction or modification, (ii) Borrower Representative and



each of its Subsidiaries is in compliance with all applicable requirements of law and Material Contracts regarding the privacy and security of customer, consumer, patient, employee and other personal data and is compliant with their respective published privacy policies and (iii) there have not been any incidents of, or, to the knowledge of the Loan Parties, any third party claims related to, any loss, theft, unauthorized access to, or unauthorized acquisition, modification, disclosure, corruption, destruction, or other misuse of any information subject to Data Protection Laws (including any ransomware incident) that Borrower Representative or any of its Subsidiaries creates, receives, maintains, or transmits.

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**7.33. Environmental Compliance.** Except as disclosed on Schedule 7.33 and except as to matters that could not reasonably be likely to have a Material Adverse Effect:

- (a) The facilities and properties currently owned, leased or operated by the Loan Parties (the “**Properties**”), do not contain any Hazardous Materials in amounts or concentrations which (i) constitute a violation of, or (ii) could reasonably be expected to give rise to liability under, any applicable Environmental Law.
- (b) None of the Loan Parties has received any written notice of violation, alleged violation, non-compliance, liability or potential liability regarding compliance with or liability under Environmental Laws with regard to any of the Properties or the business operated by the Loan Parties (the “**Business**”).
- (c) Hazardous Materials have not been transported or disposed of from the Properties by the Loan Parties in violation of, or in a manner or to a location which could reasonably be expected to give rise to liability under, any applicable Environmental Law, nor have any Hazardous Materials been generated, treated, stored or disposed of by the Loan Parties at or under any of the Properties in violation of, or in a manner that could reasonably be expected to give rise to liability under, any applicable Environmental Law.
- (d) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of a Responsible Officer, threatened in writing under any Environmental Law to which the Loan Parties are or, to the knowledge of a Responsible Officer of the Borrower, will be named as a party or with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other similar administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business.
- (e) To the knowledge of a Responsible Officer, there has been no release or threat of release of Hazardous Materials at or from the Properties, or arising from or related to the operations of the Loan Parties in connection with the Properties or otherwise in connection with the Business, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under any applicable Environmental Laws.
- (f) The Loan Parties have obtained (or in a timely manner applied for), and is in compliance with, all Environmental Permits required for its business, as currently conducted, and all such Environmental Permits are in full force and effect.

**7.34. Post-Closing Matters.** Loan Parties shall satisfy the requirements set forth on Schedule 7.34 hereof on or before the dates specified therein or such later date to be determined by Agent, at its sole option, each of which shall be completed or provided in form and substance reasonably satisfactory to Agent. The failure to satisfy any such requirement on or before the date when due (or within such longer period as Agent may agree at its sole option) shall be an Event of Default, except as otherwise agreed to by Agent at its sole option.

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## **8. NEGATIVE COVENANTS.**

**8.1. Indebtedness; Certain Equity Interests.** No Loan Party shall, and no Loan Party shall permit any other Loan Party to create, incur, assume or permit to exist, directly or indirectly any Indebtedness other than Permitted Indebtedness;

**8.2. Guaranties.** Other than Guaranties of the Obligations, no Loan Party will, or will permit any Subsidiary of a Loan Party to, at any time Guaranty or enter into or assume any Guaranty, or be obligated with respect to, or permit to be outstanding, any Guaranty, other than, so long as done in the Ordinary Course of Business, (a) Guaranties by a Loan Party or

any Subsidiary thereof of obligations under agreements of any other Loan Party entered into in connection with the acquisition of services, supplies, and equipment in the Ordinary Course of Business (other than with respect to any Indebtedness), (b) endorsements of negotiable instruments for deposit and (c) Guaranties of any Indebtedness permitted by Section 8.1.

**8.3. Liens.** No Loan Party will, or will permit any Subsidiary of a Loan Party to, (a) create, assume, incur, or permit or suffer to exist or to be created, assumed, or permitted or suffered to exist, directly or indirectly, any Lien on any of its property, real or personal, now owned or hereafter acquired by it, or assign or sell any income or revenues (including Accounts) or rights in respect of any thereof, except for Permitted Liens or (b) authorize, enter into or execute any agreement giving a Person control of a (i) Deposit Account as contemplated by Section 9-104 of the UCC or (ii) Securities Account as contemplated by Section 9-106 of the UCC, in each case other than in favor of Agent to secure the Obligations.

**8.4. Restricted Payments and Purchases.** No Loan Party shall, or shall permit any Subsidiary of a Loan Party to, directly or indirectly declare or make any Restricted Payment or Restricted Purchase, or set aside any funds for any such purpose, other than Dividends on common stock which accrue (but are not paid in cash) or are paid in kind or Dividends on preferred stock which accrue (but are not paid in cash) or are paid in kind; **provided**, that:

(a) any wholly owned Subsidiary of a Loan Party may make Restricted Payments to such Borrower;

(b) Borrower may make Restricted Payments as long as, prior to any such payment, the Payment Conditions have been met;

(c) so long as no Event of Default has occurred and is continuing, any Loan Party that is treated as a flow-through entity for federal income tax purposes may make Permitted Tax Distributions; and

(d) a Loan Party may, and may permit any of its Subsidiaries to, pay reasonable and customary directors' fees and expenses and indemnities, **provided**, that the amount of such fees, expenses and indemnities that are paid in cash for directors who are not employed by a Loan Party does not exceed \$500,000 in the aggregate for the Loan Parties and their Subsidiaries collectively during any fiscal year.

Notwithstanding the foregoing, no Restricted Payment or Restricted Purchase shall include the transfer of any Intellectual Property to any Person (other than a Loan Party).

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**8.5. Investments.** No Loan Party will, or will permit any Subsidiary of a Loan Party to, make Investments, except that:

(a) Loan Parties may purchase or otherwise acquire, own and may permit any of its Subsidiaries to purchase or otherwise acquire and own (i) cash and (ii) Cash Equivalents, subject in each case to the requirements of Section 6.1;

(b) the Loan Parties may hold the Investments in existence on the Closing Date and described in Sections 1(f) and (g) of the Perfection Certificate;

(c) the Loan Parties and their Subsidiaries may hold the Equity Interests of their respective Subsidiaries to the extent such Subsidiaries are Subsidiaries as of the Closing Date or become Subsidiaries following the Closing Date in accordance with the remaining terms of this Section 8.5;

(d) the Loan Parties may license Intellectual Property in each case in a manner not materially interfering with the conduct of the business of the Loan Parties or any of their Subsidiaries or with Agent's rights and interests (including the Liens granted thereto) in such Intellectual Property;

(e) the Loan Parties may (A) extend trade credit in the Ordinary Course of Business and (B) acquire and hold accounts receivables owing to any of them if created or acquired in the Ordinary Course of Business and payable or dischargeable in accordance with customary terms;

(f) the Loan Parties and their Subsidiaries may endorse negotiable instruments held for collection in the Ordinary Course of Business; (i) to the extent constituting Investments, the Loan Parties and their Subsidiaries may make (A) earnest money deposits made in connection with the acquisition of property or assets not prohibited hereunder and (B) deposits made in the Ordinary Course of Business to the extent constituting a Lien permitted under Section 8.3;



(g) the Loan Parties and their Subsidiaries may make Investments in securities of trade creditors in the Ordinary Course of Business received upon foreclosure or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers so long as Agent, for the benefit of the Lenders, is granted a first priority security interest in such Investments, which Lien is perfected contemporaneously therewith;

(h) without limiting Section 8.2, a Loan Party may make Investments in any other Loan Party that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia;

(i) so long as no Default or Event of Default has occurred and is continuing, the Borrowers may convert any of their Accounts that are in excess of ninety (90) days past due into notes issued by Account Debtors to a Borrower pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the Ordinary Course of Business, consistent with past practices, so long as Agent, for the benefit of the Lenders, is granted a first priority security interest in such notes, which Lien is perfected contemporaneously with the conversion of such Account to notes; and

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(j) so long as the Payment Conditions are satisfied, other Investments by the Loan Parties and their Subsidiaries not to exceed \$500,000 in the aggregate at any time outstanding.

Notwithstanding the foregoing, no Investment shall include the disposition or transfer of any Intellectual Property to any Person (other than (x) to a Loan Party or (y) as provided in clause (d) above).

**8.6.Affiliate Transactions.** No Loan Party shall, or shall permit any Subsidiary of a Loan Party to, enter into or be a party to any agreement or transaction with any Affiliate (other than a Loan Party) except to the extent such agreement or transaction:

(a) if entered into on or prior to the Closing Date, is described on Schedule 8.6 attached hereto;

(b) if entered into after the Closing Date, is fully disclosed in writing to Agent and is expressly approved by Agent in writing, prior to the entry of a Loan Party or the applicable Subsidiary thereof into such agreement or transaction;

(c) occurs upon fair and reasonable terms that are no less favorable to such Loan Party or such Subsidiary than it would obtain in a comparable arm's length transaction with a Person not an Affiliate of such Loan Party or such Subsidiary;

(d) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, constitutes a payment of customary fees, reasonable out-of-pocket costs and customary indemnities to directors, officers, consultants and employees of a Loan Party in the Ordinary Course of Business;

(e) (A) is an employment agreement entered into by a Loan Party or any of the Subsidiaries in the Ordinary Course of Business, and (B) is an employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, in any such case approved by a Loan Party's Board of Directors, and any reasonable and customary employment contract and transactions pursuant thereto;

(f) constitutes payments of loans (or cancellations of loans) to employees that are (A) approved by a majority of the Board of Directors of a Loan Party in good faith, (B) made in compliance with Applicable Law, and (C) otherwise permitted under this Agreement; or

(g) transactions amongst the Loan Parties that are permitted under Sections 8.1, 8.4 or 8.5.

Notwithstanding the foregoing, no transaction involving any Affiliate (other than a Loan Party) shall include the disposition or transfer of any Intellectual Property

**8.7. Liquidation; Change in Ownership, Name, or Year; Disposition or Acquisition of Assets; Etc.** No Loan Party shall, or shall permit any Subsidiary to, at any time:

(a) liquidate or dissolve itself (or suffer any liquidation or dissolution) or otherwise wind up its business, except any Subsidiary may liquidate or dissolve into another Subsidiary so long as, if a Loan Party is involved in such transaction a Loan Party survives such transaction and, if a Borrower is involved in such transaction,

such Borrower survives such transaction (**provided**, that, in any case, no Domestic Subsidiary may liquidate or dissolve into any Foreign Subsidiary);

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(b) sell, Divide, lease, abandon, transfer or otherwise dispose of, in a single transaction or a series of related transactions (including pursuant to or in connection with any "plan of division" as contemplated under the Delaware Limited Liability Company Act or otherwise), any assets, property or business (including any Equity Interests it holds) (each an "**Asset Sale**"), except for (i) the sale of Inventory in the Ordinary Course of Business at the fair market value thereof and for cash or cash equivalents, (ii) the physical assets used or consumed in the Ordinary Course of Business, (iii) the sale of used, obsolete or worn out property in the Ordinary Course of Business, (iv) the abandonment, cancellation or other disposition of any Intellectual Property in the Ordinary Course of Business or that, in the good faith determination of a Loan Party, are uneconomical, negligible, obsolete or otherwise not material to the conduct of its business, (v) the licensing of Intellectual Property in a manner not materially interfering with the conduct of the business of the Loan Parties or any of their Subsidiaries or with Agent's or Lender's rights and interests (including the Liens granted thereto) in such Intellectual Property, (vi) so long as no Event of Default has occurred and is continuing, the purchase price therefor is paid solely in cash and the seller thereof receives not less than fair market value for such assets, the sale of other assets having a value not exceeding \$250,000 in the aggregate for all Loan Parties and their Subsidiaries in any Fiscal Year or (vii) licenses, sublicenses, leases or subleases granted in the Ordinary Course of Business to other Persons not materially interfering with the conduct of the business of the Loan Parties or any of their Subsidiaries;

(c) acquire (i) all or any substantial part of the Equity Interests of any Person, (ii) all or any substantial part of the assets, property or business of any Person, or (iii) any assets that constitute a division or operating unit of the business of any Person, in each case other than pursuant to any acquisition expressly permitted under Section 8.5;

(d) Merge, amalgamate or consolidate with any other Person, except upon not less than five (5) Business Days prior written notice to Agent, any Subsidiary of a Loan Party may merge or consolidate with a Loan Party or any other wholly-owned Subsidiary of a Loan Party; **provided**, that a Loan Party or such wholly-owned Subsidiary shall be the continuing or surviving entity and all actions reasonably required by Agent, including actions required to maintain perfected Liens on the Equity Interests of the surviving entity and other Collateral in favor of Agent, shall have been completed;

(e) change its legal name, state of incorporation or formation or structure without giving Agent at least thirty (30) Business Days' prior written notice of its intention to do so and complying with all requirements of Agent in regard thereto and providing prompt written notice to Agent once the applicable change has taken place;

(f) change its year-end for accounting purposes from the Fiscal Year ending on October 31;

(g) create any Subsidiary, unless such Subsidiary is a Domestic Subsidiary and concurrently therewith the Loan Parties cause such Domestic Subsidiary to become a Guarantor hereunder, and, in connection therewith, take all actions reasonably required by Agent, including actions required in connection with obtaining and maintaining perfected Liens in favor of Agent on the Equity Interests of such Domestic Subsidiary and all assets of such Domestic Subsidiary constituting Collateral; or

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(h) in the case of any limited liability company, and notwithstanding anything herein or in any other Loan Document to the contrary, Divide itself into two or more limited liability companies (pursuant to a "plan of division" as contemplated under the Delaware Limited Liability Company Act or otherwise) without the prior written consent of Agent, and, in the event that any Loan Party or any Subsidiary thereof that is a limited liability company Divides itself into two or more limited liability companies (with or without the prior consent of Agent as required above), any limited liability companies formed as a result of such division shall be required to comply with the obligations set forth in Section 5.3 and the other applicable further assurances obligations set forth in the Loan Documents (in each case as if such resulting limited liability company were a Loan Party or a Subsidiary of a Loan

Party), and to become a Borrower or Loan Party (as required by Agent after consultation with the Borrower Representative), if required by the terms of this Agreement, under this Agreement and the other Loan Documents.

Notwithstanding the foregoing, no transaction under this Section 8.7 (other than as provided in clause (b)(v) above) shall include the disposition or transfer of Intellectual Property to any Person (other than a Loan Party) which could reasonably be expected to be necessary for the disposition of Collateral by Agent in connection with the exercise of remedies during the continuation of an Event of Default.

**8.8. Conduct of Business.** Loan Parties shall not engage, and shall not permit any Subsidiary to engage, in any line of business substantially different from the lines of business conducted by the Loan Parties and their Subsidiaries on the Closing Date.

**8.9. Sales and Leasebacks; Operating Leases.** No Loan Party shall, or shall permit any Subsidiary of a Loan Party to, (a) enter into any arrangement, directly or indirectly, with any third party whereby such Loan Party or such Subsidiary, as applicable, shall sell or transfer any property, real or personal, whether now owned or hereafter acquired, and whereby such Loan Party or such Subsidiary, as applicable, shall then or thereafter rent or lease as lessee such property or any part thereof or other property which such Loan Party or such Subsidiary intends to use for substantially the same purpose or purposes as the property sold or transferred or (b) create, incur or suffer to exist, any obligations as lessee for the payment of rent for any real or personal property under leases or agreements to lease other than (A) Capitalized Leases permitted under Section 8.1 and (B) operating lease obligations incurred in the Ordinary Course of Business.

**8.10. Amendment and Waiver.** Except as permitted hereunder, no Loan Party shall, or shall permit any Subsidiary of a Loan Party to, (a) enter into any amendment, or agree to or accept any waiver, of its articles or certificate of incorporation or formation and by-laws, partnership agreement or other governing documents, in each case which could materially adversely affect the rights of Agent or any Lender, (b) permit any Material Contract to be amended, cancelled or terminated prior to its stated maturity if such amendment, cancellation or termination could reasonably be expected to have a Material Adverse Effect, (c) [reserved], (d) permit any agreement evidencing any other Subordinated Indebtedness to be amended, modified or supplemented, except as permitted under any applicable subordination agreement, or (e) permit any agreement (other than the agreements evidencing Subordinated Indebtedness) evidencing or relating to any Indebtedness (other than the Obligations) permitted under Section 8.1 to be amended, waived, supplemented or otherwise modified in a manner which could materially adversely affect the rights of Agent or any Lender.

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**8.11. Prepayments.** No Loan Party shall, or shall permit any Subsidiary of a Loan Party to, prepay, redeem, defease, purchase in any manner, make any other distribution (whether in cash, securities or other property), or deposit or set aside funds (including any sinking fund or similar deposit) for the purpose of any of the foregoing, or agree to make, directly or indirectly, make any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of, or interest on any earnouts, or other Indebtedness (other than the Obligations), except:

(a) any regularly scheduled payments of principal or interest required in accordance with the terms of the instruments governing any Indebtedness permitted under Section 8.1 (other than Indebtedness allowed under the definition of Permitted Indebtedness (u));

(b) any refinancing of such Indebtedness to the extent such refinancing Indebtedness is permitted under Section 8.1; and

(c) any payments of Subordinated Indebtedness as expressly permitted by the terms of the subordination agreement applicable thereto.

**8.12. Negative Pledge.** No Loan Party shall, or shall permit any Subsidiary of a Loan Party to, directly or indirectly, enter into any agreement with any Person that prohibits or restricts or limits the ability of a Loan Party or any such Subsidiary to create, incur, pledge, or suffer to exist any Lien upon any of its respective assets or restricts the ability of any Subsidiary of a Borrower to pay Dividends to such Borrower; **provided**; that the foregoing prohibitions shall not apply to (i) the Loan Documents, (ii) any agreement existing on the Closing Date and listed on Schedule 8.12 attached hereto and any refinancing or replacement thereof, (iii) any agreement entered into for the transfer of any asset pending the close of the sale of such asset pursuant to an Asset Sale permitted under this Agreement, (iv) customary anti-assignment provisions in leases

of real or personal property or (v) any agreement or pursuant to any mortgage or any other agreement in effect at the time any Person becomes a Subsidiary of a Borrower, so long as such agreement or mortgage or other agreement was not entered into in contemplation of such Person becoming a Subsidiary and to the extent such agreement or mortgage or other agreement is permitted by this Agreement.

**8.13. Excluded Subsidiaries.** No Loan Party shall permit any Excluded Subsidiary to, as of any date (a) own any assets, as of such date, that are greater than \$100,000 or (b) have total revenues for the most recent 12 month period prior to such date in excess of \$100,000; provided further, each Loan Party will not permit the Excluded Subsidiaries in the aggregate to, as of any date (a) own any assets, as of such date, that are greater than \$250,000 or (b) have total revenues for the most recent 12 month period prior to such date in excess of \$250,000.

## **9. FINANCIAL COVENANTS.**

**9.1. Fixed Charge Coverage Ratio/Minimum Excess Availability.** Loan Parties shall not permit Excess Availability at any time to be less than the Minimum Excess Availability Amount, unless as of the last day of the most recent month for which the monthly financial statements of Loan Parties and the related Compliance Certificate have been or are required to have been delivered to Agent pursuant to Section 7.15, the Fixed Charge Coverage Ratio for the twelve consecutive calendar month period then ended is greater than 1.10 to 1.00.

**9.2. Capital Expenditure Limitation.** Loan Parties shall not make any Capital Expenditures if, after giving effect to such Capital Expenditures, the aggregate cost of all Capital Expenditures of the Loan Parties would exceed \$2,500,000 during any Fiscal Year.

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## **10. RELEASE, LIMITATION OF LIABILITY AND INDEMNITY.**

**10.1. Release.** Each Borrower and each other Loan Party on behalf of itself and its successors, assigns, heirs and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent and each Lender and any and all Participants and Affiliates, and their respective successors and assigns, and their respective directors, members, managers, officers, employees, attorneys and agents, including without limitation each Agent-Related Person, and any other Person affiliated with or representing Agent or any Lender (collectively, the **"Released Parties"**) of and from any and all liability, including all actual or potential claims, demands or causes of action of any kind, nature or description whatsoever, whether arising in law or equity or under contract or tort or under any state or federal law or otherwise, which any Borrower or any Loan Party or any of their successors, assigns or other legal representatives has had, now has or has made claim to have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever, including any liability arising from acts or omissions pertaining to the transactions contemplated by this Agreement and the other Loan Documents, whether based on errors of judgment or mistake of law or fact, from the beginning of time to and including the Closing Date, whether such claims, demands and causes of action are matured or known or unknown. Notwithstanding any provision in this Agreement to the contrary, this Section 10.1 shall remain operative even after the Termination Date and shall survive the Payment in Full of all of the Loans. Such release is made on the date hereof and remade upon each request for a Loan by any Borrower or Borrower Representative. Notwithstanding the foregoing, this Section 10.1 shall not apply to any liabilities, claims, demands or causes of action arising from the gross negligence or willful misconduct on the part of any of the Released Parties

**10.2. Limitation of Liability.** In no circumstance will any of the Released Parties be liable for lost profits or other special, punitive, or consequential damages. Notwithstanding any provision in this Agreement to the contrary, this Section 10.2 shall remain operative even after the Termination Date and shall survive the Payment in Full of all of the Loans.

### **10.3. Indemnity.**

(a) Each Loan Party hereby agrees to indemnify the Released Parties and hold them harmless from and against any and all claims, debts, liabilities, demands, obligations, actions, causes of action, penalties, costs and expenses (including internal and external attorneys' fees), of every nature, character and description (including any Environmental Liability), which the Released Parties may sustain or incur based upon or arising out of any of the transactions contemplated by this Agreement or any other Loan Documents or any of the Obligations, any Collateral relating thereto, any drafts thereunder and any errors or omissions relating thereto, or any other matter, cause or thing

whatsoever occurred, done, omitted or suffered to be done by Agent or any Lender relating to any Loan Party or the Obligations (except any such amounts sustained or incurred solely as the result of the gross negligence or willful misconduct of such Released Parties, as finally determined by a court of competent jurisdiction). Notwithstanding any provision in this Agreement to the contrary, this Section 10.3 shall remain operative even after the Termination Date and shall survive the Payment in Full of all of the Loans. This Section 10.3(a) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(b) To the extent that any Loan Party fails to pay any amount required to be paid by it to Agent (or any Released Party of Agent) under paragraph (a) above, each Lender severally agrees to pay to Agent (or such Released Party), such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (it being understood that any such payment by the Lenders shall not relieve any Loan Party of any default in the payment thereof); **provided**, that the unreimbursed expense or indemnified loss, claim, damage, penalty, liability or related expense, as the case may be, was incurred by or asserted against Agent in its capacity as such.

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## 11. EVENTS OF DEFAULT AND REMEDIES.

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

(a) **Payment.** If any Loan Party or any Other Obligor fails to pay to Agent, when due, any principal or interest payment or any other monetary Obligation required under this Agreement or any other Loan Document;

(b) **Breaches of Representations and Warranties.** If any warranty, representation, written report or certificate made or delivered to Agent or any Lender by or on behalf of any Loan Party or any Other Obligor is untrue or misleading in any material respect (except where such warranty or representation is already qualified by Material Adverse Effect, materiality or similar qualifications, in which case such warranty or representation shall be accurate in all respects);

(c) **Breaches of Covenants.**

(i) If any Loan Party or any Other Obligor defaults in the due observance or performance of any covenant, condition or agreement contained in Section 5.2, 6.1, 6.6, 6.7, 7.2 (limited to the last sentence of Section 7.2), 7.3, 7.7, 7.8, 7.11(c), 7.13, 7.14, 7.15, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29, 7.30, 7.31, 7.32, 7.33, 8 or 9; or

(ii) If any Loan Party or any Other Obligor defaults in the due observance or performance of any covenant, condition or agreement contained in any provision of this Agreement or any other Loan Document and not addressed in clauses Sections 11.1(a), (b) or (c)(i), and the continuance of such default unremedied for a period of fifteen (15) days; **provided**, that such fifteen (15) day grace period shall not be available for any default that is not reasonably capable of being cured within such period or for any intentional default;

(d) **Judgment.** If one or more judgments aggregating in excess of \$250,000 is obtained against any Loan Party or any Other Obligor which remains unstayed for more than forty-five (45) days or is enforced;

(e) **Cross-Default.** If any default (after the expiration of any applicable grace or cure period) occurs with respect to any Indebtedness (other than the Obligations or the Subordinated Debt) of any Loan Party or any Other Obligor in an aggregate principal amount exceeding \$250,000 and (i) such default shall consist of the failure to pay such Indebtedness when due, whether by acceleration or otherwise or (ii) the effect of such default is to permit the holder, with or without notice or lapse of time or both, to accelerate the maturity of any such Indebtedness or to cause such Indebtedness to become due prior to the stated maturity thereof (without regard to the existence of any subordination or intercreditor agreements);

(f) **Dissolution; Cessation of Business.** The dissolution, termination of existence, insolvency or business failure of any Loan Party or any Other Obligor, or the suspension or cessation of all or any material portion of the business in the ordinary course (for any reason) of any Loan Party or any Other Obligor (or of any general partner of any Loan Party or any Other Obligor if it is a partnership); or the undertaking of a course of action in respect of any of the foregoing, whether or not yet formally approved by any Loan Party's or Other Obligor's management,

Board of Directors; or the suspension by a Loan Party or any Other Obligor of payment of all or a material portion of its obligations in the Ordinary Course of Business or the suspension of the performance in the Ordinary Course of Business under any of their Material Contracts);

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(g) **Voluntary Bankruptcy or Similar Proceedings.** If any Loan Party or any Other Obligor shall apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of it or any of its properties, admit in writing its inability to pay its debts as they mature, make a general assignment for the benefit of creditors, be adjudicated a bankrupt or insolvent or be the subject of an order for relief under the Bankruptcy Code or under any bankruptcy or insolvency law of a foreign jurisdiction, or file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law, or take or permit to be taken any action in furtherance of or for the purpose of effecting any of the foregoing;

(h) **Involuntary Bankruptcy or Similar Proceedings.** The commencement of an involuntary case or other proceeding against any Loan Party or any Other Obligor seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar Applicable Law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or if an order for relief is entered against any Loan Party or any Other Obligor under any bankruptcy, insolvency or other similar Applicable Law as now or hereafter in effect; **provided**, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty days after the commencement of such proceedings, though Agent and Lenders shall have no obligation to make Loans during such sixty day period or, if earlier, until such proceedings are dismissed;

(i) **Revocation or Termination of Guaranty or Security Documents.** The actual or attempted revocation or termination of, or limitation or denial of liability under, any guaranty of any of the Obligations, or any security document securing any of the Obligations, by any Loan Party or Other Obligor;

(j) **Subordinated Indebtedness.**

(i) A Default or Event of Default (as such terms are defined in the Subordinated Debt Documents) with respect to the Subordinated Debt or the occurrence of any condition or event that results in the Subordinated Debt becoming due prior to its scheduled maturity as of the Closing Date or permits any holder or holders of the Subordinated Debt or any trustee or agent on its or their behalf to cause the Subordinated Debt to become due, or require the prepayment, repurchase, redemption of defeasance thereof, prior to its scheduled maturity as of the Closing Date; or

(ii) If any Loan Party or Other Obligor makes any payment on account of the Subordinated Debt or any Indebtedness or obligation which has been contractually subordinated to the Obligations other than payments which are not prohibited by the applicable subordination provisions pertaining thereto, or if any Person who has subordinated such Indebtedness or obligations attempts to limit or terminate any applicable subordination provisions pertaining thereto, in each case, including the Subordinated Debt Subordination Agreement;

(k) **Criminal Indictment or Proceedings.** If there is any indictment of any Loan Party, any Loan Party's officers, any Other Obligor or any Other Obligor's officers under any criminal statute or commencement of criminal proceedings against any such Person;

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(l) **Change of Control.** If a Change of Control occurs;

(m) **[Reserved].**

(n) **Invalid Liens.** If any Lien purported to be created by any Loan Document shall cease to be a valid perfected first priority Lien (subject only to any priority accorded by law to Permitted Liens) on any material portion of the Collateral, or any Loan Party or any Other Obligor shall assert in writing that any Lien purported to be



created by any Loan Document is not a valid perfected first-priority lien (subject only to any priority accorded by law to Permitted Liens) on the assets or properties purported to be covered thereby;

(o) **Termination of Loan Documents.** If any of the Loan Documents shall cease to be in full force and effect (other than as a result of the discharge thereof in accordance with the terms thereof or by written agreement of all parties thereto);

(p) [reserved];

(q) **Liquidation Sales.** The determination by any Loan Party to employ an agent or other third party or otherwise engage any Person or solicit proposals for the engagement of any Person in connection with the proposed liquidation of all or a material portion of its assets;

(r) **Loss of Collateral.** The uninsured loss, theft, damage or destruction of any of the Collateral in an amount in excess of \$250,000 in the aggregate for all such events during any Fiscal Year, or (iii) except as permitted hereby, the sale, lease or furnishing under a contract of service of, any of the Collateral; or

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

**11.2. Remedies with Respect to Lending Commitments/Acceleration, Etc.** Upon the occurrence and during the continuation of an Event of Default, Agent may (in its Permitted Discretion), or at the direction of Required Lenders in their Permitted Discretion, shall, (a) terminate all or any portion of the Commitment to lend to or extend credit to Borrowers under this Agreement and/or any other Loan Document, without prior notice to any Loan Party and/or (b) demand Payment in Full of all or any portion of the Obligations (whether or not payable on demand prior to such Event of Default), together with the Early Termination Fee in the amount specified in Section 3.2(e) and/or (c) take any and all other and further actions and avail itself of any and all rights and remedies available to Agent under this Agreement, any other Loan Document, under law or in equity. Notwithstanding the foregoing sentence, upon the occurrence of any Event of Default described in Section 11.1(g) or Section 11.1(h), without notice, demand or other action by Agent all of the Obligations (including the Early Termination Fee in the amount specified in Section 3.2(e)) shall immediately become due and payable whether or not payable on demand prior to such Event of Default.

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**11.3. Remedies with Respect to Collateral.** Without limiting any rights or remedies Agent or any Lender may have pursuant to this Agreement, the other Loan Documents, under Applicable Law or otherwise, upon the occurrence and during the continuation of an Event of Default:

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

(b) **Collections; Modifications of Terms.** Agent may, but shall be under no obligation to: (i) notify all appropriate parties that the Collateral, or any part thereof, has been assigned to, or is subject to a security interest in favor of, Agent; (ii) demand, sue for, collect and give receipts for and take all necessary or desirable steps to collect any Collateral or Proceeds in its or any Loan Party's name, and apply any such collections against the Obligations as Agent may elect; (iii) take control of any Collateral and any cash and non-cash Proceeds of any Collateral; (iv) enforce, compromise, extend, renew settle or discharge any rights or benefits of each Loan Party with respect to or in and to any Collateral, or deal with the Collateral as Agent may deem advisable; and (v) make any



compromises, exchanges, substitutions or surrenders of Collateral Agent deems necessary or proper in its reasonable discretion, including extending the time of payment, permitting payment in installments, or otherwise modifying the terms or rights relating to any of the Collateral, all of which may be effected without notice to, consent of, or any other action of any Loan Party and without otherwise discharging or affecting the Obligations, the Collateral or the security interests granted to Agent under this Agreement or any other Loan Document.

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

(d) **Possession and Assembly of Collateral.** Agent may take possession of the Collateral. Upon Agent's written request, each Loan Party shall assemble the Collateral and make it available to Agent at one or more places designated by Agent.

(e) **Set-off.** Agent may and, without any notice to, consent of or any other action by any Loan Party (such notice, consent or other action being expressly waived), set-off or apply (i) any and all deposits (general or special, time or demand, provisional or final) at any time held by or for the account of Agent or any Affiliate of Agent and (ii) any Indebtedness at any time owing by Agent or any Affiliate of Agent or any Participant in the Loans to or for the credit or the account of any Loan Party to the repayment of the Obligations, irrespective of whether any demand for payment of the Obligations has been made.

(f) **Disposition of Collateral.**

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(i) **Sale, Lease, etc. of Collateral.** Agent may, without demand, advertising or notice, all of which each Loan Party hereby waives (except as the same may be required by the UCC or other Applicable Law and is not waivable under the UCC or such other Applicable Law), at any time or times in one or more public or private sales or other dispositions, for cash, on credit or otherwise, at such prices and upon such terms as determined by Agent (provided such price and terms are commercially reasonable within the meaning of the UCC to the extent such sale or other disposition is subject to the UCC requirements that such sale or other disposition must be commercially reasonable), (A) sell, lease, license or otherwise dispose of any and all Collateral and/or (B) deliver and grant options to a third party to purchase, lease, license or otherwise dispose of any and all Collateral. Agent may sell, lease, license or otherwise dispose of any Collateral in its then-present condition or following any preparation or processing deemed necessary by Agent in its reasonable discretion. Agent and any agent or contractor, in conjunction with any such sale, may augment the Inventory with other goods (all of which other goods shall remain the sole property of Agent or such agent or contractor), and any amounts realized from the sale of such goods which constitute augmentations to the Inventory (net of an allocable share of the costs and expenses incurred in their disposition) shall be the sole property of Agent or such agent or contractor and neither any Loan Party nor any Person claiming under or in right of any Loan Party shall have any interest therein. Agent may be the purchaser at any such public or private sale or other disposition of Collateral, and in such case Agent may make payment of all or any portion of the purchase price therefor by the application of all or any portion of the Obligations to the purchase price payable in connection with such sale or disposition. Agent may, if it deems it reasonable, postpone or adjourn any sale or other disposition of any Collateral from time to time by an announcement at the time and place of the sale or disposition to be so postponed or adjourned without being required to give a new notice of sale or disposition; **provided**, that Agent shall provide the applicable Loan Party with written notice of the time and place of such postponed or adjourned sale or disposition. Each Loan Party hereby acknowledges and agrees that Agent's compliance with any requirements of Applicable Law in connection with a sale, lease, license or other disposition of Collateral will not be considered to adversely affect the commercial reasonableness of any sale, lease, license or other disposition of such Collateral.

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

(iii) **Warranties; Sales on Credit.** Agent may sell, lease, license or otherwise dispose of the Collateral without giving any warranties and may specifically disclaim any and all warranties, including but not limited to warranties of title, possession, merchantability and fitness. Each Loan Party hereby acknowledges and agrees that Agent's disclaimer of any and all warranties in connection with a sale, lease, license or other disposition of Collateral will not be considered to adversely affect the commercial reasonableness of any such disposition of the Collateral. If Agent sells, leases, licenses or otherwise disposes of any of the Collateral on credit, Loan Parties will be credited only with payments actually made in cash by the recipient of such Collateral and received by Agent and applied to the Obligations. If any Person fails to pay for Collateral acquired pursuant this Section 11.3(f) on credit, Agent may re-offer the Collateral for sale, lease, license or other disposition.

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

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(i) All rights of each Loan Party to exercise any of the voting and other consensual rights which it would otherwise be entitled to exercise in accordance with the terms hereof with respect to any Investment Property, and to receive any Dividends, payments, and other distributions which it would otherwise be authorized to receive and retain in accordance with the terms hereof with respect to any Investment Property, shall immediately, at the election of Agent (without requiring any notice) cease, and all such rights shall thereupon become vested solely in Agent, and Agent (personally or through an agent) shall thereupon be solely authorized and empowered, without notice, to (A) transfer and register in its name, or in the name of its nominee, the whole or any part of the Investment Property, it being acknowledged by each Loan Party that any such transfer and registration may be effected by Agent through its irrevocable appointment as proxy and attorney-in-fact pursuant to Section 11.3(g)(ii) and Section 6.4, (B) exchange certificates or instruments representing or evidencing Investment Property for certificates or instruments of smaller or larger denominations, (C) exercise the voting and all other rights as a holder with respect to all or any portion of the Investment Property (including all economic rights, all control rights, authority and powers, and all status rights of each Loan Party as a member or as a shareholder (as applicable) of the Issuer), (D) collect and receive all Dividends and other payments and distributions made thereon, (E) notify the parties obligated on any Investment Property to make payment to Agent of any amounts due or to become due thereunder, (F) endorse instruments in the name of each Loan Party to allow collection of any Investment Property, (G) enforce collection of any of the Investment Property by suit or otherwise, and surrender, release, or exchange all or any part thereof, or compromise or renew for any period (whether or not longer than the original period) any liabilities of any nature of any Person with respect thereto, (H) consummate any sales of Investment Property or exercise any other rights as set forth in Section 11.3(f), (I) otherwise act with respect to the Investment Property as though Agent was the outright owner thereof and (J) exercise any other rights or remedies Agent may have under the UCC, other Applicable Law or otherwise. In addition, in connection with any exercise of rights and remedies in accordance with this Agreement, Agent shall have a right to use each Loan Party Obligor's Intellectual Property (which right with respect to such Intellectual Property shall be a royalty free, rent free non-exclusive license and lease to use all such Intellectual Property) in order to collect, handle, deal with or dispose of any Collateral pursuant to the rights of Agent set forth this Agreement and the other Loan Documents, the UCC and other Applicable Law.

(ii) EFFECTIVE AS OF THE CLOSING DATE, EACH LOAN PARTY HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS CONTROL AGENT AS ITS PROXY AND ATTORNEY-IN-FACT FOR SUCH LOAN PARTY WITH RESPECT TO ALL OF EACH SUCH LOAN PARTY'S INVESTMENT PROPERTY WITH THE RIGHT, SOLELY DURING THE CONTINUANCE OF AN EVENT OF DEFAULT, WITHOUT NOTICE, TO TAKE ANY OF THE FOLLOWING ACTIONS (ACTING THROUGH ANY OF ITS OFFICERS, EMPLOYEES, ATTORNEYS OR AGENTS): (A) TRANSFER AND REGISTER IN AGENT'S NAME, OR IN THE NAME OF ITS NOMINEE, THE WHOLE OR ANY PART OF THE INVESTMENT PROPERTY, (B) VOTE THE PLEDGED EQUITY, WITH FULL POWER OF SUBSTITUTION TO DO SO, (C) RECEIVE AND COLLECT ANY DIVIDEND OR ANY OTHER PAYMENT OR DISTRIBUTION IN RESPECT OF, OR IN EXCHANGE FOR, THE INVESTMENT PROPERTY OR ANY PORTION THEREOF, TO GIVE FULL DISCHARGE FOR THE SAME AND TO INDORSE ANY INSTRUMENT MADE PAYABLE

TO ANY LOAN PARTY FOR THE SAME, (D) EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES, AND REMEDIES (INCLUDING ALL ECONOMIC RIGHTS, ALL CONTROL RIGHTS, AUTHORITY AND POWERS, AND ALL STATUS RIGHTS) OF EACH LOAN PARTY AS A MEMBER, PARTNER OR SHAREHOLDER (AS APPLICABLE) OF THE ISSUER AS IF IT WERE THE OWNER OF SUCH PLEDGED EQUITY (INCLUDING, WITH RESPECT TO THE PLEDGED EQUITY, GIVING OR WITHHOLDING WRITTEN CONSENTS OF MEMBERS, PARTNERS OR SHAREHOLDERS, CALLING MEETINGS OR SPECIAL MEETINGS OF BOARD OF DIRECTORS, MEMBERS, PARTNERS OR SHAREHOLDERS, AND VOTING AT SUCH MEETINGS, REMOVING EXISTING PERSONS FROM ANY BOARD OF DIRECTORS, APPOINTING NEW PERSONS TO SUCH BOARD OF DIRECTORS, OR OTHERWISE RECONSTITUTING OR ADJUSTING THE SIZE OF SUCH BOARD OF DIRECTORS, AMENDING, RESTATING, AMENDING AND RESTATING, OR OTHERWISE MODIFYING ANY GOVERNING DOCUMENTS OF ANY ISSUER), AND (E) TAKE ANY ACTION AND TO EXECUTE ANY INSTRUMENT WHICH AGENT MAY DEEM NECESSARY OR ADVISABLE TO ACCOMPLISH THE PURPOSES OF THIS AGREEMENT. THE APPOINTMENT OF CONTROL AGENT AS PROXY AND ATTORNEY-IN-FACT IS COUPLED WITH AN INTEREST AND SHALL BE VALID AND IRREVOCABLE UNTIL (x) ALL OF THE OBLIGATIONS HAVE BEEN PAID IN FULL IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, (y) CONTROL AGENT AND THE LENDERS HAVE NO FURTHER OBLIGATIONS UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, AND (z) THE COMMITMENTS UNDER THIS AGREEMENT HAVE EXPIRED OR HAVE BEEN TERMINATED (IT BEING UNDERSTOOD AND AGREED THAT SUCH OBLIGATIONS WILL BE AUTOMATICALLY REINSTATED IF AT ANY TIME PAYMENT, IN WHOLE OR IN PART, OF ANY OF THE OBLIGATIONS IS RESCINDED OR MUST OTHERWISE BE RESTORED OR RETURNED BY CONTROL AGENT OR ANY LENDER FOR ANY REASON WHATSOEVER, INCLUDING AS A PREFERENCE, FRAUDULENT CONVEYANCE, OR OTHERWISE UNDER ANY BANKRUPTCY, INSOLVENCY, OR SIMILAR LAW, ALL AS THOUGH SUCH PAYMENT HAD NOT BEEN MADE; IT BEING FURTHER UNDERSTOOD THAT IN THE EVENT PAYMENT OF ALL OR ANY PART OF THE OBLIGATIONS IS RESCINDED OR MUST BE RESTORED OR RETURNED, ALL REASONABLE AND DOCUMENTED OUT-OF-POCKET COSTS AND EXPENSES (INCLUDING ALL REASONABLE INTERNAL AND EXTERNAL ATTORNEYS' FEES AND DISBURSEMENTS) INCURRED BY CONTROL AGENT AND THE LENDERS IN DEFENDING AND ENFORCING SUCH REINSTATEMENT SHALL HEREBY BE DEEMED TO BE INCLUDED AS A PART OF THE OBLIGATIONS). SUCH APPOINTMENT OF CONTROL AGENT AS PROXY AND AS ATTORNEY-IN-FACT SHALL BE VALID AND IRREVOCABLE AS PROVIDED HEREIN AND SHALL HAVE A DURATION FROM THE CLOSING DATE UNTIL THE DATE THE OBLIGATIONS HAVE BEEN PAID IN FULL NOTWITHSTANDING ANY LIMITATIONS TO THE CONTRARY SET FORTH IN ANY APPLICABLE LAW (INCLUDING CORPORATE GOVERNANCE LAW APPLICABLE TO ANY LOAN PARTY OR ISSUER) OR ANY GOVERNING DOCUMENTS OF ANY LOAN PARTY, ANY ISSUER, OR OTHERWISE.

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

(iv) Upon exercise of the proxy set forth herein, all prior proxies given by any Loan Party with respect to any of the Pledged Equity or other Investment Property, other than to Agent, are hereby revoked, and no subsequent proxies, other than to Agent will be given with respect to any of the Pledged Equity or any of the other Investment Property unless Agent otherwise subsequently agrees in writing. Agent, as proxy, will be empowered and may exercise the irrevocable proxy to vote the Pledged Equity and the other Investment Property at any and all times during the existence of an Event of Default, including, at any meeting of shareholders, partners or members, as the

case may be, however called, and at any adjournment thereof, or in any action by written consent, and may waive any notice otherwise required in connection therewith. To the fullest extent permitted by Applicable Law, Agent shall have no agency, fiduciary or other implied duties to any Loan Party, any Issuer, any Loan Party or any other Person when acting in its capacity as such proxy or attorney-in-fact. Each Loan Party hereby waives and releases any claims that it may otherwise have against Agent with respect to any breach, or alleged breach, of any such agency, fiduciary or other duty.

(v) Any transfer to Agent or its nominee, or registration in the name of Agent or its nominee, of the whole or any part of the Investment Property shall be made solely for purposes of effectuating voting or other consensual rights with respect to the Investment Property in accordance with the terms of this Agreement and is not intended to effectuate any transfer of ownership of any of the Investment Property. Notwithstanding the delivery by Agent of any instruction to any Issuer or any exercise by Agent of an irrevocable proxy or otherwise, Agent shall not be deemed the owner of, or assume any obligations or any liabilities whatsoever of the owner or holder of, any Investment Property unless and until Agent expressly accepts such obligations in a duly authorized and executed writing and agrees in writing to become bound by the applicable Governing Documents or otherwise becomes the owner thereof under Applicable Law (including through a sale as described in Section 11.3(f)). The execution and delivery of this Agreement shall not subject Agent to, or transfer or pass to Agent, or in any way affect or modify, the liability of any Loan Party under the Governing Documents of any Issuer or any related agreements, documents, or instruments or otherwise. In no event shall the execution and delivery of this Agreement by Agent, or the exercise by Agent of any rights hereunder or assigned hereby, constitute an assumption of any liability or obligation whatsoever of any Loan Party to, under, or in connection with any of the Governing Documents of any Issuer or any related agreements, documents, or instruments or otherwise.

(vi) Compliance with the Securities Act as now in effect or as hereafter amended, or any similar statute hereafter adopted with similar purpose or effect, as well as any applicable "Blue Sky" or other state securities laws, if applicable to the Collateral or the portion thereof being sold, may require strict limitations as to the manner in which Agent or any subsequent transferee may dispose of the Collateral. With respect to any disposition as to which the Securities Act or analogous state securities laws is applicable, each Loan Party hereby waives any objection to sale in a compliant manner, and agrees that Agent has no obligation to obtain the maximum possible price for the Collateral so long as Agent proceeds in a commercially reasonable manner. Without limiting the generality of the foregoing, each Loan Party agrees that in conducting a disposition of the Collateral as to which the Securities Act or analogous state securities laws applies, Agent may seek to sell the Collateral by private placement, and may restrict bidders and prospective purchasers to those who are willing to represent that they are purchasing for investment only and not for distribution and who otherwise satisfy qualifications designed to ensure compliance with the Securities Act and analogous state securities laws and those that may be established in the Issuer's Governing Documents. Each Loan Party acknowledges that in order to protect Agent's interest, it may be necessary to sell the Collateral at a price less than the maximum price attainable if a sale were delayed or were made in another manner, including, a public offering under the Securities Act. In order to address these potential compliance requirements, Agent may solicit offers to purchase the Collateral from a limited number of bidders reasonably believed by Agent to be institutional investors or accredited investors. If Agent solicits offers in a commercially reasonable manner, then acceptance by Agent of one or more of the offers shall be deemed to be a commercially reasonable method of disposition of the Collateral and Agent will not be responsible or liable for selling all or any portion of the Collateral at a price that Agent deems in good faith to be reasonable. Agent is under no obligation to delay a disposition of any portion of the Collateral that are securities under the Securities Act or applicable "Blue Sky" or other state securities law for the period of time necessary to permit any Loan Party or the Issuer to register the securities for public sale under the Securities Act or under applicable "Blue Sky" or other state securities laws, even if a Loan Party or the Issuer agrees to do so. In addition, to the extent not prohibited by Applicable Law, each Loan Party waives any right to prior notice (except to the extent expressly provided in this Agreement) or judicial hearing in connection with the taking possession or the disposition of any of the Collateral, including any right which Loan Party otherwise would have.

(vii) To the extent permitted under Applicable Law, Agent is not required to conduct any foreclosure sale of the Investment Property or any portion thereof.

(viii) Agent, at its option, may obtain the appointment of a receiver to take possession of the Investment Property and, at the option of Agent, a receiver may be empowered (A) to collect, receive and enforce all distributions, (B) to exercise the rights of Agent as provided in this Agreement, (C) to collect all other amounts owed to any Loan Party in respect of the Investment Property as and when due to any Loan Party, (D) to otherwise collect, sell or dispose of the Investment Property, (E) to exercise all rights in and under the Investment Property; and (F) to turn over all net proceeds to Agent. Each Loan Party irrevocably and unconditionally agrees that a receiver may be appointed by a court to take the actions listed above without regard to the adequacy of the security for the Obligations, and the actions of the receiver may be taken in the name of the receiver, any Loan Party or Agent.

(ix) Agent may elect to conduct a sale of an economic interest in any Investment Property constituting limited liability company interests that does not result in the purchaser being admitted as a substitute limited liability company member in the Issuer, and that any sale or dispositions made in good faith will be considered commercially reasonable, notwithstanding the possibility that a substantially higher price might be realized if the purchaser were able to be admitted as a substitute limited liability company member rather than the holder of only an economic interest in the Issuer.

(x) Agent may disclose to prospective purchasers all of the information relating to the Investment Property (and the applicable Issuer) that is in Agent's possession or otherwise available to Agent.

(xi) Each Loan Party hereby authorizes and instructs their respective Issuer to comply with any instruction received by it from 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 the provisions of this Agreement as to Investment Property, without any other or further instructions from the respective Loan Party, and such Loan Party agrees that Issuer be fully protected in so complying.

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

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

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(j) **Waiver of Rights by Loan Parties.** Except as otherwise expressly provided for in this Agreement or by non-waivable Applicable Law, each Loan Party waives (i) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Agent on which any Loan Party may in any way be liable, and hereby ratifies and confirms whatever Agent may do in this regard, (ii) all rights to notice and a hearing prior to Agent's taking possession or control of, or to Agent's replevy, attachment or levy upon, the Collateral or any bond or security which might be required by any court prior to allowing Agent to exercise any of its remedies and (iii) the benefit of all valuation, appraisal, marshaling and exemption laws. If any notice of a proposed sale or other disposition of any part of the Collateral is required under Applicable Law, each Loan Party agrees that ten (10) calendar days prior notice of the time and place of any public sale and of the time after which any private sale or other disposition is to be made is commercially reasonable.

## 12. LOAN GUARANTY.

**12.1. Guaranty.** Each Loan Party hereby agrees that it is jointly and severally liable for, and absolutely and unconditionally guaranties to Agent, for the ratable benefit of the Lenders, the prompt payment and performance when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, all of the Obligations and all costs and expenses, including all court costs and reasonable attorneys' and paralegals' fees (including internal counsel, one (1) external counsel, and as necessary, one (1) local counsel in each relevant jurisdiction) and expenses of Agent or any Lender in endeavoring to collect all or any part of the Obligations from, or in prosecuting any action against, any Borrower, any Loan Party or any Other Obligor of all or any part of the Obligations (and such costs and expenses paid or incurred shall be deemed to be included in the Obligations). Each Loan Party further agrees that the Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guaranty notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any branch or Affiliate of Agent that extended any portion of the Obligations.

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

**12.3. No Discharge or Diminishment of Loan Guaranty.**

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

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

(c) Further, the obligations of any Loan Party hereunder shall not be discharged or impaired or otherwise affected by: (i) the failure of Agent to assert any claim or demand or to enforce any remedy with respect to all or any part of the Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for all or any part of the Obligations or all or any part of any obligations of any Guarantor; (iv) any action or failure to act by Agent with respect to any Collateral; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the Payment in Full of all of the Obligations).

**12.4. Defenses Waived.** To the fullest extent permitted by Applicable Law, each Loan Party hereby waives any defense based on or arising out of any defense of any Loan Party or the unenforceability of all or any part of the Obligations from any cause, or the cessation from any cause of the liability of any Loan Party, other than the Payment in Full of all of the Obligations. Without limiting the generality of the foregoing, each Loan Party irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by Applicable Law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Borrower, any Guarantor, or any other Person. Each Loan Party confirms that it is not a surety under any state law and shall not raise any such law as a



defense to its obligations hereunder. Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any Collateral, compromise or adjust any part of the Obligations, make any other accommodation with any Borrower or any Guarantor or exercise any other right or remedy available to it against any Borrower or any Guarantor, without affecting or impairing in any way the liability of any Loan Party under this Loan Guaranty except to the extent the Obligations have been Paid in Full. To the fullest extent permitted by Applicable Law, each Loan Party waives any defense arising out of any such election even though that election may operate, pursuant to Applicable Law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Party against any Borrower or any Guarantor or any security.

**12.5. Rights of Subrogation.** No Loan Party will assert any right, claim or cause of action, including a claim of subrogation, contribution or indemnification that it has against any Borrower or any Guarantor, or any Collateral, until the Termination Date.

**12.6. Reinstatement; Stay of Acceleration.** If at any time any payment of any portion of the Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of any Loan Parties or any other Person, or otherwise, each Loan Party's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not Agent is in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Loan Parties, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Obligations shall nonetheless be payable by the Loan Parties forthwith on demand by Agent. This Section 12.6 shall remain operative even after the Termination Date and shall survive the Payment in Full of all of the Loans.

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**12.7. Information.** Each Loan Party assumes all responsibility for being and keeping itself informed of each Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that each Loan Party assumes and incurs under this Loan Guaranty, and agrees that Agent shall not have any duty to advise any Loan Party of information known to it regarding those circumstances or risks.

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

**12.9. Maximum Liability.** The provisions of this Loan Guaranty are severable, and in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Loan Party under this Loan Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Loan Party's liability under this Loan Guaranty, then, notwithstanding any other provision of this Loan Guaranty to the contrary, the amount of such liability shall, without any further action by the Loan Parties, Agent or any Lender, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Loan Party's "**Maximum Liability**"). This Section 12.9 with respect to the Maximum Liability of each Loan



Party is intended solely to preserve the rights of Agent and the Lenders to the maximum extent not subject to avoidance under Applicable Law, and no Loan Party or any other Person shall have any right or claim under this Section with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Loan Party hereunder shall not be rendered voidable under Applicable Law. Each Loan Party agrees that the Obligations may at any time and from time to time exceed the Maximum Liability of each Loan Party without impairing this Loan Guaranty or affecting the rights and remedies of Agent hereunder; **provided**, that nothing in this sentence shall be construed to increase any Loan Party's obligations hereunder beyond its Maximum Liability.

**12.10. Contribution.** In the event any Loan Party shall make any payment or payments under this Loan Guaranty or shall suffer any loss as a result of any realization upon any Collateral granted by it to secure its obligations under this Loan Guaranty (such Loan Party a "**Paying Guarantor**"), each other Loan Party (each a "**Non-Paying Guarantor**") shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor's "**Relevant Percentage**" of such payment or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Section 12.10, each Non-Paying Guarantor's "**Relevant Percentage**" with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (x) such Non-Paying Guarantor's Maximum Liability as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor's Maximum Liability has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from any Borrower after the date hereof (whether by loan, capital infusion or by other means) to (y) the aggregate Maximum Liability of all Loan Parties hereunder (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Loan Party, the aggregate amount of all monies received by such Loan Parties from any Borrower after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Loan Party's several liability for the entire amount of the Obligations (up to such Loan Party's Maximum Liability). Each of the Loan Parties covenants and agrees that its right to receive any contribution under this Loan Guaranty from a Non-Paying Guarantor shall be subordinate and junior in right of payment to the Payment in Full of all of the Obligations. This provision is for the benefit of Agent and the Lenders and the Loan Parties and may be enforced by any one, or more, or all of them, in accordance with the terms hereof.

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**12.11. Liability Cumulative.** The liability of each Loan Party under this Section 12 is in addition to and shall be cumulative with all liabilities of each Loan Party to Agent and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

**13. PAYMENTS FREE OF TAXES; OBLIGATION TO WITHHOLD; PAYMENTS ON ACCOUNT OF TAXES.**

(a) Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall to the extent permitted by Applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, Applicable Laws require the Loan Parties to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such laws as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(b) If any Loan Party or other withholding agent shall be required by Applicable Law to withhold or deduct any Taxes from any payment under any Loan Document, then (i) such Loan Party or other applicable withholding agent shall withhold or make such deductions as are required based upon the information and documentation it has received pursuant to subsection (e) below, (ii) such Loan Party or other withholding agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Applicable Law and (iii) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the Loan Parties shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) each Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been

made. Upon request by Agent or other Recipient, Borrower Representative shall deliver to Agent or such other Recipient, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment of Indemnified Taxes, a copy of any return required by Applicable Law to report such payment or other evidence of such payment reasonably satisfactory to Agent or such other Recipient, as the case may be.

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

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(d) Without limiting the provisions of subsections (a) through (c) above, each Loan Party shall, and does hereby, on a joint and several basis, indemnify Agent, each Lender and each other Recipient (and their respective directors, officers, employees, affiliates and agents) and shall make payment in respect thereof within ten days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) paid or incurred by Agent, any Lender or any other Recipient on account of, or in connection with any Loan Document or a breach by a Loan Party thereof, and any penalties, interest and related expenses and losses arising therefrom or with respect thereto (including the fees, charges and disbursements of any internal or external counsel or other tax advisor for Agent, any Lender or any other Recipient (or their respective directors, officers, employees, affiliates, and agents)), whether or not such Indemnified Taxes or were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to Borrower Representative shall be conclusive absent manifest error. Notwithstanding any provision in this Agreement to the contrary, this Section 13 shall remain operative even after the Termination Date and shall survive the Payment in Full of all of the Loans.

(e) Each Lender shall deliver to Borrower Representative and each Lender and each Participant shall deliver to Agent, at the time or times prescribed by Applicable Laws, such properly completed and executed documentation prescribed by Applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit Borrower Representative or Agent, as the case may be, to determine (x) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (y) if applicable, the required rate of withholding or deduction and (z) such Lender's or Participant's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Recipient by the Loan Parties pursuant to this Agreement or otherwise to establish such Recipient's status for withholding tax purposes in the applicable jurisdiction; **provided**, that (i) each Recipient shall only be required to deliver such documentation as it may legally provide and (ii) other than any documentation required by Section 13.1(e)(i) or (ii) below, no Recipient shall be required to provide any such documentation if in the Recipient's reasonable judgment such completion, execution or submission would subject such Recipient to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Recipient or its Affiliates. Without limiting the generality of the foregoing, if a Borrower is resident for tax purposes in the United States:

(i) each Lender (or Participant) that is a "**United States person**" within the meaning of Section 7701(a)(30) of the Code shall deliver to Borrower Representative and Agent (or any Lender granting a participation as applicable) an executed original of Internal Revenue Service Form W-9 or such other documentation or information prescribed by Applicable Law or reasonably requested by Borrower Representative or Agent (or Lender granting a participation) as will enable Borrower Representative or Agent (or Lender granting a participation) as the case may be, to determine whether or not such Lender (or Participant) is subject to backup withholding or information reporting requirements under the Code;

(ii) each Lender (or Participant) that is not a "**United States person**" within the meaning of Section 7701(a)(30) of the Code (a "**Non-U.S. Recipient**") shall deliver to Borrower Representative and Agent (or any Lender granting a participation in case the Non-U.S. Recipient is a Participant) on or prior to the date on which such Non-U.S. Person becomes a party to this Agreement or a Participant (and from time to time thereafter upon the reasonable request of Borrower Representative or Agent but only if such Non-U.S. Recipient is legally entitled to do

so), whichever of the following is applicable: (A) executed originals of Internal Revenue Service Form W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States is a party; (B) executed originals of Internal Revenue Service Form W-8ECI; (C) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation; (D) each Non-U.S. Recipient claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, shall provide (x) a certificate to the effect that such Non-U.S. Recipient is not (1) a "**bank**" within the meaning of section 881(c)(3)(A) of the Code, (2) a "**10 percent shareholder**" of Borrowers within the meaning of section 881(c)(3)(B) of the Code, or (3) a "**controlled foreign corporation**" described in section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN-E; and/or (E) executed originals of any other form prescribed by Applicable Law (including FATCA) as a basis for claiming exemption from or a reduction in United States Federal withholding tax together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrower Representative or Agent to determine the withholding or deduction required to be made. Each Non-U.S. Recipient shall promptly notify Borrower Representative and Agent (or any Lender granting a participation if the Non-U.S. Recipient is a Participant) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

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#### 14. AGENT

**14.1. Appointment.** Each of the Lenders hereby irrevocably appoints Agent as its agent and authorizes Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as Agent, each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document; (c) make Loans, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) act as collateral agent for Lenders for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein and execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents; (e) manage, supervise or otherwise deal with Collateral; (f) exclusively receive, apply, and distribute payments and proceeds of the Collateral as provided in the Loan Documents, (g) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents, (h) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Documents, Applicable Law or otherwise, including the determination of eligibility of Accounts and Inventory, the necessity and amount of Reserves and all other determinations and decisions relating to ordinary course administration of the credit facilities contemplated hereunder; and (i) incur and pay such expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents, whether or not any Loan Party is obligated to reimburse Agent or Lenders for such expenses pursuant to the Loan Documents or otherwise. The provisions of this Article 14 are solely for the benefit of Agent and the Lenders, and the Loan Parties shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" as used herein or in any other Loan Documents (or any similar term) with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

**14.2. Rights as a Lender.** The Person serving as Agent hereunder, if it is a Lender, 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 Agent, and such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with any Loan Party or any Subsidiary or any Affiliate thereof as if it were not Agent hereunder without notice to or consent of the other Lenders.

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**14.3. Duties and Obligations.** Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, (b) Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that Agent is required to exercise as directed in writing by the Required Lenders, and, (c) except as expressly set forth in the Loan Documents, Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any Subsidiary that is communicated to or obtained by the Person serving as Agent or any of its Affiliates in any capacity. Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders or in the absence of its own gross negligence or willful misconduct as determined by a final nonappealable judgment of a court of competent jurisdiction. Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until written notice thereof is given to Agent by a Loan Party or a Lender, and Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to Agent. Agent shall be under no obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of any Loan Party.

**14.4. Reliance.** 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 it to be genuine and to have been signed or sent by the proper Person. 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. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional (who may be counsel for any Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document, unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

**14.5. Actions through Sub-Agents.** Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by Agent. Agent may also perform its duties through employees and other Agent-Related Persons. Agent shall not be responsible for the negligence or misconduct of any sub-agent, employee or Agent Professional that it selects as long as such selection was made without gross negligence or willful misconduct. Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers through their respective Affiliates and other related parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the related parties of Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

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**14.6. Resignation.** Subject to the appointment and acceptance of a successor Agent as provided in this paragraph, Agent may resign at any time by notifying the Lenders and Borrower Representative. Upon any such resignation,

the Required Lenders shall have the right, in consultation with Borrower Representative, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent. Upon the acceptance of its appointment as Agent hereunder by its 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 and under the other Loan Documents. The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor, unless otherwise agreed by Borrower Representative and such successor. Notwithstanding the foregoing, in the event no successor Agent shall have been so appointed and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its intent to resign, the retiring Agent may give notice of the effectiveness of its resignation to the Lenders and Borrower Representative, whereupon, on the date of effectiveness of such resignation stated in such notice, (a) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents, **provided** that, solely for purposes of maintaining any security interest granted to Agent under any Loan Document for the benefit of the Lenders, the retiring Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Lenders and, in the case of any Collateral in the possession of Agent, shall continue to hold such Collateral, in each case until such time as a successor Agent is appointed and accepts such appointment in accordance with this paragraph (it being understood and agreed that the retiring Agent shall have no duty or obligation to take any further action under any Loan Document, including any action required to maintain the perfection of any such security interest), and (b) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, **provided**, that (i) all payments required to be made hereunder or under any other Loan Document to Agent for the account of any Person other than Agent shall be made directly to such Person and (ii) all notices and other communications required or contemplated to be given or made to Agent shall also directly be given or made to each Lender. Following the effectiveness of Agent's resignation from its capacity as such, the provisions of this Article 14, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, 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 and in respect of the matters referred to in the proviso under clause (a) above.

#### **14.7. Non-Reliance.**

(a) Each Lender acknowledges and agrees that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of Loan Parties and their respective Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender further acknowledges the extensions of credit made hereunder are commercial loans and not investments in a business enterprise or securities. Each Lender further represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and has, independently and without reliance upon any Agent-Related Person, any arranger of this credit facility or any amendment thereto or any other Lender and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower or any other Person party to a Loan Document, and all Applicable Laws relating to the transactions contemplated hereby, and made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder. Each Lender shall, independently and without reliance upon any Agent-Related Person, any arranger of this credit facility or any amendment thereto or any other Lender and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning any Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own credit analysis and 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, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower or any other Person party to a Loan Document and in deciding whether or to the extent to which it will continue as a Lender or assign or otherwise transfer its rights, interests and obligations hereunder. Except for notices,

reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges that Agent does not have any duty or responsibility, either initially or on a continuing to provide such Lender with any credit or other information with respect to any Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement.

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(b) Each Lender hereby agrees that (i) it has requested a copy of each appraisal, audit or field examination report prepared by or on behalf of Agent; (ii) Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any such report or any of the information contained therein or any inaccuracy or omission contained in or relating to any such report and (B) shall not be liable for any information contained in any such report; (iii) such reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that Agent undertakes no obligation to update, correct or supplement such reports; (iv) it will keep all such reports confidential and strictly for its internal use, not share any such report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold Agent and any such other Person preparing any such report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any such report in connection with any extension of credit that the indemnifying Lender has made or may make to any Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold Agent and any such other Person preparing any such report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees of both internal and external counsel) of Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any such report through the indemnifying Lender.

**14.8. Not Partners or Co-Venturers; Agent as Representative of the Secured Parties.**

(a) The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in the case of Agent) authorized to act for, any other Lender. Agent shall have the exclusive right on behalf of the Lenders to enforce the payment of the principal of and interest on any Loan after the date such principal or interest has become due and payable pursuant to the terms of this Agreement.

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(b) In its capacity, Agent is a "representative" of the Lenders within the meaning of the term "secured party" as defined in the UCC. Each Lender authorizes Agent to enter into each of the Loan Documents to which it is a party and to take all action contemplated by such documents. Each Lender agrees that no Lender (other than Agent) shall have the right individually to seek to realize upon the security granted by any Loan Document, it being understood and agreed that such rights and remedies may be exercised solely by Agent for the benefit of the Lenders upon the terms of the Loan Documents. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Obligations, Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Lenders any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of Agent on behalf of the Lenders.

(c) Agent hereby appoints each other Lender as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as



applicable, of the UCC can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions. Agent shall have no obligation whatsoever to any of the Lenders (i) to verify or assure that the Collateral exists or is owned by any Borrower or its Subsidiaries or is cared for, protected, or insured or has been encumbered, (ii) to verify or assure that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, (iii) to verify or assure that any particular items of Collateral meet the eligibility criteria applicable in respect thereof, (iv) to impose, maintain, increase, reduce, implement or eliminate any particular reserve hereunder or to determine whether the amount of any reserve is appropriate or not, or (v) to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein,

**14.9.Credit Bidding.** The Loan Parties and the Lenders hereby irrevocably authorize Agent, based upon the instruction of the Required Lenders, to Credit Bid and purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (and the Loan Parties shall approve Agent as a qualified bidder and such Credit Bid as qualified bid) at any sale thereof conducted by Agent, based upon the instruction of the Required Lenders, under any provisions of the UCC, as part of any sale or investor solicitation process conducted by any Loan Party, any interim receiver, receiver, receiver and manager, administrative receiver, trustee, agent or other Person pursuant or under any insolvency laws; **provided**, that (i) the Required Lenders may not direct Agent in any manner that does not treat each of the Lenders equally, without preference or discrimination, in respect of consideration received as a result of the Credit Bid, (ii) the acquisition documents shall be commercially reasonable and contain customary protections for minority holders such as among other things, anti-dilution and tag-along rights, (iii) the exchanged debt or equity securities must be freely transferable, without restriction (subject to applicable securities laws) and (iv) reasonable efforts shall be made to structure the acquisition in a manner that causes the governance documents pertaining thereto to not impose any obligations or liabilities upon the Lenders individually (such as indemnification obligations). Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such Credit Bid or purchase and in connection therewith Agent may reduce the Obligations owed to the Lenders (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration. For purposes of the preceding sentence, the term "**Credit Bid**" shall mean, an offer submitted by Agent (on behalf of the Lenders), based upon the instruction of the Required Lenders, to acquire the property of any Loan Party or any portion thereof in exchange for and in full and final satisfaction of all or a portion (as determined by Agent, based upon the instruction of the Required Lenders) of the claims and Obligations under this Agreement and other Loan Documents.

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**14.10. Certain Collateral Matters.** The Lenders irrevocably authorize Agent, at its option and in its discretion, (a) to release any Lien granted to or held by Agent under any Loan Document (i) upon Payment in Full of all Loans and all other Obligations of Borrowers hereunder; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any disposition permitted hereunder (including the release of any guarantor); or (iii) subject to Section 15.5 if approved, authorized or ratified in writing by the Required Lenders; and (b) to subordinate its interest in any Collateral to any holder of a Lien on such Collateral which is permitted by clause (a) of the definition of Permitted Liens (it being understood that Agent may conclusively rely on a certificate from Borrower Representative in determining whether the Indebtedness secured by any such Lien is permitted hereunder). Upon request by Agent at any time, the Lenders will confirm in writing Agent's authority to release, or subordinate its interest in, particular types or items of Collateral pursuant to this Section 14.10. Agent may, and at the direction of Required Lenders shall, give blockage notices in connection with any Subordinated Debt and each Lender hereby authorizes Agent to give such notices. Each Lender further agrees that it will not act unilaterally to deliver such notices.



**14.11. Restriction on Actions by Lenders.** Each Lender agrees that it shall not, without the express written consent of Agent, and shall, upon the written request of Agent (to the extent it is lawfully entitled to do so), set off against the Obligations, any amounts owing by such Lender to a Loan Party or any deposit accounts of any Loan Party now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken, any action, including the commencement of any legal or equitable proceedings to foreclose any loan or otherwise enforce any security interest in any of the Collateral or to enforce all or any part of this Agreement or the other Loan Documents. All Enforcement Actions under this Agreement and the other Loan Documents against the Loan Parties or any third party with respect to the Obligations or the Collateral may only be taken by Agent (at the direction of the Required Lenders or as otherwise permitted in this Agreement) or by its agents at the direction of Agent.

**14.12. Expenses.** Agent is authorized and directed to deduct and retain sufficient amounts from payments or proceeds of the Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event Agent is not reimbursed for such costs and expenses by a Loan Party, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable share thereof. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including Agent Professional fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the Payment in Full hereunder and the resignation or replacement of Agent.

**14.13. Notice of Default or Event of Default.** Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent will promptly notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with this Agreement; **provided**, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

**14.14. Liability of Agent.** None of the Agent-Related Persons shall (a) be liable to any Lender for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by any Borrower or any of their respective Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Borrower, or any of their respective Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of any Borrower or their respective Subsidiaries.

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**14.15. Recovery of Erroneous Payments.** Without limitation of any other provision in this Agreement, if at any time Agent makes a payment hereunder in error to any Lender, whether or not in respect of an Obligation due and owing by the Borrowers at such time, where such payment is a Rescindable Amount, then in any such event, each Lender receiving a Rescindable Amount severally agrees to repay to Agent forthwith on demand the Rescindable Amount received by such

Lender in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to Agent, at the greater of the Federal Funds Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation. Each Lender irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. Agent shall inform each Lender promptly upon determining that any payment made to such Secured Party comprised, in whole or in part, a Rescindable Amount.

15. **GENERAL PROVISIONS.**

15.1. **Notices.**

(a) **Notice by Approved Electronic Communications.** Agent and each of its Affiliates is authorized to transmit, post or otherwise make or communicate, in its sole discretion (but shall not be required to do so), by Approved Electronic Communications in connection with this Agreement or any other Loan Document and the transactions contemplated therein. Agent is hereby authorized to establish procedures to provide access to and to make available or deliver, or to accept, notices, documents and similar items by posting to ABLSoft. All uses of ABLSoft and other Approved Electronic Communications shall be governed by and subject to, in addition to the terms of this Agreement, the separate terms, conditions and privacy policy posted or referenced in such system (or such terms, conditions and privacy policy as may be updated from time to time, including on such system) and any related contractual obligations executed by Agent and Loan Parties in connection with the use of such system. Each of the Loan Parties, the Lenders and Agent hereby acknowledges and agrees that the use of ABLSoft and other Approved Electronic Communications is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing Agent and each of its Affiliates to transmit Approved Electronic Communications. ABLSoft and all Approved Electronic Communications shall be provided "**as is**" and "**as available**". None of Agent or any of its Affiliates or related persons warrants the accuracy, adequacy or completeness of ABLSoft or any other electronic platform or electronic transmission and disclaims all liability for errors or omissions therein. No warranty of any kind is made by Agent or any of its Affiliates or related persons in connection with ABLSoft or any other electronic platform or electronic transmission, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects. Each Borrower and each other Loan Party executing this Agreement agrees that Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with ABLSoft, any Approved Electronic Communication or otherwise required for ABLSoft or any Approved Electronic Communication. Prior to the Closing Date, Borrower Representative shall deliver to Agent a complete and executed Client User Form regarding Borrowers' use of ABLSoft in the form of Exhibit C annexed hereto. No Approved Electronic Communications shall be denied legal effect merely because it is made electronically. Approved Electronic Communications that are not readily capable of bearing either a signature or a reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such Approved Electronic Communication, an E-Signature, upon which Agent and the Loan Parties may rely and assume the authenticity thereof. Each Approved Electronic Communication containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original. Each E-Signature shall be deemed sufficient to satisfy any requirement for a "**signature**" and each Approved Electronic Communication shall be deemed sufficient to satisfy any requirement for a "**writing**", in each case including pursuant to this Agreement, any other Loan Document, the UCC, the Federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural law governing such subject matter. Each party or beneficiary hereto agrees not to contest the validity or enforceability of an Approved Electronic Communication or E-Signature under the provisions of any Applicable Law requiring certain documents to be in writing or signed; **provided**, that nothing herein shall limit such party's or beneficiary's right to contest whether an Approved Electronic Communication or E-Signature has been altered after transmission.

(b) **All Other Notices.** All notices, requests, demands and other communications under or in respect of this Agreement or any transactions hereunder, other than those approved for or required to be delivered by Approved Electronic Communications (including via ABLSoft or otherwise pursuant to Section 15.1(a)), shall be in writing and shall be personally delivered or mailed (by prepaid registered or certified mail, return receipt requested), sent by prepaid recognized overnight courier service, or by email to the applicable party at its address or email address indicated below,

If to Agent:

ECLIPSE BUSINESS CAPITAL LLC,  
as Agent  
333 W Wacker Suite 950  
Chicago, IL 60606  
Attention: Jim Gurgone

with a copy to:

McDonald Hopkins LLC  
600 Superior Ave. E., Suite 2100  
Cleveland, Ohio 44114  
Attention: Jake Weinberg

If to Borrower Representative, any Borrower or any other Loan Party:

c/o RF Industries, Ltd.  
16868 Via Del Campo Court, Suite 200  
San Diego, CA 92127  
Attention: Robert Dawson

with a copy to:

DLA Piper LLP (US)  
4365 Executive Drive, Suite 1100  
San Diego, CA 92121

**Attention:** Larry Nishnick, Esq.

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

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

**15.3. Integration.** This Agreement and the other Loan Documents represent the final, entire and complete agreement between each Loan Party that is a party hereto and thereto and Agent and supersede all prior and contemporaneous negotiations, oral representations and agreements, all of which are merged and integrated into this Agreement. THERE ARE NO ORAL UNDERSTANDINGS, REPRESENTATIONS OR AGREEMENTS BETWEEN THE PARTIES THAT ARE NOT SET FORTH IN THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

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

**15.5. Amendments.**

(a) No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or the other Loan Documents shall in any event be effective unless the same shall be in writing and acknowledged by the Required Lenders, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; **provided**, that, except to the extent set forth in Section 14.9 hereof, no amendment, modification, waiver or consent shall (i) extend or increase the Commitment of any Lender without the written consent of such Lender, (ii) extend the date scheduled for payment of any principal (excluding mandatory prepayments) of or interest on the Loans or any fees payable hereunder without the written consent of each Lender directly affected thereby, (iii) reduce the principal amount of any Loan, the rate of interest thereon or any fees payable hereunder, without the consent of each Lender directly affected thereby (other than the waiver of any obligation of any Loan Party to pay interest at the Default Rate), (iv) amend or modify the definitions of Borrowing Base, Eligible Accounts, Eligible Inventory or any components thereof (including, without limitation, any Advance Rates), without the written consent of each Lender, or (v) release any guarantor from its obligations under any Guaranty, other than as part of or in connection with any disposition permitted hereunder, or release or subordinate its liens on all or any substantial part of the Collateral granted under any of the other Loan Documents (except as permitted by Section 14.10), change the definition of Required Lenders, any provision of Section 6.2, any provision of this Section 15.5, the provisions of Section 14.9 or reduce the aggregate Pro Rata Share required to effect an amendment, modification, waiver or consent, without, in each case set forth in this clause (v), the written consent of all Lenders. No provision of Section 14 or other provision of this Agreement affecting Agent in its capacity as such shall be amended, modified or waived without the consent of Agent. Any amendment contemplated by Section 3.6(d) of this Agreement in connection with a Benchmark Transition Event.

(b) If, in connection with any proposed amendment, modification, waiver or termination requiring the consent of all Lenders, the consent of the Required Lenders is obtained, but the consent of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained being referred to as a "**Non-Consenting Lender**"), then, so long as Agent is not a Non-Consenting Lender, Agent and/or a Person or Persons reasonably acceptable to Agent shall have the right to purchase from such Non-Consenting Lenders, and such Non-Consenting Lenders agree that they shall, upon Agent's request, sell and assign to Agent and/or such Person or Persons, all of the Loans and Commitments of such Non-Consenting Lenders for an amount equal to the principal balance of all such Loans and Commitments held by such Non-Consenting Lenders and all accrued interest, fees, expenses and other amounts then due with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed Assignment and Assumption.

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**15.6. Time of Essence.** Time is of the essence in the performance by each Loan Party of each and every obligation under this Agreement and the other Loan Documents.

**15.7. Expenses, Fee and Costs Reimbursement.** Each Borrower hereby agrees to promptly pay (a) all reasonable and documented out of pocket costs and expenses of Agent (including the reasonable and documented out of pocket fees, costs and expenses of internal and external legal counsel to, and appraisers, accountants, consultants and other professionals and advisors retained by or on behalf of, Agent) in connection with (i) all loan proposals and commitments pertaining to the transactions contemplated hereby (whether or not such transactions are consummated), (ii) the examination, review, due diligence investigation, documentation, negotiation, and closing of the transactions contemplated by the Loan Documents (whether or not such transactions are consummated), (iii) the creation, perfection and maintenance of Liens pursuant to the Loan Documents, (iv) the performance or enforcement by Agent of its rights and remedies under the Loan Documents (or determining whether or how to perform or enforce such rights and remedies), (v) the administration of the Loans (including usual and customary fees for wire transfers and other transfers or payments received by Agent on account of any of the Obligations) and Loan Documents, (vi) any amendments, modifications, consents and waivers to and/or under any and all Loan Documents (whether or not such amendments, modifications, consents or waivers are consummated), (vii) any customary periodic public record searches conducted by or at the request of Agent (including, title investigations and public records searches), pending litigation and Tax lien searches and searches of applicable corporate, limited liability company, partnership and related records concerning the continued existence, organization and good standing of certain Persons), (viii) protecting, storing, insuring, handling, maintaining, auditing, examining, valuing or selling any Collateral, (ix) any litigation, dispute, suit or proceeding relating to any Loan Document and (x) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Loan Documents (it being agreed that (A) such reasonable and documented costs and expenses may include the costs and expenses of workout consultants, investment bankers, financial consultants, appraisers, valuation firms and other professionals and advisors retained by or on behalf of Agent and (B) each Lender shall also be entitled to reimbursement for all out of pocket costs and expense of the type described in this clause (x), **provided** that, except to the extent of an actual or reasonably perceived conflict of interest, such reimbursement shall be limited to one additional counsel for the Lenders as a whole), and (b) without limiting the preceding clause (a), all reasonable and documented out of pocket costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder. Any fees, costs and expenses owing by any Borrower or other Loan Party hereunder shall be due and payable within three days after written demand therefor.

**15.8. Benefit of Agreement; Assignability.** The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, beneficiaries and representatives of each Borrower, each other Loan Party party hereto, Agent and each Lender; **provided**, that neither each Borrower nor any other Loan Party may assign or transfer any of its rights under this Agreement without the prior written consent of Agent and each Lender, and any prohibited assignment shall be void. No consent by Agent or any Lender to any assignment shall release any other Loan Party from its liability for any of the Obligations. Each Lender shall have the right to assign all or any of its rights and obligations under the Loan Documents to one or more other Persons in accordance with Section 15.9, and each Loan Party agrees to execute all agreements, instruments, and documents reasonably requested by any Lender in connection with such assignment. Notwithstanding any provision of this Agreement or any other Loan Document to the contrary, a Lender may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement and the other Loan Documents to secure any obligations of such Lender, including any pledge or grant to secure obligations to a Federal Reserve Bank.

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**15.9. Assignments.**

(a) Any Lender may at any time assign to one or more Persons (other than a natural person or a Competitor of any Loan Party) (any such Person, an "**Assignee**") all or any portion of such Lender's Loans and Commitments (i) as part of an assignment and transfer of such Lender's rights in and to a material portion of such Lender's portfolio of asset based credit facilities or (ii) with the prior written consent of Agent and, so long as no Event of Default exists, Borrower Representative (which consents shall not be unreasonably withheld or delayed and shall not be required for an assignment by a Lender to a Lender (other than a Defaulting Lender) or an Affiliate of a Lender (other than an Affiliate of a Defaulting Lender) or an Approved Fund (other than an Approved Fund of a Defaulting Lender)). Except as Agent may otherwise agree, any such assignment shall be in a minimum aggregate amount

equal to \$1,000,000 or, if less, the remaining Commitment and Loans held by the assigning Lender (**provided**, that an assignment to a Lender, an Affiliate of a Lender or an Approved Fund shall not be subject to the foregoing minimum assignment limitations). The Loan Parties and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Assignee until Agent shall have received and accepted an effective Assignment and Assumption executed, delivered and fully completed by the applicable parties thereto and a processing fee of \$3,500. Notwithstanding anything herein to the contrary, no assignment may be made to any equity holder of a Loan Party, any Affiliate of any equity holder of a Loan Party, any Loan Party, any holder of Subordinated Debt of a Loan Party, any holder of any debt that is secured by liens or security interests that have been contractually subordinated to the liens and security interests securing the Obligations, or any Affiliate of any of the foregoing Persons without the prior written consent of Agent, which consent may be withheld in Agent's sole discretion and, in any event, if granted, may be conditioned on such terms and conditions as Agent shall require in its sole discretion, including, without limitation, a limitation on the aggregate amount of Loans and Commitments which may be held by such Person and/or its Affiliates and/or limitations on such Person's and/or its Affiliates' voting and consent rights and/or rights to attend Lender meetings or obtain information provided to other Lenders. Any attempted assignment not made in accordance with this Section 15.9 shall be null and void. Each Loan Party shall be deemed to have granted its consent to any assignment requiring its consent hereunder unless Borrower Representative has expressly objected to such assignment within five (5) Business Days after written notice thereof.

(b) From and after the date on which the conditions described in Section 15.9(a) above have been met, (i) such Assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned to such Assignee pursuant to the applicable Assignment and Assumption, shall have the rights and obligations of a Lender hereunder and (ii) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to the applicable Assignment and Assumption, shall be released from its rights (other than its indemnification rights) and obligations hereunder. Upon the request of the Bank, Assignee (and, as applicable, the Borrower assigning Lender) pursuant to an effective Assignment and Assumption, Borrowers shall have provided execute and deliver to Agent for delivery to the Bank, Assignee (and, as applicable, the assigning Lender) a promissory note in the principal amount of the Assignee's Pro Rata Share of the aggregate Revolving Loan Commitment (and, as applicable, a promissory note in the principal amount of the Pro Rata Share of the aggregate Revolving Loan Commitment retained by the assigning Lender). Upon receipt by Agent of such promissory note(s), the assigning Lender shall return to Borrowers any prior promissory note held by it.

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(c) Agent shall, as a non-fiduciary agent of Borrowers, maintain a copy of each Assignment and Assumption delivered and accepted by it and register (the "**Register**") for the recordation of names and addresses of the Lenders and the Bank Commitment of each Lender and principal and stated interest of each Loan owing to each Lender from time to time and whether such Lender is the original Lender or the Assignee. No assignment shall be reasonably satisfied effective unless and until the Assignment and Assumption is accepted and registered in the Register. All records of transfer of a Lender's interest in the Register shall be conclusive, absent manifest error, as to the ownership of the interests in the Loans. Agent shall not incur any liability of any kind with respect to any Lender with respect to the maintenance of the Register. Each Lender granting a participation shall, as a non-fiduciary agent of the Borrowers, maintain a register containing information similar to that of the Register in a manner such that the loans hereunder are in "registered form" for the purposes of the Code. This Section 15.9 and Section 15.10 shall be construed so that the Loans are at all times maintained in "registered form" for the purpose of the Code and any related regulations (and any successor provisions).

**15.10. Participations.** Anything in this Agreement or any other Loan Document to the contrary notwithstanding, any Lender may, at any time and from time to time, without in any manner affecting or impairing the validity of any Obligations, sell to one or more Persons (other than a Competitor of any Loan Party) participating interests in its Loans, commitments or other interests hereunder or under any other Loan Document (any such Person, a "**Participant**"). In the event of a sale by a



Lender of a participating interest to a Participant, (a) such Lender's obligations hereunder and under the other Loan Documents shall remain unchanged for all purposes, (b) Borrowers and such Lender shall continue to deal solely and directly with each other in connection with such Lender's rights and obligations hereunder and under the other Loan Documents and (c) all amounts payable by Borrowers shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender; **provided**, that a Participant shall be entitled to the benefits of Section 13 as if it were a Lender if Borrower Representative is notified of such participation and the Participant complies with Section 13 as provided therein (it being agreed that the participating Lender shall hold any documentation delivered by a Participant under Section 13.1(e) on behalf of itself, Agent and the Borrowers. Each Borrower agrees that if amounts outstanding under this Agreement or any other Loan Document are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement and the other Loan Documents to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; **provided**, that such right of set-off shall not be exercised without the prior written consent of such Lender and shall be subject to the obligation of each Participant to share with such Lender its share thereof. Each Borrower also agrees that each Participant shall be entitled to the benefits of Section 15.9 as if it were a Lender. Notwithstanding the granting of any such participating interests, (i) Borrowers shall look solely to the applicable Lender for all purposes of this Agreement, the Loan Documents and the transactions contemplated hereby, (ii) Borrowers shall at all times have the right to rely upon any amendments, waivers or consents signed by the applicable Lender as being binding upon all of the Participants and (iii) all communications in respect of this Agreement and such transactions shall remain solely between Borrowers and the applicable Lender (exclusive of Participants) hereunder. If a Lender grants a participation hereunder, such Lender shall maintain, as a non-fiduciary agent of Borrowers, a register as to the participations granted and transferred under this Section containing the same information specified in Section 15.9 on the Register as if each Participant were a Lender to the extent required to cause the Loans to be in registered form for the purposes of Sections 163(f), 165(j), 871, 881, and 4701 of the Code.

**15.11. Headings; Construction.** Article, section and subsection headings are used in this Agreement only for convenience and do not affect the meanings of the provisions that they precede.

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**15.12. USA PATRIOT Act Notification; Other Anti-Money Laundering Legislation.** Agent and Lenders hereby notify Loan Parties that pursuant to the Patriot Act, the Proceeds of Crime Act, the Money Laundering Regulations 2007 (UK), Proceeds of Crime Act 2002 (UK), Terrorism Act 2000 (UK) and other applicable anti-money laundering, anti-terrorist financing, economic or trade sanctions and "know your client" or "know your customer" policies, regulations, laws or rules (the Proceeds of Crime Act and such other applicable policies, regulations, laws or rules, collectively, including any guidelines or orders thereunder, "AML Legislation"), Agent and Lenders are required to obtain, verify and record information that identifies each Loan Party, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act and the AML Legislation. Agent and Lenders will also require information regarding each personal guarantor, if any, and may require information regarding Loan Parties' management and owners, such as legal name, address, social security number and date of birth. Loan Parties shall, promptly upon request, provide all documentation and other information so requested as Agent or any Lender may request from time to time in connection order to comply with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, any obligations under the Patriot Act, Act and/or the AML Legislation.

6.6 If the Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, the Borrower shall have delivered, to the Bank, a Beneficial Ownership Certification in relation to the Borrower.

7. **Effect of Amendment.** Except as provided in this Amendment, all of the terms and conditions of the Agreement, including, but not limited to, the Dispute Resolution Provision, shall remain in full force and effect.

8. **Counterparts** **15.13. Counterparts; Fax/Email Signatures.** This Amendment Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original but and all such counterparts of which taken together shall constitute but one and the same instrument. The words "execution," "execute",



"signed," "signature," and words of like import in or related to any document to be signed in connection with this letter agreement shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by 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.

9. **General Release** **15.14. GOVERNING LAW.** In consideration of the Bank's waiver, the Borrower hereby releases and forever discharges the Bank and the Bank's, respective predecessors, successors, assigns, officers, managers, directors, employees, agents, attorneys, representatives, and affiliates (collectively referred to as the "Bank Group"), from any and all presently existing claims, demands, damages, liabilities, actions and causes of action of any nature whatsoever, including, without limitation, all claims, demands, and causes of action for contribution and indemnity, whether arising at law or in equity, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, which the Borrower may have or claim to have against any of the Bank Group arising out of facts or events in any way related to the Agreement and all documents executed in connection therewith (collectively with the Agreement, the "Loan Documents") and/or the loan transactions evidenced thereby and which have occurred on or on or prior to the date hereof. **THIS AGREEMENT, ALONG WITH ALL OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED OTHERWISE IN SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES (BUT INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW). FURTHER, THE LAW OF THE STATE OF NEW YORK SHALL APPLY TO ALL DISPUTES OR CONTROVERSIES ARISING OUT OF OR CONNECTED TO OR WITH THIS AGREEMENT AND ALL SUCH OTHER LOAN DOCUMENTS WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES.**

**15.15. CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL; CONSENT TO SERVICE OF PROCESS.** ANY LEGAL ACTION, SUIT OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS IN THE COUNTY OF COOK OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR IN ANY OTHER COURT (IN ANY JURISDICTION) SELECTED BY AGENT IN ITS SOLE DISCRETION, AND EACH BORROWER AND EACH OTHER LOAN PARTY HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFOREMENTIONED COURTS. EACH BORROWER AND EACH OTHER LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, OR BASED ON 28 U.S.C. § 1404, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING AND ADJUDICATION OF ANY SUCH ACTION, SUIT OR PROCEEDING IN ANY OF THE AFOREMENTIONED COURTS AND AMENDMENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH BORROWER, EACH OTHER LOAN PARTY, AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR UNDER ANY AMENDMENT, WAIVER, AMENDMENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION HERewith OR THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE OTHER TRANSACTION DOCUMENTS, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER AND EACH OTHER LOAN PARTY HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON ANY BORROWER OR ANY OTHER LOAN PARTY AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO

BORROWERS' NOTICE ADDRESS (ON BEHALF OF BORROWERS OR SUCH LOAN PARTY) SET FORTH IN SECTION 15.1 AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE DAYS AFTER THE SAME SHALL HAVE BEEN SO DEPOSITED IN THE MAIL, OR, AT AGENT'S OPTION, BY SERVICE UPON ANY BORROWER OR ANY OTHER LOAN PARTY IN ANY OTHER MANNER PROVIDED UNDER THE RULES OF ANY SUCH COURTS.

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A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**15.16. Publication.** Each Borrower and each other Loan Party consents to the publication by Agent of a tombstone, press releases or similar advertising material relating to the financing transactions contemplated by this Agreement, and Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

**10. Electronic Records15.17. Confidentiality, Agent and Signatures.** This Amendment and each Lender agree to use commercially reasonable efforts not to disclose Confidential Information to any document, amendment, approval, Person without the prior consent information, notice, certificate, request, statement, of Borrower Representative; **provided**, that nothing herein contained shall limit any disclosure or authorization related to this Amendment (each a "Communication"), including Communications required to be in writing, may, if agreed by the Bank, be in the form of an Electronic Record and may be executed using Electronic Signatures, including, without limitation, facsimile and/or .pdf. The Borrower agrees that any Electronic Signature (including, without limitation, facsimile or .pdf) on or associated with any Communication shall be valid and binding on the Borrower to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of the Borrower enforceable against tax structure of the Borrower in accordance with transactions contemplated hereby, or the terms thereof to the same extent as if a manually executed original signature was delivered to the Bank. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Bank of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Bank may, at its option, create one or more copies disclosure of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of the Bank's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Bank is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Bank pursuant to procedures approved by it; provided, further, without limiting the foregoing, information (a) to the extent required by Applicable Law, statute, rule, regulation or judicial process or in connection with the Bank has agreed exercise of any right or remedy under any Loan Document, or as may be required in connection with the examination, audit or similar investigation of Agent or any of its Affiliates, (b) to accept such Electronic Signature, examiners, auditors, accountants or any regulatory authority, (c) to the Bank officers, partners, managers, directors, employees, agents and advisors (including independent auditors, lawyers and counsel) of Agent and each Lender or any of their respective Affiliates, (d) in connection with any litigation or dispute which relates to this Agreement or any other Loan Document to which Agent or any Lender is a party or is otherwise subject, (e) to a subsidiary or Affiliate of Agent or any Lender, (f) to any assignee or participant (or prospective assignee or participant) which agrees to be bound by this Section 15.17 and (g) to any lender or other funding source of Agent or any Lender (each reference to Agent and Lender in the foregoing clauses shall be entitled deemed to rely on include (i) the actual and

prospective assignees and participants referred to in clause (f) and the lenders and other funding sources referred to in clause (g), as applicable for purposes of this Section 15.17), and further **provided**, that in no event shall Agent or any such Electronic Signature purportedly given Lender be obligated or required to return any materials furnished by or on behalf of any Obligor without further verification Borrower or any other Loan Party or Other Obligor. The obligations of Agent and (b) upon Lenders under this Section 15.17 shall supersede and replace the request obligations of the Bank Agent and Lenders under any Electronic Signature shall be promptly followed confidentiality letter or provision in respect of this financing or any other financing previously signed and delivered by a manually executed, original counterpart. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned Agent or any Lender to them, respectively, by 15 USC §7006, as it may be amended from time to time.

11. **FINAL AGREEMENT.** BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT: (A) THIS DOCUMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF; (B) THIS DOCUMENT SUPERSEDES ANY COMMITMENT LETTER, TERM SHEET OR OTHER WRITTEN OUTLINE OF TERMS AND CONDITIONS RELATING TO THE SUBJECT MATTER HEREOF, UNLESS SUCH COMMITMENT LETTER, TERM SHEET OR OTHER WRITTEN OUTLINE OF TERMS AND CONDITIONS EXPRESSLY PROVIDES TO THE CONTRARY; (C) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES; AND (D) THIS DOCUMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

*[Signatures on following page(s).] Any Loan Party or any of its Affiliates.*

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

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-in Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

**15.18. Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

- (a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the

same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

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(b) As used in this Section 15.20, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[Signature page follows]

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This Amendment is executed IN WITNESS WHEREOF, each Borrower, each other Loan Party party hereto, Agent and each Lender have signed this Agreement as of the date stated at the beginning of this Amendment. first set forth above.

Bank of America, N.A.

**Agent:**

ECLIPSE BUSINESS CAPITAL LLC

RF /s/ Rob Richardson

Industries,

Ltd.,

a Nevada

corporation

By: \_\_\_\_\_

Name: Rob Richardson

Its: Authorized Signatory

**Lenders:**

ECLIPSE BUSINESS CAPITAL SPV, LLC

By: /s/ John W. Faassen Rob Richardson \_\_\_\_\_

Name: Rob Richardson

Its: Authorized Signatory

Perfection Certificate Page 1

Borrowers:

RF INDUSTRIES, LTD.

By:

/s/ Peter Yin

Name: Peter Yin

Its: Chief Financial Officer

CABLES UNLIMITED, INC.

By:

/s/ Peter Yin

Name: Peter Yin

Title: Its:  
Treasurer  
&  
Secretary

John W. Faassen

Senior Vice President

Chief Financial Officer

REL-TECH ELECTRONICS, INC.

By:

/s/ Peter Yin

Name: Peter Yin

Its: Treasurer & Secretary

C ENTERPRISES, INC.

By:

/s/ Peter Yin

Name: Peter Yin

Its: Treasurer & Secretary

SCHROFF TECHNOLOGIES INTERNATIONAL, INC.

By:

/s/ Peter Yin

Name: Peter Yin

Its: Treasurer & Secretary

MICROLAB/FXR LLC

By:

/s/ Peter Yin

Name: Peter Yin

Its: Treasurer & Secretary

Perfection Certificate Page 2

CONSENT AND REAFFIRMATION OF GUARANTORS AND PLEDGORSAnnex I

Each **Description** of the undersigned (collectively referred to as the "Credit Support Providers") is a guarantor of, and/or is a pledgor of collateral for, the Borrower's obligations to the Bank under the Agreement. Each Credit Support Provider hereby (i) acknowledges and consents to the foregoing Amendment, (ii) reaffirms its obligations under its respective guaranty in favor of the Bank and/or under any agreement under which it has granted to the Bank a lien or security interest in any of its real or

personal property, and (iii) confirms that such guaranty and other agreements, including but not limited to the Dispute Resolution Provision, remain in full force and effect, without defense, offset, or counterclaim. (Capitalized terms used herein shall have the meanings specified in the foregoing Amendment.) **Certain Terms**

Although each of the undersigned has been informed of the terms of the Amendment, each understands and agrees that the Bank has no duty to so notify it or any other guarantor/pledgor or to seek this or any future acknowledgment, consent or reaffirmation, and nothing contained herein shall create or imply any such duty as to any transactions, past or future.

In consideration of the Bank's waiver in the foregoing amendment, each Credit Support Provider hereby releases and forever discharges the Bank and the Bank's, respective predecessors, successors, assigns, officers, managers, directors, employees, agents, attorneys, representatives, and affiliates (collectively referred to as the "Bank Group"), from any and all presently existing claims, demands, damages, liabilities, actions and causes of action of any nature whatsoever, including, without limitation, all claims, demands, and causes of action for contribution and indemnity, whether arising at law or in equity, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, which such Credit Support Provider may have or claim to have against any of the Bank Group arising out of facts or events in any way related to the Loan Documents and/or the loan transactions evidenced thereby and which have occurred on or on or prior to the date hereof. Each Credit Support Provider hereby specifically waives the benefit of California Civil Code Section 1542 which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

1. Loan Limits for Revolving Loans	
(a) Maximum Revolving Facility Amount	\$15,000,000
(b) Advance Rates	
(i) Accounts Advance Rate	Eighty-five percent (85%); <b>provided</b> , that if Dilution exceeds five percent (5%), Agent may, at its option in its Permitted Discretion, (A) reduce such advance rate by the number of full or partial percentage points comprising such excess or (B) establish a Reserve on account of such excess (the " <b>Dilution Reserve</b> ").
(ii) Inventory Advance Rate(s)	
Cost or market value:	Sixty-five percent (65% )
NOLV:	Eighty-five percent (85% )
(c) Reserved:	
(d) Inventory Sublimit(s)	\$7,500,000 inclusive of a sublimit for Eligible Excess Inventory in an amount not to exceed \$300,000
(e) Reserved	
(f) Reserved	
2. Reserved.	
3. Interest Rates	

(a) Revolver	Five percent (5.00%) per annum in excess of the Adjusted Term SOFR; <b>provided</b> that six and one-half percent (6.50%) per annum in excess of Adjusted Term SOFR in the case of Revolving Loans outstanding based upon the Additional Availability Amount Four percent (4.00%) per annum in excess of the Base Rate; <b>provided</b> that five and one-half percent (5.50%) per annum in excess of the Base Rate in the case of Revolving Loans outstanding based upon the Additional Availability Amount
4. Maximum Days Eligible Accounts	
(a) Maximum days after original <b>invoice date</b> for Eligible Accounts	One hundred twenty (120) days
(b) Maximum days after original <b>invoice due date</b> for Eligible Accounts	Sixty (60) days
5. Agent's Bank	Wells Fargo Bank, National Association and its affiliates Account Name: Eclipse Business Capital SPV, LLC Reference: RF Industries (which bank may be changed from time to time by notice from Agent to Borrower Representative)
6. Scheduled Maturity Date	March 15, 2027

#### Annex I - 1

#### Annex II

Borrower Representative shall provide Agent with the information set forth below at the following times (all in a format provided by, or acceptable to, Agent):

Dated Weekly (no later than the 2nd Business Day of each week), or more frequently if Agent requests (To be delivered electronically utilizing the Borrowing Base portal in ABLSoft )	<p>(a) A summary and a detailed aging, by total, of Borrowers' Accounts, together with an Account roll-forward and Cash Reconciliation Form with supporting details supplied from sales journals, collection journals, credit registers and any other records, with respect to Borrowers' Accounts, along with a Client/Customer Master List.</p> <p>(b) A summary aging, by vendor, of each Loan Party's accounts payable (identifying therein any held and/or outstanding checks).</p> <p>(c) Notice of all claims, offsets, or disputes asserted by Account Debtors with respect to Borrowers' Accounts.</p> <p>(d) An Inventory Detail report with respect to Borrowers' Inventory, including a listing by category and location of Inventory, with backup acceptable to Agent.</p> <p>(e) A detailed calculation of Inventory of Borrowers that is not eligible for the Borrowing Base.</p>
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<p>Monthly (no later than 25th day after the end of each month)</p> <p>(To be delivered electronically utilizing the Borrowing Base portal in ABLSoft)</p>	<p>(f) A summary and a detailed aging, by total, of Borrowers' Accounts, together with reconciliation to the weekly Borrowing Base submitted closest to such date and support documentation for any reconciling items noted.</p> <p>(g) A summary aging, by vendor, of each Loan Party's accounts payable and a listing by vendor, of any held and/or outstanding checks.</p> <p>(h) A monthly Account roll-forward with respect to Borrowers' Accounts tied to the beginning and ending Account balances of Borrowers' month-end accounts receivable aging.</p> <p>(i) A reconciliation of Accounts summary aging and trade accounts payable summary aging to each of (i) Borrowers' general ledger, and (ii) their monthly financial statements including any book reserves related to each category (using the Month End Reconciliation Form).</p> <p>(j) A reconciliation of the Inventory perpetual report with respect to Borrowers' Inventory to each of (i) Borrowers' general ledger, (ii) their monthly financial statements including any book reserves related thereto and (iii) the Borrowing Base submitted closest to such date, together with support documentation for any reconciling items noted (using the Month End Reconciliation Form).</p> <p>(k) A reconciliation of the loan statement provided to Borrowers by Agent for such month to each of (i) Borrowers' general ledger, (ii) their monthly financial statements and (iii) the Borrowing Base submitted closest to such date, together with support documentation for any reconciling items noted (using the Month End Reconciliation Form).</p> <p>(l) A detailed calculation of the Borrowing Base based upon the reports provided in (f) through (k) above, for such month and reflecting the outstanding principal balance of the Loans as of September 12, 2023. the last day of such month.</p>
<p>Promptly upon the request of Agent</p>	<p>Rel-Tech Electronics, Inc., (m) Copies of invoices together with corresponding shipping and delivery documents, and credit memos together with corresponding supporting documentation, with respect to invoices and credit memos in excess of an amount determined in the sole discretion of Agent, from time to time.</p>
<p>Bi-Annually (in January and in July of each calendar year)</p>	<p>(n) A detailed list of each Loan Party's vendors, with address and contact information.</p> <p>(o) An updated Perfection Certificate, true and correct in all material respects as of the date of delivery, accompanied by a Connecticut corporation certificate executed by an officer of Borrower Representative and substantially in the form attached hereto (it being understood and agreed that no such update shall serve to cure any existing Event of Default, including any Event of Default resulting from any failure to provide any such disclosure to Agent on an earlier date or any breach of any earlier made representation and/or warranty).</p>

Promptly upon (but in no event later than two Business Days after) delivery or receipt, as applicable, thereof	By: <u>/s/ Peter Yin</u> Name: Peter Yin Title: Chief Financial Officer Cables Unlimited, Inc. (p) Copies of any and all written notices (including notices of default or acceleration), a New York corporation By: <u>/s/ Peter Yin</u> Name: Peter Yin Title: Chief Financial Officer C Enterprises, Inc., a California corporation By: <u>/s/ Peter Yin</u> Name: Peter Yin Title: Chief Financial Officer Schroff Technologies International, Inc., a Rhode Island corporation By: <u>/s/ Peter Yin</u> Name: Peter Yin Title: Chief Financial Officer Microlab/FXR LLC, a New Jersey limited liability company By: RF Industries, Ltd., a Nevada corporation, its Sole Member By: <u>/s/ Peter Yin</u> Name: Peter Yin Title: Chief Financial Officer reports and other deliveries received by or on behalf of any Loan Party from or sent by or on behalf of any Loan Party to, any holder, agent or trustee with respect to any Indebtedness that is contractually subordinated to the Obligations (in such holder's, agent's or trustee's capacity as such).
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G-2 Annex II - 1

Annex III  
Revolving Loan Commitments

Eclipse Business Capital SPV, LLC	\$15,000,000.00
Total	\$15,000,000.00

Annex III - 1

Exhibit 31.1

CERTIFICATIONS PURSUANT TO  
SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002

I, Robert Dawson, certify that:

1. I have reviewed this Quarterly Report **report** on Form 10-Q **for the quarter ended January 31, 2024** of RF Industries, Ltd.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; **and**

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; **and reporting.**

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 14, 2023 March 18, 2024

/s/

Robert  
Dawson

Robert Dawson  
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATIONS PURSUANT TO  
SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002

I, Peter Yin, certify that:

1. I have reviewed this Quarterly Report report on Form 10-Q for the quarter ended January 31, 2024 of RF Industries, Ltd.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and reporting.

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 14, 2023 March 18, 2024

/s/  
Peter  
Yin

Peter Yin  
Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO

18 U.S.C. § 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of RF Industries, Ltd. (the "Company") on Form 10-Q for the quarter ended July 31, 2023 January 31, 2024, as filed with the Securities and Exchange Commission (the "Report"), I, Robert Dawson, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: September 14, 2023 March 18, 2024

/s/  
Robert  
Dawson

Robert Dawson  
President and Chief Executive Officer

*The foregoing certifications are not deemed filed with the Securities and Exchange Commission for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (Exchange Act), and are not to be incorporated by reference into any filing of RF Industries, Ltd. under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date hereof, regardless of any general incorporation language in such filing.*

Exhibit 32.2

CERTIFICATION PURSUANT TO

18 U.S.C. § 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of RF Industries, Ltd. (the "Company") on Form 10-Q for the quarter ended **July 31, 2023** **January 31, 2024**, as filed with the Securities and Exchange Commission (the "Report"), I, Peter Yin, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **September 14, 2023** **March 18, 2024**

/s/  
Peter  
Yin

Peter Yin  
Chief Financial Officer

*The foregoing certifications are not deemed filed with the Securities and Exchange Commission for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (Exchange Act), and are not to be incorporated by reference into any filing of RF Industries, Ltd. under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date hereof, regardless of any general incorporation language in such filing.*

#### DISCLAIMER

THE INFORMATION CONTAINED IN THE REFINITIV CORPORATE DISCLOSURES DELTA REPORT™ IS A COMPARISON OF TWO FINANCIALS PERIODIC REPORTS. THERE MAY BE MATERIAL ERRORS, OMISSIONS, OR INACCURACIES IN THE REPORT INCLUDING THE TEXT AND THE COMPARISON DATA AND TABLES. IN NO WAY DOES REFINITIV OR THE APPLICABLE COMPANY ASSUME ANY RESPONSIBILITY FOR ANY INVESTMENT OR OTHER DECISIONS MADE BASED UPON THE INFORMATION PROVIDED IN THIS REPORT. USERS ARE ADVISED TO REVIEW THE APPLICABLE COMPANY'S ACTUAL SEC FILINGS BEFORE MAKING ANY INVESTMENT OR OTHER DECISIONS.

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