

REFINITIV

DELTA REPORT

10-Q

DBI - DESIGNER BRANDS INC.

10-Q - MAY 04, 2024 COMPARED TO 10-Q - OCTOBER 28, 2023

The following comparison report has been automatically generated

TOTAL DELTAS 1271

■ CHANGES	152
■ DELETIONS	763
■ ADDITIONS	356

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended **October 28, 2023** **May 4, 2024**

or

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

For the transition period from _____

to _____

Commission file number **1-32545**



DESIGNER BRANDS INC.

(Exact name of registrant as specified in its charter)

Ohio

31-0746639

(State or other jurisdiction of incorporation or organization)

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

810 DSW Drive, Columbus, Ohio

43219

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: **(614) 237-7100**

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Class A Common Shares, without par value	DBI	New York Stock Exchange

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 electronically 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

Number of shares outstanding of each of the registrant's classes of common stock, as of **November 28, 2023** **May 28, 2024**: **49,124,473** **50,070,340** Class A common shares and **7,732,733** Class B common shares.

DESIGNER BRANDS INC.
TABLE OF CONTENTS

PART I		
Item 1	Financial Statements	1
	Condensed Consolidated Statements of Operations	1
	Condensed Consolidated Statements of Comprehensive Income (Loss)	2
	Condensed Consolidated Balance Sheets	3
	Condensed Consolidated Statements of Shareholders' Equity	4
	Condensed Consolidated Statements of Cash Flows	5
	Notes to the Condensed Consolidated Financial Statements	6
Item 2	Management's Discussion and Analysis of Financial Condition and Results of Operations	21 18
Item 3	Quantitative and Qualitative Disclosures About Market Risk	31 24
Item 4	Controls and Procedures	31 24

PART II		
Item 1	Legal Proceedings	31 25
Item 1A	Risk Factors	31 25
Item 2	Unregistered Sales of Equity Securities and Use of Proceeds and Issuer Purchases of Equity Securities	32 25
Item 3	Defaults Upon Senior Securities	32 26
Item 4	Mine Safety Disclosures	32 26
Item 5	Other Information	33 26
Item 6	Exhibits	33 26
	Signature SIGNATURE	34 27

All references to "we," "us," "our," "Designer Brands," "Designer Brands Inc.," or the "Company" in this Quarterly Report on Form 10-Q for the quarter ended **October 28, 2023** **May 4, 2024** (this "Form 10-Q") mean Designer Brands Inc. and its subsidiaries.

We have included certain website addresses throughout this report as inactive textual references only. The information contained on the websites referenced herein is not incorporated into this Form 10-Q.

i

[Table of contents](#)

Cautionary Statement Regarding Forward-Looking Information for Purposes of the "Safe Harbor" Provisions of the Private Securities Litigation Reform Act of 1995

Certain statements in this Form 10-Q may constitute forward-looking statements and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Such statements reflect our current views with respect to, among other things, future events and financial performance. You can identify these forward-looking statements by the use of words such as "outlook," "could," "believes," "expects," "potential," "continues," "may," "will," "should," "would," "seeks," "approximately," "predicts," "intends," "plans," "estimates," "anticipates," or the negative version of those words or other comparable words. Any forward-looking statements contained in this Form 10-Q are based upon current plans, estimates, expectations and assumptions relating to our operations, results of operations, financial condition, and liquidity. The inclusion of any forward-looking statements should not be regarded as a representation by us or any other person that the future plans, estimates, or expectations contemplated by us will be achieved. Such forward-looking statements are subject to numerous risks, uncertainties, and other factors that may cause actual results, performance, or achievements to be materially different from any future results, performance, or achievements expressed or implied by the forward-looking statements. In addition to other factors discussed elsewhere in this report, including those factors described under Part I, Item 1A, *Risk Factors* in our Annual Report on Form 10-K for the fiscal year ended **January 28, 2023** **February 3, 2024** (the "2022/2023 Form 10-K"), filed with the Securities and Exchange Commission (the "SEC") on **March 16, 2023** **March 25, 2024**, and otherwise in our reports and filings with the SEC, there are a number of important factors that could cause actual results, performance, or achievements to differ materially from those discussed in forward-looking statements that include, but are not limited to, the following:

- uncertain general economic and financial conditions, including concerns of a potential recession concerns, in the United States ("U.S."), fluctuating interest rates, inflationary pressures, and rising interest rates, and the related impacts to consumer discretionary spending;
- supply chain challenges;
- risks related spending, as well as our ability to adverse public health developments; plan for and respond to the impact of these conditions;
- our ability to anticipate and respond to fashion trends, rapidly changing consumer preferences, seasonality, customer expectations, and changing customer expectations; fashion trends;
- the impact on our consumer traffic and demand, our business operations, and the operations of our suppliers, as we experience unseasonable weather, climate change evolves, and the frequency and severity of weather events increase;

- our ability to execute on our business strategies, including integrating and growing our Brand Portfolio segment, enhancing in-store and digital shopping experiences, and meeting consumer demands;
- whether we will be able to successfully and efficiently integrate our recent acquisitions in a manner that does not impede growth;
- our ability to maintain strong relationships with our vendors, manufacturers, licensors, and retailer customers;
- risks related to losses or disruptions associated with our distribution systems, including our distribution centers and stores, whether as a result of reliance on third-party providers or otherwise;
- our ability to retain our existing management team, and continue to attract qualified new personnel;
- risks related to cyber security threats and privacy or data security breaches or the potential loss or disruption of our information technology ("IT") systems;
- risks related to the implementation of an enterprise resource planning system ("ERP") software solution new or updated IT systems;
- our ability to protect our reputation and other IT systems; to maintain the brands we license;
- our reliance on our loyalty programs and marketing to drive traffic, sales, and customer loyalty;
- our ability to protect successfully integrate new hires or changes in leadership and retain our reputation existing management team, and to maintain the brands we license; continue to attract qualified new personnel;
- risks related to restrictions imposed by our senior secured asset-based revolving credit facility, as amended ("ABL Revolver"), and our senior secured term loan credit agreement, as amended ("Term Loan"), that could limit our ability to fund our operations;
- our competitiveness with respect to style, price, brand availability, shopping platforms, and customer service;
- risks related to our international operations including international trade, and our reliance on foreign sources for merchandise, exposure to political, economic, operational, compliance and other risks, and fluctuations in foreign currency exchange rates; merchandise;
- our ability to comply with privacy laws and regulations, as well as other legal obligations;
- domestic and global political and social conditions;
- geopolitical tensions, including relating to the ongoing war in Ukraine and the Israel-Hamas war;
- risks associated with climate change and other corporate responsibility issues; and
- uncertainties related to future legislation, regulatory reform, policy changes, or interpretive guidance on existing legislation.

If one or more of these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results, performance, or achievements may vary materially from what we have projected. Furthermore, new factors emerge from time to time, and it is not possible for management to predict all such factors, nor can management assess the impact of any such factor on the business or the extent to which any factor, or combination of factors, may cause results to differ materially from those contained in any forward-looking statement. Any forward-looking statement speaks only as of the date on which such statement is made, and, except as required by law, we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement is made or to reflect the occurrence of unanticipated events.

[Table of contents](#)

PART I

ITEM 1. FINANCIAL STATEMENTS

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

		Three months ended		Nine months ended			
		Three months ended		Three months ended			
		Three months ended		Three months ended			
		Three months ended		Three months ended			
(unaudited and in thousands, except per share amounts)	(unaudited and in thousands, except per share amounts)	October 28, 2023	October 29, 2022	October 28, 2023	October 29, 2022	(unaudited and in thousands, except per share amounts)	May 4, 2024 April 29, 2023

Net sales	Net sales	\$786,329	\$865,020	\$2,320,628	\$2,554,882
Cost of sales	Cost of sales	(529,923)	(579,201)	(1,553,096)	(1,697,648)
Gross profit	Gross profit	256,406	285,819	767,532	857,234
Operating expenses	Operating expenses	(230,788)	(222,232)	(665,437)	(674,348)
Income from equity investments	Income from equity investments	2,503	2,290	6,972	6,670
Impairment charges	Impairment charges	—	(1,349)	(649)	(4,237)
Operating profit	Operating profit	28,121	64,528	108,418	185,319
Interest expense, net	Interest expense, net	(8,767)	(4,826)	(22,296)	(10,530)
Loss on extinguishment of debt and write-off of debt issuance costs		—	—	—	(12,862)
Non-operating income (expense), net		(162)	(152)	83	(109)
Income before income taxes		19,192	59,550	86,205	161,818
Income tax provision		(8,987)	(14,379)	(27,372)	(44,252)
Non-operating expenses, net					
Income (loss) before income taxes					
Income tax benefit (provision)					
Net income	Net income	10,205	45,171	58,833	117,566
Net income attributable to redeemable noncontrolling interest		(64)	—	(73)	—
Net loss (income) attributable to redeemable noncontrolling interest					
Net income attributable to Designer	Net income attributable to Designer				
Brands Inc.	Brands Inc.	\$ 10,141	\$ 45,171	\$ 58,760	\$ 117,566
Earnings per share	Earnings per share				
attributable to Designer	attributable to Designer				
Brands Inc.:	Brands Inc.:				
Basic earnings per share					
Basic earnings per share					

Basic earnings per share	Basic earnings per share	\$ 0.17	\$ 0.70	\$ 0.93	\$ 1.71
Diluted earnings per share	Diluted earnings per share	\$ 0.17	\$ 0.65	\$ 0.90	\$ 1.60
Weighted average shares used in per share calculations:	Weighted average shares used in per share calculations:				
Basic shares	Basic shares	58,633	64,245	62,860	68,924
Basic shares	Basic shares				
Diluted shares	Diluted shares	61,405	69,140	65,292	73,287

The accompanying notes are an integral part of the condensed consolidated financial statements.

[Table of contents](#)

CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

		Three months ended		Nine months ended			
		Three months ended					
		Three months ended					
		Three months ended					
(unaudited and in thousands)	(unaudited and in thousands)	October 28, 2023	October 29, 2022	October 28, 2023	October 29, 2022	(unaudited and in thousands)	
Net income	Net income	\$10,205	\$45,171	\$58,833	\$117,566		May 4, 2024
Other comprehensive loss-	Other loss-						April 29, 2023
Foreign currency translation loss	Foreign currency translation loss	(2,501)	(2,956)	(2,041)	(3,100)		
Foreign currency translation loss	Foreign currency translation loss						
Comprehensive income		7,704	42,215	56,792	114,466		
Comprehensive income attributable to redeemable noncontrolling interest		(64)	—	(73)	—		
Comprehensive income attributable to Designer Brands Inc.		\$ 7,640	\$42,215	\$56,719	\$114,466		
Comprehensive income (loss)							
Comprehensive income (loss)							

Comprehensive income (loss)
Comprehensive
loss (income)
attributable to
redeemable
noncontrolling
interest

Comprehensive
income (loss)
attributable to
Designer
Brands Inc.

The accompanying notes are an integral part of the condensed consolidated financial statements.

[Table of contents](#)

CONDENSED CONSOLIDATED BALANCE SHEETS

(unaudited and in thousands)	(unaudited and in thousands)	October 28, 2023	January 28, 2023	October 29, 2022	(unaudited and in thousands)	May 4, 2024	February 3, 2024	April 29, 2023
ASSETS	ASSETS							
Current assets:	Current assets:							
Current assets:								
Current assets:								
Cash and cash equivalents	Cash and cash equivalents	\$ 54,638	\$ 58,766	\$ 62,507				
Receivables, net	Receivables, net	106,916	77,763	228,746				
Inventories	Inventories	601,470	605,652	681,843				
Prepaid expenses and other current assets	Prepaid expenses and other current assets	36,785	47,750	53,950				
Total current assets	Total current assets	799,809	789,931	1,027,046				
Property and equipment, net	Property and equipment, net	224,638	235,430	233,515				
Operating lease assets	Operating lease assets	742,384	700,373	691,032				
Goodwill	Goodwill	123,759	97,115	93,655				
Intangible assets, net	Intangible assets, net	83,032	31,866	19,273				
Deferred tax assets	Deferred tax assets	47,199	48,285	—				
Equity investments	Equity investments	62,239	63,820	64,246				
Other assets	Other assets	49,518	42,798	42,611				
Total assets	Total assets	\$2,132,578	\$2,009,618	\$2,171,378				
LIABILITIES, REDEEMABLE NONCONTROLLING INTEREST, AND SHAREHOLDERS' EQUITY	LIABILITIES, REDEEMABLE NONCONTROLLING INTEREST, AND SHAREHOLDERS' EQUITY							
Current liabilities:	Current liabilities:							
Current liabilities:								

Current liabilities:				
Accounts payable				
Accounts payable				
Accounts payable	Accounts payable	\$ 310,113	\$ 255,364	\$ 315,996
Accrued expenses	Accrued expenses	183,383	190,676	213,905
Current maturities of long-term debt	Current maturities of long-term debt	2,500	—	—
Current operating lease liabilities	Current operating lease liabilities	182,259	190,086	187,619
Total current liabilities	Total current liabilities	678,255	636,126	717,520
Long-term debt	Long-term debt	372,965	281,035	415,467
Non-current operating lease liabilities	Non-current operating lease liabilities	669,494	631,412	628,820
Other non-current liabilities	Other non-current liabilities	21,072	24,989	26,059
Total liabilities	Total liabilities	1,741,786	1,573,562	1,787,866
Commitments and contingencies	Commitments and contingencies			Commitments and contingencies
Redeemable noncontrolling interest	Redeemable noncontrolling interest	3,208	3,155	—
Shareholders' equity:	Shareholders' equity:			
Common shares paid in-capital, no par value	Common shares paid in-capital, no par value	1,028,307	1,018,872	1,012,794
Common shares paid in-capital, no par value	Common shares paid in-capital, no par value			
Treasury shares, at cost	Treasury shares, at cost	(764,748)	(662,614)	(662,614)
Retained earnings	Retained earnings	131,416	81,993	40,049
Accumulated other comprehensive loss	Accumulated other comprehensive loss	(7,391)	(5,350)	(6,717)
Total shareholders' equity	Total shareholders' equity	387,584	432,901	383,512
Total liabilities, redeemable noncontrolling interest, and shareholders' equity	Total liabilities, redeemable noncontrolling interest, and shareholders' equity	\$2,132,578	\$2,009,618	\$2,171,378

The accompanying notes are an integral part of the condensed consolidated financial statements.

[Table of contents](#)

CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY

	Number of Shares	Amounts

(unaudited and in thousands, except per share amounts)	Class A		Class B							
	Common Shares	Common Shares	Treasury Shares	Common Shares Paid in Capital	Treasury Shares	Retained Earnings (Deficit)	Accumulated Other Comprehensive Loss	Total		
Three months ended October 28, 2023										
Balance, July 29, 2023	56,143	7,733	34,995	\$ 1,025,662	\$ (685,048)	\$ 124,094	\$ (4,890)	\$ 459,818		
Net income attributable to Designer Brands Inc.	—	—	—	—	—	10,141	—	—	10,141	
Stock-based compensation activity	475	—	—	2,645	—	—	—	—	2,645	
Repurchase of Class A common shares	(7,565)	—	7,565	—	(79,700)	—	—	—	(79,700)	
Dividends (\$0.05 per share)	—	—	—	—	—	(2,819)	—	—	(2,819)	
Foreign currency translation loss	—	—	—	—	—	—	(2,501)	—	(2,501)	
Balance, October 28, 2023	49,053	7,733	42,560	\$ 1,028,307	\$ (764,748)	\$ 131,416	\$ (7,391)	\$ 387,584		
Three months ended October 29, 2022										
Balance, July 30, 2022	56,803	7,733	31,594	\$ 1,010,181	\$ (643,563)	\$ (1,909)	\$ (3,761)	\$ 360,948		
Net income attributable to Designer Brands Inc.	—	—	—	—	—	45,171	—	—	45,171	
Stock-based compensation activity	373	—	—	2,613	—	—	—	—	2,613	
Repurchase of Class A common shares	(1,288)	—	1,288	—	(19,051)	—	—	—	(19,051)	
Dividends (\$0.05 per share)	—	—	—	—	—	(3,213)	—	—	(3,213)	
Foreign currency translation loss	—	—	—	—	—	—	(2,956)	—	(2,956)	
Balance, October 29, 2022	55,888	7,733	32,882	\$ 1,012,794	\$ (662,614)	\$ 40,049	\$ (6,717)	\$ 383,512		
Nine months ended October 28, 2023										
Balance, January 28, 2023	55,921	7,733	32,882	\$ 1,018,872	\$ (662,614)	\$ 81,993	\$ (5,350)	\$ 432,901		
Net income attributable to Designer Brands Inc.	—	—	—	—	—	58,760	—	—	58,760	
Stock-based compensation activity	2,810	—	—	9,435	—	—	—	—	9,435	
Repurchase of Class A common shares	(9,678)	—	9,678	—	(102,134)	—	—	—	(102,134)	
Dividends (\$0.15 per share)	—	—	—	—	—	(9,337)	—	—	(9,337)	
Foreign currency translation loss	—	—	—	—	—	—	(2,041)	—	(2,041)	
Balance, October 28, 2023	49,053	7,733	42,560	\$ 1,028,307	\$ (764,748)	\$ 131,416	\$ (7,391)	\$ 387,584		
Nine months ended October 29, 2022										
Balance, January 29, 2022	65,624	7,733	22,169	\$ 1,005,382	\$ (515,065)	\$ (74,304)	\$ (3,617)	\$ 412,396		
Net income attributable to Designer Brands Inc.	—	—	—	—	—	117,566	—	—	117,566	
Stock-based compensation activity	977	—	—	14,509	—	—	—	—	14,509	
Repurchase of Class A common shares	(10,713)	—	10,713	—	(147,549)	—	—	—	(147,549)	
Dividends (\$0.15 per share)	—	—	—	(7,097)	—	(3,213)	—	—	(10,310)	
Foreign currency translation loss	—	—	—	—	—	—	(3,100)	—	(3,100)	
Balance, October 29, 2022	55,888	7,733	32,882	\$ 1,012,794	\$ (662,614)	\$ 40,049	\$ (6,717)	\$ 383,512		
(unaudited and in thousands, except per share amounts)	Number of Shares			Amounts						
	Class A	Class B								
Three months ended May 4, 2024	Common	Common	Treasury	Common Shares		Retained		Accumulated Other		Total
	Shares	Shares	Shares	Paid in Capital	Treasury Shares	Earnings	(Deficit)	Comprehensive Loss	Total	
Balance, February 3, 2024	49,491	7,733	42,560	\$ 1,030,765	\$ (764,802)	\$ 98,896	\$ (5,639)	\$ 359,220		
Net income attributable to Designer Brands Inc.	—	—	—	—	—	783	—	—	783	
Stock-based compensation activity	569	—	—	2,233	—	—	—	—	2,233	
Dividends (\$0.05 per share)	—	—	—	—	—	(2,861)	—	—	(2,861)	
Foreign currency translation loss	—	—	—	—	—	—	(903)	—	(903)	
Balance, May 4, 2024	50,060	7,733	42,560	\$ 1,032,998	\$ (764,802)	\$ 96,818	\$ (6,542)	\$ 358,472		
Three months ended April 29, 2023										
Balance, January 28, 2023	55,921	7,733	32,882	\$ 1,018,872	\$ (662,614)	\$ 81,993	\$ (5,350)	\$ 432,901		
Net income attributable to Designer Brands Inc.	—	—	—	—	—	11,415	—	—	11,415	
Stock-based compensation activity	2,057	—	—	(99)	—	—	—	—	(99)	

Dividends (\$0.05 per share)	—	—	—	—	—	(3,246)	—	(3,246)
Foreign currency translation loss	—	—	—	—	—	—	(817)	(817)
Balance, April 29, 2023	57,978	7,733	32,882	\$ 1,018,773	\$ (662,614)	\$ 90,162	\$ (6,167)	\$ 440,154

The accompanying notes are an integral part of the condensed consolidated financial statements.

[Table of contents](#)

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

		Nine months ended				Three months ended	
		Three months ended				Three months ended	
(unaudited and in thousands)	(unaudited and in thousands)	October 28, 2023	October 29, 2022	(unaudited and in thousands)		May 4, 2024	April 29, 2023
Cash flows from operating activities:	Cash flows from operating activities:						
Net income	Net income	\$ 58,833	\$ 117,566				
Adjustments to reconcile net income to net cash provided by operating activities:							
Net income							
Net income							
Adjustments to reconcile net income to net cash provided by (used in) operating activities:							
Depreciation and amortization							
Depreciation and amortization							
Depreciation and amortization	Depreciation and amortization	47,801	64,754				
Stock-based compensation expense	Stock-based compensation expense	25,167	22,327				
Deferred income taxes	Deferred income taxes	875	(260)				
Income from equity investments	Income from equity investments	(6,972)	(6,670)				
Distributions received from equity investments	Distributions received from equity investments	8,552	6,230				
Impairment charges	Impairment charges	649	4,237				
Loss on extinguishment of debt and write-off of debt issuance costs		—	12,862				
Other	Other	(1,977)	4,940				

Change in operating assets and liabilities, net of acquired amounts:	Change in operating assets and liabilities, net of acquired amounts:		
Accounts receivables			
Accounts receivables			
Accounts receivables	Accounts receivables	(21,462)	(25,043)
Income tax receivable	Income tax receivable	997	(2,979)
Inventories	Inventories	44,782	(98,789)
Prepaid expenses and other current assets	Prepaid expenses and other current assets	5,998	(9,919)
Accounts payable	Accounts payable	57,374	(24,389)
Accrued expenses	Accrued expenses	(6,926)	(1,221)
Operating lease assets and liabilities, net	Operating lease assets and liabilities, net	(11,170)	(25,706)
Net cash provided by operating activities		202,521	37,940
Net cash provided by (used in) operating activities			
Cash flows from investing activities:			
Cash paid for property and equipment	Cash paid for property and equipment	(42,315)	(41,928)
Cash paid for property and equipment			
Cash paid for property and equipment			
Cash paid for business acquisitions			
Cash paid for business acquisitions			
Cash paid for business acquisitions	Cash paid for business acquisitions	(127,496)	—
Equity investment in Le Tigre	—	(8,228)	
Other			
Other			
Other	Other	—	(5,853)

Net cash used in investing activities	Net cash used in investing activities	(169,811)	(56,009)
Cash flows from financing activities:	Cash flows from financing activities:		
Borrowing on revolving credit facility	Borrowing on revolving credit facility	955,622	1,490,199
Borrowing on revolving credit facility	Borrowing on revolving credit facility		
Payments on revolving credit facility	Payments on revolving credit facility	(906,087)	(1,074,733)
Proceeds from the issuance of the Term Loan		50,000	—
Payments for borrowings and prepayment premium under Previous Term Loan		—	(238,196)
Payments of debt issuance costs	(8,313)	(2,316)	
Cash paid for treasury shares	(102,134)	(147,549)	
Payments for borrowings under Term Loan			
Payments for borrowings under Term Loan			
Payments for borrowings under Term Loan			
Dividends paid			
Dividends paid			
Dividends paid	Dividends paid	(9,337)	(10,310)
Cash paid for taxes for stock- based compensation shares withheld	Cash paid for taxes for stock- based compensation shares withheld	(15,732)	(7,818)
Other	Other	(117)	(31)
Net cash provided by (used in) financing activities		(36,098)	9,246
Net cash provided by financing activities			
Effect of exchange rate changes on cash balances	Effect of exchange rate changes on cash balances	(740)	(1,361)
Net decrease in cash, cash equivalents, and restricted cash		(4,128)	(10,184)
Cash, cash equivalents, and restricted cash, beginning of period		58,766	74,459
Cash, cash equivalents, and restricted cash, end of period		\$ 54,638	\$ 64,275

Net decrease in cash and cash equivalents	
Cash and cash equivalents, beginning of period	
Cash and cash equivalents, end of period	
Supplemental disclosures of cash flow information:	Supplemental disclosures of cash flow information:
Cash paid for income taxes	\$ 16,515 \$ 43,027
Net cash received for income taxes	
Net cash received for income taxes	
Net cash received for income taxes	
Cash paid for interest on debt	Cash paid for interest on debt \$ 18,536 \$ 10,355
Cash paid for operating lease liabilities	Cash paid for operating lease liabilities \$158,240 \$ 169,328
Non-cash investing and financing activities:	Non-cash investing and financing activities:
Property and equipment purchases not yet paid	Property and equipment purchases not yet paid \$ 5,098 \$ 6,011
Property and equipment purchases not yet paid	
Property and equipment purchases not yet paid	
Operating lease liabilities arising from lease asset additions	Operating lease liabilities arising from lease asset additions \$ 16,217 \$ 12,014
Net increase to operating lease assets and lease liabilities for modifications	Net increase to operating lease assets and lease liabilities for modifications \$150,699 \$ 164,453

The accompanying notes are an integral part of the condensed consolidated financial statements.

[Table of contents](#)

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Note 1	Description of Business and Significant Accounting Policies	7
Note 2	Acquisitions	9
Note 3	Revenue	11
Note 4	Related Party Transactions	13 12
Note 5	Earnings Per Share	14 13
Note 6	Stock-Based Compensation	14
Note 7	Shareholders' Equity	15 14
Note 8	Receivables	16 15
Note 9	Goodwill Accrued Expenses	15
Note 10	Debt	15
Note 11	Commitments and Intangible Assets Contingencies	16
Note 10	Accrued Expenses	17
Note 11	Debt	17
Note 12	Commitments and Contingencies	19
Note 13	Segment Reporting	20 17

[Table of contents](#)

1. DESCRIPTION OF BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES

DESCRIPTION OF BUSINESS

Business Operations- Designer Brands Inc. is one of the world's largest designers, producers, and retailers of footwear and accessories. We operate in three reportable segments: the U.S. Retail segment, the Canada Retail segment, and the Brand Portfolio segment. The U.S. Retail segment operates the DSW Designer Shoe Warehouse ("DSW") banner through its direct-to-consumer U.S. stores and e-commerce site. The Canada Retail segment operates The Shoe Company, DSW, and DSW Rubino banners through its direct-to-consumer Canada stores and e-commerce sites. The Brand Portfolio segment earns revenue from the wholesale of products to retailers and international distributors, commission the sale of our branded products through direct-to-consumer e-commerce for the Vince Camuto, Keds, Hush Puppies, and Topo brands, and commissions for serving retailers as the design and buying agent for products under private labels, and the sale of our branded products through direct-to-consumer e-commerce sites for the Vince Camuto, Keds, Hush Puppies, and Topo brands. Our equity investments in ABG-Camuto, LLC ("ABG-Camuto") and Le Tigre 360 Global LLC ("Le Tigre") are an integral part of the Brand Portfolio segment.

We have a 40% 40.0% ownership interest in ABG-Camuto, a joint venture that owns the intellectual property rights of Vince Camuto and other brands. We are party to a licensing agreement with ABG-Camuto, which provides for the exclusive right to design, source, and sell footwear and handbags under the brands that ABG-Camuto owns. In July 2022, we acquired We have a 33.3% ownership interest in Le Tigre, which manages the Le Tigre brand. We are also party to a license agreement with Le Tigre, which provides for the exclusive right to design, source, and sell Le Tigre-branded footwear. In addition, we own the licensing rights for footwear and handbags of the Lucky Brand and the licensing rights for footwear of the Jessica Simpson brand and beginning in the third quarter of 2023, the Hush Puppies brand and we own the licensing rights for footwear and handbags of the Lucky Brand. brand.

On February 4, 2023 April 8, 2024, we completed the acquisition of Rubino Shoes Inc. ("Rubino"), a retailer of branded footwear, handbags, and accessories that operates Rubino banner stores and an e-commerce platform in Quebec, Canada. The acquisition of Rubino allows our Canada Retail segment to expand into the Keds business ("Keds") from Wolverine World Wide, Inc. This expanded the reach province of our Owned Brands offerings, which refers to those brands that we have rights to sell through ownership or license arrangements, into casual and athleisure footwear in the wholesale and direct-to-consumer e-commerce channels, complementing the additions of Le Tigre and Topo Athletic LLC ("Topo") during 2022. Quebec.

Basis of Presentation- The accompanying unaudited, condensed consolidated financial statements have been prepared by management in accordance with accounting principles generally accepted in the U.S. ("GAAP") for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, we do not include all of the information and footnotes required by GAAP for complete financial statements. The accompanying financial statements reflect all adjustments that are, in the opinion of management, necessary for a fair presentation of the results for the interim periods presented. All such adjustments are of a normal, recurring nature. The condensed consolidated financial position, results of operations, and cash flows for these interim periods are not necessarily indicative of the results that may be expected in future periods. The balance sheet as of January 28, 2023 February 3, 2024 has been derived from the audited financial statements at that date. The financial statements should be read in conjunction with the audited consolidated financial statements and the notes thereto included in the 2022 2023 Form 10-K.

Fiscal Year- Our fiscal year ends on the Saturday nearest to January 31. References to a fiscal year (e.g., "2023" "2024") refer to the calendar year in which the fiscal year begins. This reporting schedule is followed by many national retail companies and typically results in a 52-week fiscal year (including 2022) 2024, but occasionally will contain an additional week resulting in a 53-week fiscal year (including 2023).

SIGNIFICANT ACCOUNTING POLICIES

Accounting Policies- The complete summary of significant accounting policies is included in the notes to the consolidated financial statements as presented in our 2022 Form 10-K.

Principles of Consolidation- The condensed consolidated financial statements include the accounts of Designer Brands Inc. and its subsidiaries, including any variable interest entities. All intercompany accounts and transactions have been eliminated in consolidation. All amounts are in United States ("U.S.") dollars.

[Table of contents](#)

Use of Estimates- The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and reported amounts of net sales and expenses during the reporting periods. Certain estimates and assumptions use forecasted financial information based on information reasonably available to us. Significant estimates and assumptions are required as a part of accounting for sales customer returns allowances, customer allowances and discounts reserve, allowances, gift card breakage income, deferred revenue associated with loyalty programs, valuation of inventories, depreciation and amortization, impairments of long-lived assets, intangibles and goodwill, lease accounting, redeemable noncontrolling interest, income taxes and valuation allowances on deferred tax assets, self-insurance reserves, and acquisitions. Although we believe that these estimates and assumptions are reasonable, they are based on management's knowledge of current events and actions we may undertake in the future. Changes in facts and circumstances may result in revised estimates and assumptions, and actual results could differ from these estimates.

Chief Executive Officer Transition- In January 2023, we announced our succession process relating to the Company's Chief Executive Officer ("CEO") role, whereby our former CEO, Roger Rawlins, stepped down from his role as CEO and as a member of the Company's Board of Directors (the "Board") effective April 1, 2023, at which time, Doug Howe, who previously served as Executive Vice President of the Company and President of DSW, assumed the CEO role and joined the Board. Mr. Rawlins commenced service as a strategic advisor to the Company and the Board effective April 1, 2023 through April 1, 2024 under the terms of a transition and consulting agreement. In conjunction with the CEO transition, we estimate that the CEO transition costs will total \$8.1 million, consisting of \$2.2 million in severance costs, \$2.8 million in accelerated stock-based compensation (net of stock awards forfeited), and \$3.1 million in retention stock awards to certain members of our leadership team and other related professional fees. During the three and nine months ended October 28, 2023 April 29, 2023, we recognized \$1.1 million and \$4.0 million, respectively, \$2.2 million of CEO transition costs in operating expenses on the condensed consolidated statements of operations. Since the fourth quarter of 2022, we have recognized \$7.7 million of There are no CEO transition costs with the remaining estimated \$0.4 million to be recorded during the fourth quarter of 2023, for 2024.

Severance- During the three months ended October 28, 2023 May 4, 2024 and October 29, 2022 April 29, 2023, we incurred severance costs excluding the severance related to the CEO transition, of \$1.9 million \$2.4 million and \$0.2 million, respectively. During the nine months ended October 28, 2023 and October 29, 2022, we incurred severance costs, excluding the severance related to the CEO transition, of \$4.3 million and \$1.2 million \$2.1 million, respectively. These costs are included in operating expenses in the condensed consolidated statements of operations. As of October 28, 2023 May 4, 2024, January 28, 2023 February 3, 2024, and October 29, 2022 April 29, 2023, we had \$4.3 million \$5.1 million, \$5.7 million \$3.9 million, and \$0.7 million \$4.7 million, respectively, of severance liability including the severance related to the CEO transition, included in accrued expenses on the condensed consolidated balance sheets.

Cash, Cash Equivalents, Income Taxes- For the three months ended May 4, 2024 and Restricted Cash- Cash April 29, 2023, our effective tax rate was 138.1% and cash equivalents represent cash, money market funds, 10.3%, respectively. The high effective tax rate for the three months ended May 4, 2024 was due to discrete tax benefits, primarily state tax planning initiatives and credit card receivables release of federal tax reserves no longer deemed necessary, that generally settle within approximated the amount of loss before income taxes and the impact of permanent non-deductible compensation. The low effective tax rate for the three days. Restricted cash represented cash that months ended April 29, 2023 was restricted as primarily due to withdrawal or usage net discrete tax benefits, including federal and consisted of a mandatory cash deposit maintained for certain insurance policies and letters of credit. state valuation allowance adjustments, partially offset by permanent non-deductible compensation.

The following table provides a reconciliation of cash and cash equivalents and restricted cash reported within the condensed consolidated balance sheets that sum to the total of the same such amounts shown on the condensed consolidated statements of cash flows:

(in thousands)	October 28, 2023	January 28, 2023	October 29, 2022
Cash and cash equivalents	\$ 54,638	\$ 58,766	\$ 62,507
Restricted cash, included in prepaid expenses and other current assets	—	—	1,768
Total cash, cash equivalents, and restricted cash shown in the condensed consolidated statements of cash flows	\$ 54,638	\$ 58,766	\$ 64,275

Fair Value- Fair value is defined as the price that would be received in the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Assets and liabilities recorded at fair value are categorized using defined hierarchical levels related to the subjectivity associated with the inputs to fair value measurements as follows:

- Level 1 - Quoted prices in active markets for identical assets or liabilities.
- Level 2 - Quoted prices for similar assets or liabilities in active markets or inputs that are observable.
- Level 3 - Unobservable inputs in which little or no market activity exists.

[Table of contents](#)

The carrying value of cash and cash equivalents, receivables, and accounts payables approximated their fair values due to their short-term nature. The carrying value of borrowings under our senior secured asset-based revolving credit facility ("ABL Revolver") Revolver and our new senior secured term loan credit agreement, as amended ("Term Loan"), Loan approximated fair value based on the terms and variable interest rates.

2. ACQUISITIONS

ACQUISITION OF TOPO

On December 13, 2022 **Recently Issued Accounting Pronouncements**- In November 2023, the Financial Accounting Standards Board issued Accounting Standards Update ("ASU") 2023-07, *Improvements to Reportable Segment Disclosures*, we acquired which updates reportable segment disclosure requirements including, among other things, enhanced disclosures about significant segment expenses and information used to assess segment performance. ASU 2023-07 is effective on a 79.4% ownership interest in Topo for \$19.3 million in cash, retrospective basis to all prior periods presented beginning with our 2024 Annual Report on Form 10-K and subsequent interim periods. We have an exclusive call option are currently evaluating the impact of adopting ASU 2023-07 to purchase the remaining 20.6% ownership interest in Topo upon the occurrence of certain events or after a period of two years following the close notes of the transaction. The noncontrolling interest holders also have a put option with respect to the remaining 20.6% ownership interest in Topo upon the occurrence of certain events or after a period of three years following the close of the transaction. The redemption price is defined in the operating agreement and is based primarily on a fixed multiple of Topo's trailing 12 months of adjusted earnings before interest, taxes, depreciation, amortization, and other agreed upon adjustments.

The final purchase price and the allocation of the total consideration to the fair values of the assets, liabilities, and redeemable noncontrolling interest consisted of the following:

(in thousands)	Preliminary Purchase Price and Allocation as of December 13, 2022	Measurement Period Adjustments	Final Purchase Price and Allocation as of April 29, 2023
Purchase price cash consideration	\$ 19,062	\$ 193	\$ 19,255
Fair value of assets and liabilities acquired:			
Accounts receivables	\$ 3,195	\$ (150)	\$ 3,045
Inventories	5,612	(20)	5,592
Goodwill	3,460	868	4,328
Intangible assets	12,500	(500)	12,000
Other assets	1,898	—	1,898
Accounts payable and other liabilities	(4,438)	(5)	(4,443)
Redeemable noncontrolling interest	(3,165)	—	(3,165)
	\$ 19,062	\$ 193	\$ 19,255

The fair value of the intangible assets relates to customer relationships and a trademark, which are amortized over a useful life of 10 and 15 years, respectively, and are based on the excess earnings method under the income approach. The fair value measurements are based on significant unobservable inputs, including discounted future cash flows and customer attrition rates. The fair value measurement of the redeemable noncontrolling interest was calculated by considering the implied fair value of Topo using the purchase price and an estimated amount to redeem the noncontrolling interest. The goodwill represents the excess of the purchase price over the fair value of the net assets acquired and was primarily attributable to acquiring an established design and sourcing process for athletic footwear. Goodwill is expected to be deductible for income tax purposes. During 2022, we incurred \$1.3 million of acquisition-related costs in connection with the acquisition of Topo, which was included in operating expenses on the condensed consolidated statements of operations, financial statements.

[Table of contents](#)

2. ACQUISITIONS

ACQUISITION OF KEDS

On February 4, 2023, we acquired the Keds business ("Keds"), including the Keds brand, inventory, and inventory-related accounts payable, from Wolverine World Wide, Inc. ("Seller"). The cash consideration was funded with available cash and borrowings on the ABL Revolver.

The preliminary final purchase price and the allocation of the total consideration to the fair values of the assets and liabilities was finalized as of February 3, 2024, and consisted of the following:

(in thousands)	Preliminary Purchase Price and Allocation as of February 4, 2023	Measurement Period Adjustments	Preliminary Purchase Price and Allocation as of October 28, 2023
Purchase price:			
Cash Consideration	\$ 109,360	\$ 17,944	\$ 127,304
Due to Seller	19,040	(19,040)	—
Due from Seller for estimated contingent consideration	(3,500)	(5,399)	(8,899)

	\$	124,900	\$	(6,495)	\$	118,405
Fair value of assets and liabilities acquired:						
Inventories	\$	46,700	\$	(4,184)	\$	42,516
Goodwill		36,787		(11,011)		25,776
Intangible assets		44,800		8,700		53,500
Accounts payable		(3,387)		—		(3,387)
	\$	124,900	\$	(6,495)	\$	118,405
(in thousands)						
Purchase price:						
Cash Consideration			\$			127,304
Due from Seller for estimated contingent consideration						(8,899)
			\$			118,405
Fair value of assets and liabilities acquired:						
Inventories			\$			42,516
Goodwill						25,776
Intangible assets						53,500
Accounts payable						(3,387)
			\$			118,405

We recorded an allocation of the purchase price to the tangible and identifiable intangible assets acquired and liabilities assumed based on their fair value at the acquisition date. The purchase price was subject to adjustments primarily based upon estimated contingent considerations as provided by the purchase agreement, which are based on recognized sales and incurred marketing costs for certain identified aged inventories and may result in the Seller paying us up to \$15.0 million by March 2024. Inventories. We recorded an estimated amount due from Seller at fair value based on our estimated probability of the conditions being met requiring payment. Any subsequent changes to the contingent consideration will be recorded to earnings. The allocation of estimated amount due from Seller after we have finalized the purchase price is based on certain preliminary valuations were recorded to earnings and analysis primarily related to the intangible assets that have not been completed as of the date of this filing. Subsequent changes, if any, in the estimated fair values assumed upon the finalization of more detailed analysis within the measurement period will change the allocation of the purchase price and will be adjusted during the period in which the amounts are determined. We expect to finalize the valuations during the fourth quarter of 2023. were immaterial.

The fair value of inventories, which is made up of finished goods, was determined based on market assumptions for realizing a reasonable profit after selling costs. The fair value of the intangible assets relates to \$46.9 million of an indefinite-lived trademark and \$6.6 million of customer relationships, which is amortized over a useful life of 10 years, and are based on the excess earnings method under the income approach. approach with the relief from royalty method for the trademark. The fair value measurements are based on significant unobservable inputs, including discounted future cash flows, market-based assumed royalty rates, and customer attrition rates. The goodwill, included within the Brand Portfolio segment, represents the excess of the purchase price over the fair value of the net assets acquired and was primarily attributable to acquiring an established design and sourcing process for casual footwear, including kids' footwear, with international distribution. Goodwill is expected to be deductible for income tax purposes.

[Table of contents](#)

ACQUISITION OF RUBINO

On April 8, 2024, we acquired Rubino for \$16.7 million in cash, subject to a working capital adjustment to be determined by the end of the third quarter of 2024, along with \$1.5 million in contingent consideration. The cash consideration was funded with available cash and borrowings on the ABL Revolver. The contingent consideration represents the estimated fair value associated with a potential earn-out payment to the sellers of Rubino, which was estimated at the maximum potential amount, subject to Rubino's achievement of a defined average annual financial performance target for the 24-month period following the acquisition.

The preliminary purchase price and the allocation of the total consideration to the fair values of the assets and liabilities consisted of the following:

	Preliminary Purchase Price and Allocation as of April 8, 2024	
(in thousands)		
Purchase Price:		
Cash consideration	\$	16,674
Contingent consideration		1,472
	\$	18,146
Fair value of assets and liabilities acquired:		
Inventories	\$	6,967
Operating lease assets		9,334
Goodwill		9,972
Intangible assets		3,166
Other assets		2,273
Accounts payable and other current liabilities		(4,232)
Operating lease liabilities		(9,334)
	\$	18,146

We incurred \$2.9 million recorded an allocation of acquisition-related costs in connection with the purchase price to the tangible assets and intangible trademark acquired and liabilities assumed based on their fair value at the acquisition date. The contingent consideration and the allocation of Keds, the purchase price is based on certain preliminary valuations and analysis that have not been completed as of the date of this filing. Any subsequent changes in the estimated fair values assumed upon the finalization of more detailed analysis within the measurement period will change the allocation of the purchase price and will be adjusted during the period in which the amounts are determined. We expect to finalize the valuations as soon as practicable, but not later than one year from the acquisition date.

The fair value of the intangible asset relates to an indefinite-lived trademark and was included in determined using the relief from royalty method of the income approach. The fair value measurements are based on significant unobservable inputs, including discounted future cash flows and an assumed royalty rate. The fair value of the operating expenses lease assets was determined based on the consolidated statements market valuation approach. The goodwill, included within the Canada Retail segment, represents the excess of operations, the purchase price over the fair value of the net assets acquired and was primarily attributable to acquiring an established retail banner in a province in Canada we did not previously have a presence in. Goodwill is expected to be deductible for income tax purposes.

COMBINED RESULTS OF ACQUIRED ENTITIES ENTITY

The results of operations for Topo and Keds Rubino for the nine three months ended October 28, 2023 May 4, 2024 were not material and are included in the condensed consolidated statements of operations within the Brand Portfolio Canada Retail segment. Supplemental pro forma results of operations reflecting the acquisitions acquisition are not presented as the impact on our consolidated financial results would not have been material.

[Table of contents](#)

3. REVENUE

DISAGGREGATION OF NET SALES

Net Sales by Brand Categories- The following table presents net sales disaggregated by brand categories for each segment:

(in thousands)	U.S. Retail	Canada Retail	Brand Portfolio	Eliminations	Consolidated
Three months ended October 28, 2023					
Owned Brands: ⁽¹⁾					
Direct-to-consumer	\$ 123,973	\$ —	\$ 17,204	\$ —	\$ 141,177
External customer wholesale, commission income, and other	—	—	61,905	—	61,905
Intersegment wholesale and commission income	—	—	14,948	(14,948)	—
Total Owned Brands	123,973	—	94,057	(14,948)	203,082
National brands	507,637	—	—	—	507,637
Canada Retail ⁽²⁾	—	75,610	—	—	75,610
Total net sales	\$ 631,610	\$ 75,610	\$ 94,057	\$ (14,948)	\$ 786,329
Three months ended October 29, 2022					
Owned Brands: ⁽¹⁾					
Direct-to-consumer	\$ 153,311	\$ —	\$ 9,810	\$ —	\$ 163,121
External customer wholesale, commission income, and other	—	—	66,530	—	66,530

Intersegment wholesale and commission income	—	—	31,118	(31,118)	—
Total Owned Brands	153,311	—	107,458	(31,118)	229,651
National brands	553,080	—	—	—	553,080
Canada Retail ⁽²⁾	—	82,289	—	—	82,289
Total net sales	\$ 706,391	\$ 82,289	\$ 107,458	\$ (31,118)	\$ 865,020
Nine months ended October 28, 2023					
Owned Brands: ⁽¹⁾					
Direct-to-consumer	\$ 362,931	\$ —	\$ 43,604	\$ —	\$ 406,535
External customer wholesale, commission income, and other	—	—	174,155	—	174,155
Intersegment wholesale and commission income	—	—	53,498	(53,498)	—
Total Owned Brands	362,931	—	271,257	(53,498)	580,690
National brands	1,540,107	—	—	—	1,540,107
Canada Retail ⁽²⁾	—	199,831	—	—	199,831
Total net sales	\$ 1,903,038	\$ 199,831	\$ 271,257	\$ (53,498)	\$ 2,320,628

[Table of contents](#)

	Canada (in thousands)	U.S. Retail (in thousands)	Brand Retail	Brand Portfolio	Eliminations	Consolidated (in thousands)	U.S. Retail	Canada Retail ⁽²⁾	Brand Portfolio	Eliminations	Consolidated
Nine months ended October 29, 2022											
Three months ended May 4, 2024											
Three months ended May 4, 2024											
Three months ended May 4, 2024											
Owned Brands: ⁽¹⁾	Owned Brands: ⁽¹⁾										
Owned Brands: ⁽¹⁾	Owned Brands: ⁽¹⁾										
Direct-to-consumer											
Direct-to-consumer											
Direct-to-consumer											
External customer wholesale, commission income, and other											
Intersegment wholesale											
Total Owned Brands											
National brands											
Total net sales											
Three months ended April 29, 2023											
Owned Brands: ⁽¹⁾											
Owned Brands: ⁽¹⁾											

Owned Brands: ⁽¹⁾						
Direct-to-consumer						
Direct-to-consumer						
Direct-to-consumer	Direct-to-consumer	\$ 440,343	\$ —	\$ 24,130	\$ —	\$ 464,473
External customer wholesale, commission income, and other	External customer wholesale, commission income, and other	—	—	170,665	—	170,665
Intersegment wholesale and commission income	Intersegment wholesale and commission income	—	—	76,470	(76,470)	—
Total Owned Brands	Total Owned Brands	440,343	—	271,265	(76,470)	635,138
National brands	National brands	1,702,856	—	—	—	1,702,856
Canada Retail ⁽²⁾	—	216,888	—	—	—	216,888
Total net sales Total net sales \$2,143,199 \$216,888 \$271,265 \$ (76,470) \$ 2,554,882						

(1) "Owned Brands" refers to those brands that we have rights to sell through ownership or license arrangements. Beginning in the first quarter of 2023, sales of the Keds brand are included in Owned Brands as a result of our acquisition of Keds. Sales of the Keds brand in periods prior to the first quarter of 2023 are not restated, as this brand was considered a national brand during those periods.

(2) We currently do not report Beginning with the 2023 Form 10-K, we are providing a breakout of Canada Retail segment net sales by brand categories. categories and we have recast the three months ended April 29, 2023 on a consistent basis.

Net Sales by Product and Service Categories- The following table presents net sales disaggregated by product and service categories for each segment:

	Three months ended		Nine months ended		(in thousands)	May 4, 2024	April 29, 2023			
	Three months ended		Three months ended							
	Three months ended		Three months ended							
	October 28, 2023	October 29, 2022	October 28, 2023	October 29, 2022	(in thousands)					
Net sales:	Net sales:									
U.S. Retail segment:	U.S. Retail segment:									
U.S. Retail segment:	U.S. Retail segment:									
Women's footwear	Women's footwear									
Women's footwear	Women's footwear	\$406,044	\$450,130	\$1,236,800	\$1,394,340					
Men's footwear	Men's footwear	136,455	151,106	419,008	461,035					
Kids' footwear	Kids' footwear	54,521	65,638	143,978	171,742					
Accessories and other	Accessories and other	34,590	39,517	103,252	116,082					
		631,610	706,391	1,903,038	2,143,199					

					621,367
Canada Retail segment:	Canada Retail segment:				
Women's footwear	Women's footwear				
Women's footwear	Women's footwear	39,031	41,381	110,079	115,187
Men's footwear	Men's footwear	18,526	20,334	51,272	56,224
Kids' footwear	Kids' footwear	15,145	17,291	30,778	36,700
Accessories and other	Accessories and other	2,908	3,283	7,702	8,777
		75,610	82,289	199,831	216,888
Brand Portfolio segment:					
Wholesale		74,099	95,837	219,592	237,748
Commission income and other		2,754	1,811	8,061	9,387
Direct-to-consumer		17,204	9,810	43,604	24,130
		94,057	107,458	271,257	271,265
Total segment net sales		801,277	896,138	2,374,126	2,631,352
Elimination of intersegment sales		(14,948)	(31,118)	(53,498)	(76,470)
Total net sales		\$786,329	\$865,020	\$2,320,628	\$2,554,882
					55,512

[Table of contents](#)

(in thousands)	Three months ended	
	May 4, 2024	April 29, 2023
Brand Portfolio segment:		
Wholesale	88,670	80,784
Direct-to consumer	13,930	10,624
Commission income and other	1,530	1,575
	104,130	92,983
Total segment net sales	781,009	759,824
Elimination of intersegment sales	(34,413)	(17,742)
Total net sales	\$ 746,596	\$ 742,082

During the three months ended October 28, 2023, we identified an error in the classification of certain net sales categories for the U.S. Retail segment in the Net Sales by Product and Service Categories table within Note 3, *Revenue*, of our condensed consolidated financial statements for the Quarterly Reports on Forms 10-Q for the first and second quarters of 2023. The above table for the **nine** **three** months ended **October 28, 2023** **April 29, 2023** has been corrected to reflect the reduction of **\$22.2 million** **\$8.3 million** of U.S. Retail segment net sales from accessories and other and increases of **\$10.0 million** **\$4.0 million** and **\$12.2 million** **\$4.3 million** of U.S. Retail segment net sales to women's footwear and men's footwear, respectively, representing the impact of the error for the first and second quarters quarter of 2023. This immaterial correction did not impact the condensed consolidated statements of operations, comprehensive income (loss), or balance sheets.

DEFERRED REVENUE LIABILITIES

We record deferred revenue liabilities, included in accrued expenses on the condensed consolidated balance sheets, for remaining obligations we have to our customers. The following table presents the changes and total balances for gift cards and loyalty programs:

Three months ended	Nine months ended
-----------------------	----------------------

		Three months ended					
		Three months ended					
		Three months ended					
(in thousands)	(in thousands)	October 28, 2023	October 29, 2022	October 28, 2023	October 29, 2022	(in thousands)	
Gift cards:	Gift cards:						May 4, 2024
Beginning of period	Beginning of period						April 29, 2023
Beginning of period	Beginning of period						
Beginning of period	Beginning of period	\$28,234	\$30,118	\$35,121	\$36,783		
Gift cards redeemed and breakage recognized to net sales	Gift cards redeemed and breakage recognized to net sales	(12,764)	(14,341)	(45,601)	(50,896)		
Gift cards issued	Gift cards issued	10,759	12,312	36,709	42,202		
End of period	End of period	\$26,229	\$28,089	\$26,229	\$28,089		
Loyalty programs:	Loyalty programs:						
Beginning of period	Beginning of period	\$16,762	\$16,788	\$16,900	\$15,736		
Beginning of period	Beginning of period						
Loyalty certificates redeemed and expired and other adjustments recognized to net sales	Loyalty certificates redeemed and expired and other adjustments recognized to net sales	(7,434)	(7,974)	(22,861)	(24,034)		
Deferred revenue for loyalty points issued	Deferred revenue for loyalty points issued	7,923	8,795	23,212	25,907		
End of period	End of period	\$17,251	\$17,609	\$17,251	\$17,609		

4. RELATED PARTY TRANSACTIONS

SCHOTTERNSTEIN AFFILIATES

We have transactions with entities owned or controlled by Jay L. Schottenstein, the executive chairman of our Board, and members of his family (collectively, the "Schottenstein Affiliates"). As of **October 28, 2023** **May 4, 2024**, the Schottenstein Affiliates beneficially owned **26%** approximately **25%** of the Company's outstanding common shares, representing **62%** approximately **61%** of the combined voting power of the Company, consisting of, **in the aggregate**, 7.0 million Class A common shares and 7.7 million Class B common shares. The following summarizes the related party transactions with the Schottenstein Affiliates for the relevant periods:

[Table of contents](#)

Leases- We lease certain store and office locations that are owned by the Schottenstein Affiliates. **We also leased a fulfillment**

center from a Schottenstein Affiliate through September 2022 that was not renewed. For the three months ended October 28, 2023 May 4, 2024 and October 29, 2022, we recorded rent expense from leases with Schottenstein Affiliates of \$2.0 million and \$2.3 million, respectively. For the nine months ended October 28, 2023 and October 29, 2022 April 29, 2023, we recorded rent expense from the leases with Schottenstein Affiliates of \$6.0 million \$2.0 million and \$7.3 million \$1.9 million, respectively. As of October 28, 2023 May 4, 2024, January 28, 2023 February 3, 2024, and October 29, 2022 April 29, 2023, we had related party current operating lease liabilities of \$4.6 million \$4.0 million, \$5.6 million, and \$5.4 million \$5.2 million, respectively, and non-current operating lease liabilities of \$17.7 million \$18.9 million, \$14.0 million \$18.5 million, and \$11.5 million \$13.0 million, respectively.

Other Purchases and Services- For both the three months ended October 28, 2023 May 4, 2024 and October 29, 2022 April 29, 2023, we had other purchases and services we incurred from the Schottenstein Affiliates of \$0.8 million and \$1.2 million, respectively. For the nine months ended October 28, 2023 and October 29, 2022, we had other purchases and services we incurred from the Schottenstein Affiliates of \$2.0 million and \$3.7 million \$0.6 million, respectively.

Due to Related Parties- Amounts due to the Schottenstein Affiliates, other than operating lease liabilities, were immaterial for all periods presented.

[Table of contents](#)

EQUITY METHOD INVESTMENTS

ABG-Camuto- We have a 40.0% ownership interest in ABG-Camuto. We are party to a licensing agreement with ABG-Camuto, pursuant to which we pay royalties on the net sales of the brands owned by ABG-Camuto, subject to guaranteed minimums. For the three months ended October 28, 2023 May 4, 2024 and October 29, 2022 April 29, 2023, we recorded royalty expense for amounts paid to ABG-Camuto of \$4.5 million \$4.8 million and \$4.6 million, respectively. For the nine months ended October 28, 2023 and October 29, 2022, we recorded royalty expense for amounts paid to ABG-Camuto of \$13.6 million and \$13.7 million \$4.5 million, respectively.

Le Tigre- In July 2022, we acquired We have a 33.3% ownership interest in Le Tigre. We are also party to a license agreement with Le Tigre, whereby pursuant to which we pay royalties on our the net sales of the Le Tigre brand, subject to guaranteed minimums. Activity with Le Tigre was immaterial for all periods presented.

5. EARNINGS PER SHARE

Basic earnings per share is based on net income attributable to Designer Brands Inc. and the weighted average of Class A and Class B common shares outstanding. Diluted earnings per share reflects the potential dilution of common shares adjusted for outstanding stock options and restricted stock units ("RSUs") calculated using the treasury stock method.

The following is a reconciliation between basic and diluted weighted average shares outstanding, as used in the calculation of earnings per share attributable to Designer Brands Inc.:

	Three months ended	Nine months ended			
	Three months ended				
	Three months ended				
	Three months ended				
(in thousands)	October 28, 2023	October 29, 2022	October 28, 2023	October 29, 2022	(in thousands)
Weighted average basic shares outstanding	58,633	64,245	62,860	68,924	
Dilutive effect of stock-based compensation awards	2,772	4,895	2,432	4,363	
Weighted average diluted shares outstanding	61,405	69,140	65,292	73,287	
					May 4, 2024
					April 29, 2023

For the three months ended October 28, 2023 May 4, 2024 and October 29, 2022 April 29, 2023, the number of shares relating to potentially dilutive stock-based compensation awards that were excluded from the computation of diluted earnings per share due to their anti-dilutive effect was 2.4 2.8 million and 2.7 million, respectively. For the nine months ended October 28, 2023 and October 29, 2022, the number of shares relating to potentially dilutive stock-based compensation awards that were excluded from the computation of diluted earnings per share due to their anti-dilutive effect was 3.3 million and 2.8 4.5 million, respectively.

6. STOCK-BASED COMPENSATION

Stock-based compensation expense, included in operating expenses on the condensed consolidated statements of operations, consisted of the following:

(in thousands)	Three months ended		Nine months ended	
	October 28, 2023	October 29, 2022	October 28, 2023	October 29, 2022
Stock options	\$ —	\$ —	\$ —	\$ 101
Restricted and director stock units	6,138	6,364	25,167	22,226
	\$ 6,138	\$ 6,364	\$ 25,167	\$ 22,327

[Table of contents](#)

6. STOCK-BASED COMPENSATION

For the three months ended May 4, 2024 and April 29, 2023, we recorded stock-based compensation expense of \$5.6 million and \$11.7 million, respectively, which is included in operating expenses in the condensed consolidated statements of operations.

The following table summarizes the stock-based compensation award share activity for RSUs for the **nine** three months ended **October 28, 2023** **May 4, 2024**:

(in thousands)	(in thousands)	Shares of Time-Based RSUs		Shares of Performance-Based RSUs
		RSUs	Based RSUs (in thousands)	
Outstanding	Outstanding	6,790	969	
- beginning	- beginning			
of period	of period			
Granted	Granted	2,586	813	
Vested	Vested	(4,107)	(249)	
Forfeited	Forfeited	(519)	(250)	
Outstanding	Outstanding	4,750	1,283	
- end of	- end of			
period	period			

7. SHAREHOLDERS' EQUITY

SHARES

Our Class A common shares are listed for trading under the ticker symbol "DBI" on the New York Stock Exchange. There is currently no public market for the Company's Class B common shares, but the Class B common shares can be converted into the Company's Class A common shares at the election of the holder on a share-for-share basis. Holders of Class A common shares are entitled to one vote per share and holders of Class B common shares are entitled to eight votes per share on matters submitted to shareholders for approval.

The following table provides additional information for our common shares:

(in thousands)	(in thousands)	October 28, 2023	January 28, 2023	October 29, 2022	(in thousands)	May 4, 2024	February 3, 2024	April 29, 2023	Class A		Class B	
									Class A	Class B	Class A	Class B
Class A												
Authorized shares	Authorized shares	250,000	100,000	250,000	100,000	250,000	100,000					
Issued shares	Issued shares	91,613	7,733	88,803	7,733	88,770	7,733					
Outstanding shares	Outstanding shares	49,053	7,733	55,921	7,733	55,888	7,733					
Treasury shares	Treasury shares	42,560	—	32,882	—	32,882	—					

We have authorized 100 million shares of no par value preferred shares, with no shares issued for any of the periods presented.

DIVIDENDS

On November 16, 2023, the Board declared a quarterly cash dividend payment of \$0.05 per share for both Class A and Class B common shares. The dividend will be paid on December 14, 2023 to shareholders of record at the close of business on November 30, 2023.

SHARE REPURCHASES

On August 17, 2017, the Board authorized the repurchase of an additional \$500.0 million of Class A common shares under our share repurchase program, which was added to the \$33.5 million remaining from the previous authorization. On June 8, 2023, we commenced a modified "Dutch Auction" tender offer (the "Tender Offer"), to purchase up to \$100.0 million of the Company's Class A common shares. The Tender Offer expired on July 7, 2023 and on July 12, 2023, we repurchased 1.5 million Class A common shares under the Tender Offer at a purchase price of \$10.00 per share and at an aggregate cost of \$15.1 million, including transaction costs. During the nine months ended October 28, 2023, we repurchased an aggregate of 9.7 million Class A common shares, including open market purchases and the 1.5 million Class A common shares purchased under the Tender Offer, at an aggregate cost of \$102.1 million, including transaction costs and excise tax. Share repurchases were funded from the proceeds from our Term Loan. As of October 28, 2023 May 4, 2024, \$87.7 million of Class A common shares remained available for repurchase under the share repurchase program. The share repurchase program may be suspended, modified, or discontinued at any time, and we have no obligation to repurchase any amount of our Class A common shares under the program. Under the share repurchase program, shares will be repurchased in the open market at times and in amounts considered appropriate based on price and market conditions.

DIVIDENDS

On May 15, 2024, the Board declared a quarterly cash dividend payment of \$0.05 per share for both Class A and Class B common shares. The dividend will be paid on June 18, 2024 to shareholders of record at the close of business on June 5, 2024.

[Table of contents](#)

8. RECEIVABLES

Receivables, net, consisted of the following:

(in thousands)	(in thousands)	October 28, 2023	January 28, 2023	October 29, 2022	(in thousands)	May 4, 2024	February 3, 2024	April 29, 2023
Customer accounts receivables:	Customer accounts receivables:							
Receivables with payment guarantee by third-party provider								
Receivables with payment guarantee by third-party provider								
Receivables with payment guarantee by third-party provider	Receivables with payment guarantee by third-party provider							
	\$ 39,858		\$19,539	\$ 53,304				
Receivables without payment guarantee	Receivables without payment guarantee							
	8,517		5,241	2,572				
Income tax receivable	Income tax receivable							
	43,024		44,021	165,218				
Other receivables	Other receivables							
	15,879		9,274	8,729				
Total receivables	Total receivables							
	107,278		78,075	229,823				
Allowance for doubtful accounts	Allowance for doubtful accounts							
	(362)		(312)	(1,077)				
	\$106,916		\$77,763	\$228,746				

\$

9. GOODWILL AND INTANGIBLE ASSETS

GOODWILL

The following table presents the changes to goodwill by segment:

(in thousands)	Nine months ended					
	October 28, 2023			October 29, 2022		
	Goodwill	Accumulated Impairments	Net	Goodwill	Accumulated Impairments	Net
Beginning of period by segment:						
U.S. Retail	\$ 93,655	\$ —	\$ 93,655	\$ 93,655	\$ —	\$ 93,655
Canada Retail	41,357	(41,357)	—	43,114	(43,114)	—
Brand Portfolio	23,449	(19,989)	3,460	19,989	(19,989)	—
	158,461	(61,346)	97,115	156,758	(63,103)	93,655
Activity by Segment:						
Canada Retail-						
Currency translation adjustment	(1,619)	1,619	—	(2,671)	2,671	—
Brand Portfolio:						
Purchase price and allocation adjustments for acquisition of Topo	868	—	868	—	—	—
Acquired Keds goodwill	25,776	—	25,776	—	—	—
	25,025	1,619	26,644	(2,671)	2,671	—
End of period by segment:						
U.S. Retail	93,655	—	93,655	93,655	—	93,655
Canada Retail	39,738	(39,738)	—	40,443	(40,443)	—
Brand Portfolio	50,093	(19,989)	30,104	19,989	(19,989)	—
	\$ 183,486	\$ (59,727)	\$ 123,759	\$ 154,087	\$ (60,432)	\$ 93,655

[Table of contents](#)

INTANGIBLE ASSETS

Intangible assets consisted of the following:

(in thousands)	Cost	Accumulated Amortization		Net
October 28, 2023				
Definite-lived customer relationships	\$ 14,299	\$ (3,580)	\$ 10,719	
Definite-lived trademark	11,953	(899)	11,054	
Indefinite-lived trademarks and trademarks	61,259	—	61,259	
	\$ 87,511	\$ (4,479)	\$ 83,032	
January 28, 2023				
Definite-lived customer relationships	\$ 7,852	\$ (1,454)	\$ 6,398	
Definite-lived trademark	10,853	(292)	10,561	
Indefinite-lived trademarks and trademarks	14,907	—	14,907	
	\$ 33,612	\$ (1,746)	\$ 31,866	
October 29, 2022				
Definite-lived customer relationships	\$ 1,322	\$ (1,322)	—	
Definite-lived trademark	4,853	(162)	4,691	
Indefinite-lived trademarks and trademarks	14,582	—	14,582	
	\$ 20,757	\$ (1,484)	\$ 19,273	

10. ACCRUED EXPENSES

Accrued expenses consisted of the following:

(in thousands)	(in thousands)	October 28, 2023	January 28, 2023	October 29, 2022	(in thousands)	May 4, 2024	February 3, 2024	April 29, 2023
Gift cards	Gift cards	\$ 26,229	\$ 35,121	\$ 28,089				
Accrued compensation and related expenses	Accrued compensation and related expenses	22,863	45,019	38,815				
Accrued taxes	Accrued taxes	30,035	19,419	30,689				
Loyalty programs deferred revenue	Loyalty programs deferred revenue	17,251	16,900	17,609				
Sales returns allowances		20,977	18,107	19,722				
Customer allowances and discounts		1,883	1,230	1,921				
Customer returns and allowances								
Other	Other	64,145	54,880	77,060				
		\$183,383	\$190,676	\$213,905				
Other								
Other								
		\$						

11. 10. DEBT

Debt consisted of the following:

(in thousands)	October 28, 2023	January 28, 2023	October 29, 2022
ABL Revolver	\$ 330,571	\$ 281,035	\$ 415,467
Term Loan	50,000	—	—
Total debt	380,571	281,035	415,467
Less unamortized Term Loan debt issuance costs	(5,106)	—	—
Less current maturities of long-term debt	(2,500)	—	—
Long-term debt	\$ 372,965	\$ 281,035	\$ 415,467

[Table of contents](#)

As of October 28, 2023, future maturities of debt are as follows:

(in thousands)	October 28, 2023	January 28, 2023	October 29, 2022
Remainder of 2023		\$ 1,250	
2024		2,500	
2025		2,500	
2026		2,500	
2027		371,821	
Total		\$ 380,571	

(in thousands)	May 4, 2024	February 3, 2024	April 29, 2023
ABL Revolver	\$ 351,296	\$ 301,070	\$ 390,302

Term Loan	131,437	133,125	—
Total debt	482,733	434,195	390,302
Less unamortized Term Loan debt issuance costs	(6,655)	(7,101)	—
Less current maturities of long-term debt	(6,750)	(6,750)	—
Long-term debt	\$ 469,328	\$ 420,344	\$ 390,302

ABL REVOLVER

On March 30, 2022, we replaced our previous senior secured asset-based revolving credit facility with our current ABL Revolver, which was subsequently amended on February 28, 2023 and June 23, 2023. The amended ABL Revolver provides a revolving line of credit of up to \$600.0 million, including a Canadian sub-limit of up to \$60.0 million, a \$75.0 million sub-limit for the issuance of letters of credit, a \$60.0 million sub-limit for swing-loan advances for U.S. borrowings, and a \$6.0 million sub-limit for swing-loan advances for Canadian borrowings. In addition, the ABL Revolver includes a first-in last-out term loan ("FILO Term Loan") of up to \$30.0 million, which was drawn in full on February 28, 2023. The FILO Term Loan may be repaid in full, but not in part, so long as certain payment conditions are satisfied. Once repaid, no portion of the FILO Term Loan may be reborrowed. Our ABL Revolver matures in March 2027 and is secured by a first-priority lien on substantially all of our personal property assets, including credit card receivables and inventory. The ABL Revolver may be used to provide funds for working capital, capital expenditures, share repurchases, other expenditures, and permitted acquisitions as defined by the credit facility agreement. The amount of credit available is limited to a borrowing base formulated on, among other things, a percentage of the book value of eligible inventory and credit card receivables, as reduced by certain reserves. As of **October 28, 2023** **May 4, 2024**, the revolving

[Table of contents](#)

line of credit (excluding the FILO Term Loan) had a borrowing base of **\$518.9 million** **\$514.0 million**, with **\$300.6 million** **\$321.3 million** in outstanding borrowings and **\$5.0 million** **\$4.9 million** in letters of credit issued, resulting in **\$213.3 million** **\$187.8 million** available for borrowings.

Borrowings under the revolving line of credit and letters of credit issued under the ABL Revolver accrue interest, at our option, at a rate equal to: (A) a base rate per annum equal to the greatest of (i) the prime rate, (ii) the Fed Funds Rate (as defined in the credit facility agreement and subject to a floor of 0%) plus 0.5%, and (iii) Adjusted Term SOFR (as defined in the credit facility agreement) plus 1.0%; or (B) a one-month, three-month, or six-month Adjusted Term SOFR per annum (subject to a floor of 0%), plus, in each instance, an applicable rate to be determined based on average availability. The FILO Term Loan accrues interest, at our option, at a rate equal to: (A) a fluctuating interest rate per annum equal to the greatest of (i) the prime rate, (ii) the Fed Funds Rate plus 0.5%, or (iii) Adjusted Term SOFR plus 1.0%, plus 2.5%; or (B) Adjusted Term SOFR for the interest period in effect for such borrowing plus 3.5%. Commitment fees are based on the unused portion of the ABL Revolver available for borrowings. Interest expense related to the ABL Revolver includes interest on borrowings and letters of credit, with an interest rate of **7.6%** **7.5%** as of **October 28, 2023** **May 4, 2024**, commitment fees, and the amortization of debt issuance costs.

TERM LOAN

On June 23, 2023, we entered into the Term Loan which provides for and have since borrowed the maximum aggregate principal amount of \$135.0 million, during 2023, consisting of (A) borrowings at closing of a **\$45.0 million** **\$121.5 million** U.S. loan and a **\$5.0 million** **\$13.5 million** Canadian loan (denominated in USD) and (B) delay draw loans available to borrow up to \$76.5 million in U.S. loans and \$8.5 million in Canadian loans (denominated in USD). The Term Loan was amended on September 21, 2023 to extend the date through which the delay draw loans remain available, and on October 31, 2023, we borrowed \$25.0 million of the delay draw loans with any remaining delay draw loans to be taken by January 31, 2024. The Term Loan matures at the earliest of the date the ABL Revolver matures (currently March 2027) or five years from closing of the Term Loan (June 2028). The Term Loan is collateralized by a first priority lien on substantially all of our personal, real, and intellectual property and by a second priority lien on the assets used as collateral for the ABL revolver, primarily credit card receivables, accounts receivable, and inventory.

Borrowings under the Term Loan bear interest at a per annum rate equal to: (A) an adjusted three-month SOFR per annum (subject to a floor of 2.0%), plus 7.0%; or if (A) is not available, then (B) a base rate per annum equal to the greater of (i) 2.0%, (ii) the prime rate, (iii) the Fed Funds Rate plus 0.5%, and (iv) the Adjusted Term SOFR plus 1.0%; plus, in each instance, 6.0%, with an interest rate of **12.5%** **12.4%** (effective interest rate of **13.4%** **13.8%** when including the amortization of debt issuance costs) as of **October 28, 2023** **May 4, 2024**.

[Table of contents](#)

DEBT COVENANTS

The ABL Revolver requires us to maintain a fixed charge coverage ratio covenant of not less than 1:1 when availability is less than the greater of \$47.3 million or 10.0% of the maximum borrowing amount. At any time that liquidity is less than \$100.0 million, the Term Loan requires a maximum consolidated net leverage ratio as of the last day of each fiscal month, calculated on a trailing twelve-month basis, of (1) 2.25 to 1.00 for any trailing twelve-month period through February 3, 2024, and (2) 2.50 to 1.00 thereafter. Testing of the consolidated net leverage ratio ends after liquidity has been greater than or equal to \$100.0 million for a period of 45 consecutive days. The ABL Revolver and the Term Loan also contain customary covenants restricting certain activities, including limitations on our ability to sell assets, engage in acquisitions, enter into transactions involving related parties, incur additional debt, grant liens on assets, pay dividends or repurchase stock, and make certain other changes. There are specific exceptions to these covenants including, in some cases, upon satisfying specified payment conditions based on availability. The ABL Revolver and the Term Loan contain customary events of default, including failure to comply with certain financial and other covenants. Upon an event of default that is not cured or waived within the cure periods, in addition to other remedies that may be available to the lenders,

our obligations may be accelerated, outstanding letters of credit may be required to be cash collateralized, and remedies may be exercised against the collateral. As of **October 28, 2023** **May 4, 2024**, we were in compliance with all financial covenants contained in the ABL Revolver and the Term Loan.

TERMINATION OF PREVIOUS TERM LOAN

On February 8, 2022, we settled in full the \$231.3 million principal amount outstanding on that date under our previous senior secured term loan agreement ("Previous Term Loan"). In connection with this settlement, during the nine months ended October 29, 2022, we incurred a \$12.7 million loss on extinguishment of debt, composed of a \$6.9 million prepayment premium and a \$5.7 million write-off of unamortized debt issuance costs.

12.11. COMMITMENTS AND CONTINGENCIES

LEGAL PROCEEDINGS

We are involved in various legal proceedings that are incidental to the conduct of our business. Although it is not possible to predict with certainty the eventual outcome of any litigation, we believe the amount of any potential liability with respect to current legal proceedings will not be material to our results of operations or financial condition. As additional information becomes available, we will assess any potential liability related to pending litigation and revise the estimates as needed.

[Table of contents](#)

GUARANTEES

We provide guarantees for lease obligations that are scheduled to expire in 2025 2027 for locations a location that have been leased to a third party. If the third party does not pay the rent or vacates the premise, premises, we may be required to make full rent payments to the landlord. As of **October 28, 2023** **May 4, 2024**, the total future payment requirements for these guarantees were approximately \$5.5 million \$3.7 million.

[Table of contents](#)

13.12. SEGMENT REPORTING

The following table provides certain financial data by segment reconciled to the condensed consolidated financial statements:

(in thousands)	Canada (in thousands)	U.S. Retail	Brand Retail	Portfolio	Eliminations	(in thousands)	U.S. Retail	Canada Retail	Brand Portfolio	Eliminations	Consolidated
Three months ended October 28, 2023											
Three months ended May 4, 2024											
Three months ended May 4, 2024											
Three months ended May 4, 2024											
Net sales:											
Net sales:											
Net sales:											
External customer sales											
External customer sales											
External customer sales	External customer sales	\$ 631,610	\$ 75,610	\$ 79,109	\$ —	\$ 786,329					
Intersegment sales	Intersegment sales	—	—	14,948	(14,948)	—					
Total net sales	Total net sales	\$ 631,610	\$ 75,610	\$ 94,057	\$ (14,948)	\$ 786,329					
Gross profit	Gross profit	\$ 200,268	\$ 26,606	\$ 28,654	\$ 878	\$ 256,406					
Income from equity investments	Income from equity investments	\$ —	\$ —	\$ 2,503	\$ —	\$ 2,503					
Three months ended October 29, 2022											

Three months
ended April 29,
2023

Net sales: Net sales:

Net sales:

Net sales:

External customer sales

External customer sales

External customer sales	External customer sales	\$ 706,391	\$ 82,289	\$ 76,340	\$ —	\$ 865,020
Intersegment sales	Intersegment sales	—	—	31,118	(31,118)	—
Total net sales	Total net sales	\$ 706,391	\$ 82,289	\$ 107,458	\$ (31,118)	\$ 865,020
Gross profit	Gross profit	\$ 232,058	\$ 31,298	\$ 23,839	\$ (1,376)	\$ 285,819
Income from equity investments	Income from equity investments	\$ —	\$ —	\$ 2,290	\$ —	\$ 2,290

Nine months ended October 28, 2023

Net sales:

External customer sales	\$1,903,038	\$199,831	\$217,759	\$ —	\$ 2,320,628
Intersegment sales	—	—	53,498	(53,498)	—
Total net sales	\$1,903,038	\$199,831	\$271,257	\$ (53,498)	\$ 2,320,628
Gross profit	\$ 622,850	\$ 67,591	\$ 75,037	\$ 2,054	\$ 767,532
Income from equity investments	\$ —	\$ —	\$ 6,972	\$ —	\$ 6,972

Nine months ended October 29, 2022

Net sales:

External customer sales	\$2,143,199	\$216,888	\$194,795	\$ —	\$ 2,554,882
Intersegment sales	—	—	76,470	(76,470)	—
Total net sales	\$2,143,199	\$216,888	\$271,265	\$ (76,470)	\$ 2,554,882
Gross profit	\$ 716,268	\$ 81,145	\$ 59,975	\$ (154)	\$ 857,234
Income from equity investments	\$ —	\$ —	\$ 6,670	\$ —	\$ 6,670

Beginning in 2024, we changed how the Brand Portfolio segment sources certain Owned Brands for the U.S. Retail segment by transacting using a wholesale model, where intersegment sales and cost of sales are recorded, whereas in 2023 and prior we transacted on a commission model, where intersegment sales were based on a percentage of product cost. This change results in an increase in Brand Portfolio intersegment net sales, cost of sales, and gross profit and a corresponding increase in the amount of eliminated intersegment net sales, cost of sales, and gross profit with no impact to consolidated net sales and cost of sales.

[Table of contents](#)

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

EXECUTIVE OVERVIEW AND TRENDS IN OUR BUSINESS

For the **third** first quarter of **2023**, **2024**, net sales **saldecreased 9.1%** and **es increased 0.6%** and total comparable **sales sales decreased 9.3%** **2.5%** compared to the same period last year. Net sales during **During the third first quarter of 2023** **2024**, net sales from our Owned Brands **decreased 11.6%** compared to the same period last year, with Owned Brands representing 25.8% **represented 24.5%** of consolidated net sales, down from **26.5%** **27.8%** for the same period last year. At the beginning of 2023, we completed the acquisition of Keds, expanding our Owned Brands' reach into casual and athleisure footwear in the wholesale and direct-to-consumer e-commerce channels and complementing the additions of Le Tigre and Topo during 2022. We believe these acquisitions represent significant steps taken toward our long-term goal of net sales from our Owned Brands reaching one-third of total sales by 2026. Gross profit as a percentage of net sales for the **third** first quarter of **2023** **2024** was **40** **80** basis points **lower** **higher** when compared to the same period last year, primarily due to **improvements from the Brand Portfolio segment as we achieved significant improvements in product costing and did not have the same level of closeout sales as we did in the first quarter of 2023 as we were managing through excess inventory from last year's acquired brands.**

Beginning in 2024, we changed how the Brand Portfolio segment sources certain Owned Brands for the U.S. Retail segment by transacting using a wholesale model, where intersegment sales and cost of sales are recorded, whereas in 2023 and prior we transacted on a commission model, where intersegment sales were based on a percentage of product cost. This change results in an increase in Brand Portfolio intersegment net sales, cost of sales, gross profit, and gross profit as a percentage of net sales and a corresponding increase in the amount of eliminated intersegment net sales, cost of sales, and gross profit with no impact to promotional pricing consolidated net sales and the deleveraging effect cost of lower sales on fixed occupancy costs, which more than offset lower logistics costs including freight, shipping, and distribution sales.

EFFECTS OF GLOBAL ECONOMIC CONDITIONS

Throughout 2023, During the first quarter of 2024, our comparable sales declined as we experienced lower traffic and a downturn decrease in global the number of units per transaction. We believe this is a result of ongoing concern among consumers of negative and/or uncertain economic conditions, most notably the growing concerns of a potential recession, rising fluctuations in interest rates, inflationary pressures, changes in employment levels, and significant foreign currency volatility, has adversely impacted discretionary consumer income levels and spending for our customers. volatility. Consumer spending on discretionary items, including our products, generally declines during periods of economic uncertainty, when disposable income is reduced, or when there is a reduction in consumer confidence. We are unable to predict the severity of macroeconomic uncertainty, whether or when such circumstances may improve or worsen, or the full impact such circumstances could have on our business.

During the second half of 2022 and continuing into 2023, our net sales declined as we experienced lower traffic and became more promotional under a more competitive landscape. Competitive pricing pressure has been exacerbated by a more promotional retail environment as the industry experienced a shift from tighter inventory positions to excess inventory and as macroeconomic conditions continue to impact discretionary consumer spending. These factors ultimately could require us to enact mitigating operating efficiency measures that could have a material adverse effect on our business, operations, and results of operations.

FINANCIAL SUMMARY AND OTHER KEY METRICS

For the three months ended **October 28, 2023** **May 4, 2024**:

- Net sales decreased increased to **\$786.3 million** **\$746.6 million** from **\$865.0 million** **\$742.1 million** for the same period last year.
- Gross profit as a percentage of net sales was **32.6%** **32.8%** compared to **33.0%** **32.0%** for the same period last year.
- Net income attributable to Designer Brands Inc. was **\$10.1 million** **\$0.8 million**, or **\$0.01** per diluted share, which included net after-tax charges of **\$4.0 million**, or **\$0.07** per diluted share, primarily related to restructuring and integration costs. For the three months ended April 29, 2023, net income attributable to Designer Brands Inc. was **\$11.4 million**, or **\$0.17** per diluted share, compared to **\$45.2 million** which included net after-tax charges of **\$2.8 million**, or **\$0.65** per diluted share, for **\$0.04**, primarily related to the same period last year. CEO transition, restructuring, integration, and acquisition costs, partially offset by the valuation change on deferred tax assets.

Comparable Sales Performance Metric- The following table presents the percent change in comparable sales for each segment and in total:

		Three months ended			
		October 28, 2023	October 29, 2022		
		Three months ended			
		Three months ended			
		May 4, 2024			
		May 4, 2024			
		May 4, 2024			
Change in comparable sales:					
Change in comparable sales:					
Change in comparable sales:	Change in comparable sales:				
U.S. Retail segment	U.S. Retail segment	(9.8)	%	1.1	%
U.S. Retail segment					
U.S. Retail segment					
Canada Retail segment					
Canada Retail segment					
Canada Retail segment	Canada Retail segment	(7.7)	%	18.8	%
Brand Portfolio segment - direct-to-consumer channel	Brand Portfolio segment - direct-to-consumer channel	7.0	%	27.0	%
Brand Portfolio segment - direct-to-consumer channel					
Brand Portfolio segment - direct-to-consumer channel					
Total	Total	(9.3)	%	3.0	%
Total					
Total					

[Table of contents](#)

We consider the percent change in comparable sales from the same previous year period, a primary metric commonly used throughout the retail industry, to be an important measurement for management and investors of the performance of our direct-to-consumer businesses. We include in our comparable sales metric sales from stores in operation for at least 14 months at the beginning of the applicable year. Stores are added to the comparable base at the beginning of the year and are dropped for comparative purposes in the quarter in which they are closed. Comparable sales include the e-commerce sales of the U.S. Retail and Canada Retail segments. For calculating comparable sales in 2024, periods in 2023 are shifted by one week to compare similar calendar weeks. Comparable sales for the Canada Retail segment exclude the impact of foreign currency translation and are calculated by translating current period results at the foreign currency exchange rate used in the comparable period of the prior year. Comparable sales include the e-commerce net sales of the Brand Portfolio segment from the direct-to-consumer e-commerce site sites for the Vince Camuto brand. The and Topo. Net sales from the direct-to-consumer e-commerce sales sites for Topo, Keds and Hush Puppies will be added to the comparable base for the Brand Portfolio segment beginning with the first quarter of 2024, the second quarter of 2024 and the third quarter of 2024, respectively. Stores added as a result of the Rubino acquisition that will have been in operation for at least 14 months at the beginning of 2025, along with its e-commerce sales, will be added to the comparable base beginning with the second quarter of 2025. The calculation of comparable sales varies across the retail industry and, as a result, the calculations of other retail companies may not be consistent with our calculation.

Number of Stores- As of **October 28, 2023** **May 4, 2024** and **October 29, 2022** **April 29, 2023**, we had the following number of stores:

	October 28, 2023	October 29, 2022
U.S. Retail segment - DSW stores	May 4, 2024	
U.S. Retail segment - DSW stores	May 4, 2024	
U.S. Retail segment - DSW stores	May 4, 2024	
Canada Retail segment:	Canada Retail segment:	
Canada Retail segment:	Canada Retail segment:	
The Shoe Company stores	The Shoe Company stores	113
DSW stores	DSW stores	25
	144	138
DSW stores		
DSW stores		
Rubino stores		
Rubino stores		
Rubino stores		
	175	
	175	
	175	
Total number of stores	Total number of stores	643
Total number of stores		642
Total number of stores		

[Table of contents](#)

RESULTS OF OPERATIONS

THIRD FIRST QUARTER OF 2024 COMPARED WITH FIRST QUARTER OF 2023 COMPARED WITH THIRD QUARTER OF 2022

(amounts in thousands, except per	(amounts in thousands, except per	Three months ended

Net income attributable to Designer Brands Inc.	Net income attributable to Designer Brands Inc.	\$ 10,141	1.3 %	\$ 45,171	5.2 %	\$ (35,030)	(77.5)%	Brands Inc.	\$ 783	0.1	0.1 %	\$ 11,415	1.5
Earnings per share attributable to Designer Brands Inc.:	Earnings per share attributable to Designer Brands Inc.:												
Basic earnings per share	Basic earnings per share												
Basic earnings per share	Basic earnings per share	\$ 0.17		\$ 0.70		\$ (0.53)	(75.7)%	\$ 0.01		\$			\$ 0.18
Diluted earnings per share	Diluted earnings per share	\$ 0.17		\$ 0.65		\$ (0.48)	(73.8)%	Diluted earnings per share	\$ 0.01		\$		\$
Weighted average shares used in per share calculations:	Weighted average shares used in per share calculations:												
Basic shares	Basic shares	58,633		64,245		(5,612)	(8.7)%						
Basic shares	Basic shares								57,464				64,371
Diluted shares	Diluted shares	61,405		69,140		(7,735)	(11.2)%	Diluted shares	59,470		67,042		

NM - Not meaningful

[Table of contents](#)

NET SALES

The following table summarizes net sales by segment:

Three months ended													
Three months ended													
(dollars in thousands)	(dollars in thousands)	October 28, 2023	October 29, 2022	Change			May 4, 2024						
		% of Segment Net Amount	% of Segment Net Amount	Amount	Sales	Amount	Amount	%	Comparable Sales	Amount	Amount	% of Segment Net Sales	April 29, 2023
(dollars in thousands)													
(dollars in thousands)													
Segment net sales:	Segment net sales:												
U.S. Retail	U.S. Retail	\$631,610	78.8 %	\$706,391	78.8 %	\$(74,781)	(10.6)%	(9.8) %	\$621,367	79.6	79.6 %	\$612,886	

Canada	Canada												
Retail	Retail	75,610	9.5	82,289	9.2	(6,679)	(8.1)%	(7.7)	%	Canada			
Brand	Brand									Retail	55,512	7.1	7.1
Portfolio	Portfolio	94,057	11.7	107,458	12.0	(13,401)	(12.5)%	7.0	%	Brand			
										Portfolio	104,130	13.3	13.3
Total	Total									segment			
segment	segment									net			
net sales	net sales	801,277	100.0	%	896,138	100.0	%	(94,861)	(10.6)%	sales	781,009	100.0	100.0
Elimination	Elimination												
of	of												
intersegment	intersegment												
net sales	net sales	(14,948)			(31,118)			16,170	(52.0)%				
Consolidated	Consolidated												
net sales	net sales	\$786,329			\$865,020			\$78,691	(9.1)%				
Consolidated net sales													
Consolidated net sales													

For the three months ended October 28, 2023, May 4, 2024, net sales decreased increased in the U.S. Retail segment with \$68.0 million primarily due to added net sales of the decline \$23.3 million due to the calendar shift as a result of 2023 containing an additional week, offset by the decrease in comparable sales and the majority of the remaining decrease due to the impact of store closures since the end of the third quarter of 2022. sales. The decrease in comparable sales for the U.S. Retail segment was largely driven by a decrease in comparable transactions of approximately 6%, driven by lower traffic, and a decrease in the comparable average sales amounts per transaction of 3% due to lower units per transaction, partially offset by an increase in comparable transactions of approximately 4% 1% as we were conversion rates more promotional than we were during the same period last year. offset lower traffic. Net sales decreased increased in the Canada Retail segment primarily also due to lower comparable sales the calendar. The shift as well as the impact of new stores opened since the end of the first quarter of 2023, partially offset by a decrease in comparable sales for the Canada Retail segment was primarily driven by lower comparable average sales amount per transaction. Net sales. The increase in net sales for the Brand Portfolio segment decreased with approximately \$34.0 million of the decline was primarily due to lower a change in how we source certain Owned Brands for the U.S. Retail segment from a commission model, where sales are based on a percentage of product cost, to a wholesale model, where sales as retailer customers continued to pull back on orders, partially offset primarily from and cost of sales are recorded. This change also resulted in the increase in intersegment net sales added from acquired Topo and Keds businesses that are eliminated.

GROSS PROFIT

The following table summarizes gross profit by segment:

Three months ended																		
(dollars in thousands)		(dollars in thousands)		October 28, 2023		October 29, 2022		Change										
				% of Segment Net		% of Segment Net												
				Amount	Net Sales	Amount	Net Sales	Amount	%	Basis								
(dollars in thousands)																		
(dollars in thousands)																		
May 4, 2024																		
April 29, 2023																		
Change																		
% of Segment Net																		
Amount																		
Segment gross profit:	Segment gross profit:																	
U.S. Retail	U.S. Retail	\$200,268	31.7	%	\$232,058	32.9	%	\$31,790	(13.7)%	(120)								
Canada Retail	Canada Retail	26,606	35.2	%	31,298	38.0	%	(4,692)	(15.0)%	(280)								
Brand Portfolio	Brand Portfolio	28,654	30.5	%	23,839	22.2	%	4,815	20.2 %	830								
Total segment gross profit	Total segment gross profit	255,528	31.9	%	287,195	32.0	%	(31,667)	(11.0)%	(10)								

Net recognition	Net recognition				
(elimination)	(elimination)				
of	of				
intersegment	intersegment				
gross profit	gross profit	878	(1,376)	2,254	
Consolidated gross profit	Consolidated gross profit	\$256,406	32.6 %	\$285,819	33.0 %
				\$29,413	(10.3) %
				(40)	
Consolidated gross profit					
Consolidated gross profit					

The decrease increase in consolidated gross profit for the U.S. Retail and Canada Retail segments was primarily driven by the decrease increase in consolidated net sales during during the three months ended October 28, 2023 May 4, 2024 over the same period last year, partially offset by lower freight and shipping costs for all segments and lower distribution costs in the U.S. Retail segment as we realized the benefit of moving our digital fulfillment activities from our Ohio location to our New Jersey location. Gross profit as a percentage of net sales decreased by 120 basis points for the U.S. Retail segment when compared to the same period last year primarily due to promotional pricing and a change in mix of products sold, whereas the deleveraging effect of lower sales on fixed store occupancy costs, which more than offset lower logistics costs including freight, shipping and distribution. Gross profit as a percentage of net sales decreased 280 basis points decrease for the Canada Retail segment when was primarily due to the increase in store occupancy costs with new stores and renewed leases resulting in slight increases in rent. The increase in gross profit for the Brand Portfolio segment was primarily driven by higher margin rates on wholesale sales as well as the transition of certain Owned Brands sourced for the U.S. Retail segment under a wholesale model as discussed above, which also resulted in the net elimination of intersegment gross profit during the first quarter of 2024 as compared to the net recognition of intersegment gross profit for the same period

[Table of contents](#)

last year primarily due (refer to a mix shift in sales towards lower margin products and the deleveraging effect of lower sales on fixed store occupancy costs, table below). Gross profit as a percentage of net sales increased 830 basis points for the Brand

[Table of contents](#)

Portfolio segment when compared to with the same period transition of certain Owned Brands sourced for the U.S. Retail segment under a wholesale model, as well as significant improvements we achieved in product costing and a lower level of closeout sales than the first quarter of 2023 as we managed through excess inventory from last year, primarily due to the change in mix of products sold, improved inventory positions, and lower freight costs year's acquired brands.

The net recognition (elimination) of intersegment gross profit consisted of the following:

		Three months ended			
		October 28, 2023	October 29, 2022	(in thousands)	May 4, 2024
				Three months ended	
Intersegment recognition and elimination activity:	Intersegment recognition and elimination activity:				April 29, 2023
Net sales recognized by Brand Portfolio segment		\$(14,948)	\$(31,118)		
Elimination of net sales recognized by Brand Portfolio segment					
Elimination of net sales recognized by Brand Portfolio segment					
Elimination of net sales recognized by Brand Portfolio segment					
Cost of sales: Cost of sales:					
Cost of sales recognized by Brand Portfolio segment		9,857	21,426		

Elimination of cost of sales recognized by Brand Portfolio segment	
Elimination of cost of sales recognized by Brand Portfolio segment	
Elimination of cost of sales recognized by Brand Portfolio segment	
Recognition of intersegment gross profit for inventory previously purchased that was subsequently sold to external customers during the current period	Recognition of intersegment gross profit for inventory previously purchased that was subsequently sold to external customers during the current period
	5,969
	8,316
	\$ 878
	\$ (1,376)

OPERATING EXPENSES

For the three months ended **October 28, 2023** **May 4, 2024**, operating expenses increased by **\$8.6 million** **\$18.4 million** over the same period last year, primarily driven by an increase in incentive compensation as we did not recognize incentive compensation last year based on the performance of the business, an increase in marketing expenses expense as we invested more in brand awareness for the newly acquired brands in the Brand Portfolio segment, and the additional operating higher store selling expenses from the acquired businesses, partially offset by lower store payroll in line with lower with the increase in retail sales. Operating expenses, as a percentage of net sales, increased **370** **240** basis points over the same period last year due to higher marketing the increase in operating expenses and being greater than the deleveraging of costs on lower increase in net sales.

INTEREST EXPENSE, NET

For the three months ended **October 28, 2023** **May 4, 2024**, interest expense, net, increased by **\$3.9 million** **\$5.0 million** over the same period last year, primarily driven by overall higher interest rates on our debt, with higher rates on the ABL Revolver over the same period last year, and the addition of the Term Loan.

[Table of contents](#)

NINE MONTHS OF 2023 COMPARED WITH NINE MONTHS OF 2022

(amounts in thousands, except per share amounts)	Nine months ended					
	October 28, 2023		October 29, 2022		Change	
	Amount	% of Net Sales	Amount	% of Net Sales	Amount	%
Net sales	\$ 2,320,628	100.0 %	\$ 2,554,882	100.0 %	\$ (234,254)	(9.2)%
Cost of sales	(1,553,096)	(66.9)	(1,697,648)	(66.4)	144,552	(8.5)%
Gross profit	767,532	33.1	857,234	33.6	(89,702)	(10.5)%
Operating expenses	(665,437)	(28.7)	(674,348)	(26.4)	8,911	(1.3)%
Income from equity investments	6,972	0.3	6,670	0.3	302	4.5 %
Impairment charges	(649)	—	(4,237)	(0.2)	3,588	(84.7)%
Operating profit	108,418	4.7	185,319	7.3	(76,901)	(41.5)%
Interest expense, net	(22,296)	(1.0)	(10,530)	(0.4)	(11,766)	111.7 %

Loss on extinguishment of debt and write-off of debt	—	—	(12,862)	(0.5)	12,862	NM
issuance costs	—	—	(12,862)	(0.5)	12,862	NM
Non-operating income (expense), net	83	—	(109)	—	192	NM
Income before income taxes	86,205	3.7	161,818	6.4	(75,613)	(46.7)%
Income tax provision	(27,372)	(1.2)	(44,252)	(1.7)	16,880	(38.1)%
Net income	58,833	2.5	117,566	4.7	(58,733)	(50.0)%
Net income attributable to redeemable noncontrolling interest	(73)	—	—	—	(73)	NM
Net income attributable to Designer Brands Inc.	\$ 58,760	2.5 %	\$ 117,566	4.7 %	\$ (58,806)	(50.0)%
Earnings per share attributable to Designer Brands Inc.:						
Basic earnings per share	\$ 0.93		\$ 1.71		\$ (0.78)	(45.6)%
Diluted earnings per share	\$ 0.90		\$ 1.60		\$ (0.70)	(43.8)%
Weighted average shares used in per share calculations:						
Basic shares	62,860		68,924		(6,064)	(8.8)%
Diluted shares	65,292		73,287		(7,995)	(10.9)%

NM - Not meaningful

[Table of contents](#)

NET SALES

The following table summarizes net sales by segment:

(dollars in thousands)	Nine months ended						Change	
	October 28, 2023		October 29, 2022					
	Amount	% of Segment Net Sales	Amount	% of Segment Net Sales	Amount	%		
Segment net sales:								
U.S. Retail	\$ 1,903,038	80.2 %	\$ 2,143,199	81.5 %	\$ (240,161)	(11.2)%	(10.2)%	
Canada Retail	199,831	8.4	216,888	8.2	(17,057)	(7.9)%	(4.8)%	
Brand Portfolio	271,257	11.4	271,265	10.3	(8)	— %	6.0 %	
Total segment net sales	2,374,126	100.0 %	2,631,352	100.0 %	(257,226)	(9.8)%	(9.5)%	
Elimination of intersegment net sales	(53,498)		(76,470)		22,972	(30.0)%		
Consolidated net sales	\$ 2,320,628		\$ 2,554,882		\$ (234,254)	(9.2)%		

For the nine months ended October 28, 2023, net sales decreased in the U.S. Retail segment with \$214.0 million of the decline due to the decrease in comparable sales and the majority of the remaining decrease due to the impact of store closures since the end of the third quarter of 2022. The decrease in comparable sales for the U.S. Retail segment was largely driven by a decrease in comparable transactions of approximately 7%, driven by lower traffic, and a decrease in the comparable average sales amounts per transaction of approximately 3% as we were more promotional than we were during the same period last year. Net sales decreased in the Canada Retail segment with \$10.5 million of the decline due to the decrease in comparable sales and the majority of the remaining decrease due to the unfavorable impact from foreign currency translation. The decrease in the comparable sales for the Canada Retail segment was impacted primarily by lower comparable average sales amount per transaction. Net sales for the Brand Portfolio segment were flat to last year with the net sales added from the acquired Topo and Keds businesses offset by lower wholesale sales as retailer customers pulled back on orders.

GROSS PROFIT

The following table summarizes gross profit by segment:

(dollars in thousands)	Nine months ended						Change	
	October 28, 2023		October 29, 2022					
	Amount	% of Segment Net Sales	Amount	% of Segment Net Sales	Amount	%		
Segment gross profit:								
U.S. Retail	\$ 622,850	32.7 %	\$ 716,268	33.4 %	\$ (93,418)	(13.0)%	(70)	
Canada Retail	67,591	33.8 %	81,145	37.4 %	(13,554)	(16.7)%	(360)	
Brand Portfolio	75,037	27.7 %	59,975	22.1 %	15,062	25.1 %	560	

Total segment gross profit	765,478	32.2 %	857,388	32.6 %	(91,910)	(10.7)%	(40)
Net recognition (elimination) of intersegment gross profit	2,054		(154)		2,208		
Consolidated gross profit	\$ 767,532	33.1 %	\$ 857,234	33.6 %	\$ (89,702)	(10.5)%	(50)

The decrease in consolidated gross profit was primarily driven by the decrease in consolidated net sales during the nine months ended October 28, 2023 over the same period last year, partially offset by lower freight and shipping costs for all segments and lower distribution costs in the U.S. Retail segment as we realized the benefit of moving our digital fulfillment activities from our Ohio location to our New Jersey location. Gross profit as a percentage of net sales decreased 70 basis points for the U.S. Retail segment when compared to the same period last year, primarily due to the deleveraging effect of lower sales on fixed store occupancy costs, as well as being more promotional, partially offset by lower logistics costs including freight, shipping, and distribution. Gross profit as a percentage of net sales decreased 360 basis points for the Canada Retail segment when compared to the same period last year, primarily due to a mix shift in sales towards lower margin products and the deleveraging

[Table of contents](#)

effect of lower sales on fixed store occupancy costs. Gross profit as a percentage of net sales increased 560 basis points for the Brand Portfolio segment when compared to the same period last year, primarily due to the change in mix of products sold, improved inventory positions, and lower freight costs.

The net recognition (elimination) of intersegment gross profit consisted of the following:

(in thousands)	Nine months ended	
	October 28, 2023	October 29, 2022
Intersegment recognition and elimination activity:		
Net sales recognized by Brand Portfolio segment	\$ (53,498)	\$ (76,470)
Cost of sales:		
Cost of sales recognized by Brand Portfolio segment	38,134	52,149
Recognition of intersegment gross profit for inventory previously purchased that was subsequently sold to external customers during the current period	17,418	24,167
	\$ 2,054	\$ (154)

OPERATING EXPENSES

For the nine months ended October 28, 2023, operating expenses decreased by \$8.9 million over the same period last year, primarily driven by a decrease in incentive compensation and store payroll in line with lower net sales, partially offset by an increase in CEO transition, restructuring, integration, and acquisition costs, as well as the additional operating expenses from the acquired businesses. Operating expenses, as a percentage of net sales, increased 230 basis points over the same period last year, due to the lower net sales as we deleveraged our costs.

INTEREST EXPENSE, NET INCOME TAXES

For the **nine** three months ended October 28, 2023 May 4, 2024 and April 29, 2023, interest expense, net, increased by \$11.8 million over our effective tax rate was 138.1% and 10.3%, respectively. The high effective tax rate for the same period last year, three months ended May 4, 2024 was due to discrete tax benefits, primarily driven by overall higher interest rates on our debt, with higher rates on state tax planning initiatives and release of federal tax reserves no longer deemed necessary, that approximated the ABL Revolver over the same period last year amount of loss before income taxes and the addition impact of permanent non-deductible compensation. The low effective tax rate for the Term Loan.

LOSS ON EXTINGUISHMENT OF DEBT AND WRITE-OFF OF DEBT ISSUANCE COSTS

In connection with the settlement of our Term Loan on February 8, 2022, during the **nine** three months ended October 29, 2022, we incurred a \$12.7 million loss on extinguishment of debt, composed of a \$6.9 million prepayment premium April 29, 2023 was primarily due to net discrete tax benefits, including federal and a \$5.7 million write-off of unamortized debt issuance costs. As a result of the replacement of the ABL Revolver during 2023, we also wrote off \$0.2 million of debt issuance costs. state valuation allowance adjustments, partially offset by permanent non-deductible compensation.

LIQUIDITY AND CAPITAL RESOURCES

OVERVIEW

Our primary ongoing operating cash flow requirements are for inventory purchases, payments on lease obligations and licensing royalty commitments, other working capital needs, capital expenditures, and debt service. Our working capital and inventory levels fluctuate seasonally.

During 2023, we had the following significant transactions that impacted our liquidity:

- On February 4, 2023 April 8, 2024, we completed the acquisition of Keds with \$127.3 million acquired Rubino for \$16.7 million in cash, consideration, funded with available cash and borrowings on the ABL Revolver.
- On February 28, 2023, the ABL Revolver was amended to increase the available capacity under the revolving line of credit from \$550.0 million to \$600.0 million and to add a FILO Term Loan of up to \$30.0 million, which was drawn in full, subject to a borrowing base.
- On June 23, 2023 June 3, 2024, we entered into received \$46.9 million from the Internal Revenue Service representing the final amount due, plus interest, as a Term Loan that provides for a maximum aggregate principal amount of \$135.0 million, which is made up of \$50.0 million in loans taken during the second quarter of 2023 and delay draw loans available to borrow up to \$85.0 million.

[Table of contents](#)

- The Term Loan was amended on September 21, 2023 to extend the date through which the delay draw loans remain available and on October 31, 2023, we borrowed \$25.0 million result of the delay draw loans with any remaining delay draw loans Coronavirus Aid, Relief, and Economic Security Act. We intend to be taken by January 31, 2024.
- We repurchased an aggregate 9.7 million Class A common shares, including open market purchases and purchases under the Tender Offer, at an aggregate cost of \$102.1 million, including transaction costs and excise tax, under our share repurchase program. As of October 28, 2023, \$87.7 million of Class A common shares remained available for repurchase under the share repurchase program. use these proceeds to pay down debt.

We are committed to a cash management strategy that maintains liquidity to adequately support the operation of the business, pursue our growth strategy, and withstand unanticipated business volatility, including the impacts of the global economic conditions on our results of operations. We believe that cash generated from our operations, together with our current levels of cash, as well as the availability under our ABL Revolver, and Term Loan, are sufficient to maintain our ongoing operations, support seasonal

[Table of contents](#)

working capital requirements, fund acquisitions and capital expenditures, repurchase common shares under our share repurchase program, and meet our debt service obligations over the next 12 months and beyond.

The following table presents the key categories of our condensed consolidated statements of cash flows:

		Nine months ended		Change
		Three months ended		
(in thousands)	(in thousands)	October 28, 2023	October 29, 2022	
Net cash provided by operating activities	\$202,521	\$ 37,940	\$164,581	
(in thousands)				
Net cash provided by (used in) operating activities				May 4, 2024
Net cash used in investing activities	(169,811)	(56,009)	(113,802)	April 29, 2023
Net cash provided by (used in) financing activities	(36,098)	9,246	(45,344)	Change
Net cash provided by financing activities				

Effect of exchange rate changes on cash balances	Effect of exchange rate changes on cash balances	(740)	(1,361)	621
Net decrease in cash, cash equivalents and restricted cash		\$ (4,128)	\$ (10,184)	\$ 6,056
Net decrease in cash and cash equivalents				

OPERATING CASH FLOWS

The increase For the three months ended May 4, 2024, we had net cash used in operations as compared to net cash provided by operations for the same period last year. This change was largely driven by lower higher spend on working capital during the nine months ended October 28, 2023 over the same period last year, due to the decreased as we increased our investment in inventory with the slowdown in sales, as discussed above inventories, partially offset by no incentive compensation for 2023 being paid in the results first quarter of operations, 2024 whereas we did pay incentive compensation for 2022 in the first quarter of 2023, and the timing of payments on liabilities, which was partially offset by the decrease in net income recognized in the nine three months ended October 28, 2023 May 4, 2024 over the same period last year after adjusting for non-cash activity, including depreciation and amortization and stock-based compensation activity. As of May 4, 2024, our inventories remain below the loss on extinguishment amount as of debt and write-off April 29, 2023. Also, during the first quarter of debt issuance costs, 2023, much of the inventory buildup came from the acquisition of Keds, which is included in investing cash flows. Other changes in working capital were the result of timing of payments with the calendar shift.

INVESTING CASH FLOWS

For the nine three months ended October 28, 2023 May 4, 2024, net cash used in investing activities was primarily due to the acquisition of Keds the Rubino business for \$127.3 million \$16.7 million and capital expenditures of \$42.3 million \$15.9 million relating to infrastructure and IT projects and new stores, and store improvements, including relocations. For the nine three months ended October 29, 2022 April 29, 2023, net cash used in investing activities was primarily due to the acquisition of the Keds business of \$109.4 million and capital expenditures of \$41.9 million \$14.4 million relating to infrastructure and IT projects and store improvements as well as our \$8.2 million investment in Le Tigre, relocation and improvements.

FINANCING CASH FLOWS

For the nine three months ended October 28, 2023 May 4, 2024, net cash used in provided by financing activities was primarily due to the repurchase net receipts of 9.7 million Class A common shares at an aggregate cost \$50.2 million from our ABL Revolver, which was primarily used to fund our working capital investments and the acquisition of \$102.1 million, Rubino, partially offset by payments of \$15.7 million \$3.3 million for taxes for stock-based compensation shares withheld and payments of dividends of \$9.3 million, partially offset by proceeds from the issuance of the Term Loan of \$50.0 million and net receipts of \$49.5 million from our ABL Revolver, \$2.9 million for dividends. For the nine three months ended October 29, 2022 April 29, 2023, net cash provided by financing activities was primarily due to net receipts of \$415.5 million \$109.4 million from our revolving lines of credit, ABL Revolver, which was used primarily to fund the Keds business acquisition, partially offset by payments of \$238.2 million \$11.8 million for the settlement of the Previous Term Loan, the repurchase of 10.7 million Class A common taxes for stock-based compensation shares at an aggregate cost of \$147.5 million, and the payments of dividends of \$10.3 million, withheld.

[Table of contents](#)

DEBT

ABL Revolver- On March 30, 2022, we replaced our previous senior secured asset-based revolving credit facility with our current ABL Revolver, which was subsequently amended on February 28, 2023 and June 23, 2023. The amended ABL Revolver provides a revolving line of credit of up to \$600.0 million, including a Canadian sub-limit of up to \$60.0 million, a \$75.0 million sub-limit for the issuance of letters of credit, a \$60.0 million sub-limit for swing-loan advances for U.S. borrowings, and a \$6.0 million sub-limit for swing-loan advances for Canadian borrowings. In addition, the ABL Revolver includes a FILO Term Loan of up to \$30.0 million, which was drawn in full on February 28, 2023. The FILO Term Loan may be repaid in full, but not in part, so long as certain payment conditions are satisfied. Once repaid, no portion of the FILO Term Loan may be reborrowed. Our The ABL Revolver, which matures in March 2027, and is secured by a first-priority lien on substantially all of our personal property assets, including credit card receivables and inventory. The ABL Revolver may be used to provide funds for working capital, capital expenditures, share repurchases, other expenditures, and permitted acquisitions as defined by the credit facility agreement. The amount of credit available is limited to a borrowing base formulated on, among other things, a percentage of the book value of eligible inventory and credit card receivables, as reduced by certain reserves. As of October 28, 2023 May 4, 2024, the revolving line of credit (excluding the FILO Term Loan) had a borrowing base of \$518.9 million \$514.0 million, with \$300.6 million \$321.3 million in outstanding borrowings and \$5.0 million \$4.9 million in letters of credit issued, resulting in \$213.3 million \$187.8 million available for borrowings.

Term Loan- On June 23, 2023, we entered into a Term Loan that provides for and have since borrowed the maximum aggregate principal amount of \$135.0 million, which is made up of (a) borrowings at closing of a \$45.0 million U.S. loan and a \$5.0 million Canadian loan (denominated in USD) and (b) delay draw loans available to borrow up to \$76.5 million in U.S. loans and \$8.5 million in Canadian loans (denominated in USD). The Term Loan was amended on September 21, 2023 to extend the date through which the delay draw loans remain available, and on October 31, 2023, we borrowed \$25.0 million of the delay draw loans with any remaining delay draw loans to be taken by January 31, 2024. The Term Loan matures at the earliest of the date the ABL Revolver matures (currently March 2027) or five years from closing of the Term Loan (June 2028). The Term Loan is collateralized by a first priority lien on substantially all

[Table of our personal, real, and intellectual property and by a second priority lien on the assets used as collateral for the ABL revolver, primarily credit card receivables, accounts receivable, and inventory contents](#)

Debt Covenants- The ABL Revolver required us to maintain a fixed charge coverage ratio covenant of not less than 1:1 when availability is less than the greater of \$47.3 million or 10.0% of the maximum borrowing amount. At any time that liquidity is less than \$100.0 million, the Term Loan requires a maximum consolidated net leverage ratio as of the last day of each fiscal month, calculated on a trailing twelve-month basis, of (1) 2.25 to 1.00 for any trailing twelve-month period through February 3, 2024, and (2) 2.50 to 1.00 thereafter. Testing of the consolidated net leverage ratio ends after liquidity has been greater than or equal to \$100.0 million for a period of 45 consecutive days. The ABL Revolver and the Term Loan also contain customary covenants restricting certain activities, including limitations on our ability to sell assets, engage in acquisitions, enter into transactions involving related parties, incur additional debt, grant liens on assets, pay dividends or repurchase stock, and make certain other changes. There are specific exceptions to these covenants including, in some cases, upon satisfying specified payment conditions based on availability. As of **October 28, 2023** **May 4, 2024**, we were in compliance with all financial covenants contained in the ABL Revolver and the Term Loan.

Termination of Previous Term Loan- On February 8, 2022, we settled in full the \$231.3 million principal amount outstanding on that date under our Previous Term Loan. In connection with this settlement, during the nine months ended October 29, 2022, we incurred a \$12.7 million loss on extinguishment of debt, composed of a \$6.9 million prepayment premium and a \$5.7 million write-off of unamortized debt issuance costs.

Refer to Note **11, 10, Debt**, of the condensed consolidated financial statements of this Form 10-Q for further information about our debt arrangements.

CAPITAL EXPENDITURE PLANS FOR CAPITALIZED COSTS

We During 2024, we expect to spend approximately \$55.0 million \$65.0 million to \$60.0 million \$75.0 million that will be capitalized for capital expenditures in 2023, \$42.3 million property and equipment and implementation costs for cloud computing arrangements accounted for as service contracts, \$17.4 million of which was spent during the nine three months ended **October 28, 2023** **May 4, 2024**. Our future investments will depend primarily on the number of stores we open and remodel, infrastructure and IT projects that we undertake, and the timing of these expenditures.

RECENT ACCOUNTING PRONOUNCEMENTS

There are no The information related to recent accounting pronouncements that are expected to have a material impact to our as set forth in Note 1, *Description of Business and Significant Accounting Policies - Recently Issued Accounting Pronouncements*, of the condensed consolidated financial statements when adopted, included in this Form 10-Q is incorporated herein by reference.

[Table of contents](#)

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The preparation of our condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, and disclosure of commitments and contingencies at the date of the condensed consolidated financial statements and reported amounts of revenue and expenses during the reporting period. We base these estimates and judgments on factors we believe to be relevant, 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. The process of determining significant estimates is fact-specific and takes into account factors such as historical experience, current and expected economic conditions, product mix, and in some cases, actuarial and valuation techniques. We constantly re-evaluate these significant factors and make adjustments where facts and circumstances dictate. While we believe that the factors considered provide a meaningful basis for the accounting policies applied in the preparation of the condensed consolidated financial statements, we cannot guarantee that our estimates and assumptions will be accurate. As the determination of these estimates requires the exercise of judgment, actual results may differ from those estimates, and such differences may be material to our condensed consolidated financial statements. There have been no material changes to the application of critical accounting policies and estimates disclosed in our **2022** **2023** Form 10-K.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We have market risk exposure related to interest rates and foreign currency exchange rates. There have been no material changes in our primary risk exposures or management of market risks from those disclosed in our **2022** **2023** Form 10-K.

ITEM 4. CONTROLS AND PROCEDURES

EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES

We, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")). Based on that

[Table of contents](#)

evaluation, our Chief Executive Officer and Chief Financial Officer concluded, as of the end of the period covered by this Form 10-Q, that such disclosure controls and procedures were effective.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

No change was made in our internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(e), during our last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II

ITEM 1. LEGAL PROCEEDINGS

The information set forth in Note **12.11, Commitments and Contingencies - Legal Proceedings**, of the condensed consolidated financial statements of this Form 10-Q is incorporated herein by reference.

ITEM 1A. RISK FACTORS

As of the date of this filing, there have been no material changes to the risk factors as set forth in Part I, Item 1A., *Risk Factors*, in our **2022** **2023** Form 10-K.

[Table of contents](#)

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS AND ISSUER PURCHASES OF EQUITY SECURITIES

SHARE REPURCHASE PROGRAM

On August 17, 2017, the Board authorized the repurchase of an additional \$500.0 million of Class A common shares under our share repurchase program, which was added to the \$33.5 million remaining from the previous authorization. The share repurchase program may be suspended, modified, or discontinued at any time, and we have no obligation to repurchase any amount of our Class A common shares under the program. Under this share repurchase program, shares will be repurchased in the open market at times and in amounts considered appropriate based on price and market conditions.

The following table sets forth the Class A common shares repurchased during the three months ended **October 28, 2023** **May 4, 2024**:

<i>(in thousands, except per share amounts)</i>	(a) Total Number of Shares Purchased ⁽¹⁾	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Programs	(d) Approximate Dollar Value of Shares that May Yet Be Purchased Under the Programs
July 30, 2023 to August 26, 2023	4,457 \$	10.11	4,454 \$	121,415
August 27, 2023 to September 30, 2023	3,380 \$	10.99	3,111 \$	87,677
October 1, 2023 to October 28, 2023	6 \$	11.86	— \$	87,677
	7,843 \$	10.49	7,565	

<i>(in thousands, except per share amounts)</i>	(a) Total Number of Shares Purchased ⁽¹⁾	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Programs	(d) Approximate Dollar Value of Shares that May Yet Be Purchased Under the Programs
February 4, 2024 to March 2, 2024	4 \$	9.19	— \$	87,677
March 3, 2024 to April 6, 2024	292 \$	11.21	— \$	87,677

April 7, 2024 to May 4, 2024	<u>13</u>	\$	<u>9.55</u>	—	\$	<u>87,677</u>
	<u>309</u>	\$	<u>11.12</u>	—	\$	<u>—</u>

(1) The total number of shares repurchased **includes** shares repurchased as part of publicly announced programs and 278,015 **represents** shares withheld in connection with tax payments due upon vesting of stock-based compensation awards.

DIVIDENDS

The payment of any future dividends is at the discretion of our Board and is based on our future earnings, cash flow, financial condition, capital requirements, changes in taxation laws, general economic condition and any other relevant factors. **We anticipate declaring** **It is anticipated that** **dividends will be declared** on a quarterly basis.

On November 16, 2023 **on** May 15, 2024, the Board of Directors declared a quarterly cash dividend payment of \$0.05 per share for both Class A and Class B common shares. The dividend will be paid on December 14, 2023 **June 18, 2024** to shareholders of record at the close of business on November 30, 2023 **June 5, 2024**.

[Table of contents](#)

RESTRICTIONS

The ABL Revolver and the Term Loan contain customary covenants restricting our activities, including limitations on the ability to pay dividends or repurchase stock. There are specific exceptions to these covenants including, in some cases, upon satisfying specified payment conditions based on availability.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

[Table of contents](#)

ITEM 5. OTHER INFORMATION

RULE 10B5-1 TRADING PLANS

During the three months ended October 28, 2023 **May 4, 2024**, none of our directors or executive officers adopted or terminated any contract, instruction, or written plan for the purchase or sale of the Company's securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) or any "non-Rule 10b5-1 trading arrangement" (as defined in Item 408(c) of Regulation S-K).

ITEM 6. EXHIBITS

Exhibit Number	Exhibit Description	Incorporated by Reference			
		Form	File No.	Date of Filing	Exhibit Number
10.1*	First Amendment dated as of September 21, 2023, to Term Credit Agreement dated as of June 23, 2023 among Designer Brands Inc., Designer Brands Canada Inc., certain of domestic subsidiaries as guarantors, the lenders party thereto, and PLC Agent LLC, as Administrative Agent and Lead Arranger.	-	-	-	-
31.1*	Rule 13a-14(a)/15d-14(a) Certification - Principal Executive Officer.	-	-	-	-
31.2*	Rule 13a-14(a)/15d-14(a) Certification - Principal Financial Officer.	-	-	-	-
32.1**	Section 1350 Certification - Principal Executive Officer.	-	-	-	-
32.2**	Section 1350 Certification - Principal Financial Officer.	-	-	-	-
101*	The following materials from the Designer Brands Inc. Quarterly Report on Form 10-Q for the quarter ended October 28, 2023 May 4, 2024 , formatted in iXBRL (Inline eXtensible Business Reporting Language): (i) Condensed Consolidated Statements of Operations; (ii) Condensed Consolidated Statements of Comprehensive Income ; Income (Loss) ; (iii) Condensed Consolidated Balance Sheets; (iv) Condensed Consolidated Statements of Shareholders' Equity; (v) Condensed Consolidated Statements of Cash Flows; and (vi) Notes to the Condensed Consolidated Financial Statements.	-	-	-	-
104*	Cover Page Interactive Data File, formatted in iXBRL and contained in Exhibit 101.	-	-	-	-

* Filed herewith

** Furnished herewith

[Table of contents](#)

SIGNATURE

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

DESIGNER BRANDS INC.

Date: **December 5, 2023** June 4, 2024

By: /s/ Jared A. Poff

Jared A. Poff

Executive Vice President, Chief Financial Officer and Chief Administrative Officer
(Principal Financial Officer and duly authorized officer)

34



slide1

Execution Version FIRST AMENDMENT TO TERM CREDIT AGREEMENT This First Amendment to Term Credit Agreement (this "Amendment") is made as of September 21, 2023, by and among: DESIGNER BRANDS INC., an Ohio corporation (the "U.S. Borrower"), DESIGNER BRANDS CANADA INC., an Ontario corporation (the "Canadian Borrower" and together with the U.S. Borrower, each a "Borrower" and collectively, the "Borrowers"), the undersigned Loan Parties party hereto, the undersigned Lenders party hereto, and PLC AGENT LLC, as administrative agent ("the Administrative Agent"); in consideration of the mutual covenants herein contained and benefits to be derived herefrom, **W I T N E S S E T H**: WHEREAS, reference is made to that certain Term Credit Agreement, dated as of June 23, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the "Existing Credit Agreement", and, as further amended pursuant to this Amendment, the "Amended Credit Agreement"), by, among others, (i) the Borrowers, (ii) the other Loan Parties from time to time party thereto, (iii) the Lenders from time to time party thereto, and (iv) the Administrative Agent; WHEREAS, the Borrowers have requested that the Administrative Agent and the Lenders provide for certain modifications to the Existing Credit Agreement, and the Administrative Agent and the Lenders are willing to do so, but only upon the terms and conditions set forth herein, including the Required DDTL Borrowing (as defined in Section 4); and WHEREAS, Section 9.02 of the Existing Credit Agreement provides that the Administrative Agent and the Lenders may amend the Existing Credit Agreement and the other Loan Documents, NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

Section 1. Defined Terms. Capitalized terms used in this Amendment shall have the respective meanings assigned to such terms in the Amended Credit Agreement unless otherwise defined herein.

Section 2. Amendments to Existing Credit Agreement. Effective as of the First Amendment Effective Date and subject to the satisfaction of the conditions precedent set forth in Section 3, including for the avoidance of doubt the Required DDTL Borrowing (as defined in Section 4); the Existing Credit Agreement shall be amended to (i) delete the stricken text (indicated textually in the same manner as the following example: stricken text), (ii) add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) and (iii) move from its location the stricken text in green (indicated textually in the same manner as the following example: moved from text) into its new location the double-underlined text in green (indicated textually in the same manner as 11585138v3).



2 the following example: moved to text), as set forth in the pages of the Amended Credit Agreement attached as Annex A hereto. Section 3. Effectiveness. (a) This First Amendment shall become effective once the following conditions precedent have been fulfilled to the satisfaction of the Administrative Agent (such date referred to herein as (the "First Amendment Effective Date")): (i) the Administrative Agent shall have received this Amendment, duly executed and delivered by the Loan Parties and the Lenders; and (ii) the Borrowers shall have borrowed Delay Draw Term Loans, in accordance with, and subject to the terms and conditions of, the Existing Credit Agreement, in an aggregate principal amount of \$25,000,000 on or before October 31, 2023 (the "Required DDTL Borrowing"). (b) Interim Extension. Upon satisfaction of the condition precedent in Section 3(a)(i) above, the Administrative Agent and Lenders hereby agree that clause (a) of the definition of "Delay Draw Commitment Period" shall be deleted and replaced in its entirety with "(a) October 31, 2023". Section 4. Representations, Warranties and Covenants. The Loan Parties hereby represent and warrant that on the date hereof and on the First Amendment Effective Date: (a) no Default or Event of Default exists; (b) all necessary corporate or limited liability action has been taken by each of the Loan Parties to enter into and perform its obligations under this Amendment and the documents delivered in connection therewith; and (c) the representations and warranties contained in Article III of the Existing Credit Agreement and the other Loan Documents are true and correct in all material respects (except that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects). Section 5. Release by the Loan Parties. Each Loan Party for and on behalf of itself and its legal representatives, successors and assigns, fully, unconditionally, and irrevocably waives, releases, relinquishes and forever discharges the Administrative Agent, the Lenders and each of their parents, subsidiaries, and affiliates, its and their respective past, present and future directors, officers, managers, agents, employees, insurers, attorneys, representatives and all of their respective heirs, successors and assigns, (collectively, the "Released Parties"), of and from any and all manner of action or causes of action, suits, claims, liabilities, losses, costs, expenses, demands, judgments, damages (including compensatory and punitive damages), levies and executions of whatsoever kind, nature and/or description arising on or before the date hereof, in each case whether known or unknown, asserted or unasserted, liquidated or unliquidated, joint or several, fixed or contingent, direct or indirect, contractual or tortious, which the Loan Parties, or their legal representatives, successors or assigns, ever had or now has or may claim to have against any of the Released Parties, with respect to any matter whatsoever, including, without limitation, the Loan Documents, the administration of any Loan Documents, the

slide3

3 negotiations relating to this Amendment and the other Loan Documents executed in connection herewith and any other instruments and agreements executed by the Loan Parties in connection therewith or herewith, arising on or before the date hereof. Section 6. Counterparts. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Amendment and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous letters of intent, commitment letters, agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Amendment by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Amendment. Section 7. Applicable Law. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE STATE OF NEW YORK. Section 8. Headings. The headings of this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof. Section 9. Effect of Amendment. Except as expressly set forth herein, this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the other Credit Parties under the Amended Credit Agreement or any other Loan Document, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Amended Credit Agreement or any other provision of either such agreement or any other Loan Document. Except as expressly modified herein, each and every term, condition, obligation, covenant and agreement contained in the Amended Credit Agreement or any other Loan Document is hereby ratified and re-affirmed in all respects and shall continue in full force and effect. The Loan Parties hereby acknowledge, confirm and agree that the Collateral Documents and any and all Liens previously granted to the Administrative Agent, for the benefit of the Credit Parties, shall continue to secure all applicable Obligations of the Loan Parties at any time and from time to time outstanding under the Amended Credit Agreement and the other Loan Documents, as such Obligations have been amended pursuant to this Amendment. From and after the date hereof, all references to the Amended Credit Agreement in any Loan Document shall, unless expressly provided otherwise, refer to the Credit Agreement as amended by this Amendment. This Amendment is a Loan Document executed pursuant to the Amended Credit Agreement and shall be construed, administered and applied in accordance with the terms and provisions thereof. [SIGNATURE PAGES FOLLOW]

slide4

[Signature Page to First Amendment to Term Credit Agreement] IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first above written. U.S. BORROWER: DESIGNER BRANDS INC. By: Name: Maria Walters Title: Senior Vice President, Tax and Treasurer CANADIAN BORROWER: DESIGNER BRANDS CANADA INC. By: Name: Maria Walters Title: Senior Vice President, Treasurer DocuSign Envelope ID: F9751B4F-DE60-4E99-8E3C-C187897FF52C



slide5

[Signature Page to First Amendment to Term Credit Agreement] OTHER LOAN PARTIES: DSW SHOE WAREHOUSE, INC. By: Name: Marla Walters Title: Senior Vice President, Treasurer BRAND CARD SERVICES LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer DSW INFORMATION TECHNOLOGY LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer ETAILEDIRECT LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer DocuSign Envelope ID: F9751B4F-DE60-4E99-8E3C-C187897FF52C

slide6

[Signature Page to First Amendment to Term Credit Agreement] EBUYS, INC. By: Name: Marla Walters Title: Senior Vice President, Treasurer DSW MS LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer DSW LEASED BUSINESS DIVISION LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer 810 AC LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer RETAIL VENTURES SERVICES, INC. By: Name: Marla Walters Title: Senior Vice President, Treasurer DocuSign Envelope ID: F9751B4F-DE60-4E99-8E3C-C187897FF52C



slide7



slide8

[Signature Page to First Amendment to Term Credit Agreement] CCI OPERATIONS LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer VC FOOTWEAR LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer VC LINE BUILDING SERVICES LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer HOT ON TIME LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer SOLE SOCIETY GROUP, INC. By: Name: Marla Walters Title: Senior Vice President, Treasurer DocuSign Envelope ID: F9751B4F-DE60-4E99-8E3C-C187897FF52C



slide9

[Signature Page to First Amendment to Term Credit Agreement] TOPO ATHLETIC LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer DESIGNER BRANDS PARTNERS LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer DBI BRANDS MANAGEMENT LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer DBI TRADE CO LLC By: Name: Laura Noonan Title: Senior Director – Global Compliance DocuSign Envelope ID: F9751B4F-DE60-4E99-8E3C-C187897FF52C



slide10

[Signature Page to First Amendment to Term Credit Agreement] TOPO ATHLETIC LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer DESIGNER BRANDS PARTNERS LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer DBI BRANDS MANAGEMENT LLC By: Name: Marla Walters Title: Senior Vice President, Treasurer DBI TRADE CO LLC By: Name: Laura Noonan Title: Senior Director – Global Compliance DocuSign Envelope ID: 640E50E4-08CB-4F3F-9265-3DB9DB44A045

slide11

slide12

slide13

ANNEX A Amended Credit Agreement [See attached.]

slide14

Execution Version Conformed through First Amendment dated as of September 21, 2023 TERM CREDIT AGREEMENT dated as of June 23, 2023 among DESIGNER BRANDS INC., as the Company and the U.S. Borrower, DESIGNER BRANDS CANADA INC., as the Canadian Borrower, The other LOAN PARTIES from time to time party hereto, The LENDERS from time to time party hereto, and PLC AGENT LLC, as Administrative Agent and Lead Arranger 11584747



TABLE OF CONTENTS	Page	ARTICLE I. DEFINITIONS	1	SECTION 1.01	Defined Terms	1	SECTION 1.02	Classification of Loans and Borrowings	50	SECTION 1.03	Terms Generally	50	SECTION 1.04	Accounting Terms; GAAP	51					
SECTION 1.05	Rates	51	SECTION 1.06	Status of Obligations	52	SECTION 1.07	Exchange Rates	52	SECTION 1.08	Divisions	52	ARTICLE II. THE CREDITS	53	SECTION 2.01	Commitments	53	SECTION 2.02	Loans and Borrowings	53	
SECTION 2.03	Requests for Delay	54	SECTION 2.04	Term Loans	54	SECTION 2.05	Protective Advances	54	SECTION 2.05	[Reserved]	55	SECTION 2.06	[Reserved]	55	SECTION 2.07	Funding of Borrowings	55	SECTION 2.08	Increase in Commitments	56
SECTION 2.09	Termination of Commitments		SECTION 2.10	Repayment and Amortization of Loans; Evidence of Debt	57	SECTION 2.11	Prepayment of Loans	58	SECTION 2.12	Fees	60	SECTION 2.13	Interest	61	SECTION 2.14	Conforming Changes	62	SECTION 2.15	Increased Costs; Losses	63
SECTION 2.16	Illegality; Inability to Determine Rates	63	SECTION 2.17	Withholding of Taxes; Gross-Up	63	SECTION 2.18	Payments Generally; Allocation of Proceeds; Sharing of Set-offs	67	SECTION 2.19	Mitigation Obligations; Replacement of Lenders	69	SECTION 2.20	Defaulting Lenders	69	SECTION 2.21	Returned Payments	70	ARTICLE III. REPRESENTATIONS AND WARRANTIES	71	
SECTION 3.01	Organization and Qualification; Power and Authority; Compliance With Laws; Event of Default	71	SECTION 3.02	Capitalization; Subsidiaries and Joint Ventures; Investment Companies	71	SECTION 3.03	Validity and Binding Effect; No Conflict; Material Agreements; Consents	71	SECTION 3.05	Litigation	73	SECTION 3.06	Financial Statements; No Material Adverse Effect; Beneficial Ownership Certification	72	SECTION 3.07	Margin Stock	73	SECTION 3.08	Full Disclosure	73
SECTION 3.09	Taxes	73	SECTION 3.10	Properties, Patents, Trademarks, Copyrights, Licenses, Etc	74	SECTION 3.11	Insurance	74	SECTION 3.12	ERISA Compliance; Canadian Pension Plans	74	SECTION 3.13	Environmental Matters	76	11584747					

TABLE OF CONTENTS (continued)	SECTION 3.14 Labor Matters 76	SECTION 3.15 Solvency 76	SECTION 3.16 Anti-Terrorism Laws, Anti-Corruption Laws and Sanctions 76	SECTION 3.17 EEA Financial Institutions 77	SECTION 3.18
Security Interest in Collateral 77	SECTION 3.19 Credit Card Agreements 77	SECTION 3.20 Plan Assets, Prohibited Transactions 77	SECTION 3.21 Beneficial Ownership Certificate 78	ARTICLE IV. CONDITIONS 78	SECTION 4.01
Closing Date 78	ARTICLE V. AFFIRMATIVE COVENANTS 81	SECTION 5.01 Financial Statements; Borrowing Base and Other Information 81	SECTION 5.02 Notices of Material Events and Delivery of Other Reports 84	SECTION 5.03	
Preservation of Existence, Etc 86	SECTION 5.04 Payment of Liabilities, Including Taxes, Etc 86	SECTION 5.05 Maintenance of Insurance 87	SECTION 5.06 Maintenance of Properties 87	SECTION 5.07 Inspection Rights; Appraisals 88	
SECTION 5.08 Keeping of Records and Books of Account 89	SECTION 5.09 Compliance with Laws and Material Contractual Obligations 89	SECTION 5.10 Use of Proceeds 89	SECTION 5.11 Anti-Terrorism Laws, International Trade Law Compliance 89	SECTION 5.12 Casualty 90	SECTION 5.13 [Reserved] 90
SECTION 5.14 Additional Collateral; Further Assurances 90	SECTION 5.15 Environmental Laws 91	SECTION 5.16 Canadian Pension Plans 91	SECTION 5.17 Post-Closing Covenants 92	ARTICLE VI. NEGATIVE COVENANTS 92	SECTION 6.01 Indebtedness 92
SECTION 6.02 Restricted Payments 97	SECTION 6.03 Limitations on Restrictive Agreements 101	SECTION 6.04 Sale of Equity Interests and Assets 102	SECTION 6.05 Affiliate Transactions 106	SECTION 6.06 Amendments of Certain Documents; Line of Business 108	SECTION 6.07 Liens 108
SECTION 6.08 Mergers, Amalgamations, Fundamental Changes, Etc 109	SECTION 6.09 Sanctions; Anti-Terrorism Laws 110	SECTION 6.10 Restrictions on Certain Subsidiaries 111	SECTION 6.11 Canadian Pension Plans 111	SECTION 6.12 Consolidated Net Leverage Ratio 111	SECTION 6.13 Disposal of Assets of IPCo JV and Other IP Entities 111
ARTICLE VII. EVENTS OF DEFAULT 111	ARTICLE VIII. THE ADMINISTRATIVE AGENT 115	SECTION 8.01 Appointment 115	SECTION 8.02 Rights as a Lender 116	SECTION 8.03 Duties and Obligations 116	SECTION 8.04 Reliance 116 ii 11584747

TABLE OF CONTENTS (continued) SECTION 8.05 Actions through Sub-Agents 117 SECTION 8.06 Resignation 117 SECTION 8.07 Non-Reliance 118 SECTION 8.08 Other Agency Titles 118 SECTION 8.09 Not Partner or Co-Venturers; Administrative Agent as Representative of the Secured Parties 118 SECTION 8.10 Erroneous Payments 119 SECTION 8.11 No Reliance on Administrative Agent's Customer Identification Program 120 ARTICLE IX; MISCELLANEOUS 120 SECTION 9.01 Notices 120 SECTION 9.02 Waivers; Amendments 122 SECTION 9.03 Expenses; Indemnity; Damage Waiver 125 SECTION 9.04 Successors and Assigns 127 SECTION 9.05 Survival 132 SECTION 9.06 Counterparts; Integration; Effectiveness; Electronic Execution 132 SECTION 9.07 Severability 132 SECTION 9.08 Right of Setoff 132 SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process 133 SECTION 9.10 WAIVER OF JURY TRIAL 134 SECTION 9.11 Headings 134 SECTION 9.12 Confidentiality 134 SECTION 9.13 Several Obligations; Nonreliance; Violation of Law 135 SECTION 9.14 USA PATRIOT Act 135 SECTION 9.15 Canadian Anti-Money Laundering Legislation 135 SECTION 9.16 Disclosure 136 SECTION 9.17 Appointment for Perfection 136 SECTION 9.18 Interest Rate Limitation 136 SECTION 9.19 No Advisory or Fiduciary Responsibility 136 SECTION 9.20 Obligations of Foreign Subsidiaries 137 SECTION 9.21 [Reserved] 137 SECTION 9.22 Judgment Currency 137 SECTION 9.23 Waiver of Immunity 138 SECTION 9.24 Process Agent 138 SECTION 9.25 Termination and Release of Collateral 138 SECTION 9.26 Publicity 139 SECTION 9.27 Acknowledgement and Consent to Bail-In of Affected Financial Institutions 139 SECTION 9.28 Certain ERISA Matters 139 ARTICLE X. U.S. GUARANTY 140 SECTION 10.01 Guaranty 140 SECTION 10.02 Guaranty of Payment 140 SECTION 10.03 No Discharge or Diminishment of Loan Guaranty 140 SECTION 10.04 Defenses Waived 141 SECTION 10.05 Rights of Subrogation 141 SECTION 10.06 Reinstatement; Stay of Acceleration 141 SECTION 10.07 Information 142 SECTION 10.08 [Reserved.] 142 SECTION 10.09 [Reserved.] 142 SECTION 10.10 Maximum Liability 142 iii 11584747

slide18

TABLE OF CONTENTS (continued) SECTION 10.11 Contribution 142 SECTION 10.12 Liability Cumulative 143 SECTION 10.13 [Reserved] 143 SECTION 10.14 Common Enterprise 143 ARTICLE XI. CANADIAN GUARANTY 143 SECTION 11.01 Guaranty 143 SECTION 11.02 Guarantee of Payment 144 SECTION 11.03 No Discharge or Diminishment of Canadian Guaranty 144 SECTION 11.04 Defenses Waived 145 SECTION 11.05 Rights of Subrogation 145 SECTION 11.06 Reinstatement; Stay of Acceleration 145 SECTION 11.07 Information 145 SECTION 11.08 Maximum Canadian Liability 146 SECTION 11.09 Contribution 146 SECTION 11.10 Liability Cumulative 146 SECTION 11.11 Common Enterprise 147 ARTICLE XII. 147 SECTION 12.01 Appointment; Nature of Relationship 147 SECTION 12.02 Powers 147 SECTION 12.03 Employment of Agents 147 SECTION 12.04 Notices 147 SECTION 12.05 Successor Borrower Representative 148 SECTION 12.06 Execution of Loan Documents; Borrowing Base Certificate 148 SECTION 12.07 Reporting 148 v 11584747



slide19

TABLE OF CONTENTS (continued) SCHEDULES: Schedule 1.01(a) – Commitment Schedule Schedule 1.01(c) – Existing Owned Real Property Schedule 1.01(d) – Immaterial Subsidiaries Schedule 3.02 – Capitalization; Subsidiaries; Joint Ventures Schedule 3.10(a) – Real Property Schedule 3.10(b) – Intellectual Property Schedule 3.11 – Insurance Schedule 3.12 – Canadian Pension Plans Schedule 3.19 – Credit Card Arrangements Schedule 5.17 – Post-Closing Covenants Schedule 6.01 – Existing Indebtedness Schedule 6.02 – Existing Investments Schedule 6.03 – Existing Contractual Encumbrances and Restrictions Schedule 6.05 – Existing Affiliate Transactions Schedule 6.07 – Existing Liens EXHIBITS: Exhibit A – Form of Assignment and Assumption Exhibit B – Form of Note Exhibit C – Form of Borrowing Request Exhibit D – Form of Compliance Certificate Exhibit E – Reserved Exhibit F – Form of Joinder Agreement Exhibit G-1 – Form of U.S. Tax Certificate (For Foreign Lenders that are not Partnerships for U.S. Federal Income Tax Purposes) Exhibit G-2 – Form of U.S. Tax Certificate (For Foreign Participants that are not Partnerships for U.S. Federal Income Tax Purposes) Exhibit G-3 – Form of U.S. Tax Certificate (For Foreign Participants that are Partnerships for U.S. Federal Income Tax Purposes) Exhibit G-4 – Form of U.S. Tax Certificate (For Foreign Lenders that are Partnerships for U.S. Federal Income Tax Purposes) v 11584747



TERM CREDIT AGREEMENT dated as of June 23, 2023, among DESIGNER BRANDS INC., an Ohio corporation (the "Company"), DESIGNER BRANDS CANADA INC., an Ontario corporation, the other Loan Parties from time to time party hereto, the Lenders from time to time party hereto, and PLC AGENT LLC, as Administrative Agent. WITNESSETH: The Borrowers have requested that the Lenders provide (i) a term loan on the Closing Date in the aggregate principal amount of \$45,000,000 to the U.S. Borrower and a term loan on the Closing Date in the aggregate principal amount of \$5,000,000 to the Canadian Borrower, and (ii) up to \$85,000,000 (\$76,500,000 to the U.S. Borrower and \$8,500,000 to the Canadian Borrower) pursuant to a delay draw term loan facility, and, in all cases, the Lenders have indicated their willingness to lend such term loans, severally and not jointly, on the terms and conditions set forth herein. In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows: ARTICLE I. DEFINITIONS SECTION 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below: "ABL Agent" means the "Administrative Agent" (or such similar defined term used therein) as such term is defined in the ABL Credit Agreement. "ABL Credit Agreement" means that certain Credit Agreement, dated as of March 30, 2022, by and among the Company, Designer Brands Canada, Inc., an Ontario corporation, the other Loan Parties from time to time party thereto, the lenders from time to time party thereto, and The Huntington National Bank, as administrative agent, as amended, amended and restated, supplemented, refinanced or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "ABL Documents" means the "Loan Documents" (or such similar defined term used therein) under and as defined in the ABL Credit Agreement, as amended, amended and restated, supplemented, refinanced or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "ABL Intercreditor Agreement" means the Intercreditor Agreement, in form and substance reasonably satisfactory to the Administrative Agent and the Company, to be entered into as of the Closing Date among the Administrative Agent, the ABL Agent and the Loan Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time. "ABL Lenders" means the "Lenders" under the ABL Credit Agreement. "Account" means an "Account" as defined in Article 9 of the UCC or the PPSA, as applicable. "Account Debtor" means any Person that is or may become obligated to any Loan Party under, with respect to or on account of an Account or Credit Card Account. "Acquired Indebtedness" means, with respect to any specified Person: (1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, and (2) Indebtedness secured by a Lien 11584747.

slide21

encumbering any asset acquired by such specified Person. Acquired Indebtedness will be deemed to have been incurred, with respect to clause (1) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (2) of the preceding sentence, on the date of consummation of such acquisition of such assets. "Acquisition" means any transaction, or any series of related transactions, consummated on or after the Closing Date, by which any Loan Party or Restricted Subsidiary (a) acquires any business or division of a business or all or substantially all of the assets of any Person, whether through the purchase of assets, merger or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person which has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person. "Additional Refinancing Amount" means, in connection with the incurrence of any Refinancing Indebtedness, the aggregate principal amount of additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay accrued and unpaid interest, premiums (including tender premiums), expenses, defeasance costs and fees in respect thereof. "Adjusted Term SOFR" means the sum of: (i) Term SOFR and (ii) 0.1000% (10.00 basis points). Adjusted Term SOFR will be determined by the Administrative Agent and adjusted monthly (as of the beginning of each month) as to all Loans then outstanding. "Administrative Agent" means PLC Agent LLC, in its capacity as administrative agent hereunder and under the other Loan Documents, and including any of its Affiliates performing any of the functions of the Administrative Agent at any time, and their successors in such capacity as provided in Article VIII. "Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent, if any. "Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution. "Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the specified Person. "Affiliated Holders" means, with respect to any specified natural person, (a) such specified natural person's parents, spouse, siblings, descendants, step children, step grandchildren, nieces and nephews and their respective spouses, (b) the estate, legatees and devisees of such specified natural person and each of the persons referred to in clause (a) of this definition, and (c) any company, partnership, trust or other entity or investment vehicle created for the benefit of, or Controlled by, such specified natural person or any of the persons referred to in clause (a) or (b) of this definition or the holdings of which are for the primary benefit of such specified natural person or any of the persons referred to in clause (a) or (b) of this definition or created by any such person for the benefit of any charitable organization or for a charitable purpose. "Affiliate Transaction" has the meaning specified in Section 6.05. "Agreement" means this Term Credit Agreement, as amended, restated, supplemented or otherwise modified from time to time. 2 11584747

slide22

"Aggregate Commitments" means, at any time, the aggregate Commitments of all Lenders. "Aggregate Term Exposure" means, at any time, the aggregate Term Exposure of all the Lenders at such time. "Alternate Base Rate" means, for any day, a fluctuating interest rate per annum equal to the highest of: (a) the Floor, (b) the Prime Rate, (c) the Fed Funds Rate in effect on such day plus 0.50% and (d) Adjusted Term SOFR plus 1.00% per annum. Each change in the Prime Rate or the Federal Funds Rate, respectively, shall take effect at the opening of business on the day specified in the public announcement of such change. If the Alternate Base Rate is being used to determine the Applicable Reference Rate, Alternate Base Rate shall be determined without reference to clause (d) above. "AML Legislation" has the meaning specified in Section 9.15. "Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction in which the Company or any of its Subsidiaries is located or is doing material business from time to time concerning or relating to bribery or corruption and includes the Canadian Economic Sanctions and Export Control Laws. "Anti-Terrorism Laws" means those laws and sanctions relating to terrorism or money laundering, including Canadian Anti-Money Laundering & Anti-Terrorism Legislation, Executive Order No. 13224, the USA Patriot Act (Public Law 107-56), the Bank Secrecy Act (Public Law 91-508), the Trading with the Enemy Act (50 U.S.C. App. Section 1 et. seq.), the International Emergency Economic Powers Act (50 U.S.C. Section 1701 et. seq.), and the sanction regulations promulgated pursuant thereto by the Office of Foreign Assets Control, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957 (as any of the foregoing may from time to time be amended, renewed, extended or replaced, in each case in any jurisdiction in which any Loan Party or any of its Subsidiaries is located or is doing material business). "Applicable Percentage" means, with respect to any Lender, a percentage equal to a fraction the numerator of which is such Lender's Commitment and the denominator of which is the Aggregate Commitments; provided that, after any Term Loans have been made, the Applicable Percentages shall be determined based upon the sum of such Lender's share of (a) the Aggregate Term Exposure at that time, plus (b) the outstanding Commitments, if any; provided further that, in accordance with Section 2.20, so long as any Lender shall be a Defaulting Lender, such Defaulting Lender's Commitments, if any, shall be disregarded in the calculations in this definition. "Applicable Margin" mean (a) with respect to any Loan bearing interest at the Adjusted Term SOFR component of the Applicable Reference Rate, 7.00% per annum and (b) with respect to any Loan bearing interest at the Alternate Base Rate component of the Applicable Reference Rate, 6.00% per annum. "Applicable Reference Rate" with respect to any Loan, an interest rate per annum equal to Adjusted Term SOFR; provided, however, that in the event that Adjusted Term SOFR is unavailable, subject to the last sentence of the definition of "Term SOFR", the Applicable Reference Rate shall mean a per annum interest rate equal to the Alternate Base Rate. The Applicable Reference Rate will be determined and adjusted monthly (as of the beginning of each month) as to all Loans then outstanding. "Approved Fund" has the meaning assigned to such term in Section 9.04. "Article II JV" means Article II JV, LLC, a Delaware limited liability company. 3 11584747



slide23

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (other than an Ineligible Institution) (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent. "Availability" means "Availability" as defined in the ABL Credit Agreement as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "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 or requirement for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings). "Bankruptcy Code" means title 11 of the United States Code, as amended. "Bankruptcy Event" means, with respect to any Person, when such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, interim receiver, monitor, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business, appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person. "BC/VC" means BC/VC Ventures LLC, a Delaware limited liability company. "Beneficial Owner" means, with respect to any U.S. Federal withholding Tax, the beneficial owner, for U.S. Federal income tax purposes, to whom such Tax relates. "Beneficial Ownership Certification" means a certification regarding beneficial ownership, as required by the Beneficial Ownership Regulation. "Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230. "BIA" means the Bankruptcy and Insolvency Act (Canada), as amended. "Billing Statement" has the meaning assigned to such term in Section 2.18(g). 4 11584747



"Blocked Person" means any of the following: (a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224; (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224; (c) a Person that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or (d) a Person who is affiliated or associated with a Person listed above. "Board" means the Board of Governors of the Federal Reserve System of the U.S. "Borrower" or "Borrowers" means, individually or collectively, the U.S. Borrower and/or the Canadian Borrower, as applicable. "Borrower Representative" has the meaning assigned to such term in Section 12.01. "Borrowing" means (a) Term Loans of the same Type and Class made on the same date and (b) a Protective Advance. "Borrowing Base" means the "Borrowing Base" (collectively, including all components thereof, including, without limitation, the "U.S. Borrowing Base", the "U.S. FILO Borrowing Base", the "Canadian Borrowing Base" and "Canadian FILO Borrowing Base") (or such similar defined terms used therein) as each such term is defined in the ABL Credit Agreement as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "Borrowing Base Certificate" means the "Borrowing Base Certificate" (or such similar defined term used therein) delivered pursuant to the ABL Credit Agreement with respect to the Borrowing Base as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "Borrowing Base Reporting Date" means twenty-five (25) days after the end of each fiscal month of the Company (or, if such day is not a Business Day, on the next succeeding Business Day); provided, however, during any Increased BBC Reporting Period, the Borrowing Base Reporting Date shall mean Wednesday of each week (or, if such day is not a Business Day, on the next succeeding Business Day). "Borrowing Request" means a request by the Borrower Representative for a Borrowing in accordance with Section 2.03, which shall be, in the case of any such written request, in the form of Exhibit C or any other form approved by the Administrative Agent. "BRX" means BRX DBI Joint Venture LLC, a Delaware limited liability company. "Business Day" means any day other than a Saturday, a Sunday, or other day on which the Administrative Agent is authorized or required to be closed. "Camuto Entities" means, collectively, Camuto LLC, a Delaware limited liability company and any Person that is a Subsidiary thereof. For the avoidance of doubt, each of CCI Operations LLC, an Ohio limited liability company, Camuto Overseas Holding Subsidiary, LLC, an Ohio limited liability company, Vincent Camuto LLC, a Connecticut limited liability company, Sole Society Group, Inc., a Delaware corporation, VCJS LLC, a Connecticut limited liability company, VCS Group LLC, a Delaware limited liability company, Hot on time LLC, a Connecticut limited liability company, VC Line Building Services LLC, a Connecticut limited liability company, VC Footwear LLC, a Connecticut limited liability company, and Article II JV and BC/VC shall constitute a Camuto Entity. 5 11584747

slide25

"Canada" means the country of Canada and any province or territory thereof. "Canadian Anti-Money Laundering & Anti-Terrorism Legislation" means the Criminal Code, R.S.C. 1985, c. C-46, the Proceeds of Crime Act and the United Nations Act, R.S.C. 1985, c. U-2 or any similar Canadian legislation, together with all rules, regulations and interpretations thereunder or related thereto including, without limitation, the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism and the United Nations Al-Qaida and Taliban Regulations promulgated under the United Nations Act. "Canadian Blocked Person" means any Person that is a "politically exposed foreign person" or "terrorist group" or similar person whose property or interests in property are blocked or subject to blocking pursuant to, or as described in, any Canadian Economic Sanctions and Export Control Laws. "Canadian Borrower" means Designer Brands Canada Inc. "Canadian Closing Date Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make the Closing Date Term Loans in U.S. Dollars to the Canadian Borrower on the Closing Date in accordance with Section 2.01(a). "Canadian Collateral" means any and all property of any Canadian Loan Party covered by the Collateral Documents and any and all other property of any Canadian Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the Administrative Agent to secure the Canadian Secured Obligations. "Canadian Commitment" means, with respect to each Lender, the sum of its Canadian Closing Date Commitment and Canadian Delay Draw Commitment. "Canadian Defined Benefit Plan" means a Canadian Pension Plan, which contains a "defined benefit provision," as defined in subsection 147.1(1) of the ITA. "Canadian Delay Draw Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make Delay Draw Term Loans in U.S. Dollars to the Canadian Borrower in accordance with Section 2.01(b). "Canadian Economic Sanctions and Export Control Laws" means any Canadian laws, regulations or orders governing transactions in controlled goods or technologies or dealings with countries, entities, organizations, or individuals subject to economic sanctions and similar measures. "Canadian Guaranteed Obligation" has the meaning assigned to such term in Section 11.01. "Canadian Guarantor" means each Restricted Subsidiary of the Canadian Borrower that is listed on the signature pages hereto as a Canadian Guarantor or that becomes a party hereto as a Canadian Guarantor pursuant to Section 5.14, in each case, until such Subsidiary's Canadian Guaranty is released in accordance herewith. "Canadian Guaranty" means Article XI of this Agreement. "Canadian Loan Parties" means, individually and collectively as the context may require, the Canadian Borrower and the Canadian Guarantors. "Canadian MEPP" means any plan that is a multi-employer pension plan as defined under the applicable federal or provincial pension standards legislation in Canada. 6.11584747.

slide26

slide27

thereof) maturing in twelve (12) months or less from the date of acquisition; (b) commercial paper maturing in one (1) year or less rated not lower than A-1, by S&P or P-1 by Moody's on the date of acquisition; (c) demand deposits, time deposits or certificates of deposit maturing within one year in commercial banks whose obligations are rated A-1, A or the equivalent or better by S&P on the date of acquisition; (d) money market or mutual funds whose investments are limited to those types of investments described in clauses (a)-(c) above, and (e) fully collateralized repurchase agreements with a term of not more than one hundred eighty (180) days for securities described in clause (a) above and entered into with commercial banks whose obligations are rated A-1, A or the equivalent or better by S&P on the date of acquisition, provided, that, for the avoidance of doubt, "Cash Equivalents" does not include any Credit Card Accounts. "Casualty" has the meaning assigned to such term in Section 5.12. "CCAA" means the Companies' Creditors Arrangement Act (Canada), as amended. "CFC" means each Person that is a "controlled foreign corporation" within the meaning of Section 957(a) of the Code. "CFC Holdco" means a Domestic Subsidiary owning, directly or indirectly, no material assets other than equity interests of one or more CFCs. "Change in Control" means (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than a Permitted Holder, shall have acquired beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the SEC under the Exchange Act), directly or indirectly, of more than twenty-five percent (25%) of the voting Equity Interests of the Company, (b) the Company ceases to own, directly or indirectly, one hundred percent (100%) of the fully diluted Equity Interests of any other Loan Party except with respect to this clause (b), in any transaction permitted hereunder, or (c) a "Change in Control" (or words of similar import) shall have occurred under

the ABL Credit Agreement. "Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of law) and (y) all requests, rules, regulations, guidelines, interpretations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (whether or not having the force of law), in each case pursuant to Basel III, shall in each case be deemed to be a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented. "Charges" has the meaning assigned to such term in Section 9.18. "CIP Regulations" shall have the meaning set forth in Section 8.11 hereof. "Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are U.S. Term Loans or Canadian Term Loans. 8 11584747



slide28

"Closing Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02); "Closing Date Term Loan" means a Loan made on the Closing Date pursuant to Section 2.01(a); "Closing Date U.S. Commitment" means the Commitment of a Lender to make a Closing Date Term Loan in U.S. Dollars to the U.S. Borrower on the Closing Date in the amounts reflected on Schedule 1.01(a); "Closing Date Canadian Commitment" means the Commitment of a Lender to make a Closing Date Term Loan in U.S. Dollars to the Canadian Borrower on the Closing Date in the amounts reflected on Schedule 1.01(a); "CME" means CME Group Benchmark Administration Limited; "Code" means the Internal Revenue Code of 1986, as amended from time to time; "Collateral" means any and all property owned, leased or operated by a Person covered by the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be, become or be intended to be, subject to a security interest or Lien in favor of the Administrative Agent, on behalf of itself and the Lenders and other Secured Parties, to secure the U.S. Secured Obligations or the Canadian Secured Obligations; "Collateral Access Agreement" means any landlord waiver or other agreement, in form and substance satisfactory to the Administrative Agent in its Permitted Discretion, between the Administrative Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any real property where any Collateral is or may be located, as such landlord waiver or other agreement may be amended, restated, supplemented or otherwise modified from time to time; "Collateral and Guaranty Requirement" means, at any time, the requirement that: (a) the Administrative Agent shall have received from the Company and each other Loan Party either (i) (A) in the case of each U.S. Loan Party, a counterpart of this Agreement and the U.S. Security Agreement, duly executed and delivered on behalf of such Person or (B) in the case of each Loan Party that is a Canadian Subsidiary, a counterpart of this Agreement and the Canadian Security Agreement, duly executed and delivered on behalf of such Person, or (ii) in the case of any Person that becomes a Subsidiary (other than Excluded Subsidiary) after the Closing Date, (A) a Joinder Agreement, duly executed and delivered on behalf of such Person, and (B) instruments in the form or forms specified in the applicable Security Agreement under which such Person becomes a party to the applicable Security Agreement, duly executed and delivered on behalf of such Person, together with such certificates, documents and opinions with respect to such Subsidiary as may reasonably be requested by the Administrative Agent; (b) the Administrative Agent shall have received all Intellectual Property security agreements, deposit account control agreements, securities account control agreements and other Collateral Documents required to be provided to it hereunder or under the applicable Security Agreement; (c) the Administrative Agent shall have received all

Real Property Deliverables with respect to all Material Real Property; 9 11584747



slide29

(d) all documents and instruments, including UCC financing statements, PPSA registrations and registrations in respect of deeds of hypothec required by the Collateral Documents or this Agreement with the priority required by the Collateral Documents shall have been filed, registered or recorded or delivered to the Administrative Agent for filing, registration or recording; (e) the Administrative Agent shall have received the iPCo JV Consent and Pledge; and (f) each Loan Party shall have obtained all material consents and approvals required in connection with the execution and delivery of all Collateral Documents to which it is a party and the performance of its obligations thereunder. Notwithstanding the foregoing, any Subsidiary formed or acquired after the Closing Date and required to become a Loan Party shall not be required to comply with the foregoing requirements prior to the time specified in Section 5.14. The foregoing definition shall not require the creation or perfection of pledges or security interests in, or legal opinions or other deliverables with respect to, particular assets of the Loan Parties, or the provision of Guarantees by any Subsidiary, if and for so long as the Administrative Agent, in consultation with the Company, determines that the cost of creating or perfecting such pledges or security interests in such assets, or obtaining legal opinions or other deliverables in respect of such assets, or providing such Guarantees, shall be excessive in view of the benefits to be obtained by the Lenders therefrom. The Administrative Agent may in its Permitted Discretion grant extensions of time for the creation and perfection of security interests in, or the delivery of legal opinions or other deliverables with respect to, particular assets or the provision of any Guarantee by any Subsidiary (including extensions beyond the Closing Date or in connection with assets acquired or Subsidiaries formed or acquired, after the Closing Date) where it determines that such action cannot be accomplished without unreasonable effort or expense by the time or times at which it would otherwise be required to be accomplished by this Agreement or the Collateral Documents. Notwithstanding the foregoing, no action required to be taken by any Person to effect compliance by the Administrative Agent and the Lenders with any applicable Requirement of Law shall be deemed to cause unreasonable effort or expense hereunder. "Collateral Documents" means, collectively, the Security Agreements, the Mortgages, the ABL Intercreditor Agreement, the iPCo JV Consent and Pledge, any deposit account control agreement, any securities account control agreement, and any other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, the U.S. Guaranty or the Canadian Guaranty or any joinder or supplement thereto or any other Guarantee of all or any portion of the Obligations, subordination agreements, pledges, and collateral assignments, whether theretofore, now or hereafter executed by any Borrower or any other Loan Party and delivered to the Administrative Agent. "Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make Term Loans hereunder (including with respect to U.S. Closing Date Term Loan Commitments, U.S. Delay Draw Commitments, Canadian Closing Date Term Loan Commitments, and Canadian Delay Draw Commitments), as such commitment may be reduced pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate amount of all of the Lenders' Commitments is \$135,000,000. "Commitment Schedule" means the Schedule attached hereto as Schedule 1.01(a). "Communications" has the meaning assigned to such term in Section 9.01(d). 10 11584747



"Company" has the meaning assigned to such term in the introductory paragraph hereof. "Company on a Consolidated Basis" means the consolidation of the Company and its Restricted Subsidiaries in accordance with GAAP. "Competitor" shall mean any Person that is an operating company and is engaged primarily in the same or similar business as the Company. "Compliance Certificate" means a certificate executed by a Financial Officer of the Borrower Representative in substantially the form of Exhibit D. "Conforming Changes" means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Term SOFR, as applicable, any conforming changes to the definitions of "Alternate Base Rate", "SOFR", "Term SOFR", and "Adjusted Term SOFR", timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of "Business Day" and "U.S. Government Securities Business Day", timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document). "Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income or capital (however denominated) or that are franchise Taxes or branch profits Taxes. "Consideration" means with respect to any Permitted Acquisition, the aggregate of (without duplication) (i) the cash paid by any of the Loan Parties, directly or indirectly, to the seller in connection therewith, (ii) the indebtedness incurred or assumed by any of the Loan Parties, whether in favor of the seller or otherwise and whether fixed or contingent, in connection therewith, (iii) any Guarantee given or incurred by any Loan Party in connection therewith, and (iv) any other cash or equity consideration given or obligation incurred by any of the Loan Parties in connection therewith, as each of the foregoing is recorded by the Loan Parties in accordance with GAAP. "Consolidated EBITDA" means, for any period of determination, without duplication, consolidated net income of the Company on a Consolidated Basis plus (i) the following (to the extent deducted from such calculation of consolidated net income): (a) depreciation, (b) amortization, (c) non-cash expenses related to stock based compensation, (d) other non-cash charges, non-cash expenses, or non-cash losses to net income (provided, however, that cash payments made in such period or in any future period in respect of such non-cash charges, expenses or losses shall be subtracted from consolidated net income in calculating Consolidated EBITDA), (e) interest expense, (f) income tax expense, (g) restructuring charges or expenses (including integration costs, restructuring costs and severance costs related to acquisitions and to closure or consolidation of plants, facilities or locations and any expense related to any reconstruction, recommissioning or reconfiguration of fixed assets for alternate use) not to exceed \$25,000,000 in the aggregate incurred prior to the Closing Date, minus (ii) non-cash credits or non-cash gains (to the extent included in such calculation of consolidated net income), in each case determined and consolidated for the Company and its Restricted Subsidiaries in accordance with GAAP; provided that the foregoing shall exclude the income (or deficit) of any Person 11 11584747



(other than a Restricted Subsidiary) in which the Company or any of its Restricted Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Company or such Restricted Subsidiary in the form of dividends or similar distributions. "Consolidated Net Leverage Ratio" means, as of any date of determination, the ratio of (a) the result of (x) (i) Consolidated Total Debt as of such date minus (ii) Qualified Cash of the Loan Parties at such time to (b) Consolidated EBITDA for the most recently ended trailing twelve (12) month period prior to such date of determination. "Consolidated Total Debt" means, as at any date of determination for any Person, the aggregate principal amount (or stated balance sheet amount, if larger) of all Indebtedness of such Person and its Restricted Subsidiaries determined on a consolidated basis in accordance with GAAP. "Contingent Obligations" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent: (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (2) to advance or supply funds: (A) for the purchase or payment of any such primary obligation; or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or (3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto. "Covenant Testing Event" means any period (i) commencing at any time when Liquidity shall be less than \$100,000,000, and (ii) ending when Liquidity shall have been greater than or equal to \$100,000,000 for a period of forty-five (45) consecutive days. "Credit Card Accounts" means any "payment intangibles," as defined in the UCC or PPSA, receivables or other rights to payment of a monetary obligation due to any Loan Party in connection with purchases of inventory of such Loan Party in the ordinary course of business from (1) a credit card issuer or a credit card processor with respect to (a) credit cards issued by Visa, MasterCard, American Express, Discover, each of their respective Affiliates, and any other credit card issuers that are reasonably acceptable to the Administrative Agent, (b) private label credit cards of any Loan Party issued under non-recourse arrangements substantially similar to those in effect on the Closing Date or (c) debit cards issued by issuers or providers that are reasonably acceptable to the Administrative Agent or (2) PayPal, Inc., Stripe, Square, Venmo, Apple Pay, AfterPay or any other similar "Buy-Now, Pay Later" product, or any other e-commerce service providers or electronic payment services providers. 12-11584747

slide32

"Credit Card Agreement" means any agreement between (i) on the one hand, a Loan Party, and (ii) on the other hand (a) a credit card issuer or a credit card processor (including any credit card processor that processes purchases of inventory from a Loan Party through debit cards) or (b) PayPal, Inc., Stripe, Square, Venmo, Apple Pay, AfterPay or any other similar "Buy-Now, Pay Later" product, or any other e-commerce service providers or electronic payment services providers. "Credit Party" means the Administrative Agent or any other Lender. "Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default. "Defaulting Lender" means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans or (ii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent and the Borrower Representative in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied; (b) has notified any Borrower or any Credit Party in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular Default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within three Business Days after request by a Credit Party or any Borrower, in each case, 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 its Loans, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt by such Credit Party and such Borrower of such certification in form and substance satisfactory to them and the Administrative Agent, or (d) has become the subject of a Bankruptcy Event or a Bail-in Action. "Delay Draw Term Loan" means a Loan made on a date after the Closing Date pursuant to Section 2.01(b). "Delay Draw Commitment" means as to any Lender, the obligation of such Lender, if any, to make Delay Draw Term Loans in an aggregate principal amount not to exceed the amount set forth under the heading "Delay Draw Commitment" opposite such Lender's name on Schedule 1.01(a) or in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof (including in connection with assignments permitted hereunder). The original aggregate principal amount of the Delay Draw Commitments on the Closing Date is \$85,000,000, comprised of \$76,500,000 of U.S. Delay Draw Commitments and \$8,500,000 of Canadian Delay Draw Commitments. "Delay Draw Commitment Period" means the period from and including the Closing Date through the earlier of (a) the date that is ninety (90) days after the Closing Date January 31, 2024 and (b) the date on which the Delay Draw Commitments are zero (\$0). "Delay Draw Conditions" means at any date of determination, that (a) no Default then exists or would arise as a result of the making of the subject Delay Draw Term Loans, (b) the representations and warranties contained in Article III and the other Loan Documents are true and correct in all material respects (except that any representation or warranty which by its terms is made as of a specified

Date shall be required to be true and correct in all material respects only as of such specified date, and that any 13.11584747,

slide33

representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects), (c) if a Covenant Testing Event has occurred and is continuing, the Loan Parties shall be in pro forma compliance with Section 6.12 after giving effect to the subject Delay Draw Term Loans and (d) the Borrowers shall have delivered to the Administrative Agent evidence reasonably satisfactory to the Administrative Agent that the conditions contained in the foregoing clauses (a), (b) and (c) have been satisfied, as applicable. "Designated Non-cash Consideration" means the Fair Market Value (as determined in good faith by the Company) of non-cash consideration received by the Company or a Restricted Subsidiary in connection with a Disposition that is so designated as Designated Non-cash Consideration pursuant to an officer's certificate signed by a Financial Officer of the Company, setting forth such valuation, less the amount of Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration. "Disbursement Letter" means a disbursement letter, in form and substance reasonably satisfactory to the Administrative Agent, by and among the Loan Parties and the Administrative Agent and the other Persons party thereto, and the related funds flow memorandum describing the sources and uses of all cash payments in connection with the transactions contemplated to occur on the Closing Date. "Disposition" means with respect to any property, any sale, lease, sublease (as lessor or sublessor) license, sale and leaseback, assignment, conveyance, transfer, license or other disposition thereof (including by means of a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law). The terms "Dispose" and "Disposed of" shall have correlative meanings. "Disqualified Institution" means, on any date, (a) any Person designated by the Company as a "Disqualified Institution" by written notice delivered to the Administrative Agent on or prior to the Closing Date and (b) any other Person that is a Competitor of the Company or any of its Subsidiaries, which Person has been designated by the Company as a "Disqualified Institution" by written notice to the Administrative Agent not less than five (5) Business Days prior to such date; provided that "Disqualified Institutions" shall exclude any Person that the Company has designated as no longer being a "Disqualified Institution" by written notice delivered to the Administrative Agent from time to time; provided further that, for the avoidance of doubt, a Competitor shall not include any bona fide debt fund or investment vehicle that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business which is managed, sponsored or advised by any person controlling, controlled by or under common control with such Competitor or affiliate thereof, as applicable, and for which no personnel involved with the investment of such Competitor, as applicable, (1) makes any investment decisions or (2) has access to any information (other than information publicly available) relating to the Company or any entity that forms a part of the Company's business (including Subsidiaries of the Company). "Disqualified Stock" means any Equity Interests which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale), or is redeemable at the option of the holder thereof, in whole or in part (other than as a result of a change of control or asset sale), in each case at any time on or prior to the date that is 91 days after the Maturity Date, or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) Indebtedness or (ii) any Equity Interests referred to in (a) above, in each case at any time prior to the date that is 91 days after the Maturity Date; provided, however, that only the portion of such Equity Interests which so matures or is mandatorily redeemable, is so 14 11584747.

redeemable at the option of the holder or is so convertible or exchangeable thereof prior to such date shall be deemed to be Disqualified Stock; provided, further, however, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of the Company or their Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Stock solely because it may be required to be repurchased by such Person in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; provided, further, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Equity Interests that are not Disqualified Stock shall not be deemed to be Disqualified Stock. "Document" has the meaning assigned to such term in each Security Agreement, as applicable. "Dollar Amount" means (a) with regard to any calculation denominated in U.S. Dollars, the amount thereof, and (b) with regard to any calculation denominated in any other currency, the amount of U.S. Dollars which is equivalent to the amount so expressed in such currency at the Spot Rate on the relevant date of determination. "Domestic Subsidiary" means a Subsidiary organized under the laws of a jurisdiction located in the U.S. "Dominion Period" means (a) "Dominion Period" as defined in the ABL Credit Agreement as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor

Agreement, or (b) a Default. "DQ List" has the meaning specified in Section 9.04(e). "Ebuys" means Ebuys, Inc., a California corporation. "EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent. "EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway. "EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any Delegee) having responsibility for the resolution of any EEA Financial Institution. "Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record. "Electronic System" means any electronic system, including email, Syndtrak, e-fax, Intralinks®, ClearPar® and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system. 15 11584747



slide35

"Eligible Consigned Inventory" shall have the meaning set forth in the ABL Credit Agreement as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "Eligible Credit Card Accounts" shall have the meaning set forth in the ABL Credit Agreement as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "Eligible In-Transit Inventory" shall have the meaning set forth in the ABL Credit Agreement as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "Eligible Inventory" shall have the meaning set forth in the ABL Credit Agreement as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "Eligible Trade Accounts" shall have the meaning set forth in the ABL Credit Agreement as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "Environment" shall mean any surface water, groundwater, drinking water supply, land surface or subsurface strata or ambient air. "Environmental Indemnity" shall mean each environmental indemnity agreement, made by each Loan Party with respect to Mortgaged Property, in each case, in form and substance reasonably satisfactory to the Administrative Agent. "Environmental Laws" means all laws, rules, regulations, codes, ordinances, and all binding orders, decrees, judgments, injunctions, notices or agreements passed, adopted, issued, promulgated or entered into by any Governmental Authority, relating to protection of the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters to the extent related to exposure to Hazardous Materials. "Environmental Liability" means (i) any obligation or responsibility of any Loan Party or any Restricted Subsidiary to comply with the terms of any order, decree, injunction, claim, notice or obligation of an agreement (including an Environmental Indemnity); or (ii) any obligation or responsibility of any Loan Party or any Restricted Subsidiary for damages, costs of environmental investigation or remediation, fines, or penalties of any Loan Party or any Restricted Subsidiary, either of which is resulting from or based upon (a) a violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials resulting in physical injury or property damage or a claim of such injury or property damage, (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 by or imposed upon any Loan Party or any Restricted Subsidiary with respect to the foregoing clauses (i) or (ii). "Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing (but excluding any debt security that is convertible into, or exchangeable for, Equity Interests). 16 11584747

slide36

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time. "ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with a Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code. "ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to satisfy the "minimum funding standard" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination or partial termination of any Plan; (e) the receipt by any Loan Party or any ERISA Affiliate from the PBGC of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by any Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of any Loan Party or any ERISA Affiliate from any Multiemployer Plan; (g) the receipt by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any notice, concerning the imposition upon any Loan Party or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent (within the meaning of Title IV of ERISA), in "at-risk" status (as defined in Section 303(l) of ERISA or Section 430(l) of the Code) or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (h) the failure to timely make a contribution required to be made with respect to any Plan or Multiemployer Plan; or (i) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Plan. "Erroneous Payment" shall have the meaning set forth in Section 8.10. "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. "European Union" means the region comprised of member states of the European Union pursuant to the Treaty of Rome of March 25, 1957, as amended by the Single European Act 1986 and the Maastricht Treaty (signed February 7, 1992), as amended from time to time. "Event of Default" has the meaning assigned to such term in Article VII. "Excluded Asset" has the meaning assigned to such term in the applicable Security Agreement. "Excluded Domestic Subsidiary" means, collectively, (i) Article II JV, (ii) BC/VC, (iii) IPCo JV, (iv) Camuto Overseas Holding Subsidiary LLC, an Ohio limited liability company, and any other CFC Holdco; (v) any Domestic Subsidiary that is a direct or indirect Subsidiary of a CFC, and (vi) any other Domestic Subsidiary of any Loan Party formed or otherwise acquired after the Closing Date if the execution of a Joinder Agreement and the Guarantee of the U.S. Obligations would cause material adverse tax consequences to any Loan Party or any Affiliate of a Loan Party (pursuant to Section 956 of the Code and the United States Income Tax Regulations promulgated thereunder, or otherwise) in the reasonable, good-faith determination of the Company, in consultation with the Administrative Agent. 17 11584747



Excluded Subsidiary means each (a) Immaterial Subsidiary, (b) Unrestricted Subsidiary, (c) Excluded Domestic Subsidiary (other than, with respect to the Canadian Obligations, any CFC Holdco that owns equity interests of one or more Canadian Subsidiaries), (d) Foreign Subsidiary (other than Canadian Subsidiaries with respect to the Canadian Obligations), (e) Subsidiary that is not a Wholly Owned Subsidiary, (f) Special Purpose Receivables Subsidiary, (g) Subsidiary that is prohibited by applicable law, rule or regulation or by any contractual obligation (if, with respect to any such contractual obligations, such contractual obligations were existing on the Closing Date or existing at the time of acquisition thereof after the Closing Date), in each case from guaranteeing the U.S. Obligations or Canadian Obligations, as applicable, or that would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee unless such consent, approval, license or authorization has been received, (h) any other Subsidiary if in the reasonable good faith determination of the Company, in consultation with the Administrative Agent, a guarantee by such Subsidiary would result in materially adverse tax consequences to the Company or any of its Subsidiaries and (i) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent (confirmed in writing by notice to the Company), the cost or other consequences of becoming a Guarantor shall be excessive in view of the benefits to be obtained by the Lenders therefrom; provided that any Subsidiary of the Company that is a borrower or guarantor of the obligations under the ABL Credit Agreement shall become a Guarantor hereunder, subject to Section 9.20. **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 or capital (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrowers under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f); (d) any U.S. Federal withholding Taxes imposed under FATCA; and (e) any Canadian federal withholding Taxes imposed on the payment as a result of having been made to a Recipient that, at the time of making such payment, (i) is a person with which a Loan Party does not deal at arm's length (for the purposes of the ITA), or (ii) is a "specified shareholder" (as defined in subsection 18(5) of the ITA) of a Loan Party or does not deal at arm's length (for the purposes of the ITA) with such a "specified shareholder" (other than where the non-arm's length relationship arises, or where the Recipient is a "specified shareholder" or does not deal at arm's length with a "specified shareholder" in connection with or as a result of the Recipient having become a party to, received or perfected a security interest under or received or enforced any rights under, a Loan Document). **Existing Owned Real Property** means the real property owned by the Loan Parties as of the Closing Date and described on Schedule 1.01(c). **Extraordinary Receipts** means any cash received by the Company or any of its Restricted Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.11(b)(i) or (b)(ii) hereof), including, without limitation, (a) foreign, United States, federal, state, provincial, territorial or local tax refunds, (b) pension plan reversions, (c) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action (other than to the 18.11584747).



extent such judgments, proceeds of settlements or other consideration are (i) immediately payable to a Person that is not an Affiliate of the Company or any of its Restricted Subsidiaries as reimbursement for any costs or damages previously incurred or any payment previously made by such Person, (ii) condemnation awards (and payments in lieu thereof), (e) indemnity payments and (h) any purchase price adjustment received in connection with any purchase agreement. "Factoring Agreements" means receivables purchase or factoring agreements entered into by one or more Camuto Entities and The CIT Group/Commercial Services, Inc. or other factor, as such agreements may be amended, modified, supplemented, restated or replaced from time to time; provided that, amendments, modifications, restatements or replacements of the Factoring Agreements in effect on the Closing Date that are materially adverse to the interests of the Lender shall be reasonably acceptable to the Administrative Agent; provided further that, other than pursuant to an unsecured guaranty by the Company or any of its Subsidiaries of the obligations of one or more Camuto Entities thereunder, none of the Company or any Restricted Subsidiary thereof (other than any Camuto Entity) shall become party to any such agreement pursuant to any such agreement, amendment, modification, supplement, restatement or replacement. "Fair Market Value" means, with respect to any asset or property, the price which could be negotiated in an arm's-length transaction, for cash, between a willing seller and a willing and able buyer with neither party being compelled to buy or sell and, with respect to any Mortgage, the amount as reasonably determined by Administrative Agent based upon any recent appraisal, broker assessment of value or real property Tax assessment. "FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing. "Fed Funds Rate" means the rate per annum (rounded upwards, if necessary, to the nearest one hundredth of one percent (1/100 of 1%)) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System on any day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, however, that: (a) if the day for which such rate is to be determined is not a Business Day, the Fed Funds Rate for such day shall be such a rate on such transactions on the immediately preceding Business Day as so published on the next succeeding Business Day and (b) if the Fed Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. "Fee Letter" means that certain fee letter, dated as of the Closing Date, executed by the Borrowers and the Administrative Agent, as amended, amended and restated, supplemented or otherwise modified from time to time by the parties thereto. "FILO Reserve" shall have the meaning set forth in the ABL Credit Agreement as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "Finance Lease" means, with respect to any Person, any lease of any real or personal property by such Person as lessee that, in conformity with GAAP, is accounted for as a finance lease on the balance sheet of such Person. 19 11584747

slide39

"Finance Lease Obligations" means, with respect to any Person and a Finance Lease, the amount of the obligation of such Person as the lessee under such Finance Lease which would, in accordance with GAAP, appear as a liability on a balance sheet of such Person. "Financial Officer" means with respect to the Company, its President, Chief Executive Officer, Chief Financial Officer, Treasurer or Controller, or other duly elected officer of the Borrower Representative reasonably acceptable to the Administrative Agent. "First Amendment" means that certain First Amendment to Term Credit Agreement, dated as of September 21, 2023, by and among the Administrative Agent, the Loan Parties and the Lenders. "First Amendment Effective Date" has the meaning assigned to such term in the First Amendment. "Flood Laws" means, collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Reform Act of 2004 as now or hereafter in effect or any successor statute thereto, (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto, and (iv) related legislation. "Floor" means a per annum rate of interest equal to 2.00%. "Foreign Benefit Event" means, with respect to any Foreign Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable Law, or in excess of the amount that would be permitted under any applicable Requirements of Law absent a waiver from a Governmental Authority, (b) the failure to make the required contributions, under any applicable Requirement of Law, on or before the date such contributions are due, except where the failure to do so would not reasonably be expected to result in a material liability or is due to an administrative error that is corrected, (c) the receipt of a notice by a Governmental Authority relating to the intention to terminate any such Foreign Plan or to appoint a trustee or similar official to terminate any such Foreign Plan, or alleging the insolvency of any such Foreign Plan, (d) the incurrence of any additional liability by any Borrower, any Restricted Subsidiary of a Borrower or any Loan Party under applicable Requirements of Law on account of the complete or partial termination of such Foreign Plan or the complete or partial withdrawal of any participating employer therein or (e) the occurrence of any transaction that is prohibited under any applicable Requirements of Law and that would reasonably be expected to result in the incurrence of any material liability by any Borrower or any Restricted Subsidiary of a Borrower. "Foreign Lender" means (a) if a Borrower is a U.S. Person, a Lender, with respect to such Borrower, that is not a U.S. Person, and (b) if a Borrower is not a U.S. Person, a Lender, with respect to such Borrower, that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes. "Foreign Plan" means any plan established under the law of a jurisdiction other than the United States or Canada (or a state, province, territory or local government thereof) primarily for employees or former employees outside the United States of America and Canada, that is established, maintained or contributed to by a Borrower or any of its Restricted Subsidiaries or Affiliates and which provides pension, retirement or savings benefits through a trust or other funding vehicle, other than any state social security arrangements. "Foreign Subsidiary" means any Subsidiary which is not a Domestic Subsidiary. 20

11584747

slide40

"GAAP" means accounting principles generally accepted in the U.S., consistently applied. "Governmental Authority" means the government of the United States of America, Canada, any other nation or any political subdivision thereof, whether provincial, territorial, 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 body exercising such powers or functions, such as the European Union or the European Central Bank). "Guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation, provided, that the term Guarantee shall not include: (i) warranties or indemnities made in trade contracts, asset sale agreements, acquisition agreements, commitment letters, engagement letters and brokerage and deposit agreements in the ordinary course of business, and warranties and indemnities to lenders in any documents evidencing Indebtedness permitted pursuant to Section 6.01 with respect to the guarantor, (ii) any indemnities made in connection with liability of a Person's directors, officers and employees in their capacities as such as permitted by applicable law, (iii) any contingent liability arising from the endorsement of negotiable or other instruments for deposit or collection in the ordinary course of business, and (iv) any continuing liability of the Company or its Subsidiaries as a lessee under a lease after such lease has been assigned or subleased by such Person. "Guaranteed Obligations" means U.S. Guaranteed Obligations or Canadian Guaranteed Obligations, as the context requires. "Guarantors" means all U.S. Guarantors and Canadian Guarantors. "Hazardous Material" means: (a) any substance, material, or waste that is included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "toxic materials," "toxic waste," or words of similar import in any Environmental Law, (b) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and (c) any substance, material, or waste that is (i) petroleum, petroleum derivative or fraction, or a petroleum by-product, (ii) asbestos or asbestos-containing material, (iii) polychlorinated biphenyls, (iv) ozone depleting substances, (v) radon gas or (vi) a pesticide, herbicide, or other substance regulated under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. §136 et seq. "Immaterial Subsidiary" shall mean any Subsidiary (other than a Borrower) designated by the Borrower Representative to the Administrative Agent as an "Immaterial Subsidiary" and that meets each of the following criteria as of the last day of the most recent fiscal quarter for which financial statements have been delivered to the Administrative Agent pursuant to Sections 5.01(a) or (b): (a) such Subsidiary and its Subsidiaries accounted for less than (x) 2.5% of Total Assets at such date and (y) 2.5% of the 21 11584747



consolidated revenues of the Company and its Subsidiaries for the most recent four fiscal quarter period ending on such date, (b) all Immaterial Subsidiaries and their respective Subsidiaries accounted for less than (x) 5.0% of Total Assets at such date and (y) 5.0% of the consolidated revenues of the Company and its Subsidiaries for the most recent four fiscal quarter period ending on such date, and (c) such Subsidiary and its Subsidiaries do not own any Material Real Property, Material Intellectual Property, or Equity Interests of the IPCo JV; provided, that no Subsidiary shall be or be designated as an "Immaterial Subsidiary" if such Subsidiary has provided a Guaranty of, or pledged any Collateral

as security for, the obligations under the ABL Credit Agreement (unless such Guaranty or pledge, as applicable, is released prior to or substantially concurrently with such designation). Each Immaterial Subsidiary as of the Closing Date shall be set forth in Schedule 1.01(d), and the Borrower Representative shall update such Schedule from time to time after the Closing Date as necessary to reflect all Immaterial Subsidiaries at such time (the selection of Subsidiaries to be added to or removed from such Schedule to be made as the Borrowers may determine). "Increased BBC Reporting Period" means (a) any period during which any Event of Default has occurred and is continuing or (b) any period (i) commencing at any time when Availability shall be less than the greater of (x) \$63,000,000 and (y) 12.5% of the Maximum Credit Amount (calculated without giving effect to the FILO Reserve), in either case, for a period of three (3) consecutive Business Days and (ii) ending when Availability shall have been greater than or equal to the greater of (x) \$63,000,000 and (y) 12.5% of the Maximum Credit Amount (calculated without giving effect to the FILO Reserve), in either case, for a period of thirty (30) consecutive days. "Increased Financial Reporting Period" means any period (i) commencing at any time when Availability shall be less than thereafter, the greater of (x) \$78,750,000 and (y) 15% of the Maximum Credit Amount (calculated without giving effect to the FILO Reserve), in either case, for a period of three (3) consecutive Business Days, and (ii) ending when Availability shall have been greater than or equal to the greater of (x) \$78,750,000 and (y) 15% of the Maximum Credit Amount (calculated without giving effect to the FILO Reserve), in either case, for a period of thirty (30) consecutive days. "Incur" means issue, assume, guarantee, incur or otherwise be or become liable for, provided, however, that any Indebtedness or Equity Interests of a Person existing at the time such person becomes a Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) shall be deemed to be incurred by such Person at the time it becomes a Subsidiary. "Incurred" and "Inurrence" shall have like meanings. "Indebtedness" means, with respect to any Person: (i) the principal amount of any indebtedness of such Person, whether or not contingent; (a) in respect of borrowed money, (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit, bankers' acceptances or similar facilities (or, without duplication, reimbursement agreements in respect thereof), (c) representing the deferred and unpaid purchase price of any property (except any such balance that constitutes (i) a trade payable or similar obligation to a trade creditor Incurred in the ordinary course of business, (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP, (iii) obligations accounted for as an operating lease in conformity with GAAP, and (iv) liabilities accrued in the ordinary course of business), (d) in respect of Finance Lease Obligations, and (e) all monetary obligations that qualify as indebtedness on the balance sheet of such Person in accordance with GAAP under any receivables factoring, receivable sales or similar transactions and all attributable indebtedness calculated in accordance with GAAP under any synthetic lease, tax ownership/operating lease, off-balance sheet financing or similar financing. 22

11584747



slide42

(2) to the extent not otherwise included, any obligation of such Person to be liable for, or to pay, as obligor, guarantor or otherwise, the obligations referred to in clause (1) of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and (3) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset owned by such Person (whether or not such Indebtedness is assumed by such Person); provided, however, that the amount of such Indebtedness will be the lesser of: (a) the Fair Market Value (as determined in good faith by the Company) of such asset at such date of determination, and (b) the amount of such Indebtedness of such other Person; provided, however, that, notwithstanding the foregoing, Indebtedness shall be deemed not to include (1) Contingent Obligations incurred in the ordinary course of business and not in respect of borrowed money; (2) deferred or prepaid revenues; (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (4) trade and other ordinary course payables and accrued expenses arising in the ordinary course of business; (5) in the case of the Company and the Subsidiaries, (x) all intercompany Indebtedness solely among the Company and the Restricted Subsidiaries having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business and (y) intercompany liabilities in connection with cash management, tax and accounting operations of the Company and the Subsidiaries; and (6) any Swap Agreement Obligations; provided that such agreements are entered into for bona fide hedging purposes of the Company and the Subsidiaries (as determined in good faith by the board of directors or senior management of the Company, whether or not accounted for as a hedge in accordance with GAAP) and, in the case of any foreign exchange contract, currency swap agreement, futures contract, option contract or other similar agreement, such agreements are related to business transactions of the Company and the Subsidiaries entered into in the ordinary course of business and, in the case of any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement, such agreements substantially correspond in terms of notional amount, duration and interest rates, as applicable, to Indebtedness of the Company or the Subsidiaries Incurred without violation of this Agreement. Notwithstanding anything in this Agreement to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Financial Accounting Standards Board Accounting Standards Codification 815 (or any other Accounting Standards Codification or Financial Accounting Standards having a similar result or effect or any successor thereto) to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness under this Agreement but for the application of this sentence shall not be deemed an incurrence of Indebtedness under this Agreement. "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 subsection (a), Other Taxes. "Indemnitee" has the meaning assigned to such term in Section 9.03(b). "Independent Financial Advisor" means an accounting, appraisal or investment banking firm or consultant, in each case of nationally recognized standing, that is, in the good faith determination of the Company, qualified to perform the task for which it has been engaged. "Ineligible Institution" has the meaning assigned to such term in Section 9.04(b). 23 11584747

slide43

"Information" has the meaning assigned to such term in Section 9.12. "Insolvency Laws" means each of the Bankruptcy Code, the BIA, the CCAA, the Winding-Up and Restructuring Act (Canada), in each case as amended, and any other applicable state, provincial, territorial or federal bankruptcy laws, each as now and hereafter in effect, any successors to such statutes and any other applicable insolvency or other similar law of any jurisdiction, including any corporate law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it and including any rules and regulations pursuant thereto. "Intellectual Property" means all present and future, trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers; and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, customer lists, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing. "Intercompany Subordination Agreement" means the Intercompany Subordination Agreement, dated as of the Closing Date, among the Company, its Subsidiaries, the Administrative Agent and the ABL Agent, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof. "Interest Expense" means, with respect to any Person for any fiscal period, interest expense of such Person determined in accordance with GAAP for the relevant period ended on such date. "Interest Payment Date" means (a) on the first day of each month in arrears, (b) upon a repayment or prepayment of the Loans, on the date of such repayment or prepayment of such Loan (with respect to such Loan), and (c) on the Maturity Date. "Inventory" has the meaning assigned to such term in each Security Agreement, as applicable. "Investments" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions; repayments of intercompany Indebtedness pursuant to clauses (a) and (b) of the definition of "Junior Indebtedness"; purchases or other acquisitions for consideration of indebtedness, Equity interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet of such Person in the same manner as the other investments included in the definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of "Unrestricted Subsidiary" and Section 6.02; (1) "Investments" shall include the portion (proportionate to the Company's direct or indirect equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by the Company) of the net assets of such Subsidiary at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided, however, that upon a redesignation of such Subsidiary as a Restricted Subsidiary as of the date of such redesignation, the portion of "Investments" in respect of such Subsidiary shall be determined as of the date of such redesignation.

that upon a redesignation of such Subsidiary as a Restricted Subsidiary as of the date of such redesignation, the portion of "Investments" in respect of such Subsidiary shall be determined as of the date of such redesignation.

slide44

such time; provided that any repayment of such indebtedness will be deemed an investment in such Subsidiary in such amount and (y) ABL Obligations) and (c) indebtedness arising from agreements of a Loan Party or any Subsidiary providing for the adjustment of acquisition or purchase price or similar obligations (including earn-outs), in each case, incurred or assumed in connection with any investments or any acquisition or disposition of any business, assets or a Subsidiary. "Le Tigre" means Le Tigre 360 Global LLC, a Delaware limited liability company. "Lenders" means the Persons listed on the Commitment Schedule and any other Person that shall have become a Lender hereunder pursuant to Section 2.09 or an Assignment and Assumption, other than any such Person that ceases to be a Lender hereunder pursuant to an Assignment and Assumption. 25 11584747



slide45

"Lien" means, with respect to any asset, any mortgage, lien, pledge, hypothecation, charge, security interest or similar encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement or any lease in the nature thereof), provided that in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien. "Liquidity" means the sum of (i) Qualified Cash of the Loan Parties plus (ii) Availability. "Loan Documents" means, collectively, this Agreement, any promissory notes issued pursuant to this Agreement, the Collateral Documents, the Loan Guaranty, the ABL Intercreditor Agreement, the Intercompany Subordination Agreement, any Environmental Indemnity (if any), the Fee Letter, each Compliance Certificate, each Borrowing Base Certificate, any promissory notes issued hereunder, and any and all other instruments, agreements, documents and writings executed in connection with the foregoing which the Company and the Administrative Agent agree in writing is a "Loan Document." Any reference in this Agreement or any other Loan Document to a Loan Document shall include all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative. "Loan Guaranty" means the U.S. Guaranty and/or the Canadian Guaranty, as the context so requires. "Loan Parties" means, collectively, the Borrowers and the Guarantors and any other Person who becomes a party to this Agreement pursuant to a Joinder Agreement and their successors and assigns, and the term "Loan Party" shall mean any one of them or all of them individually, as the context may require. "Loans" means the loans and advances made by the Lenders or the Administrative Agent pursuant to this Agreement, including Term Loans and Protective Advances. "Material Adverse Effect" means any set of circumstances or events which (a) is material and adverse to the business, properties, assets or financial condition of the Loan Parties and their Subsidiaries taken as a whole, (b) impairs materially the rights and remedies of the Administrative Agent or any Lender under any Loan Document or the ability of the Loan Parties taken as a whole to duly and punctually pay or perform any of the Obligations, (c) has a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party, (d) has a material adverse effect upon the Collateral, or (e) has a material adverse effect upon the Administrative Agent's Liens (on behalf of itself and other Secured Parties) on the Collateral or the priority of such Liens. "Material Agreement" means any agreement to which any Loan Party or any Restricted Subsidiary is a party that, if terminated or if breached by any Loan Party or any Restricted Subsidiary, would be reasonably expected to have a Material Adverse Effect. "Material Event" means, with respect to Mortgaged Property (if any) (a) any portion thereof (the loss of which shall have, in the Permitted Discretion of the Administrative Agent, a material and adverse impact on the use, operation or value of thereof) has been damaged by a Casualty or taken through a condemnation, either temporarily or permanently, or (b) any waste, impairment, deterioration or abandonment of such Real Estate has occurred (which shall have, in the Permitted Discretion of the Administrative Agent, a material and adverse impact on the use, operation or value of thereof) other than as a result of (i) ordinary wear and tear and (ii) depreciation in accordance with GAAP. 26 11584747

slide46

"Material Intellectual Property" means trademarks, trademark applications, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable), patents and patent applications; industrial design applications and registered industrial designs; customer lists; license agreements related to any of the foregoing and income therefrom; in each case, that: (i) accounts for (or is utilized in connection with the performance of services or sales of goods, which results in) \$5,000,000 or more, individually or in the aggregate, of annual revenues for the Company and its Subsidiaries, or (ii) has a Fair Market Value of \$5,000,000 or more, individually or in the aggregate (as determined by the Administrative Agent and the applicable Loan Party in good faith); or (iii) is otherwise included in the most recent intellectual property appraisal received by the Administrative Agent pursuant to the terms of this Agreement. "Material Real Property" means the (i) Existing Owned Real Property and (ii) any fee owned real property having a Fair Market Value in excess of \$5,000,000 as of the date of the acquisition thereof. "Maturity Date" means the earliest to occur of (i) the date that is five (5) years after the Closing Date (ii) the date on which Loans shall become due and payable in full hereunder, whether by acceleration or otherwise and (iii) the maturity date under the ABL Credit Agreement. "Maximum Credit Amount" means "Maximum Credit Amount" as defined in the ABL Credit Agreement as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "Maximum Rate" has the meaning assigned to such term in Section 9.18. "Moody's" means Moody's Investors Service, Inc. "Mortgage" means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Administrative Agent, in form and substance satisfactory to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, on real property of a Loan Party, including any amendment, restatement, modification or supplement thereto. "Mortgaged Property" shall mean, collectively, the Real Estate subject to the Mortgages. "Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA. "Net Proceeds" means, (a) with respect to any Disposition, an amount equal to: (i) the cash proceeds received in respect of such Disposition, minus (ii) any direct costs incurred in connection with such Disposition to the extent paid or payable to third parties (other than Affiliates), including (A) Taxes (including transfer Taxes, deed or recording Taxes and repatriation Taxes or any withholding or deduction) paid (or reasonably estimated to be payable) in connection with such Disposition during the Tax period the sale occurs, (B) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Disposition, and (C) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Disposition undertaken by the Company or any of its Restricted Subsidiaries in connection with such Disposition; provided that upon release of any such reserve, the amount released shall be considered Net Proceeds; 11584747

slide47

and (b) with respect to any Casualty, (i) the cash proceeds received in respect of such event including (A) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received and (B) insurance proceeds, minus (ii) the sum of (A) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (B) the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) that is secured by a Lien in such asset that is not Collateral or is senior to the Liens securing the Secured Obligations or, other than with respect to assets that are Collateral in which the Administrative Agent has a first priority Lien, otherwise subject to mandatory prepayment as a result of such event and (C) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer of the Borrower Representative). "Non-Consenting Lender" has the meaning assigned to such term in Section 9.02(d). "Obligated Party" means a U.S. Obligated Party or a Canadian Obligated Party, as the context requires. "Obligations" means, individually and collectively as the context may require, the U.S. Obligations and the Canadian Obligations. "OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury. "Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than a connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or enforced, any Loan Document, or sold or assigned an interest in any Loan or any Loan Document). "Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19). "Participant" has the meaning assigned to such term in Section 9.04(c). "Participant Register" has the meaning assigned to such term in Section 9.04(c). "Payment Conditions" means, at the time of determination with respect to any specified transaction or payment, that: (a) no Default then exists or would arise as a result of entering into such transaction or the making such payment; (b) immediately after giving effect to such transaction or payment, one of the following tests shall be satisfied: 28.11584747.



(i) (1) Availability for the 30 consecutive day period immediately preceding such specified transaction or payment shall not have been less than the greater of \$94,500,000 and 17.5% of the Maximum Credit Amount (calculated without giving effect to the FILO Reserve), and (2) Availability on the date of such specified transaction or payment shall not be less than the greater of such amounts; or (ii) (1) Availability for the 30 consecutive day period immediately preceding such specified transaction or payment shall not have been less than the greater of \$63,000,000 and 12.5% of the Maximum Credit Amount (calculated without giving effect to the FILO Reserve), (2) Availability on the date of such specified transaction or payment shall not be less than the greater of such amounts. (3) the Consolidated Fixed Charge Coverage Ratio, based on the most recently completed Test Period and for which financial statements have been, or have been required to be delivered to the Administrative Agent, shall not be less than 1.00 to 1.00, and (4) with respect to Restricted Payments under Section 6.02(a)(i) and (ii) of the definition thereof, on a pro forma basis after giving effect to such payment, Availability shall be greater than the greater of (i) 20% of the Maximum Credit Amount and (ii) \$110,000,000; and (c) the Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower Representative, including an updated Borrowing Base Certificate (as applicable), certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby, provided that no such certificate shall be required for any transaction made in reliance on the Payment Conditions with a value of less than \$7,500,000 (or, in the case of any Investment in a Restricted Subsidiary, \$7,500,000). "Payment Office" shall mean initially PLC Agent LLC, 100 Federal Street, Floor 20, Boston, MA 02110; thereafter, such other office of the Administrative Agent, if any, which it may designate by notice to the Borrower Representative and to each Lender to be the Payment Office. "PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions. "Permitted Acquisition" means any Acquisition by the Company or any Restricted Subsidiary in a transaction that satisfies each of the following requirements: (a) if a Loan Party is acquiring the ownership interests in a Domestic Subsidiary (other than an Excluded Subsidiary) or in a Canadian Subsidiary (other than an Excluded Subsidiary), such Person shall execute a Joinder Agreement and such other documents required by Section 5.14 and join this Agreement as a Borrower or Guarantor pursuant to Section 5.14; (b) the board of directors or other equivalent governing body of such Person shall have approved such Acquisition and the Loan Parties also shall have delivered to the Administrative Agent and the Lenders written evidence of the approval of the board of directors (or equivalent body) of such Person for such Acquisition; (c) each applicable Governmental Authority shall have approved such Acquisition and the Loan Parties shall have delivered to the Administrative Agent and the Lenders written evidence of the approval of such Governmental Authority or such Acquisition; (d) as of the date of the execution of the definitive acquisition agreement, no Default exists will exist, or would exist as a result thereof; 29 11584747



slide49

(e) the business, division, product line or line of business acquired, or the business conducted by the Person whose ownership interests are being acquired, as applicable, shall be engaged in a business otherwise permitted to be engaged in by a Loan Party under this Agreement; (f) for Acquisitions with respect to which the Consideration is equal to or greater than \$34,375,000, the Loan Parties shall deliver to the Administrative Agent at least five (5) days before (or such shorter timeframe as may be agreed to by the Administrative Agent in its sole discretion) such Acquisition (i) notice of such Acquisition, and (ii) copies of (x) any agreements entered into or proposed to be entered into by such Loan Parties in connection with such Acquisition, (y) such other information about such Person or its assets as the Administrative Agent or any Lender may reasonably require; (g) Consolidated EBITDA, calculated on a pro forma basis giving effect to such Acquisition, is at least 90% of Consolidated EBITDA immediately prior to the consummation of and without giving effect to such Acquisition; (h) if such Acquisition is an acquisition of Equity Interests, such Acquisition will not result in any violation of Regulation U; and (i) the Loan Parties shall have satisfied the Payment Conditions before and immediately after giving effect to such Acquisition. "Permitted Consigned Inventory Account" means a deposit account specifically and exclusively used for collected proceeds of consigned Inventory subject to a Permitted Consigned Inventory Financing. "Permitted Consigned Inventory Financing" means any secured, asset-based Indebtedness with respect to any Loan Party's or any Restricted Subsidiary's Inventory which is consigned to Persons which are not Loan Parties or Subsidiaries, so long as (x) such Indebtedness does not exceed an amount equal to \$50,000,000 at any time in the aggregate for all such financing arrangements, (y) such Indebtedness is secured by (and only by) such consigned Inventory, the related receivable and proceeds of such consigned Inventory, the applicable Permitted Consigned Inventory Account, and solely to the extent governing or otherwise directly relating to such consigned Inventory, Documents (as defined in the UCC), licensees from any Governmental Authority to sell any such consigned Inventory, and Chattel Paper (as defined in the UCC), and (z) the proceeds of any such consigned Inventory are remitted to a Permitted Consigned Inventory Account. "Permitted Discretion" means a determination made by the Administrative Agent in the exercise of its reasonable (from the perspective of a secured term loan lender) credit judgment, exercised in good faith in accordance with customary business practices in the retail industry. "Permitted Holders" means Jay L. Schottenstein, his Affiliates and Affiliated Holders. "Permitted Investments" means: (1) any Investment in the Company or any Restricted Subsidiary, provided that the aggregate amount of Investments by Loan Parties in Restricted Subsidiaries that are not Loan Parties in reliance on this Clause (1) shall not exceed (when combined with Investments made by Loan Parties in Subsidiaries that are not (or do not become in connection with such transaction) Loan Parties in reliance on Clauses (3), (21) and (22) of the definition of Permitted Investments) \$25,000,000; provided further that the aggregate amount of Investments by U.S. Loan Parties in Canadian Loan Parties in reliance on this Clause (1) shall not exceed \$25,000,000; provided, further that, upon written notice from a 30 11584747

slide50

Responsible Officer of the Borrower Representative to the Administrative Agent, the dollar amounts set forth in the foregoing provisos shall be reset at \$25,000,000 and \$25,000,000 respectively on any such date as the Payment Conditions become satisfied (it being understood that such written notice shall include an updated Borrowing Base Certificate (as applicable) and calculations (in reasonable detail) demonstrating compliance with the Payment Conditions); provided, further that, with respect to any such Investment (in a single transaction or a series of related transactions) consisting of assets of the type eligible to be included in the Borrowing Base that decreases the Borrowing Base by \$3,437,500 or more (after giving effect thereto), the Borrower Representative shall have first delivered an updated Borrowing Base Certificate to the Administrative Agent giving pro forma effect to such Investment and demonstrating pro forma compliance with Section 6.12; (2) any Investment in (A) cash, (B) Cash Equivalents, (C) short term tax-exempt securities rated not lower than BBB by S&P, Baa2 by Moody's or an equivalent rating by Fitch with provisions for liquidity or maturity accommodations of two (2) years or less; (D) investments in other readily marketable securities (excluding any equity or equity-linked securities other than auction rate preferred securities) which are rated P1 or P2 by Moody's, A1 or A2 by S&P or F1 or F2 by Fitch (in lieu of a short term rating, a long term rating of not less than A2 by Moody's, A by S&P or an equivalent rating by Fitch would qualify under this sub-clause (vii), provided that no such security position shall exceed five percent (5%) of the invested cash portfolio of the Loan Parties); and (E) in the case of investments by any Foreign Subsidiary, obligations of a credit quality and maturity comparable to that of the items referred to in clauses (B) through (D) above that are available in local markets; (3) any Permitted Acquisition; provided that the aggregate amount of Investments by Loan Parties in Restricted Subsidiaries that are not Loan Parties (or do not merge into a Loan Party in connection with such transaction) in reliance on this Clause (3) shall not exceed (when combined with Investments made by Loan Parties in Subsidiaries that are not (or do not become in connection with such transaction) Loan Parties in reliance on Clauses (1), (21) and (22) of the definition of Permitted Investments) \$25,000,000; provided, further that, upon written notice from a Responsible Officer of the Borrower Representative to the Administrative Agent, the dollar amount set forth in the foregoing proviso shall be reset at \$25,000,000 on any such date as the Payment Conditions become satisfied (it being understood that such written notice shall include an updated Borrowing Base Certificate (as applicable) and calculations (in reasonable detail) demonstrating compliance with the Payment Conditions); provided, further that, with respect to any such Investment (in a single transaction or a series of related transactions) consisting of assets of the type eligible to be included in the Borrowing Base that decreases the Borrowing Base by \$3,437,500 or more (after giving effect thereto), the Borrower Representative shall have first delivered an updated Borrowing Base Certificate to the Administrative Agent giving pro forma effect to such Investment and demonstrating pro forma compliance with Section 6.12; (4) any Investment in securities or other assets not constituting cash or Cash Equivalents and received in connection with any disposition of assets permitted by Section 6.04; (5) any Investment existing on the Closing Date or an Investment consisting of any extension, modification or renewal of any Investment existing on the Closing Date; provided that the amount of any such Investment may be increased (x) as required by the terms of such Investment as in existence on the Closing Date to the extent set forth Schedule 6.02 or (y) as otherwise permitted under this Agreement; (6) loans and advances to officers, directors, employees or consultants of the Company or any of its Subsidiaries (i) in the ordinary course of business in an aggregate outstanding amount (valued at the time of the making thereof, and without giving effect to any write-downs or 31 11584747.

slide51

write-offs thereof) not to exceed \$6,875,000 at the time of Incurrence; (ii) in respect of payroll payments and expenses in the ordinary course of business and (iii) in connection with such Person's purchase of Equity Interests of the Company or any direct or indirect parent of the Company solely to the extent that the amount of such loans and advances shall be contributed to the Company in cash as common equity; (7) any Investment acquired by the Company or any Restricted Subsidiary (a) in exchange for any other Investment or accounts receivable held by the Company or such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other investment or accounts receivable, or (b) as a result of a foreclosure by the Company or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default, or as a result of a Ball-In Action with respect to any contractual counterparty of the Company or any Restricted Subsidiary; (8) any Investment acquired by the Company or any Subsidiary in the settlement of overdue Indebtedness and accounts payable owed to a Loan Party or a Subsidiary in the ordinary course of business and for amounts which, individually and in the aggregate, are not material to the Loan Parties or their Subsidiaries; (9) Swap Agreement Obligations permitted under Section 6.01(i); (10) additional Investments by the Company or any Restricted Subsidiary having an aggregate Fair Market Value (as determined in good faith by the Company), taken together with all other Investments made pursuant to this clause (10) that are at that time outstanding, not to exceed \$25,000,000; provided, however, that if any Investment pursuant to this clause (10) is made in any Person that is not a Loan Party at the date of the making of such Investment and such Person becomes a Loan Party after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (10) for so long as such Person continues to be a Loan Party; (11) [Reserved]; (12) Investments the payment for which consists of Equity Interests of the Company (other than Disqualified Stock); (13) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 6.05 (except transactions described in clauses (a), (b), (c), (e), (f), (g), (i) or (m) of Section 6.05); (14) guarantees issued in accordance with Section 6.01, including, without limitation, any guarantee or other obligation issued or incurred under this Agreement in connection with any letter of credit issued for the account of the Company or any of its Restricted Subsidiaries (including with respect to the issuance of, or payments in respect of drawings under, such letters of credit); (15) Investments consisting of purchases and acquisitions of inventory, supplies, materials,



slide52

(18) Investments of a Restricted Subsidiary acquired after the Closing Date or of an entity merged into, amalgamated with, or consolidated with a Loan Party or a Restricted Subsidiary in a transaction that is not prohibited by Section 6.08 after the Closing Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation; (19) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers; (20) advances in the form of a prepayment of expenses in the ordinary course of business, so long as such expenses are being paid in accordance with customary trade terms of the Company or the Restricted Subsidiaries; (21) Investments in Joint Ventures or Unrestricted Subsidiaries having an aggregate Fair Market Value (as determined in good faith by the Company), taken together with all other Investments made pursuant to this clause (21) that are at that time outstanding, not to exceed (x) \$25,000,000 plus (y) an amount equal to any returns (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received in respect of any such Investment (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value); provided that the aggregate amount of Investments made by Loan Parties in reliance on this Clause (21) shall not exceed (when combined with Investments made by Loan Parties in Subsidiaries that are not (or do not become in connection with such transaction) Loan Parties in reliance on Clauses (1), (3) and (22) of the definition of Permitted Investments) \$25,000,000; provided, further that, upon written notice from a Responsible Officer of the Borrower Representative to the Administrative Agent, the dollar amount set forth in the foregoing proviso shall be reset at \$25,000,000 on any such date as the Payment Conditions become satisfied (it being understood that such written notice shall include an updated Borrowing Base Certificate (as applicable) and calculations (in reasonable detail) demonstrating compliance with the Payment Conditions); provided, however, that if any Investment pursuant to this clause (21) is made in any Person that is not a Loan Party at the date of the making of such Investment and such Person becomes a Loan Party after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (21) for so long as such Person continues to be a Loan Party; provided, further that, with respect to any such Investment (in a single transaction or a series of related transactions) consisting of assets of the type eligible to be included in the Borrowing Base that decreases the Borrowing Base by \$3,437,500 or more (after giving effect thereto), the Borrower Representative shall have first delivered an updated Borrowing Base Certificate to the Administrative Agent giving pro forma effect to such Investment and demonstrating pro forma compliance with Section 6.12; (22) any Investment in any Subsidiary of the Company or any Joint Venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business; provided that the aggregate amount of Investments made by Loan Parties in Subsidiaries or joint ventures that are not Loan Parties in reliance on this Clause (22) shall not exceed (when combined with Investments made by Loan Parties in Subsidiaries that are not (or do not become in connection with such transaction) Loan Parties in reliance on Clauses (1), (3) and (21) of the definition of Permitted Investment) \$25,000,000; provided, further that, upon written notice from a Responsible Officer of the Borrower Representative to the Administrative Agent, the dollar amount set forth in the foregoing proviso shall be reset at \$25,000,000 on any such date as the Payment Conditions become satisfied (it being understood that such written notice shall include an updated Borrowing Base Certificate (as applicable) and calculations (in reasonable detail) demonstrating compliance with the Payment Conditions); provided, however, that if any Investment pursuant to this clause (22) is made in 33 11584747



any Person that is not a Loan Party at the date of the making of such Investment and such Person becomes a Loan Party after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (2) for so long as such Person continues to be a Loan Party; (23) trade credit extended on usual and customary terms in the ordinary course of business; (24) Guarantees of any Loan Party or any Restricted Subsidiary of leases or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business; (25) Subject to Pro Forma Compliance with the Payment Conditions, any other Investments (other than Acquisitions); (26) Investments consisting of the ownership of Equity Interests in Article II JV, IFCo JV and BC/VC existing as of the Closing Date; and (27) to the extent constituting an Investment, the transfer by a Loan Party or a Restricted Subsidiary to a Special Purpose Receivables Subsidiary, and the purchase by such Special Purpose Receivables Subsidiary, of wholesale accounts receivable, proceeds of such accounts receivable and other property customarily transferred in connection with the financing or securitization of accounts receivable for Fair Market Value (as determined in good faith by the Company) or for another price consistent with customary or market practice for the sale of accounts receivable in connection with the financing or securitization of accounts receivable (as determined in good faith by the Company). "Permitted Liens" means, with respect to any Person: (1) pledges, bonds or deposits and other Liens granted by such Person under workmen's compensation laws, unemployment or employment insurance laws, old age pensions or similar legislation or programs, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness (it being understood that Indebtedness permitted pursuant to Section 6.01(cc) and other obligations in respect of cash management services shall not constitute Indebtedness for purposes of this clause (1))) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. or Canadian government bonds to secure surety or appeal bonds, performance and return of money bonds, or deposits as security for contested Taxes or import duties or payments of rent, in each case incurred in the ordinary course of business; (2) (a) Liens imposed by law and landlords, carriers, warehousemen's, mechanics', materialmen's, repairmen's, construction, or other like Liens; (b) Liens of customs brokers, freight forwarders and common carriers; (c) inchoate Liens imposed pursuant to applicable Canadian federal or provincial pension standards legislation, and (d) statutory and common law Liens of landlords, in each case securing obligations that are not overdue by more than 45 days or that are being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review; (3) Liens for Taxes not yet overdue by more than 45 days (or, with respect to real estate Taxes, any longer period before delinquency), or that are being contested in good faith by appropriate proceedings, if adequate reserves with respect thereto have been provided in accordance with GAAP; 34.11584747

slide54

(4) deposits or escrows to secure performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit, bankers' acceptances or similar obligations (other than Indebtedness for borrowed money, it being understood that Indebtedness permitted pursuant to Section 6.01(cc) and other obligations in respect of cash management services shall not constitute Indebtedness for purposes of this clause (4))) issued pursuant to the request of and for the account of any Person in the ordinary course of business; (5) (a) any state of facts as shown by any professional survey or physical inspection of any Material Real Property delivered to the Administrative Agent (i) prior to the Closing Date with respect to any Existing Owned Real Property and (ii) prior to the date of acquisition of any such Material Real Property acquired after the Closing Date and (b) minor survey exceptions, minor encumbrances, minor encroachments, trackage rights, special and supplemental assessments, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines, communication towers, other utilities and other similar purposes, servicing agreements, development agreements, site plan agreements, land use and air rights agreements, reservations, restrictions and leases for mineral and water rights, all title exceptions, exclusions and encumbrances in existence with respect to all owned or leased real property as of the date of this Agreement and at the time of acquisition of any interest in real property acquired after the date of this Agreement and in existence at the time of such acquisition, and other similar liens, charges and encumbrances incurred in the ordinary course of business, or title defects or irregularities that are of a minor nature or zoning or other restrictions as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness, and which would not in the aggregate with respect to any particular real property be reasonably expected to materially adversely affect the value of said properties or materially impair their use, in the operation of the business of such Person as of the date of this Agreement or the date of any future acquisition as the case may be; (6) (A) Liens on assets of a Subsidiary that is not a Loan Party securing Indebtedness of a Subsidiary that is not a Loan Party permitted to be incurred pursuant to Section 6.01; (B) [Reserved]; (C) Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to clause (d) or (m) (to the extent such guarantees are issued in respect of any Indebtedness) of Section 6.01; provided that, in the case of clause (m) any Lien on the Collateral in reliance on this clause (6)(C) shall be junior to the Liens on the Collateral securing the Obligations pursuant to the ABL Intercreditor Agreement and/or a junior lien intercreditor agreement or collateral trust agreement reasonably satisfactory to the Administrative Agent and the Required Lenders reflecting the junior-lien status of the Liens securing such Indebtedness as it relates to Collateral; (D) [Reserved]; (E) Liens created pursuant to the Collateral Documents or otherwise securing the Obligations; (7) any Lien existing on the date of this Agreement and described on Schedule 6.07, provided that the principal amount secured thereby is not hereafter increased, and no additional assets become subject to such Lien (except pursuant to the terms of the agreements governing such Lien as in effect on the date of this Agreement); 35.11584747



(8) Liens on assets, property or shares of stock of a Person at the time such Person becomes a Subsidiary; provided, however, that such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; provided, further, however, that such Liens may not extend to any other property owned by the Company or any Restricted Subsidiary (other than pursuant to after-acquired property clauses in effect with respect to such Lien at the time of acquisition on property of the type that would have been subject to such Lien notwithstanding the occurrence of such acquisition); (9) Liens on assets or property at the time the Company or a Restricted Subsidiary acquired the assets or property, including any acquisition by means of a merger, amalgamation or consolidation with or into the Company or any Restricted Subsidiary; provided, however, that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition; provided, further, however, that the Liens may not extend to any other property owned by the Company or any Restricted Subsidiary (other than pursuant to after-acquired property clauses in effect with respect to such Lien at the time of acquisition on property of the type that would have been subject to such Lien notwithstanding the occurrence of such acquisition); (10) [Reserved]; (11) [Reserved]; (12) [Reserved]; (13) (a) leases, subleases, licenses and sublicenses of real property (excluding any leases, subleases, licenses and sublicenses with respect to any Material Real Property entered into after the Closing Date unless with the prior written consent of the Administrative Agent) which do not materially interfere with the ordinary conduct of the business of the Company or any of the Subsidiaries and (b) all Liens created or purported to be created by any lessee, sub lessee, licensee or sub licensee of any Loan Parties in violation of any applicable lease, sublease, licensee or sub licensee, without the knowledge of such Loan Parties (and upon learning of such Liens in this clause (b), so long as the applicable Loan Party promptly takes all reasonable action to remove, satisfy, discharge or bond such Liens); (14) Liens arising from Uniform Commercial Code financing statement filings (or equivalent filings including under the PPSA) regarding operating leases or other obligations not constituting Indebtedness (it being understood that Indebtedness permitted pursuant to Section 6.01(cc) and other obligations in respect of cash management services shall not constitute Indebtedness for purposes of this clause (14)); (15) Liens in favor of any Loan Party; (16) [Reserved]; (17) pledges and deposits made in the ordinary course of business to secure liability to insurance carriers; (18) Liens on the Equity Interests of Unrestricted Subsidiaries; (19) (a) leases or subleases, and licenses or sublicenses (including with respect to Intellectual Property on a non-exclusive basis or on an exclusive basis with the prior written consent of the Administrative Agent) granted to others in the ordinary course of business, but excluding any leases, 36 11584747

slide56

subleases, licenses and sublicenses with respect to any Material Real Property entered into after the Closing Date unless with the prior written consent of the Administrative Agent, in all such cases, not interfering in any material respect with the business of the Company and the Subsidiaries, taken as a whole and (b) and Liens on real property which is not owned but is leased or subleased by the Company or any Restricted Subsidiary; (20) Liens to secure any refinancing, future advance, increase, cross-collateralization, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clauses 6(C), (7), (8), (9), and (11) of this definition; provided, however, that (x) such new Lien shall be limited to all or part of the same property (including any after acquired property to the extent it would have been subject to the original Lien) that secured the original Lien (plus improvements on and accretions to such property, proceeds and products thereof, customary security deposits and any other assets pursuant to the after-acquired property clauses to the extent such assets secured (or would have secured) the Indebtedness being refinanced, refunded, extended, renewed or replaced), and (y) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount (or accreted value, if applicable) described under clauses 6(C), (7), (8), (9), and (11) of this definition at the time the original Lien became a Permitted Lien under this Agreement and, in the case of any Lien on Collateral, shall not have a greater priority level with respect to Liens securing the Obligations than the Liens securing the Indebtedness so refinanced, refunded, extended, renewed or replaced; (B) unpaid accrued interest and premiums (including tender premiums), and (C) an amount necessary to pay any underwriting discounts, defeasance costs, commissions, fees and expenses related to such refinancing, refunding, extension, renewal or replacement; provided, further, however, that in the case of Liens to secure any refinancing, refunding, extension or renewal of Indebtedness secured by a Lien referred to in clause (8) or (9), such new Lien shall have priority equal to or more junior than the Lien securing such refinanced, refunded, extended or renewed Indebtedness; (21) [Reserved]; (22) judgment and attachment Liens not giving rise to an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made; (23) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale or purchase of goods entered into in the ordinary course of business (or in connection with a Similar Business); (24) Liens incurred to secure cash management services or to implement cash pooling arrangements in the ordinary course of business; (25) Liens in favor of credit card issuers or credit card processors pursuant to agreements therewith; (26) any encumbrance or restriction (including put and call arrangements) with respect to Equity Interests of any Joint Venture or similar arrangement securing obligations of such Joint Venture or pursuant to any joint venture agreement or similar agreement; (27) any amounts held by a trustee in the funds and accounts under any indenture issued in escrow pursuant to customary escrow arrangements pending the release thereof, or under any indenture pursuant to customary discharge, redemption or defeasance provisions; 37 1158474

slide57

(28) Liens (i) arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository or financial institution, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business or (iii) encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to brokerage accounts incurred in the ordinary course of business and not for speculative purposes; (29) Liens that are contractual rights of set-off relating to pooled deposits, sweep accounts, reserve accounts or similar accounts of the Company or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company or any Restricted Subsidiary, including with respect to credit card charge-backs and similar obligations; (30) Liens disclosed by the title reports, commitments or title insurance policies (and future date downs) delivered pursuant to (a) this Agreement, and, in each case, any replacement, modification, date down, extension or renewal of any such Lien (and all existing surveys); provided that such replacement, modification, date down, extension or renewal Lien shall not cover any property other than the property that was subject to such Lien prior to such replacement, modification, date down, extension or renewal; provided, further, that the Indebtedness and other obligations secured by such replacement, modification, date down, extension or renewal Lien are permitted under this Agreement or (b) the acquisition of any interest of any Loan Party in real property acquired after the date of this Agreement and in existence at the time of such acquisition (and not created or suffered in anticipation of such acquisition), so long as any Liens in this clause (b) would not interfere in any material respect with the business of the applicable Loan Party as intended to be conducted on such after-acquired real property; (31) Liens that are contractual rights of set-off relating to purchase orders and other agreements entered into with customers, suppliers or service providers of the Company or any Restricted Subsidiary in the ordinary course of business; (32) in the case of real property that constitutes a leasehold or subleasehold interest, (x) any Lien to which the fee simple interest (or any superior leasehold interest) is or may become subject and any subordination of such leasehold or subleasehold interest to any such Lien in accordance with the terms and provisions of the applicable leasehold or subleasehold documents, and (y) any right of first refusal, right of first negotiation or right of first offer which is granted to the lessor or sublessor; (33) agreements to subordinate any interest of the Company or any Restricted Subsidiary in any accounts receivable arising from inventory consigned by the Company or any such Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business; (34) Liens securing insurance premium financing arrangements; provided that such Liens are limited to the applicable unearned insurance premiums; (35) [Reserved]; (36) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (e) of the definition thereof; (37) Liens in favor of the ABL Agent to secured indebtedness permitted under Section 6.01(b); 38 11584747

slide58

(38) with respect to a Permitted Wholesale A/R Financing, Liens on wholesale accounts receivable, proceeds of such accounts receivable and other property upon which Liens are customarily granted in connection with the financing or securitization of accounts receivable (but not, for the avoidance of doubt, on any property included in the calculation of the Borrowing Base); (39) Liens in favor of landlords on leasehold improvements financed by allowances or advances provided by such landlords pursuant to lease arrangements; (40) Liens on proceeds in an aggregate amount not to exceed \$6,875,000 at any one time outstanding granted in connection with securities lending transactions or reverse repurchase agreements involving United States Treasury bonds; (41) Liens securing other obligations of the Loan Parties and their Restricted Subsidiaries in an aggregate amount not to exceed \$25,000,000 at any one time outstanding; (42) with respect to a Permitted Consigned Inventory Financing, Liens on consigned Inventory and the related receivables and proceeds of such consigned Inventory, the applicable Permitted Consigned Inventory Account, and solely to the extent governing or otherwise directly relating to such consigned Inventory, Documents (as defined in the UCC), licenses from any Governmental Authority to sell any such consigned Inventory, and Chatel Paper (as defined in the UCC); and (43) Liens created in connection with any Sale/Leaseback Transaction permitted by Section 6.04; provided, however, notwithstanding the foregoing and Section 6.07, the Loan Parties and their Restricted Subsidiaries shall not directly or indirectly create, incur or suffer to exist any Lien on any of the (a) Material Real Property other than (i) with respect to Material Real Property acquired after the Closing Date, pursuant to the foregoing clauses (2), (3), (4), (5), 6(E), (7), (13), (22), and (30) in this definition of "Permitted Liens" and (ii) with respect to the Existing Owned Real Property, pursuant to the foregoing clauses (2), (3), (5), 6(E), (7), (22), (30) and (37) in this definition of "Permitted Liens"; or (b) any Material Intellectual Property other than pursuant to the foregoing clauses (6)(E) and (37). "Permitted Specified Liens" means Permitted Liens described in clauses (2), (3), (5), and 6(E) of the definition of Permitted Liens. "Permitted Wholesale A/R Financing" means, collectively, any facility evidenced by the Factoring Agreements or any other factoring arrangement or any securitization transaction or series of securitization transactions that may be entered into by any Loan Party so long as (x) the only assets so factored or securitized pursuant to such facility, arrangement or transaction are the wholesale Accounts of a Loan Party or a Restricted Subsidiary to the extent the same are not included in the Borrowing Base hereunder, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with the financing or securitization of accounts receivable and (y) other than pursuant to an unsecured guaranty by the Company or any of its Subsidiaries, no Loan Party or any Restricted Subsidiary whose assets are not being financed or securitized pursuant to such facility, arrangement or transaction shall become party to any such facility, arrangement or transaction. "Person" means any natural person, corporation, limited liability company, unlimited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity. 39 11584747



"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA. "Plan Asset Regulations" shall mean 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time. "PPSA" means the Personal Property Security Act (Ontario) or such other applicable legislation in effect from time to time in such other jurisdiction in Canada (including the Civil Code (Quebec)) for purposes of the provisions hereof relating to perfection, effect of perfection or non-perfection or priority. "Preferred Stock" means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution, or winding up. "Prepayment Premium" has the meaning specified in the Fee Letter. "Prime Rate" means, as of any date of determination, the rate of interest published by the Wall Street Journal as the "WSJ Prime Rate" for such day. Any change in the Prime Rate shall take effect at the opening of business on the day of such change. "Prior Claims" means all liabilities and obligations of any Canadian Loan Party secured by any Liens, choate or inchoate, which rank or are capable of ranking pari passu or in priority to the Liens granted to the Administrative Agent to secure the Canadian Secured Obligations, including, (a) any such amounts due and not paid for wages or vacation pay (including amounts protected by the Wage Earner Protection Program Act (Canada)), amounts due and not paid under any legislation relating to workers' compensation or to employment insurance, all amounts deducted or withheld and not paid and remitted when due with respect to Taxes including amounts currently or past due and not paid for realty, municipal or similar taxes (to the extent impacting personal or moveable property); and (b) (i) all amounts currently or past due and not yet contributed, remitted or paid to or under any Canadian Pension Plan or under the Canada Pension Plan, the Quebec Pension Plan, the Pension Benefits Act (Ontario) or any similar legislation, and (ii) any solvency deficiency or wind-up deficiency with respect to Canadian Defined Benefit Plans that are registered in Ontario. "Pro Forma Compliance" means, with respect to any determination for any period and any transaction, that such determination shall be made by giving pro forma effect to each such transaction, as if each such transaction had been consummated on the first day of such period, based on, in the case of determinations made in reliance on pro-forma financial statement calculations only, historical results accounted for in accordance with GAAP and, to the extent applicable, reasonable assumptions that are specified in detail in the relevant compliance certificate, financial statement or other document provided to the Administrative Agent or any Lender in connection herewith (which shall be prepared by the Company in good faith (subject to the approval of the Administrative Agent, not to be unreasonably withheld)) and for such purposes historical financial statements shall be recalculated as if such transaction had been consummated at the beginning of the applicable period, and any Indebtedness or other liabilities to be incurred, assumed or repaid had been incurred, assumed or repaid at the beginning of such period (and assuming that such Indebtedness to be incurred bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to such Indebtedness incurred during such period) and, to the extent pro forma financial statements are required to be prepared by the Company under Regulation S-X of the Securities Act of 1933 ("Reg. S-X") reflecting such transaction for any period, all pro forma calculations made hereunder with respect to such transaction and for such period shall be in conformity with Reg. S-X at all times 40-11584747



slide60

after such pro-forma financial statements reflecting such transactions are required to be filed by the Company under Reg. S-X. "Proceeds of Crime Act" means the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada), as amended. "Projections" has the meaning assigned to such term in Section 3.06(b). "Protective Advance" has the meaning assigned to such term in Section 2.04. "Qualified Cash" means, as of any date of determination, the aggregate amount of unrestricted cash and Specified Cash Equivalents of the Loan Parties that is (i) in one or more deposit accounts or in securities accounts, or any combination thereof, each of which such deposit account or securities account is, subject to Section 5.17, subject to a control agreement in form and substance reasonably satisfactory to Administrative Agent, and is maintained by a branch office of the bank or securities intermediary located within the United States or Canada or (ii) in an Excluded Account under clause (b) or (e) of the definition of "Excluded Accounts" in the U.S. Security Agreement or the Canadian Security Agreement, as applicable; provided, that Qualified Cash may include Credit Card Accounts, which, consistent with methodologies used as of the Closing Date, are reflected on the Loan Parties' books and records as cash, solely for purposes of calculating the Consolidated Net Leverage Ratio but not, for the avoidance of doubt, for purposes of calculating Liquidity or for any other purpose under the Loan Documents. "Real Estate" means all leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party or any Restricted Subsidiary, as the context may require, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof. "Real Property Deliverables" means each of the following agreements, instruments and other documents in respect of each Material Real Property, each in form and substance reasonably satisfactory to the Administrative Agent: (a) a Mortgage duly executed by the applicable Loan Party; (b) evidence of the recording of each Mortgage in such office or offices as may be necessary or, in the reasonable opinion of the Administrative Agent, desirable to perfect the Lien purported to be created thereby or to otherwise protect the rights of the Administrative Agent and the Lenders thereunder; (c) a Title Insurance Policy or bring-down of the existing Title Insurance Policy with respect to each Mortgage, dated as of the Closing Date; (d) an existing ALTA survey together with a survey affidavit of no change to induce removal of the survey exception to the Title Insurance Policy and issue a survey endorsement to the Title Insurance Policy (if such endorsement is available at commercially reasonable rates and customarily issued in similar circumstances in the applicable jurisdiction, unless such endorsement is waived by Administrative Agent in its reasonable discretion); (e) a zoning report issued by a provider reasonably satisfactory to the Administrative Agent or a copy of each letter issued by the applicable Governmental Authority, evidencing each Material Real Property's compliance with all applicable Requirements of Law, together with a copy of all certificates of occupancy issued with respect to each Material Real Property; 41 11584747

slide61

(f) an opinion of counsel, satisfactory to the Administrative Agent, in the state where such Material Real Property is located with respect to the enforceability of the Mortgage to be recorded and such other matters as the Administrative Agent may reasonably request; (g) an ASTM 1527-13 Phase I Environmental Site Assessment ("Phase I ESA") (and if reasonably requested by the Administrative Agent based upon the results of such Phase I, a Phase II Environmental Site Assessment with respect to all Material Real Property acquired after the date of this Agreement), by an independent firm reasonably satisfactory to the Administrative Agent; and (h) such other agreements, instruments, appraisals and other documents (including opinions of counsel, flood zone certificates and proof of flood insurance, if required) as the Administrative Agent may reasonably require. "Recipient" means, as applicable, (a) the Administrative Agent and (b) any Lender, or any combination thereof (as the context requires). "Register" has the meaning assigned to such term in Section 9.04. "Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, partners, members, trustees, employees, agents, administrators, managers, representatives and advisors of such Person and such Person's Affiliates. "Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of any Hazardous Material into the environment. "Relevant Entity" means (a) each Loan Party and each Subsidiary of each Loan Party, and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person means the direct or indirect (x) ownership of, or power to vote, twenty-five percent (25%) or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise. "Relevant Plan" has the meaning set forth in Section 9.04(e). "Report" means reports prepared by the Administrative Agent or another Person (including ABL Secured Parties) showing the results of appraisals, field examinations or audits pertaining to the assets of the Loan Parties from information furnished by or on behalf of the Borrowers, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent. "Reportable Compliance Event" means that any Relevant Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, or custodially detained in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations is in actual or probable violation of any Anti-Terrorism Law. "Required Lenders" means, at any time, Lenders (other than Defaulting Lenders) having Term Exposures and unused Commitments representing more than 50% of the sum of the Aggregate Term Exposure and unused Commitments at such time; provided if there are more than two (2) unaffiliated ABL Secured Parties.

slide62

Lenders at any time, at least three two (2) unaffiliated Lenders (other than Defaulting Lenders) having Term Exposures and unused Commitments representing more than 50% of the sum of the Aggregate Term Exposure and unused Commitments at such time. "Requirement of Law" means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject. "Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority. "Responsible Officer" means, with respect to any Loan Party, the Chief Executive Officer, President, Chief Financial Officer, Treasurer or Assistant Treasurer of such Loan Party, any other executive officer, including any Executive Vice President or Senior Vice President of such Loan Party, any Vice President of any Restricted Subsidiary of such Loan Party, any manager or the members (as applicable) in the case of any Loan Party which is a limited liability company, and such other individuals, designated by written notice to the Administrative Agent from the Borrower Representative, authorized to execute notices, reports and other documents on behalf of such Loan Party required

hereunder. The Borrower Representative may amend such list of individuals from time to time by giving written notice of such amendment to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party in their capacity as an officer of such Loan Party and not in any individual capacity. "Refinancing Indebtedness" has the meaning specified in Section 6.01(n). "Restricted Investment" means any investment that is not a Permitted Investment. "Restricted Payments" has the meaning specified in Section 6.02(a). "Restricted Subsidiary" means, with respect to any Person, any Subsidiary of such Person other than an Unrestricted Subsidiary of such Person. Unless the context otherwise requires, the term "Restricted Subsidiary" shall mean a Restricted Subsidiary of the Company. Each Loan Party (other than the Company) shall constitute a Restricted Subsidiary. "S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business. "Sale/Leaseback Transaction" means an arrangement relating to property now owned or hereafter acquired by a Loan Party or a Restricted Subsidiary whereby such Loan Party or Restricted Subsidiary transfers such property to a Person and such Loan Party or Restricted Subsidiary leases it from such Person, other than leases between any Loan Party and a Restricted Subsidiary or between Restricted Subsidiaries. "Sanctioned Country" means, at any time, a country or territory which is itself the subject or target of any Sanctions (as of the Closing Date, Cuba, Iran, North Korea, Crimea Region, the Donetsk and Luhansk territories of Ukraine, and Syria). 43 11584747



slide63

"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 United Nations Security Council, Her Majesty's Treasury of the United Kingdom, the European Union or any EU member state, (b) a Blocked Person, (c) a Canadian Blocked Person, (d) any Person operating, organized or resident in a Sanctioned Country, or (e) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) through (d). "Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time (a) by 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, (b) by the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom, or (c) by a government of Canada pursuant to Canadian Economic Sanctions and Export Control Laws. "SEC" means the Securities and Exchange Commission of the U.S. "Secured Obligations" means all U.S. Secured Obligations and Canadian Secured Obligations. "Secured Parties" means (a) the Administrative Agent, (b) the Lenders and (c) the successors and assigns of each of the foregoing. "Security Agreement" means and refers to each of the U.S. Security Agreement and the Canadian Security Agreements. "Senior Representative" means, with respect to any Indebtedness, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities. "Similar Business" has the meaning specified in Section 6.04. "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). "Solvent" means, with respect to any Person on any date of determination, taking into account any right of reimbursement, contribution or similar right available to such Person from other Persons, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (ii) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (iv) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature, (v) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged, and (vi) such Person is not an "insolvent person" as such term is defined in the BIA. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, 44 11584747

slide64

in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability. "Special Purpose Receivables Subsidiary" means (i) a direct or indirect Subsidiary of the Company established in connection with a Permitted Wholesale A/R Financing for the acquisition of wholesale Accounts of a Loan Party or a Restricted Subsidiary to the extent the same are not included in the Borrowing Base hereunder, proceeds of such accounts receivable and other assets which are customarily transferred in connection with the financing or securitization of accounts receivable, which engages in no material activities other than in connection with the financing of accounts receivable of a Loan Party and/or Restricted Subsidiaries, and which is organized in a manner intended to reduce the likelihood that it would be substantively consolidated with the Company or any of the Subsidiaries (other than Special Purpose Receivables Subsidiaries) in the event the Company or any such Subsidiary becomes subject to a proceeding under the Bankruptcy Code (or other Insolvency Laws) and (ii) any subsidiary of a Special Purpose Receivables Subsidiary. "Specified Cash Equivalents" means, as of any date of determination, the aggregate amount of Cash Equivalents under clause (a) or (d) of the definition thereof. "Spot Rate" means, on any date, as determined by the Administrative Agent, the spot selling rate posted by Reuters on its website for the sale of the applicable currency for U.S. Dollars at approximately 11:00 a.m., New York City time, on such date (the "Applicable Quotation Date"); provided, that if, for any reason, no such spot rate is being quoted, the spot selling rate shall be determined by reference to such publicly available service for displaying exchange rates as may be reasonably selected by the Administrative Agent; or, in the event no such service is selected, such spot selling rate shall instead be the rate reasonably determined by the Administrative Agent as the spot rate of exchange in the market where its foreign currency exchange operations in respect of the applicable currency are then being conducted, at or about 11:00 a.m., New York City time, on the Applicable Quotation Date for the purchase of the relevant currency for delivery two Business Days later. "Statements" has the meaning given to such term in Section 3.06(a). "Subordinated Indebtedness" of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of the Administrative Agent. "subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. "Subsidiary" means any direct or indirect subsidiary of the Company or a Loan Party, as applicable. Notwithstanding the foregoing or anything herein to the contrary none of IPCo JV, BRX, JEMS or Le Tigre or any of their respective Subsidiaries shall constitute a Subsidiary of the Company or any Subsidiary of the Company for purposes of this Agreement, but shall each be considered a Joint Venture for purposes hereof. "Successor Rate" shall mean an alternative rate of interest established pursuant to the last sentence of the definition of Term SOFR; provided, that, the Successor Rate shall at no time be less than the Floor. 45 1158474?

slide65

"Subsidiary Equity Interests" has the meaning specified in Section 3.02. "Swap Agreement" means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrowers or the Restricted Subsidiaries shall be a Swap Agreement. "Swap Agreement Obligations" means "Swap Agreement Obligations" as defined in the ABL Credit Agreement as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, withholdings, (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto. "Term Exposure" means, with respect to any Lender at any time, the sum of (a) the outstanding principal amount of such Lender's Term Loans at such time plus (b) an amount equal to its Applicable Percentage of the aggregate principal amount of Protective Advances outstanding at such time. "Term Loan" means a Loan made pursuant to Section 2.01, which, for the avoidance of doubt, includes the Closing Date Term Loans and any Delay Draw Term Loans. "Term Priority Collateral" has the meaning specified in the ABL Intercreditor Agreement. "Term SOFR" means at any time of determination for any month, greater of (x) the Floor and (y) the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the first day of such month for a term equivalent to three months, provided that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate for such tenor on the first U.S. Government Securities Business Day immediately prior thereto for which such Term SOFR Screen Rate for such tenor was published, in each case. Term SOFR shall be determined on a monthly basis as of the first day of each month. Notwithstanding the foregoing, if the Administrative Agent has made the reasonable determination that adequate and reasonable means do not exist for determining Term SOFR and the Administrative Agent has made the same determination in relation to other similarly situated borrowers, the Administrative Agent, in consultation with the Borrower, may establish a reasonably equivalent alternative interest rate for the Loans (using a methodology substantially consistent with the methodology Administrative Agent has used (or is using) with respect to similarly situated borrowers), in which case, such alternative rate of interest shall apply with respect to the Loans (which rate of interest shall be deemed to be the "Term SOFR" for all purposes of this Agreement). "Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time). "Test Period" means, as of any date of determination, the most recently completed twelve (12) fiscal months of the Loan Parties ended on or prior to such time (taken as one accounting period) for which financial statements have been delivered (or are required to have been delivered). 46

11584747



Title Insurance Policy means a mortgagee's loan policy, in form and substance satisfactory to the Administrative Agent, together with all endorsements made from time to time thereto, issued to the Administrative Agent by or on behalf of a title insurance company selected by or otherwise reasonably satisfactory to the Administrative Agent, insuring the Lien created by a Mortgage in an amount (not to exceed 105% of the Fair Market Value of the Mortgaged Property) and on terms and with such endorsements satisfactory to the Administrative Agent, delivered to the Administrative Agent. "Total Assets" means, at any date of determination, the consolidated total assets of the Company and its Subsidiaries as of the last day of the most recent fiscal quarter of the Company for which financial statements have been delivered pursuant to Section 5.01(a) or (b) as adjusted to give effect to any acquisition or Disposition of a Person or assets that may have occurred on or after the last day of such fiscal quarter. "Trade Date" has the meaning set forth in Section 9.04(e). "Transactions" means the execution, delivery and performance by the Loan Parties of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions and the use of the proceeds thereof. "Type", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, "Closing Date Term Loans" or Delay Draw Term Loans. "UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or in any other state the laws of which are required to be applied in connection with the issue of perfection of security interests. "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. "Unfunded Pension Liability" means, in respect of a Canadian Defined Benefit Plan, any solvency deficiency or wind-up deficiency (as determined for the purposes of the Pension Benefits Act (Ontario) or other equivalent provincial legislation), as identified in the most recent actuarial valuation report that has been filed with the applicable pension regulator in respect of such Canadian Defined Benefit Plan. "Unliquidated Obligations" means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is: (i) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (ii) any other obligation (including any guarantee) that is contingent in nature at such time; or (iii) an obligation to provide collateral to secure any of the foregoing types of obligations. "Unrestricted Subsidiary" means: 47 11584747



slide67

(1) any Subsidiary of the Company that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of the Company in the manner provided below; and (2) any Subsidiary of an Unrestricted Subsidiary. The Company may designate any Subsidiary of the Company (including any newly acquired or newly formed Subsidiary of the Company) to be an Unrestricted Subsidiary by written notice to the Administrative Agent unless at the time of such designation such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on any property of, the Company or any other Restricted Subsidiary that is not a Subsidiary of the Subsidiary to be so designated, in each case at the time of such designation; provided, however, that the Subsidiary to be so designated and its Subsidiaries do not at the time of designation have and do not thereafter incur any Indebtedness pursuant to which the Lender has recourse to any of the assets of the Company or any of the Restricted Subsidiaries unless otherwise permitted under Section 6.02; provided, further, however, that either: (a) the Subsidiary to be so designated has total consolidated assets of \$1,000 or less; or (b) if such Subsidiary has consolidated assets greater than \$1,000, then such designation would be permitted under Section 6.02. Notwithstanding the foregoing, no Unrestricted Subsidiary may own any Material Intellectual Property without the prior written consent of the Administrative Agent. The Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary by written notice to the Administrative Agent; provided, however, that immediately after giving effect to such designation, the Company shall be in Pro Forma Compliance with the Payment Conditions. In no event may any Subsidiary that is a "Restricted Subsidiary" under (and as defined in) the ABL Credit Agreement be designated an Unrestricted Subsidiary (unless such Subsidiary is designated an "Unrestricted Subsidiary" under the ABL Credit Agreement prior or substantially concurrently with such designation). As of the date hereof, no entity is an Unrestricted Subsidiary. "U.S." means the United States of America. "U.S. Benefit Plan" means any of (a) an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan". "U.S. Borrower" means the Company. "U.S. Borrowing Base" shall have the meaning set forth in the ABL Credit Agreement as in effect on the date hereof or as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement. "U.S. Closing Date Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make the Closing Date Term Loans in U.S. Dollars to the U.S. Borrower on the Closing Date in accordance with Section 2.01(a). 48 11584747

slide68

"U.S. Collateral" means any and all property owned, leased or operated by a U.S. Loan Party covered by the Collateral Documents and any and all other property of any U.S. Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the Administrative Agent to secure the Secured Obligations. "U.S. Commitment" means, with respect to each Lender, the sum of its U.S. Closing Date Commitment and U.S. Delay Draw Commitment. "U.S. Delay Draw Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make Delay Draw Term Loans in U.S. Dollars to the U.S. Borrower in accordance with Section 2.01(b). "U.S. Dollar" or "\$" means the lawful money of the United States of America. "U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities. "U.S. Guaranteed Obligations" has the meaning set forth in Section 10.01. "U.S. Guarantor" means each Domestic Subsidiary of a Borrower that is listed on the signature pages hereto as a Guarantor or that becomes a party hereto as a Guarantor pursuant to Section 5.14, in each case, until such Subsidiary's U.S. Guaranty is released in accordance herewith. "U.S. Guaranty" means Article X of this Agreement. "U.S. Loan Parties" means the Company and U.S. Guarantor. "U.S. Obligated Party" has the meaning set forth in Section 10.02. "U.S. Obligations" means, with respect to the U.S. Loan Parties, all unpaid principal of and accrued and unpaid interest on the Loans to the U.S. Borrower, all accrued and unpaid fees (including any Prepayment Premium) and all expenses, reimbursements, indemnities and other obligations of the U.S. Loan Parties to the Lenders or to any Lender, the Administrative Agent or any indemnified party arising under the Loan Documents (including, without limitation, obligations of and interest, costs, fees and other amounts accruing during the pendency of any proceeding under any Insolvency Laws, regardless of whether allowed or allowable in such proceeding) but, in each case, excluding any obligations of the U.S. Loan Parties in respect of the Canadian Obligations. "U.S. Person" means a "United States person" within the meaning of Section 7701(a)(30) of the Code. "U.S. Secured Obligations" means the U.S. Obligations. "U.S. Security Agreement" means that certain Security Agreement, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders, dated as of the Closing Date, among the U.S. Loan Parties and the Administrative Agent, and, as the context requires, any other pledge or security agreement entered into, after the Closing Date by any other U.S. Loan Party (as required by this Agreement or any other Loan Document), or any other Person, as the same may be amended, restated, supplemented or otherwise modified from time to time. 49 11584747



slide69

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(i)(B)(3). "U.S. Term Loan" means any Term Loan made to the U.S. Borrower. "USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. "Weighted Average Life to Maturity" means, when applied to any Indebtedness or Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing (1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment, by (2) the sum of all such payments. "Wholly Owned Subsidiary" of any Person means a Restricted Subsidiary of such Person 100% of the outstanding Equity Interests or other ownership interests of which (other than directors' qualifying shares or shares required pursuant to applicable Requirements of Law) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person. "Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA. "Write-Down and Conversion Powers" means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers. SECTION 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans and Borrowings may be classified and referred to by Class (e.g., a "U.S. Term Loan" or a "Canadian Term Loan") or by Type (e.g., a "Closing Date Term Loan" or "Delay Draw Term Loan") or by Class and Type (e.g., a "U.S. Closing Date Term Loan"). SECTION 1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "law" shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations



restatements, supplements or modifications set forth herein or in the other Loan Documents), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority which shall have succeeded to any or all functions thereof, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (f) any reference in any definition to the phrase "at any time" or "for any period" shall refer to the same time or period for all calculations or determinations within such definition, and (g) 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. For purposes of any Collateral located in the Province of Quebec or charged by any deed of hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of a Loan Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "priority" shall be deemed to include "rank" or "prior claim", as applicable, (b) "beneficial ownership" shall be deemed to include "ownership", (c) "leasehold interest" shall be deemed to include "valid rights resulting from a lease", (d) "lease" shall be deemed to include a "lease" or a "contract of leasing (crédit-bail)", as applicable, (e) "personal property" shall be deemed to include "movable property", (f) "real property" shall be deemed to include "immovable property", (g) "tangible property" shall be deemed to include "corporate property", (h) "intangible property" shall be deemed to include "incorporeal property", (i) "security interest", "lien" and "mortgage" shall be deemed to include a "hypothec", "prior claim", "reservation of ownership" and a "resolutory clause", as applicable, (j) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication by registration under the Civil Code of Québec, (k) all references to "perfection" or "perfected" Liens shall be deemed to include a reference to the "opposability" of such Liens to third parties, (l) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (m) "goods" shall be deemed to include "corporate movable property" other than chattel paper, documents of title, instruments, money and securities, (n) an "agent" shall be deemed to include a "mandatory", and (o) "deposit account" shall be deemed to include a "financial account" (within the meaning of Article 2713.6 of the Civil Code of Québec). To the extent any dollar floors in the ABL Credit Agreement are increased pursuant to Section 2.08 thereof and there is a corresponding dollar floor in this Agreement which, after giving effect to the increase under the ABL Credit Agreement, results in a lower dollar floor in this Agreement than in the ABL Credit Agreement, such dollar floor in this Agreement shall be automatically increased to be the same amount as is reflected in the ABL Credit Agreement. SECTION 1.04 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if after the date hereof there occurs (a) any change in GAAP or in the application thereof on the operation of any provision hereof or (b) any change in the historical accounting practices, systems or reserves relating to the components of the Borrowing Base that is adverse to the Lenders (or "Lenders" as defined in the ABL Credit Agreement) in any material respect, and the Borrower Representative notifies the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of such change (or if the Administrative Agent notifies the Borrower Representative that the Required Lenders request an amendment to any provision hereof for 51 11584747,

slide71

such purpose), regardless of whether any such notice is given before or after such change, then the provisions herein shall be interpreted on the basis of GAAP as in effect and applied, or based on the historical accounting practices, systems or reserves in effect, in each case, immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith, and the Borrower Representative, the Administrative Agent and the Lenders agree to negotiate in good faith with respect to any proposed amendment to eliminate or adjust for the effect of any such change. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect or any successor thereto) to value any Indebtedness or other liabilities of the Company or any Subsidiary at "fair value", as defined therein and (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Financial Accounting Standards Board Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. SECTION 1.05 Rates. Neither the Administrative Agent nor any Lender warrants or accepts responsibility for, and neither the Administrative Agent nor any Lender shall have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to Alternate Base Rate or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Alternate Base Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent, the Lenders and their respective affiliates or other related entities may engage in transactions that affect the calculation of Alternate Base Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain Alternate Base Rate, Term SOFR or any other Benchmark or 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 the Borrowers, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error by, or any calculation of any such rate (or component thereof) provided by, any such information source or service. SECTION 1.06 Status of Obligations. In the event that any Borrower or any other Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, such Borrower shall take or cause such other Loan Party to take all such actions as shall be necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness, in each case, to the extent set forth in the applicable subordination agreement. Without limiting the foregoing, the Secured Obligations are hereby designated as "senior indebtedness" and as "designated senior indebtedness" and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any 52 1158474?

slide72

payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness, in each case, to the extent set forth in the applicable subordination agreement. SECTION 1.07 Exchange Rates. Without limiting the other terms of this Agreement, the calculations and determinations under this Agreement of any amount in any currency other than U.S. Dollars shall be deemed to refer to the Dollar Amount thereof, as the case may be, and all Borrowing Base Certificates delivered under this Agreement shall express such calculations or determinations in U.S. Dollars or the Dollar Amount thereof, as the case may be. Each requisite currency translation shall be based on the Spot Rate. SECTION 1.08 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time. ARTICLE II. THE CREDITS SECTION 2.01 Commitments. (a) Closing Date Term Loans. (i) Subject to the terms and conditions set forth herein, each Lender severally agrees to make, on the Closing Date, a U.S. Term Loan to the U.S. Borrower in an aggregate principal amount not to exceed the amount of such Lender's U.S. Closing Date Commitment and a Canadian Term Loan to the Canadian Borrower in an aggregate principal amount not to exceed the amount of such Lender's Canadian Closing Date Commitment. (ii) Notwithstanding the foregoing, the aggregate principal amount of the U.S. Term Loans made on the Closing Date shall not exceed \$45,000,000, and the aggregate principal amount of the Canadian Term Loans made on the Closing Date shall not exceed \$5,000,000. (b) Delay Draw Term Loans. (i) Subject to the terms and conditions set forth herein (including satisfaction of the Delay Draw Conditions), each Lender severally agrees to make term loans (each a "Delay Draw Term Loan" and collectively, the "Delay Draw Term Loans") to the Borrowers from time to time during the Delay Draw Commitment Period so long as (1) such request does not exceed the then applicable Delay Draw Commitments, (2) any such Lender's share of such borrowing does not exceed the amount of such Delay Draw Lender's Delay Draw Commitment, (3) any such Lender's share of such borrowing to be made (i) as a U.S. Term Loan to the U.S. Borrower does not exceed the amount of such Lender's U.S. Delay Draw Commitment and (ii) as a Canadian Term Loan to the Canadian Borrower does not to exceed the amount of such Lender's Canadian Delay Draw Commitment, and (4) such request does not, (i) with respect to amounts to be advanced as a U.S. Term Loan to the U.S. Borrower does not exceed the U.S. Delay Draw Commitment and, (ii) with respect to such amounts to be advanced as a Canadian Term Loan to the Canadian Borrower does not to exceed the Canadian Delay Draw Commitment. 53 11584747



(ii) Any Borrowing of Delay Draw Term Loans shall be made to the U.S. Borrower and the Canadian Borrower on a ratable basis, as applicable, based on the then outstanding U.S. Delay Draw Commitments and Canadian Delay Draw Commitments. (c) Any principal amount of any Term Loan which is repaid or prepaid may not be reborrowed. SECTION 2.02 Loans and Borrowings. (a) Each Loan shall be made by the Lenders ratably in accordance with their respective applicable Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the applicable Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. Any Protective Advance shall be made in accordance with the procedures set forth in Section 2.04. (b) All Borrowings shall be denominated in U.S. Dollars. Subject to Section 2.13, each Loan shall bear interest by reference to the Applicable Reference Rate. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided, however, (i) the exercise of such option shall be recorded in the Register in accordance with Section 9.04(b)(v) and such Affiliate shall have provided the tax forms required by 2.17(i) to the Administrative Agent, and (ii) any that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement. SECTION 2.03 Requests for Delay Draw Term Loans. To request a Delay Draw Term Loan, the Borrower Representative shall notify the Administrative Agent of such request in writing (through a form of electronic submission reasonably acceptable to the Administrative Agent) in a form approved by the Administrative Agent (which shall include reasonably acceptable funding indemnity language) and signed by the Borrower Representative not later than 1:00 p.m., New York time, ten (10) Business Days before the date of the proposed Delay Draw Term Loan (or such shorter period as agreed to by the Administrative Agent in its sole discretion). Except as provided in Section 2.08, the Borrowers may request the Lenders make Delay Draw Term Loans on no more than two (2) occasions. Each such Borrowing Request shall be irrevocable and signed by the Borrower Representative. Each such written Borrowing Request shall specify the following information in compliance with Section 2.02: (i) the aggregate amount of the requested Borrowing, which, shall be in an amount not less than \$10,000,000; (ii) the portion of the Borrowing to be made as (x) a U.S. Term Loan to the U.S. Borrower and (y) a Canadian Term Loan to the Canadian Borrower (which allocation must be in accordance with Section 2.01(b)(ii)); and (iii) the date of such Borrowing, which shall be a Business Day. Any Borrowing Request that shall fail to specify any of the information required by the preceding provisions of this paragraph may be rejected by the Administrative Agent if such failure is not corrected promptly after the Administrative Agent shall give written or telephonic notice thereof to the Borrower Representative and, if so rejected, will be of no force or effect. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender 54 11584747.

slide74

of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing. Each Borrowing Request shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in this Section and in Section 2.02(b) and on each day the Delay Draw Conditions are satisfied. SECTION 2.04 Protective Advances. (a) Subject to the limitations set forth below, after the Closing Date, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation to), to make Loans to the U.S. Borrower and/or the Canadian Borrower, as applicable, on behalf of all Lenders, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the applicable Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the applicable Loans and other applicable Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the applicable Borrower pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 9.03) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "Protective Advances"); provided that, without the consent of the Required Lenders, the aggregate principal amount of outstanding Protective Advances shall not, at any time, exceed \$25,000,000. Subject to Section 9.20, the Protective Advances shall be secured by the Liens in favor of the Administrative Agent in and to the applicable Collateral and shall constitute U.S. Obligations or Canadian Obligations, as applicable, hereunder. All Protective Advances shall be in U.S. Dollars and bear interest as provided in Section 2.13. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. At any time Administrative Agent may require the Lenders to fund their risk participations described in Section 2.04(b). (b) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral (subject to Section 9.20) received by the Administrative Agent in respect of such Protective Advance. SECTION 2.05 [Reserved]. SECTION 2.06 [Reserved]. SECTION 2.07 Funding of Borrowings. (a) Each Lender shall make each 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., New York time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage. Subject to Section 4.01, and upon receipt of all requested funds, the Administrative Agent shall make such Term Loans available to the applicable Borrower on the Closing Date and on each applicable funding date of any Delay Draw Term Loans by causing an amount of same day funds in U.S. Dollars equal to the proceeds of all such Term Loans received by Administrative Agent from Lenders to be wire transferred to such account as may be designated in the Borrowing Request. 55 11584747.

slide75

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the applicable Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at the interest rate applicable to Term Loans. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the applicable Borrower, and the applicable Borrower shall pay such interest at the interest rate applicable to Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. Any payment by the applicable Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent. SECTION 2.08 Increase in Commitments. (a) Subject to the prior written consent of the Administrative Agent (which consent may be contingent on effectuating certain amendments to this Agreement and the other Loan Documents applicable to some or all of the Loans, which amendments shall be in form and substance reasonably acceptable to the Administrative Agent), the Borrowers shall have the right to request an increase in the Delay Draw Commitments by obtaining additional Delay Draw Commitments, either from one or more of the existing Lenders or, solely to the extent that the existing Lenders do not agree to furnish the entire amount of any requested increase, another lending institution (which Commitments may be provided on the same, or as and to the extent required by the Administrative Agent and applicable Lenders, different terms and conditions from the existing Delay Draw Commitments) provided that (i) any such request for an increase shall be in a minimum amount of \$10,000,000, (ii) the aggregate amount of all additional Delay Draw Commitments obtained under this Section 2.08 shall not exceed \$50,000,000, (iii) the identity of any such new Lender shall be reasonably acceptable to the Administrative Agent, such approval not to be unreasonably withheld or delayed, (iv) any such new Lender assumes all of the rights and obligations of a "Lender" hereunder, (v) the procedures and requirements described in Section 2.08 have been satisfied, and (vi) the Borrowers shall have paid to the Administrative Agent and applicable Lenders any fees required by Administrative Agent and such Lender in connection therewith. Nothing contained in this Section 2.08 shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Delay Draw Commitment hereunder at any time. (b) Any amendment hereto for such an increase shall be in form and substance reasonably satisfactory to the Administrative Agent and shall only require the written signatures of the Administrative Agent, the Borrowers and each Lender being added or increasing its Delay Draw Commitment. As a condition precedent to such an increase or addition, the Borrowers shall deliver to the Administrative Agent (i) a certificate of each Loan Party signed by an Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of the Borrowers, certifying that, before and after giving effect to such increase or addition, (1) the representations and warranties contained in Article III and the other Loan Documents are true and correct in all material respects (except that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects) and (2) no Default exists, and (ii) legal

66 11584747

slide76

opinions and documents consistent with those delivered on the Closing Date, to the extent reasonably requested by the Administrative Agent. (c) Within a reasonable time after the effective date of any increase or addition, the Administrative Agent shall, and is hereby authorized and directed to, revise the Commitment Schedule to reflect such increase or addition and shall distribute such revised Commitment Schedule to each of the Lenders and the Borrower.

Representative, whereupon such revised Commitment Schedule shall replace the old Commitment Schedule and become part of this Agreement. SECTION 2.09 Termination of Commitments; Credit Agreement. (a) The aggregate amount of the Closing Date U.S. Commitments and the Closing Date Canadian Commitments of the Lenders shall terminate upon funding of the Closing Date Term Loans. Upon the funding of any Delay Draw Term Loan by a Lender, the Delay Draw Commitment of such Lender shall be reduced by an amount equal to the amount of the Delay Draw Term Loan funded by such Lender; provided, however, that all Delay Draw Commitments shall terminate on the last day of Delay Draw Commitment Period. For the avoidance of doubt, any U.S. Term Loan that is made shall automatically and permanently reduce the Aggregate Commitment and the U.S. Commitment of each Lender, and each Canadian Term Loan that is made shall automatically and permanently reduce the Aggregate Commitment and the Canadian Commitment of each Lender, as applicable. (b) The Borrowers may, upon at least ten (10) Business Days prior written notice to the Administrative Agent, terminate this Agreement by paying to the Administrative Agent, in cash, the Obligations, in full, plus the Prepayment Premium, if any, payable in connection with such termination of this Agreement. If the Borrower Representative has sent a notice of termination pursuant to this Section 2.09(b), then the Borrowers shall be obligated to repay the Obligations, in full, plus the Prepayment Premium, if any, payable in connection with such termination of this Agreement on the date set forth as the date of termination of this Agreement in such notice, provided that such notice may provide that it is conditioned upon the consummation of other financing or the consummation of a sale of Equity Interests, in which case, such notice may be revoked or extended by the applicable Borrower if any such condition is not satisfied prior to the date of termination of this Agreement in such notice. SECTION 2.10 Repayment and Amortization of Loans; Evidence of Debt. (a) Subject to Section 9.20, each Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Borrower on the Maturity Date, and (ii) to the Administrative Agent the then unpaid amount of each Protective Advance on the earlier of the Maturity Date and demand by the Administrative Agent; (b) The U.S. Borrower shall repay the principal amount of the U.S. Term Loans in consecutive quarterly installments, each in an amount equal to \$562,500.00 plus 1.25% of the initial principal amount of all U.S. Delay Draw Term Loans made after the Closing Date beginning on the date that is sixth months after the Closing Date, and thereafter, on the last Business Day of each fiscal quarter; provided, however, that the last such installment shall be in the amount necessary to repay in full the unpaid principal amount of the U.S. Term Loans. The outstanding unpaid principal amount of the U.S. Term Loans, and all accrued and unpaid interest thereon, shall be due and payable on the earliest of (i) the Maturity Date and (ii) the date on which the U.S. Term Loans are declared due and payable pursuant to the terms of this Agreement. 57 11584747



slide77

(c) The Canadian Borrower shall repay the principal amount of the Canadian Term Loans in consecutive quarterly installments, each in an amount equal to \$62,500.00 plus 1.25% of the initial principal amount of all Canadian Delay Draw Term Loans made after the Closing Date, beginning on the date that is six months after the Closing Date, and thereafter, on the last Business Day of each fiscal quarter; provided, however, that the last such installment shall be in the amount necessary to repay in full the unpaid principal amount of the Canadian Term Loans. The outstanding unpaid principal amount of the Canadian Term Loans, and all accrued and unpaid interest thereon, shall be due and payable on the earliest of (i) the Maturity Date and (ii) the date on which the Canadian Term Loans are declared due and payable pursuant to the terms of this Agreement. (d) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder. (e) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type and Class thereof, (ii) the amount of any principal or interest due and payable or to become due and payable from each applicable Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. (f) The entries made in the accounts maintained pursuant to paragraph (d) or (e) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of each applicable Borrower to repay the Loans in accordance with the terms of this Agreement. In the event of any conflict between the accounts maintained by the Lenders pursuant to clause (d) and the accounts maintained by the Administrative Agent pursuant to clause (e), the accounts maintained pursuant to clause (e) shall control. (g) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the applicable Borrower shall execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in the form of Exhibit B. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or to such payee and its registered assigns). SECTION 2.11 Prepayment of Loans. (a) Voluntary Prepayments. Each Borrower shall have the right, at any time and from time to time, upon at least ten (10) Business Days' prior written notice to the Administrative Agent, to prepay any Borrowing in whole or in part, provided that such notice may provide that it is conditioned upon the consummation of other financing or the consummation of a sale of Equity Interests, in which case, such notice may be revoked or extended by the applicable Borrower if any such condition is not satisfied prior to the date of termination of this Agreement in such notice. Each prepayment made pursuant to this Section 2.11(a) shall be accompanied by the payment of (i) accrued interest to the date of such payment on the amount prepaid, (ii) the Prepayment Premium, if any, payable in connection with such prepayment of the Term Loans, and (iii) any break funding expenses under Section 2.15(d). Each such prepayment shall be applied: first, against the remaining installments of principal due on the U.S. Term Loans on a pro rata basis in inverse order of maturity, and second, against the remaining installments of principal due on the Canadian Term Loans on a pro rata basis in inverse order of maturity. 58 11584747



(b) Mandatory Prepayments. (i) Dispositions. No later than the third (3rd) Business Day following the date of receipt by Company or any of its Restricted Subsidiaries of any Net Proceeds from Dispositions of Term Priority Collateral in excess of \$250,000 in the aggregate in any fiscal year, the Borrowers shall prepay the Term Loan as set forth in Section 2.11(c) in an aggregate amount equal to such Net Proceeds. Nothing contained in this Section 2.11(b)(i) shall permit the Loan Parties or any of their Restricted Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.04. (ii) Insurance/Condemnation Proceeds. No later than the third (3rd) Business Day following the date of receipt by the Company or any of its Restricted Subsidiaries, or Administrative Agent as loss payee, of any Net Proceeds from insurance or any condemnation, taking or other Casualty, in each case with respect to Term Priority Collateral, the Borrowers shall prepay the Term Loan as set forth Section 2.11(c) in an aggregate amount equal to such Net Proceeds; provided, so long as (i) no Event of Default shall have occurred and be continuing, (ii) the Company has delivered to the Administrative Agent written notice promptly following receipt of such Net Proceeds setting forth the Company's intention to apply or reinvest the Net Proceeds received to the costs of replacement of the properties or assets that are the subject of such condemnation, taking or other casualty or the cost of purchase or construction of other assets useful in the business of the Company or its Subsidiaries (provided that all such assets constitute Term Priority Collateral) and that such funds are being held in a segregated account subject to a control agreement providing the Administrative Agent with a first priority lien thereon, (iii) until such application or reinvestment the monies are held in a deposit account in which the Administrative Agent has a perfected first-priority security interest, and (iv) the Company or its Restricted Subsidiaries, as applicable, complete such replacement, purchase, or construction within 180 days after the initial receipt of such monies, the Company and its Restricted Subsidiaries shall have the option to apply such monies in an aggregate amount not to exceed \$5,000,000 in any fiscal year to the costs of replacement of the assets that are the subject of such condemnation, taking or other casualty or the costs of purchase or construction of other assets useful in the business of the Company and its Subsidiaries unless and to the extent that either (x) such applicable period shall have expired without such replacement, purchase or construction being made or completed, or (y) there shall occur an Event of Default that is continuing, then, in either case, any amounts held for reinvestment by the Company or its Restricted Subsidiaries shall be applied to the Term Loan in accordance with Section 2.11(c). (iii) [Reserved]. (iv) Issuance of Debt. No later than the first (1st) Business Day following the date of receipt by the Company or any of its Restricted Subsidiaries of any cash proceeds from the incurrence of any indebtedness of the Company or any of its Restricted Subsidiaries (other than with respect to any indebtedness permitted to be incurred pursuant to Section 6.01), the Borrowers shall prepay the Loans as set forth in Section 2.11(c) in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, in each case, paid to non-Affiliates, including reasonable legal fees and expenses. (v) Extraordinary Receipts. No later than the third (3rd) Business Day following the date of receipt by the Company or any of its Restricted Subsidiaries of any Extraordinary Receipts arising from Term Priority Collateral in excess of \$250,000 in the aggregate in any fiscal year, the Borrowers shall prepay the Loans and as set forth in Section 2.11(c) in the 59

11584747

slide79

amount of such Extraordinary Receipts in excess of \$250,000; provided that, notwithstanding the foregoing, the Borrowers shall only be required to prepay the Loans in an amount equal to 50% of the proceeds of foreign, United States, state or local tax refunds (for the avoidance of doubt, the Company and its Restricted Subsidiaries shall not be required to prepay the Loans with the proceeds of sales tax refunds). Notwithstanding any of the foregoing, (a) in no event shall any Net Proceeds or cash proceeds from the incurrence of any Indebtedness or Extraordinary Receipts of the Canadian Loan Parties be required to be applied to prepay any U.S. Term Loan or other U.S. Obligations (and for the avoidance of doubt, the foregoing provisions shall in all cases be subject to Section 9.20), (b) to the extent that any or all of the Net Proceeds of any Disposition by a Foreign Subsidiary (other than a Canadian Loan Party) giving rise to a prepayment event pursuant to Section 2.11(b)(i) (a "Foreign Disposition"), the Net Proceeds of any Casualty from a Foreign Subsidiary (other than a Canadian Loan Party) (a "Foreign Casualty Event") or Extraordinary Receipts of a Foreign Subsidiary (other than a Canadian Loan Party) to the extent used to prepay Canadian Term Loans) are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Proceeds or Extraordinary Receipts so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.11(b) but may be retained by the applicable Foreign Subsidiary (other than a Canadian Loan Party to the extent used to prepay Canadian Term Loans) so long as the applicable local law will not permit repatriation to the United States (each Borrower hereby agreeing to cause the applicable Foreign Subsidiary (other than a Canadian Loan Party to the extent used to prepay Canadian Term Loans) to use its commercially reasonable efforts to promptly take all actions reasonably required by the applicable local law to permit such repatriation) and, if within 12 months of the applicable prepayment event, such repatriation of any of such affected Net Proceeds or Extraordinary Receipt is permitted under the applicable local law, such repatriation will be immediately effected and such repatriated Net Proceeds will be promptly (and in any event not later than ten Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.11(b) to the extent provided herein and (c) to the extent that the applicable Borrower has determined in good faith and in consultation with the Administrative Agent that repatriation to the United States of any or all of the Net Proceeds of

any Foreign Disposition or any Foreign Casualty Event or Extraordinary Receipts of a Foreign Subsidiary (other than a Canadian Loan Party to the extent used to prepay Canadian Term Loans) would have material adverse tax consequences (relative to the relevant Foreign Disposition, Foreign Casualty Event or Extraordinary Receipt and taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds or Extraordinary Receipt, the Net Proceeds or Extraordinary Receipt so affected may be retained by the applicable Foreign Subsidiary (other than a Canadian Loan Party to the extent used to prepay Canadian Term Loans); provided that, to the extent that within 12 months of the applicable prepayment event, the repatriation of any Net Proceeds or Extraordinary Receipt from such Foreign Subsidiary (other than a Canadian Loan Party to the extent used to prepay Canadian Term Loans) would no longer have material adverse tax consequences (relative to the relevant Foreign Disposition, Foreign Casualty Event or Extraordinary Receipt), such Foreign Subsidiary (other than a Canadian Loan Party to the extent used to prepay Canadian Term Loans) shall promptly repatriate an amount equal to such Net Proceeds or Extraordinary Receipt to the Administrative Agent, which amount shall be applied to the prepayment of Term Loans pursuant to Section 2.11(b). (c) Application of Payments. So long as no Event of Default has occurred and is continuing, and subject to Section 9.20 and the terms of the ABL Intercreditor Agreement, any mandatory prepayment of a Term Loan pursuant to Sections 2.11(b)(i) through (b)(vi) above shall be applied first, against the remaining installments of principal due on the U.S. Term Loans on a pro rata basis in inverse order of maturity until paid in full; and second, against the remaining installments of principal due on the Canadian Term Loans on a pro rata basis in inverse order of maturity until paid in full. Notwithstanding 60 11584747



slide80

the foregoing, (i) after the occurrence and during the continuance of an Event of Default, if the Administrative Agent has elected, or has been directed by the Required Lenders, to apply payments in respect of any Obligations in accordance with Section 2.18(b), prepayments required under Section 2.11(b) shall be applied in the manner set forth in Section 2.18(b) and (ii) (A) any payments from the U.S. Loan Parties or in respect of U.S. Collateral shall be applied in accordance with Section 2.18(b) first to the U.S. Obligations until paid in full and second to the Canadian Obligations until paid in full and (B) any payments from the Canadian Loan Parties or in respect of Canadian Collateral shall be applied in accordance with Section 2.18(b) solely in respect of the Canadian Obligations until paid in full. (d) Interest and Fees. Any prepayment made pursuant to Section 2.11(b) shall be accompanied by (i) accrued interest on the principal amount being prepaid to the date of prepayment, (ii) any break funding expenses under Section 2.16, and (iii) the Prepayment Premium, if any, payable in connection with such prepayment of the applicable Term Loan. (e) Cumulative Prepayments. Except as otherwise expressly provided in this Agreement, payments with respect to any subsection of this Section 2.11 to the extent applicable are in addition to payments made or required to be made under any other subsection of this Section 2.11. SECTION 2.12 Fees. (a) The Company agrees to pay to the Administrative Agent all fees payable by it in the Fee Letter in the amounts and at the times specified therein. (b) The U.S. Borrowers agreeBorrower agrees to pay to the Administrative Agent, for the account of each Lender in accordance with its Applicable Percentage of the U.S. Delay Draw Commitments, a commitment fee equal to: (i) at all times from the Closing Date through and including the First Amendment Effective Date, 2.00% per annum multiplied by the actual daily amount of the then outstanding U.S. Delay Draw Commitments during the period from and including the Closing Date to but excluding the First Amendment Effective Date, and (ii) at all times from and after the First Amendment Effective Date but excluding the date on which the Delay Draw Commitments terminate, 3.00% per annum multiplied by the actual daily amount of the then outstanding U.S. Delay Draw Commitments during the period from and including the First Amendment Effective Date to but excluding the date on which the Delay Draw Commitments terminate. The Canadian Borrower agrees to pay to the Administrative Agent, for the account of each Lender in accordance with its Applicable Percentage of the Canadian Delay Draw Commitments, a commitment fee equal to: (i) at all times from the Closing Date through and including the First Amendment Effective Date, 2.00% per annum multiplied by the actual daily amount of the then outstanding Canadian Delay Draw Commitments during the period from and including the Closing Date to but excluding the First Amendment Effective Date, and (ii) at all times from and after the First Amendment Effective Date but excluding the date on which the Delay Draw Commitments terminate, 3.00% per annum multiplied by the actual daily amount of the then outstanding Canadian Delay Draw Commitments during the period from and including the First Amendment Effective Date to but excluding the date on which the Delay Draw Commitments terminate. Accrued commitment fees shall be payable in arrears on the first Business Day of each fiscal month of the Company and on the date on which the Delay Draw Commitments terminate, commencing on the first such date to occur after the Closing Date. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed, (including the first day but excluding the last day). (c) All fees payable hereunder shall be paid on the dates due and shall be paid in U.S. Dollars, in immediately available funds, to the Administrative Agent for distribution, in the case of commitment fees and participation fees, to the Lenders. 61.11584747

slide81

(d) Upon payment, such fees in this Section 2.12 shall not be refundable under any circumstances, absent manifest error in calculation. SECTION 2.13 Interest. (a) The Loans shall bear interest at a rate per annum equal to the Applicable Reference Rate plus the Applicable Margin. (b) Each Protective Advance shall bear interest at the Alternate Base Rate plus the Applicable Margin. (c) Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrower Representative, declare that (i) all Loans shall bear interest at 2% per annum plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount outstanding (including any Prepayment Premium, if applicable) hereunder, such amount shall accrue interest at 2% per annum plus the Alternate Base Rate plus the Applicable Margin, in each case, from the date such Event of Default occurred until the date such Event of Default is waived in writing in accordance herewith; provided, that (x) the default rate of interest set forth in this clause (c) shall apply automatically and without any further action by any party (including notice to the Borrower Representative) upon the occurrence and during the continuance of any Event of Default under clauses (a) and (e) of Article VII and (y) application of the default rate of interest pursuant to this clause (c) may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of "each Lender affected thereby" for reductions in interest rates. (d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment. (e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to clause (b) of the Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Adjusted Term SOFR, Term SOFR, SOFR or Alternate Base Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error. For the purposes of the Interest Act (Canada), the yearly rate of interest to which any rate calculated on the basis of a period of time different from the actual number of days in the year (360 days, for example) is equivalent is the stated rate multiplied by the actual number of days in the year (365 or 366, as applicable) and divided by the number of days in the shorter period (360 days, in the example). SECTION 2.14 Conforming Changes. In connection with the use or administration of the Applicable Reference Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower Representative and Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of the Applicable Reference Rate. SECTION 2.15 Increased Costs, Losses. 62 11584747



(a) **Increased Costs Generally.** If any Change in Law shall (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender; (ii) subject to the Administrative Agent or any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (e) of the definition of Excluded Taxes and (C) Connection Income Taxes) with respect to any Loan Document or (iii) impose on any Lender or any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or participation therein, and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making or maintaining any Loan or of maintaining its obligation to make any such Loan, or to reduce the amount of any sum received or receivable by such Lender or such other Recipient hereunder (whether of principal, interest or otherwise), then, upon request of such Lender or such other Recipient, the applicable Borrower will pay to such Lender or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered. (b) **Capital Requirements.** If any Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitment of, or the Loans made by, such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time the applicable Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered. (c) **Certificates for Reimbursement; Delay in Requests.** A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower Representative accompanied by a certificate setting forth in reasonable detail any amount or amounts and upon such delivery of such items, shall be conclusive absent manifest error. Each applicable Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof; provided that the Borrowers shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof). (d) **Compensation for Losses.** Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, repay or borrow any Loan on the date or in the amount notified by the Borrower Representative, including any loss or expense arising from the liquidation or reemployment of funds. **SECTION 2.16 Illegality; Inability to Determine Rates.** (a) **Illegality.** If any Lender determines in good faith that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to determine or charge interest rates based upon Term SOFR, then, on notice thereof in reasonable detail by such Lender to the Borrower Representative through the Administrative Agent, such Lender may cease to make or maintain Loans based on such rates and shall promptly notify the Borrower Representative and the Administrative Agent of such action.



Agent and subject to the last sentence of the definition of "Term SOFR", the interest rate shall, if necessary to avoid such illegality, be determined by the Administrative Agent by reference to the Alternate Base Rate (instead of Adjusted Term SOFR) until the Administrative Agent provides notice to the Borrower Representative that the circumstances giving rise to such determination no longer exist. (b) Inability to Determine Rates. Subject to Section 2.14, if (i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Term SOFR cannot be determined pursuant to the definition thereof or (ii) the Administrative Agent is advised by the Required Lenders that Term SOFR or Adjusted Term SOFR will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans, the Administrative Agent will promptly so notify the Borrower Representative and each Lender. Thereafter, subject to the last sentence of the definition of "Term SOFR", interest shall be determined by reference to the Alternate Base Rate (as opposed to Adjusted Term SOFR), until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Successor Rate Conforming Changes from time to time in consultation with the Borrower and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement (following consultation with the Borrower Representative). SECTION 2.17 Withholding of Taxes; Gross-Up. (a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made. (b) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes. (c) Evidence of Payment. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent. (d) Indemnification by the Loan Parties. Subject in all cases to Section 9.21, the Loan Parties shall jointly and severally indemnify each Recipient, within 10 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) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the 64 11584747.

slide84

calculation of the amount of such payment or liability delivered to the Borrower Representative by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. (e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the calculation of the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this paragraph (e). (f) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the Administrative Agent and at the time or times prescribed by applicable law, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative Agent or prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Representative or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrower Representative or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f)(i)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. (ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person: (A) any Lender that is a U.S. Person shall deliver to the Borrower Representative and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), executed copies of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. Federal backup withholding tax; (B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), whichever of the following is applicable: 65 11584747



(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable (or successor form), establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable (or successor form), establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty; (2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, executed copies of IRS Form W-8ECI (or successor form); (3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable (or successor form); or (4) to the extent a Foreign Lender is not the Beneficial Owner, executed copies of IRS Form W-BIMY (or successor form), accompanied by IRS Form W-8ECI (or successor form), IRS Form W-8BEN or W-8BEN-E, as applicable (or successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9 (or successor form), and/or other certification documents from each Beneficial Owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner; (C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and (D) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those [66 11584747](#))



contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower Representative and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower Representative or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower Representative and the Administrative Agent in writing of its legal inability to do so. (g) Treatment of Certain Refunds. If any party determines in its sole discretion exercised in good faith that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph (g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person. (h) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document. (i) Defined Terms. For purposes of this Section 2.17, the term "applicable law" includes FATCA. SECTION 2.18 Payments Generally; Allocation of Proceeds; Sharing of Set-offs. (a) Each Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, or fees, or of amounts payable under Sections 2.15, 2.16 or 2.17, or otherwise) prior to 12:00 noon, New York time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest 67 11584747



slide87

thereon. All such payments shall be made to the Administrative Agent at the Administrative Agent's Payment Office, or as otherwise directed by the Administrative Agent, except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder of principal or interest in respect of any Loan and all other payments hereunder and under each other Loan Document, shall be made in U.S. Dollars. Unless payment is otherwise made by Borrowers when due (subject to any applicable grace or cure periods), if any Obligation (whether interest, fees or other charges or cost or expense) is not paid when due (subject to any applicable grace or cure periods), the Administrative Agent may, in its sole discretion, after the due date thereof, elect to capitalize the amount of such unpaid Obligation(s) to the principal amount of the Loans and any such capitalized amounts shall thereafter be treated as principal of the Loans for all purposes of this Agreement and the other Loan Documents. The foregoing shall not be deemed a waiver of any Event of Default resulting from the failure to make any such payment when due. (a) Any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents or (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11(c)) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, shall be applied ratably (but subject to Section 9.20) first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Administrative Agent from the applicable Borrower until paid in full, second, to pay any fees (including any Prepayment Premium) or expense reimbursements then due to the Lenders from the applicable Borrower until paid in full, third, to pay interest due in respect of Protective Advances owing to the Administrative Agent until paid in full, fourth, to pay the principal of Protective Advances owing to the Administrative Agent until paid in full, fifth, to pay interest then due and payable on the applicable Loans (other than Protective Advances owing to the Administrative Agent) until paid in full, sixth, to prepay principal on the applicable Loans (other than Protective Advances owing to the Administrative Agent) until paid in full, and seventh, to the payment of any other Secured Obligation of the applicable Borrower; provided that any such application of proceeds from any Canadian Collateral or any Canadian Loan Party shall be made solely in respect of Canadian Secured Obligations. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations. Notwithstanding the foregoing, (i) any payments from the U.S. Loan Parties or in respect of U.S. Collateral shall be applied in accordance with this Section 2.18(b) first, to the U.S. Obligations until paid in full and second, to the Canadian Obligations until paid in full and (ii) any payments from the Canadian Loan Parties or in respect of Canadian Collateral shall be applied in accordance with this Section 2.18(b) solely in respect of the Canadian Obligations until paid in full. (b) [Reserved]. (c) If, except as otherwise expressly provided herein, any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than its applicable proportion as provided herein, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price 68 11584747.



restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by a Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender or a Disqualified Institution), or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the applicable Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Subject to Section 9.20, the U.S. Borrower and Canadian Borrower each agrees, with respect to itself and the Term Loans made to it, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation in Term Loans made to such Borrower pursuant to the foregoing arrangements may, subject to Section 9.08, exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation to the extent otherwise permitted under this Agreement for a Lender. It is acknowledged and agreed that the foregoing provisions of this Section 2.19(d) reflect an agreement entered into solely among the Lenders (and not the Company or any Borrower) and the consent of the Company or any Borrower shall not be required to give effect to any action taken by the Lenders or the Administrative Agent pursuant to such provisions. (d) Unless the Administrative Agent shall have received notice from the Borrower Representative prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that a Borrower will not make such payment, the Administrative Agent may assume that each applicable Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if an applicable Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it but excluding the date of payment to the Administrative Agent, at a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. (e) If any Lender shall fail to make any payment required to be made by it hereunder, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender hereunder. Application of amounts pursuant to (i) and (ii) above shall be made in any order determined by the Administrative Agent in its discretion. (f) The Administrative Agent may from time to time provide the Borrowers with billing statements or invoices with respect to any of the Secured Obligations (the "Billing Statements"). The Administrative Agent is under no duty or obligation to provide Billing Statements, which, if provided, will be solely for the Borrowers' convenience. The Billing Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Secured Obligations. If the Borrowers pay the full amount indicated on a Billing Statement on or before the due date indicated on such Billing Statement, the Borrowers shall not be in default; provided, that acceptance by the Administrative Agent, on behalf of the Lenders, of any payment that is less than the payment due at that time shall not constitute a waiver of the Administrative Agent's or the Lenders' right to receive payment in full at another time.

SECTION 2.19 Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.15, or if any Borrower is required to pay any indemnified Taxes or additional amounts to any Lender or any Governmental Authority for 69 11584747



The account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender. (b) If any Lender requests compensation under Section 2.15, or if any Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, and, in each case, such Lender has declined or is unable to designate a

different lending office in accordance with paragraph (a) of this Section, or if any Lender becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17) and obligations under this Agreement and other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) if the assignee is not already a Lender, an Affiliate of a Lender or an Approved Fund, the Borrowers shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld or delayed, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the applicable Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply. SECTION 2.20 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender: (a) fees pursuant to Section 2.12(b) shall cease to accrue on the unfunded portion of the Delay Draw Commitment of such Defaulting Lender; (b) such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and the Commitment and Term Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02) or under any other Loan Document; provided, that, except as otherwise provided in Section 9.02, this clause (b) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender directly affected thereby; (c) [reserved]; (d) [reserved]; and 70 11584747

slide90

(e) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of any Defaulting Lender or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower Representative may request (so long as no Default exists) to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower Representative, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default exists, to the payment of any amounts owing to the Borrower Representative as a result of any judgment of a court of competent jurisdiction obtained by the Borrower Representative or any other Loan Party against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.20(e) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto. SECTION 2.21 Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion), then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement. ARTICLE III. REPRESENTATIONS AND WARRANTIES Each Loan Party represents and warrants to the Lenders that: SECTION 3.01 Organization and Qualification; Power and Authority; Compliance With Laws; Event of Default. Each Loan Party and each Restricted Subsidiary of each Loan Party: (i) is a corporation, partnership, limited liability company or unlimited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (ii) has the lawful power to own or lease its properties and to engage in the business it presently conducts or proposes to conduct, (iii) is duly licensed or qualified and in good standing in each jurisdiction where the property owned or leased by it or the nature of the business transacted by it or both makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in good standing would not constitute a Material Adverse Effect, (iv) has full power to enter into, execute, deliver and carry out this Agreement and the other Loan Documents to which it is a party, to incur the Indebtedness contemplated by the Loan Documents and to perform its Obligations under the Loan Documents to which it is a party, 71 11584747



slide91

and all such actions have been duly authorized by all necessary proceedings on its part, and (v) is in compliance with all applicable Requirements of Law (other than Environmental Laws which are specifically addressed in Section 3.13 and Anti-Terrorism Laws which are specifically addressed in Section 3.16) in all jurisdictions in which any Loan Party or Restricted Subsidiary of any Loan Party is presently or will be doing business, except where the failure to do so would not constitute a Material Adverse Effect. No Event of Default or Default exists or is continuing. SECTION 3.02 Capitalization, Subsidiaries and Joint Ventures, Investment Companies, Schedule 3.02 states (i) the name of each of the Company's Subsidiaries, its jurisdiction of organization and the amount, percentage and type of equity interests in such Subsidiary (the "Subsidiary Equity Interests"), (ii) all Joint Ventures in which the Company or any Restricted Subsidiary owns any Equity Interests (the "Joint Venture Equity Interests") and (iii) any options, warrants or other rights outstanding to purchase any such Subsidiary Equity Interests or Joint Venture Equity Interests. The Company and each Restricted Subsidiary of the Company has good and marketable title to all of the Subsidiary Equity Interests and Joint Venture Equity Interests it purports to own, free and clear in each case of any Lien (other than Permitted Liens) and all such Subsidiary Equity Interests and Joint Venture Equity Interests have been validly issued and fully paid and are nonassessable (if applicable). None of the Loan Parties or Subsidiaries of any Loan Party is an "investment company" registered or required to be registered under the Investment Company Act of 1940 or under the "control" of an "investment company" as such terms are defined in the Investment Company Act of 1940 and shall not become such an "investment company" or under such "control." SECTION 3.03 Validity and Binding Effect, This Agreement and each of the other Loan Documents (i) has been duly and validly executed and delivered by each Loan Party that is a party thereto and (ii) constitutes, or will constitute, legal, valid and binding obligations of each Loan Party that is a party thereto, enforceable against such Loan Party in accordance with its terms, except to the extent that enforceability of this Agreement or any other Loan Document may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of creditors' rights generally or limiting the right of specific performance or by general principles of equity. SECTION 3.04 No Conflict; Material Agreements; Consents, Neither the execution and delivery of this Agreement, the other Loan Documents or the ABL Documents by any Loan Party nor the consummation of the transactions herein or therein contemplated or compliance with the terms and provisions hereof or thereof by any of them will conflict with, constitute a default under or result in any breach of (i) the terms and conditions of the articles or certificate of incorporation, code of regulations, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, operating agreement, limited liability company agreement or other organizational documents of any Loan Party, (ii) any Requirement of Law or any agreement or instrument or order, writ, judgment, injunction or decree to which any Loan Party or any of its Restricted Subsidiaries is a party or by which it or any of its Restricted Subsidiaries is bound or to which it is subject, in each case under clause (ii), except as would not result in a Material Adverse Effect, or (iii) result in the creation or enforcement of any Lien, charge or encumbrance whatsoever upon any property (now or hereafter acquired) of any Loan Party or any of its Restricted Subsidiaries (except Liens created pursuant to the Loan Documents and the ABL Documents). None of the Loan Parties or their Restricted Subsidiaries is bound by any contractual obligation, or subject to any restriction in any organization document, or any Requirement of Law which results in a Material Adverse Effect. No consent, approval, exemption, order or authorization of, or a registration or filing with, any Governmental Authority or any other Person is required by any Requirement of Law or any agreement in connection with the execution, delivery and carrying out of this Agreement and the other Loan Documents other than those which have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents. 72 11584747



slide92

SECTION 3.05 Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of any Loan Party, threatened against such Loan Party or any Restricted Subsidiary of such Loan Party at law or in equity before any arbitrator or any Governmental Authority which (i) involve any Loan Document or the Transactions or (ii) individually or in the aggregate would reasonably be expected to result in a Material Adverse Effect. None of the Loan Parties or any Restricted Subsidiaries of any Loan Party is in violation of any order, writ, injunction or any decree of any Governmental Authority which constitutes a Material Adverse Effect. **SECTION 3.06 Financial Statements; No Material Adverse Effect; Beneficial Ownership Certification.** (a) Historical Statements. The Loan Parties have delivered or caused to be delivered to the Administrative Agent copies of the (i) audited consolidated year-end financial statements of the Company and its Subsidiaries for and as of the end of the fiscal year ended January 28, 2023 and (ii) unaudited consolidated interim financial statements of the Company and its Subsidiaries for and as of the fiscal quarter ended on April 29, 2023 (such annual and interim statements being collectively referred to as the "Statements"). The Statements were compiled from the books and records maintained by the Loan Parties' management, are correct and complete in all material respects and fairly represent in all material respects the consolidated financial condition of the Company and its Subsidiaries as of the respective dates thereof and the results of operations for the fiscal periods then ended and have been prepared in accordance with GAAP consistently applied, subject (in the case of the interim statements) to normal year-end audit adjustments. (b) Financial Projections. The Loan Parties have delivered to the Administrative Agent summary projected financial statements (including, without limitation, a consolidated income statement, balance sheet and cash flow together with a detailed explanation of the assumptions used in preparing such projected financial statements) of the Company and its Subsidiaries on a quarterly basis for the first fiscal year following the Closing Date and on an annual basis for the fiscal year thereafter, derived from various assumptions of the Loan Parties' management (the "Projections"). The Projections have been prepared in good faith based on assumptions believed by the Company to be reasonable at the time such Projections were prepared and information believed by

the Company to have been accurate based upon the information available to the Company at the time such Projections were furnished to the Lenders, and the Company is not be aware of any facts or information that would lead it to believe that such Projections are incorrect or misleading in any material respect, it being understood that (a) the Projections represent a reasonable range of possible results in light of the history of the business, present and foreseeable conditions and the intentions of the Loan Parties' management, it being understood that such Projections (i) are as to future events and not to be viewed as facts, (ii) are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and their Subsidiaries, and (iii) no assurance can be given that the Projections will be realized, (b) actual results may significantly vary from the Projections and such variations may be adverse and material and (c) the Projections should not be regarded as a representation by the Loan Parties or its management that the projected results or financial condition of the Loan Parties will be achieved. (c) Accuracy of Financial Statements. No Material Adverse Effect. As of the respective dates of the Statements, no Loan Party nor any Subsidiary thereof has any liabilities, contingent or otherwise, or forward or long-term commitments that are not disclosed in the Statements or in the notes thereto, and except as disclosed therein there are no unrealized or anticipated losses from any commitments of any Loan Party or any Subsidiary thereof and, in each case, which constitutes a Material Adverse Effect. Since January 28, 2023, no Material Adverse Effect has occurred. (d) Beneficial Ownership. As of the date hereof, the information included in the Beneficial Ownership Certification is true and correct in all material respects. 73

11584747



slide93

SECTION 3.07 Margin Stock. None of the Loan Parties or any Subsidiaries of any Loan Party engages or intends to engage principally, or as one of its important activities, in the business of extending credit for the purpose, immediately, incidentally or ultimately, of purchasing or carrying margin stock (within the meaning of Regulation U, T or X as promulgated by the Board of Governors of the Federal Reserve System). No part of the proceeds of any Loan has been or will be used, immediately, incidentally or ultimately, to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or which is inconsistent with the provisions of the regulations of the Board of Governors of the Federal Reserve System. None of the Loan Parties or any Subsidiary of any Loan Party holds or intends to hold or, after giving effect to the use of proceeds of any Loan, will hold, margin stock in such amounts that more than twenty-five (25%) of the reasonable value of the assets of any Loan Party or Subsidiary of any Loan Party are or will be represented by margin stock. As of the Closing Date, none of the Loan Parties holds any margin stock. SECTION 3.08 Full Disclosure. Neither this Agreement nor any other Loan Document, nor any certificate, statement, agreement or other documents furnished to the Administrative Agent or any Lender in connection therewith or therewith, taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which they were made, not misleading. There is no fact known to any Loan Party which would reasonably be expected to constitute a Material Adverse Effect which has not been set forth in this Agreement or in the certificates, statements, agreements or other documents furnished in writing to the Administrative Agent and the Lenders prior to or at the Closing Date in connection with the transactions contemplated hereby. SECTION 3.09 Taxes. All federal and other material Tax returns required to have been filed with respect to each Loan Party and each Restricted Subsidiary of each Loan Party have been filed, and payment or adequate provision has been made for the payment of all Taxes, fees, assessments and other governmental charges which have or may become due pursuant to said returns or to assessments received, except to the extent that (a) the amount thereof is not individually or in the aggregate material or (b) such Taxes, fees, assessments and other charges are being contested in good faith by appropriate proceedings diligently conducted and for which such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made. Each Loan Party and each of its respective Restricted Subsidiaries has withheld all employee withholdings and has made all employer contributions to be withheld and made by it pursuant to applicable law on account of the Canadian Pension Plans, employment insurance and employee income Taxes, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. SECTION 3.10 Properties, Patents, Trademarks, Copyrights, Licenses, Etc. (a) As of the date hereof, Schedule 3.10(a) hereto sets forth the address of each parcel of real property that is owned or leased by any Loan Party. Except as set forth on Schedule 3.10(a), (i) each of such leases and subleases of each Loan Party is valid and enforceable in accordance with its terms and is in full force and effect, except to the extent that enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of creditors' rights generally or limiting the right of specific performance or by general principles of equity, (ii) no default by any party to any such lease or sublease exists, and (iii) each of the Loan Parties and each of its Restricted Subsidiaries has good and indefeasible title to, or valid leasehold interests in, all of its material real and personal property, free of all Liens other than Permitted Liens except, in the case of (i) or (ii), to the extent that the failure of the foregoing to be true would result in a Material Adverse Effect. (b) Each Loan Party and each Restricted Subsidiary of each Loan Party owns or possesses all the material patents, trademarks, service marks, trade names, copyrights, licenses, registrations, 74 11584747

slide94

franchises, permits and rights necessary to own and operate its properties and to carry on its business as presently conducted and planned to be conducted by such Loan Party or Restricted Subsidiary, without known possible, alleged or actual conflict with the rights of others, except with respect to any conflict that does not, individually or in the aggregate, result in a Material Adverse Effect. Except as set forth on Schedule 3.10(b), each Loan Party's and each Restricted Subsidiary's rights with respect to such material patents, trademarks, service marks, trade names, copyrights, and other Intellectual Property necessary to own and operate its properties and to carry on its business as presently conducted and planned to be conducted are not subject to any licensing agreement or similar arrangement (other than (A) restrictions relating to software licenses that may limit such Loan Party's ability to transfer or assign any such agreement to a third party and (B) licensing agreements or similar agreements that do not materially impair the ability of the Administrative Agent or the Lenders to avail themselves of their rights of disposal and other rights granted under the Collateral Documents in respect of Inventory). SECTION 3.11 Insurance. Schedule 3.11 hereto sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the date hereof. As of the date hereof, no premiums in respect of such insurance are overdue. The properties of each Loan Party and each of its Restricted Subsidiaries are insured pursuant to policies and other bonds which are valid and in full force and effect and which provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of each such Loan Party and Restricted Subsidiary in accordance with prudent business practice in the industry of such Loan Parties and Restricted Subsidiaries. SECTION 3.12 ERISA Compliance; Canadian Pension Plans. (i) Each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other federal or state law, except where the failure to comply does not result in a Material Adverse Effect. Each Plan that is intended to qualify under Section 401(a) of the Code has received from the IRS a favorable determination or opinion letter, which has not by its terms expired, that such Plan is so qualified, or such Plan is entitled to rely on an IRS advisory or opinion letter with respect to an IRS-approved master and prototype or volume submitted plan, or a timely application for such a determination or opinion letter is currently being processed by the IRS with respect thereto; and, to the best knowledge of the Company, nothing has occurred which would prevent, or cause the loss of, such qualification. Except as would not result in a Material Adverse Effect, (a) the Company and each ERISA Affiliate have made all required contributions to each Plan subject to Sections 412 or 430 of the Code, and (b) no application for a funding waiver or an extension of any amortization period pursuant to Sections 412 or 430 of the Code has been made with respect to any Plan. (ii) Except as would not, either individually or in the aggregate, result in a Material Adverse Effect, (a) no ERISA Event has occurred or is reasonably expected to occur; (b) no Plan has any unfunded pension liability (i.e., excess of benefit liabilities over the current value of that Plan's assets, determined pursuant to the assumptions used for funding the Plan for the applicable plan year in accordance with Section 430 of the Code); (c) neither the Company nor any of its ERISA Affiliates has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (d) neither the Company nor any of its ERISA Affiliates has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 of ERISA, with respect to a Multiemployer Plan; (e) neither the Company nor any of its ERISA Affiliates has received notice that a Multiemployer Plan is insolvent or in critical or endangered status and that additional contributions are due to the Multiemployer Plan; and (f) neither the Company nor any of its ERISA Affiliates has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA. 75 11584747



(iii) Each Foreign Plan is duly registered under all applicable Requirements of Law which require registration and, as applicable, is approved for tax purposes by the relevant tax authorities in the jurisdiction in which such Foreign Plans are registered. Each Loan Party and any Restricted Subsidiary thereof have complied with and performed in all material respects all of its obligations under and in respect of the Foreign Plans under the terms thereof, any funding agreements and all applicable Requirements of Law (including any fiduciary, funding, investment and administration obligations). (iv) No Foreign Benefit Event has occurred and no Borrower, no Restricted Subsidiary of a Borrower or any Loan Party is aware of any fact, event or circumstance existing as of the date hereof that would reasonably be expected to constitute or result in a Foreign Benefit Event. (v) Schedule 3.12 lists as of the Closing Date all Canadian Pension Plans currently maintained or contributed to by the Loan Parties. Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, as of the Closing Date, the Canadian Pension Plans are duly registered under the ITA and all other applicable laws which require registration. Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) each Loan Party has complied with and performed all of its obligations under and in respect of the Canadian Pension Plans under the terms thereof, any funding agreements and all applicable laws (including any fiduciary, funding, investment and administration obligations), (ii) all employer and employee payments, contributions or premiums to be remitted, paid to or in respect of each Canadian Pension Plan have been paid in a timely fashion in accordance with the terms thereof, any funding agreement and all applicable laws, and (iii) there have been no improper withdrawals or applications of the assets of the Canadian Pension Plans. As at the date of this Agreement, no promises of benefit improvements under the Canadian Pension Plans have been made except where such improvement would not be reasonably expected to have a Material Adverse Effect, and, in any event, no such improvements will result in any additional solvency deficiency or going concern unfunded liability under any Canadian Defined Benefit Plan which would be reasonably expected to have a Material Adverse Effect. There are no outstanding disputes concerning the assets of the Canadian Pension Plans which would be reasonably expected to have a Material Adverse Effect. No Canadian Pension Event has occurred which has resulted in, or would reasonably be expected to result in, a Material Adverse Effect. Each of the Canadian Pension Plans is fully funded on both a going concern and on a solvency basis (using actuarial methods and assumptions which are consistent with the valuations last filed with the applicable Governmental Authorities and which are consistent with generally accepted actuarial principles) and no Canadian Pension Event has occurred. SECTION 3.13 Environmental Matters. Each Loan Party and each Restricted Subsidiary of each Loan Party is and has been in compliance with applicable

Environmental Laws except to the extent that any non-compliance would not in the aggregate constitute a Material Adverse Effect. No Loan Party or any Restricted Subsidiary (i) has incurred an Environmental Liability, (ii) has received notice of any claim with respect to any Environmental Liability or (iii) has knowledge of any Environmental Liability except, in any case of (i), (ii) or (iii), where such failure or liability, as the case may be, would not reasonably be expected to result in a Material Adverse Effect. SECTION 3.14 Labor Matters. Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) there are no strikes, lockouts, slowdowns or any other labor disputes against Company or any Restricted Subsidiary pending or, to the knowledge of Company, threatened, (ii) the hours worked by and payments made to employees of Company and the 76 11584747



slide96

Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act of 1938, the Employee Standards Act (Ontario) or any other applicable federal, state, provincial, territorial, local or foreign law dealing with such matters and (iii) all payments due from Company or any Restricted Subsidiary, or for which any claim may be made against Company or any Restricted Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of Company or such Restricted Subsidiary to the extent required by GAAP. The consummation of the Transactions do not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which Company or any Restricted Subsidiary is bound. SECTION 3.15 Solvency. Before and after giving effect to the transactions contemplated by this Agreement and the other Loan Documents, including all Indebtedness incurred thereby and the payment of all fees related thereto, the Loan Parties, taken as a whole, are Solvent. SECTION 3.16 Anti-Terrorism Laws, Anti-Corruption Laws and Sanctions. Each Loan Party has implemented and maintains in effect policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Terrorism Laws, Anti-Corruption Laws and applicable Sanctions, and such Loan Party, its Subsidiaries and their respective officers and directors and, to the knowledge of such Loan Party, its employees and agents, are in compliance with Anti-Terrorism Laws, Anti-Corruption Laws and applicable Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in any Loan Party being designated as a Sanctioned Person. None of (a) any Loan Party, any Subsidiary or any of their respective directors, officers or, to the knowledge of any such Loan Party or Subsidiary, employees, or (b) to the knowledge of any such Loan Party or Subsidiary, any agent of such Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Loan Documents will violate Anti-Terrorism Laws, Anti-Corruption Laws or applicable Sanctions. Notwithstanding the foregoing, the representations made in this Section 3.16 shall not be made by nor apply to any Person that qualifies as a corporation that is registered or incorporated under the laws of Canada or any province or territory thereof and that carries on business in whole or in part in Canada within the meaning of Section 2 of the Foreign Extraterritorial Measures (United States) Order, 1992 passed under the Foreign Extraterritorial Measures Act (Canada) in so far as such representations would result in a violation of or conflict with the Foreign Extraterritorial Measures Act (Canada) or any similar law. SECTION 3.17 EEA Financial Institutions. No Loan Party is an EEA Financial Institution. SECTION 3.18 Security Interest in Collateral. (a) The provisions of the Security Agreements create legal, valid and enforceable (except to the extent that enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of creditors' rights generally or limiting the right of specific performance or by general principles of equity) Liens on the Collateral granted by (a) the U.S. Loan Parties in favor of the Administrative Agent (for the benefit of the Secured Parties), securing the U.S. Secured Obligations and (b) the Canadian Loan Parties in favor of the Administrative Agent (for the benefit of the Secured Parties), securing the Canadian Secured Obligations. (b) Each of the Mortgages entered into pursuant to Section 5.15 is effective to create in favor of the Administrative Agent (for the benefit of the Secured Parties) securing the Secured Obligations, a legal, valid and enforceable (except to the extent that enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of 77 11584747).

slide97

creditors' rights generally or limiting the right of specific performance or by general principles of equity) Lien on the property described therein, and when the Mortgages are filed in the appropriate offices, each such Mortgage shall constitute a Lien on, and security interest in, all right, title and interest of the Loan Parties in the subject property, in each case prior and superior in right to any other Person (except Permitted Liens). SECTION 3.19 Credit Card Agreements. All Credit Card Agreements relating to Eligible Credit Card Accounts are in full force and effect, currently binding upon each Loan Party that is a party thereto and, to the knowledge of the Loan Parties, binding upon other parties thereto in accordance with their terms (except to the extent that enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of creditors' rights generally or limiting the right of specific performance or by general principles of equity). The Loan Parties are in compliance in all material respects with each such Credit Card Agreement. Annexed hereto as Schedule 3.19 is a list describing all arrangements as of the date hereof to which any Loan Party is a party with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges, debit card charges, and other e-commerce charges contemplated by the definition of "Credit Card Accounts" for sales made by such Loan Party. SECTION 3.20 Plan Assets; Prohibited Transactions. No Loan Party or any of its Subsidiaries is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations), and neither the execution, delivery or performance of the transactions contemplated under this Agreement, including the making of any Loan hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code. Should any of the information or disclosures provided on any of the Schedules attached hereto become outdated or incorrect in any material respect, the Company shall promptly provide the Administrative Agent in writing with such revisions or updates to such Schedule as may be necessary or appropriate to update or correct same. No Schedule shall be deemed to have been amended, modified or superseded by any such correction or update, nor shall any breach of warranty or representation resulting from the inaccuracy or incompleteness of any such Schedule be deemed to have been cured thereby, unless and until the Required Lenders, in their sole and absolute discretion, shall have accepted in writing such revisions or updates to such Schedule; provided however, that the Company may update Schedule 3.02 without any Lender approval in connection with any transaction permitted under Sections 6.04 and Section 6.08. SECTION 3.21 Beneficial Ownership Certificate. Each Loan Party represents that as of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects. ARTICLE IV. CONDITIONS SECTION 4.01 Closing Date. This Agreement and the obligations of the Lenders to make Loans hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived by each of the Lenders): (a) Credit Agreement; Fee Letter. The Administrative Agent (or its counsel) shall have received from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party 78 11584747.

slide98

or (B) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement. The Administrative Agent (or its counsel) shall have received from each person party to the Fee Letter either (A) a counterpart of the Fee Letter signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of the Fee Letter. (b) Other Loan Documents. The Administrative Agent (or its counsel) shall have received either (A) a counterpart of each Collateral Document, the Intercompany Subordination Agreement, the Disbursement Letter, any promissory notes request pursuant to Section 2.10(f), and any other Loan Documents, in each case, signed on behalf of each party thereto or (B) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page thereof) that each such party has signed a counterpart of each such Collateral Document, the Intercompany Subordination Agreement, the Disbursement Letter, promissory note or other Loan Document. (c) Lien Searches. The Administrative Agent shall have received the results of a recent lien search (1) in each jurisdiction where the Loan Parties and the IPCo JV are organized and (2) in each jurisdiction where each Loan Party maintains its principal place of business, if different, and such searches shall reveal no Liens on any of the assets of the Loan Parties except for Permitted Liens or subject to satisfactory estoppel letters discharged on or prior to the Closing Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent. (d) Corporate Structure. The corporate structure, capital structure and other material debt instruments, material accounts and governing documents of the Borrowers and their Subsidiaries shall be reasonably acceptable to the Administrative Agent in its Permitted Discretion. (e) Tax Withholding. The Administrative Agent shall have received a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party. (f) Due Diligence. The Administrative Agent and its counsel shall have completed all legal, financial and collateral due diligence, the results of which shall be satisfactory to Administrative Agent in its Permitted Discretion, including, without limitation, receipt of the following, which shall be in form and substance reasonably acceptable to the Administrative Agent: (i) a copy of the most recently completed field examination report delivered to the ABL Agent under the ABL Credit Agreement, (ii) recently completed appraisal reports with respect to the Loan Parties intellectual property and each Material Real Property, in each case, from an appraiser engaged by and reasonably acceptable to the Administrative Agent, and prepared on a basis reasonably satisfactory to the Administrative Agent, such appraisals and to include fair market value analyses. (g) USA PATRIOT Act, Etc. The Administrative Agent and the Lenders shall have received (i) all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and Proceeds of Crime Act, for each Loan Party, (ii) a duly executed W-9 (or other applicable tax form) of the Borrower Representative, and (iii) to the extent requested by any Lender or the Administrative Agent from the Borrower Representative directly at least ten (10) Business Days prior to the date hereof, each Borrower, to the extent qualifying as a "legal entity customer" under the Beneficial Ownership Regulation, shall deliver to each such Lender or Administrative Agent a Beneficial Ownership Certification at least three (3) Business Days prior to the date hereof. 79 11584747



(h) Opinions. The Administrative Agent shall have received a written opinion of (i) Vorys, Sater, Seymour and Pease LLP, counsel to the Loan Parties, (ii) Shipman & Goodwin, local counsel for the Loan Parties formed under the laws of the state of Connecticut, (iii) Evans & Dixon, L.L.C., local counsel for the Loan Party formed under the laws of the state of Missouri, and (iv) Osler, Hoskin & Harcourt LLP, local counsel for the Loan Party formed under the laws of the Province of Ontario, Canada, in each case addressed to the Administrative Agent and the Lenders and in form and substance reasonably satisfactory to the Administrative Agent and its counsel. (i) Financial Statements and Projections. The Lenders shall have received the Statements, the Projections and a projection of Availability on a monthly basis through the end of the fiscal year ending February 3, 2024. (j) Closing Certificates, Certified Certificate of incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated as of the Closing Date and executed by its Secretary or Assistant Secretary, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the Responsible Officers of such Loan Party authorized to sign the Loan Documents to which it is a party, and (C) contain appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement, and (ii) a good standing certificate for each Loan Party from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for each Loan Party from the appropriate governmental officer in such jurisdiction. (k) Collateral and Guaranty Requirement; Perfection Certificate. Subject to Section 5.17, the Collateral and Guaranty Requirement shall have been satisfied with respect to all Loan Parties as of the Closing Date and the Administrative Agent shall have received a completed perfection certificate in form and substance reasonably satisfactory to the Administrative Agent, dated as of the Closing Date and signed by a Responsible Officer of the Borrower, together with all attachments contemplated thereby. (l) Officer's Certificate. The Administrative Agent shall have received a certificate, signed by a Responsible Officer of the Borrower Representative, dated as of the Closing Date (i) stating that no Default has occurred and is continuing and (ii) stating that the representations and warranties contained in the Loan Documents are true and correct in all material respects as of such date except to the extent that any such representation or warranty expressly relates solely to an earlier date (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects), and (iii) certifying any other factual matters as may be reasonably requested by the Administrative Agent. (m) Fees and Expenses. The Lenders and the Administrative Agent shall have received all fees required to be paid, including pursuant to the Fee Letter, and all expenses for which invoices have been presented at least one (1) day prior to the Closing Date (including the reasonable and documented fees and expenses of legal counsel), on or before the Closing Date. (n) Reserved. (o) Control Agreements. Subject to Section 5.17, the Administrative Agent shall have received each deposit account control agreement and securities account control agreement, in form and 80 11584747.



substance reasonably satisfactory to the Administrative Agent, required to be provided to the Administrative Agent pursuant to the Security Agreements. (p) Borrowing Request. The Administrative Agent shall have received a Borrowing Request executed and delivered by the Borrowers, at least ten (10) Business Days prior to the Closing Date, in form and substance reasonably acceptable to the Administrative Agent (which shall include reasonably acceptable funding indemnity language). (q) Solvency. The Administrative Agent shall have received a solvency certificate from a Financial Officer of the Company. (r) Borrowing Base Certificate. The Administrative Agent shall have received a copy of any Borrowing Base Certificate delivered to the ABL Agent under the terms of the ABL Credit Agreement as of April 26, 2023. (s) Closing Minimum Liquidity. After giving effect to all Borrowings (as defined in the ABL Credit Agreement) pursuant to the ABL Credit Agreement to be made on the Closing Date and the payment of all fees and expenses due hereunder and pursuant to the ABL Credit Agreement (but, for the avoidance of doubt, without giving effect to any Borrowings pursuant to this Agreement to be made on the Closing Date), the Administrative Agent shall be reasonably satisfied that Liquidity of the Loan Parties is not less than \$190,000,000. (t) Filings, Registrations and Recordings. Each document (including any UCC or PPSA financing statement) required by the Collateral Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Permitted Liens), shall be in proper form for filing, registration or recordation. (u) Insurance. The Administrative Agent shall have received evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of Section 5.11 hereof. (v) IPCo JV. The Administrative Agent shall have received the IPCo JV Consent and Pledge, duly executed by the parties thereto. (w) ABL Amendment. The Administrative Agent shall have received a duly executed amendment to the ABL Credit Agreement, which shall be in form and substance reasonably acceptable to the Administrative Agent, and which shall be in full force and effect, contemporaneously with the effectiveness of this Agreement. (x) ABL Documents. The Administrative Agent shall have received copies of the ABL Documents, as amended and in effect on the Closing Date. (y) ABL Intercreditor Agreement. The Administrative Agent shall have received the ABL Intercreditor Agreement, duly executed by the Administrative Agent, the ABL Agent and the Loan Parties. (z) No Proceedings. There shall not be any action, suit, investigation or proceeding pending or, to the knowledge of the Loan Parties, threatened in any court or before any arbitrator or Governmental Authority in which there is a reasonable possibility of a decision which would reasonably be expected to have a Material Adverse Effect. 81 11584747

slide101

(aa) Material Adverse Effect. No Material Adverse Effect shall have occurred since March 16, 2023. (bb) Representations and Warranties. The Administrative Agent shall have received a certificate from the Borrowers certifying that: (1) the representations and warranties of the Loan Parties set forth in the Loan Documents shall be true and correct in all material respects with the same effect as though made on and as of the date of such Borrowing (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects); (2) prior to and immediately after giving effect to the Closing Date, no Default shall have occurred and be continuing. ARTICLE V. AFFIRMATIVE COVENANTS Until the Commitments shall have expired or been terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document (other than contingent or indemnity obligations for which no claim has been made by the Person entitled thereto) shall have been paid in full, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that: SECTION 5.01 Financial Statements; Borrowing Base and Other Information. The Borrower Representative will furnish to the Administrative Agent, for distribution to each Lender: (a) Within ninety (90) calendar days after the end of each fiscal year (or, if the Company notifies the Administrative Agent that the SEC has extended the applicable deadline for the Company to file its annual report on Form 10-K, then such later date as so extended by the SEC (but not to exceed one hundred thirty-five (135) days after the end of the applicable fiscal year)), financial statements of the Company and its Subsidiaries consisting of an audited consolidated balance sheet as of the end of such fiscal year and related consolidated statements of income, shareholders' equity and cash flows for the fiscal year then ended, all in reasonable detail and setting forth in comparative form the financial statements as of the end of and for the preceding fiscal year, and certified by independent certified public accountants of nationally recognized standing reasonably satisfactory to the Administrative Agent. The certificate or report of accountants shall be free of qualifications (other than any consistency qualification that may result from a change in the method used to prepare the financial statements as to which such accountants concur) and shall not indicate the occurrence or existence of any event, condition or contingency which would materially impair the prospect of payment or performance of any covenant, agreement or duty of any Loan Party under any of the Loan Documents. (b) For each of the first three fiscal quarters of each fiscal year of the Company, within forty-five (45) calendar days after the end of any such fiscal quarter (or, if the Company notifies the Administrative Agent that the SEC has extended the applicable deadline for the Company to file its quarterly report on Form 10-Q, such later date as so extended by the SEC (but not to exceed one hundred (100) days after the end of the applicable fiscal quarter)), financial statements of the Company and its Subsidiaries, consisting of a consolidated balance sheet as of the end of such fiscal quarter and related consolidated statements of income, shareholders' equity and cash flows for the fiscal quarter then ended and the fiscal year through that date, all in reasonable detail and certified (subject to normal year-end audit adjustments and the absence of footnotes) by a Financial Officer of the Company as presenting fairly in all material respects the financial condition and results of operations of the Company and its 82 11584747

slide102

Subsidiaries on a consolidated basis in accordance with GAAP, consistently applied, and setting forth in comparative form the respective financial statements for the corresponding date and period in the previous fiscal year. (c) During any Increased Financial Reporting Period, within thirty (30) days after the end of each fiscal month of the Company, monthly financial statements of the Company and its Subsidiaries, consisting of a consolidated balance sheet and related statements of operations and cash flows as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, all in reasonable detail and certified (subject to normal year-end audit adjustments and the absence of footnotes) by a Financial Officer of the Company as presenting fairly in all material respects the financial condition and results of operations of the Company and its Subsidiaries on a consolidated basis in accordance with GAAP, consistently applied, and setting forth in comparative form the respective financial statements for the corresponding date and period (or periods) in (or, in the case of the balance sheet, as of the end of) the previous fiscal year. (d) Concurrently with any delivery of financial statements under clause (a), (b) or (c) above, a Compliance Certificate, which shall (i) when delivered concurrently with the delivery of the financial statements delivered under clause (b) or (c), certify that such financial statements present fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certify as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) state whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.06 and, if any such change has occurred, specifying the

effect of such change on the financial statements accompanying such certificate, (iv) provide reasonably detailed calculations demonstrating compliance with Section 6.12 (including, irrespective of whether a Covenant Testing Event is then in effect, reasonably detailed calculations with respect to Consolidated Net Leverage Ratio for such applicable period), (v) describe whether, since the later of the Closing Date and the date of the last Compliance Certificate, any Loan Party shall have (A) changed its name as it appears in official filings in the state or province of incorporation or organization, (B) changed its chief executive office, (C) changed the type of entity that it is, (D) changed its organization identification number, if any, issued by its state or province of incorporation or other organization, (E) changed its state or province of incorporation or organization, (F) acquired, registered or issued any new patents, trademarks or copyrights and whether any material intent-to-use trademarks are no longer "intent-to-use" trademarks, or (G) or closed any store location, and (vi) certify a list of names of all Immaterial Subsidiaries, that each Subsidiary set forth on such list individually qualifies as an Immaterial Subsidiary and that all such Subsidiaries in the aggregate do not exceed the limitation set forth in clause (b) of the definition of the term "Immaterial Subsidiary". (e) On or before each Borrowing Base Reporting Date, a Borrowing Base Certificate setting forth a computation of the Borrowing Base as of the most recently ended fiscal month or week, as applicable, to which such Borrowing Base Reporting Date relates, together with supporting information and any additional reports with respect to the Borrowing Base that the Administrative Agent may reasonably request. (f) On or before each Borrowing Base Reporting Date, the following information as of the most recently ended fiscal month or week, as applicable, to which such Borrowing Base Reporting Date relates, all delivered electronically in a text formatted file in form reasonably acceptable to the Administrative Agent: (i) a reasonably detailed aging of the Loan Parties' Credit Card Accounts and other Accounts; 83 11584747



slide103

(ii) a schedule detailing the Loan Parties' Inventory; (iii) a reasonably detailed accounts payable aging; (iv) a worksheet of calculations prepared by the Loan Parties to determine Eligible Credit Card Accounts, Eligible Trade Accounts, Eligible Inventory, Eligible Consigned Inventory, and Eligible In-Transit Inventory, such worksheets detailing the Credit Card Accounts, other Accounts and Inventory excluded from Eligible Credit Card Accounts, Eligible Trade Accounts, Eligible Inventory, Eligible Consigned Inventory, and Eligible In-Transit Inventory and the reason for such exclusion; (v) a reconciliation of the Loan Parties' Credit Card Accounts, other Accounts and Inventory between (A) the amounts shown in the Loan Parties' general ledger and financial statements and the reports delivered pursuant to clauses (i) and (ii) above and (B) the amounts and dates shown in the reports delivered pursuant to clauses (i) and (ii) above and the Borrowing Base Certificate delivered pursuant to clause (e) above as of such date; and (vi) such other information regarding the Collateral or Loan Parties as the Administrative Agent may from time to time reasonably request. (g) Concurrently with any delivery thereof to the members of the IPCo JV, and no less frequently than once per fiscal quarter, all financial statements, other reports and material notices with respect to the IPCo JV. (h) Concurrent with delivery thereof to the ABL Agent or the ABL Lenders, as applicable, any additional (or more frequent) information or reports provided to the ABL Agent or the ABL Lenders pursuant to the ABL Credit Agreement (without duplication of reports delivered under this Agreement). The Borrower Representative shall be deemed to have furnished to the Administrative Agent the financial statements and certificates required to be delivered pursuant to Sections 5.01(a) and (b) and the reports and other material required by Section 5.02(d)(iv) upon the filing of such financial statements or material by the Company through the SEC's EDGAR system (or any successor electronic gathering system) or the publication by the Company of such financial statements on its website, so long as such system or website is publicly available; provided that, the Borrower Representative shall, at the reasonable request of the Administrative Agent or any Lender, promptly deliver electronic or paper copies of such filings together with all accompanying exhibits, attachments, calculations, or other supporting documentation included with such filings. SECTION 5.02 Notices of Material Events and Delivery of Other Reports. The Borrower Representative will furnish to the Administrative Agent prompt (but in any event within any time period after such Responsible Officer has such knowledge that may be specified below) written notice of the following: (a) Promptly after any Responsible Officer of any Loan Party has learned of the occurrence of an Event of Default or a Default (and in any event within five (5) Business Days after knowledge thereof), a certificate signed by a Responsible Officer setting forth the details of such Event of Default or Default and the action which such Loan Party proposes to take with respect thereto; (b) Promptly after the commencement thereof (and in any event within five (5) Business Days after knowledge by a Responsible Officer of the Borrower Representative thereof), notice of all actions, suits, proceedings or investigations before or by any Governmental Authority or any other 84 11584747

slide104

Person against any Loan Party or any Restricted Subsidiary which involve a claim or series of claims that, individually or in the aggregate would reasonably be expected to have a Material Adverse Effect. (c) Promptly in the event that any Loan Party or its accountants conclude or advise that any previously issued financial statement, audit report or interim review should no longer be relied upon or that disclosure should be made or action should be taken to prevent future reliance. (d) Promptly upon the occurrence of any ERISA Event or Foreign Benefit Event. (e) (1) Promptly upon filing thereof, a copy of the most recent actuarial valuation report prepared in respect of any Canadian Defined Benefit Plan that has been filed with the applicable pension regulator in Canada, and (2) promptly after any request therefor by the Administrative Agent or any Lender, copies of (i) any documents described in Section 101(k)(1) of ERISA that any Loan Party or any ERISA Affiliate may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l)(1) of ERISA that any Loan Party or any ERISA Affiliate may request with respect to any Multiemployer Plan; provided that if a Loan Party or any ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan and is eligible to request such documents or notices, the applicable Loan Party or the applicable ERISA Affiliate shall promptly make a request for such documents and notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof. (f) Within five (5) Business Days after knowledge by a Responsible Officer of the Borrower Representative of the occurrence of (i) any Casualty with respect to Collateral having a value in the amount of \$13,750,000 or more, whether or not covered by insurance, and (ii) any Material Event with respect to Mortgaged Property (if any), whether or not covered by insurance. (g) Within ten (10) Business Days after knowledge by a Responsible Officer of the Borrower Representative of the receipt by any Loan Party or any Restricted Subsidiary thereof, any default notice received under or with respect to any leased location or public warehouse where Collateral in the amount of \$13,750,000 or more is located. (h) After knowledge by a Responsible Officer of the Borrower Representative of (i) any action or inaction of a plan sponsor or administrator that would reasonably be expected to result in a Canadian Pension Event; the existence of any Unfunded Pension Liability in an amount in excess of \$6,875,000; and (ii) receipt of any notice from, or any action of, any Governmental Authority that that would reasonably be expected to result in a Canadian Pension Event; which, for each of clause (i)-(ii), results, or would reasonably be expected to result in, a Material Adverse Effect. (i) (A) Within five (5) Business Days after knowledge by a Responsible Officer of the Borrower Representative (1) of the occurrence of any default or event of default under the ABL Credit Agreement or receipt of any notice asserting a default or event of default thereunder (together with a copy of such notice), as well as copies of any amendments to the documents related to the ABL Credit Agreement, or (2) of the occurrence of any default or event of default by any Person under any agreement relating to Eligible Trade Accounts contained in the U.S. Borrowing Base, or (3) that any Account Debtor with respect to Eligible Trade Accounts ceases to meet the requirements of clause (i) of the definition of "Eligible Trade Accounts" (as such term is defined in the ABL Credit Agreement), and (B) on and at the time of submission to the ABL Agent of the Borrowing Base Certificate after a Responsible Officer of the Borrower Representative has knowledge that any Loan Party has entered into a material amendment, waiver or other modification of any agreement applicable to any Eligible Trade Account included in the U.S. Borrowing Base. 85 11584747



(j) (A) Within five (5) Business Days after knowledge by a Responsible Officer of the Borrower Representative (1) of the occurrence of any default or event of default by any Person under any Credit Card Agreement relating to Credit Cards Accounts contained in the Borrowing Base, (2) the establishment of, or receipt by any Loan Party of a notice of any proposed establishment of, a reserve or reserve account (or similar concept), whether in the form of an actual deposit account, book entry or otherwise, in connection with any Credit Card Agreement for the purposes of securing all or any portion of any Loan Party's existing or potential obligations to the applicable credit card issuer or processor under such Credit Card Agreement, or (3) that any credit card issuer, credit card processor or debit card issuer or provider with respect to Credit Card Accounts ceases to meet the requirements of clause (f) of the definition of "Eligible Credit Card Accounts"; and (B) on and at the time of submission to the Administrative Agent of the Borrowing Base Certificate after a Responsible Officer of the Borrower Representative has knowledge that any Loan Party has entered into a material amendment, waiver or other modification of a Credit Card Agreement applicable to any Credit Card Account included in the Borrowing Base. (k) Within five (5) Business Days after knowledge by a Responsible Officer of the Borrower Representative of the filing of any Lien with respect to any delinquent Taxes in excess of \$2,750,000. (l) Within five (5) Business Days after knowledge by a Responsible Officer of the Borrower Representative of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of the beneficial owners identified in parts (c) or (d) of such certification. (m) Promptly after knowledge by a Responsible Officer of the Borrower Representative of any other development that results, or would reasonably be expected to result in, a Material Adverse Effect. (n) Promptly upon learning thereof, report to Administrative Agent all matters materially affecting the value, enforceability or collectability of any portion of the Collateral, including any Loan Parties' reclamation or repossession of, or the return to any Loan Party of, a material amount of goods or claims or disputes asserted by any customer or other obligor. (o) (a) Promptly copies of all environmental audits and reviews in respect of Mortgaged Real Property (if any), (b) at least thirty (30) days prior thereto, notice of any Loan Party's opening of any new office or place of business or any Loan Party's closing of any existing office or place of business (but excluding, (A) the closing of any store location, and (B) other than with respect to stores in Canada located in a province in respect of which the Administrative Agent has not made a PPSA registration, the opening of any new store location), and (c) promptly upon any Loan Party's learning thereof, notice of any labor dispute to which any Loan Party may become a party, any strikes or walkouts relating to any of its plants or other facilities, and the expiration of any labor contract to which any Loan Party is a party or by which any Loan Party is bound. (p) Promptly upon their becoming available to the Loan Parties: (i) The annual budget and a copy of the plan and forecast (including monthly projected consolidated balance sheets, income statements and cash flow statements) of the Company and its Subsidiaries for each quarter of such fiscal year, to be supplied no later than 60 days following the end of the prior fiscal year; (ii) Within five (5) Business Days after a Responsible Officer of the Borrower Representative has knowledge of the production or the receipt by a Loan Party thereof, copies of R6 11584747



any material environmental reports relating to the Mortgaged Real Property (if any) produced by or on behalf of any Loan Party or Restricted Subsidiary; (iii) Any reports including management letters submitted to any Loan Party by independent accountants in connection with any annual or interim audit of financial statements; and (iv) Reports, including Forms 10-K, 10-Q and 8-K, registration statements and prospectuses and other shareholder communications, filed by any Loan Party with the SEC or any Canadian federal or provincial securities commission, or with any national securities exchange, or distributed by the Company to its shareholders generally, as the case may be. (g) Promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, Proceeds of Crime Act and the Beneficial Ownership Regulation. (h) Promptly upon entering into such agreements, copies of the primary transaction documents (and any material amendments thereto) governing any Permitted Consigned Inventory Financing. (i) Promptly upon entering into such agreements, copies of the primary transaction documents (and any material amendments thereto) governing any Permitted Wholesale A/R Financing. (j) Promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of any Loan Party or any Restricted Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request. SECTION 5.03 Preservation of Existence, Etc. Each Loan Party shall, and shall cause each of its Restricted Subsidiaries to, maintain its legal existence as a corporation, limited partnership, limited liability company or unlimited liability company, as applicable, and its license or qualification and good standing (a) in its jurisdiction of incorporation or organization, and (b) in each jurisdiction in which its ownership or lease of property or the nature of its business makes such license or qualification necessary, except with respect to clause (b), except where the failure to so maintain any license or qualification would not reasonably be expected to result in a Material Adverse Effect, provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation, dissolution, disposition or other transaction permitted under Section 6.04 or Section 6.08. SECTION 5.04 Payment of Liabilities, Including Taxes, Etc. Each Loan Party shall, and shall cause each of its Restricted Subsidiaries to, duly pay and discharge all liabilities to which it is subject or which are asserted against it, promptly as and when the same shall become due and payable, including all Taxes and governmental charges upon it or any of its properties, assets, income or profits, prior to the date on which penalties attach thereto, unless such liabilities, including Taxes or similar charges, are being contested in good faith and by appropriate and lawful proceedings diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made, except to the extent that the failure to pay or discharge any such liabilities would not reasonably be expected to result in a Material Adverse Effect. SECTION 5.05 Maintenance of Insurance. 87.11584747



slide107

(a) Each Loan Party shall, and shall cause each of its Restricted Subsidiaries to, insure its properties and assets against loss or damage by fire and such other insurable hazards as such assets are commonly insured (including fire, extended coverage, property damage, workers' compensation, public liability and business interruption insurance) and against other risks (including errors and omissions) in such amounts as similar properties and assets are insured by prudent companies in similar circumstances carrying on similar businesses, and with reputable and financially sound insurers having a financial strength rating of at least A- by A.M. Best Company (or otherwise reasonably satisfactory to the Administrative Agent) and including self-insurance to the extent customary (but not with respect to insurance on Collateral included in any portion of the Borrowing Base, Material Real Property or Material Intellectual Property), all as reasonably acceptable by the Administrative Agent and as may be required pursuant to the terms of the Collateral Documents. At the request of the Administrative Agent, the Loan Parties shall deliver to the Administrative Agent (x) annually a certificate of insurance signed by the Loan Parties' independent insurance broker describing and certifying as to the existence of the insurance on the Collateral required to be maintained by this Agreement and the other Loan Documents, (y) copies of the endorsements described in the next two (2) sentences attached to such certificate, and (z) from time to time a summary schedule indicating all insurance then in force with respect to each of the Loan Parties. All insurance policies required in this clause shall name the Administrative Agent (or the benefit of the Administrative Agent and the Secured Parties) as an additional insured, as applicable, and with respect to casualty policies covering Collateral, as mortgagee or as lender loss payee, as applicable, and shall contain lender loss payable clauses or mortgagee clauses, as applicable, through endorsements in form and substance reasonably satisfactory to the Administrative Agent. Additionally, such policies of insurance shall provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Administrative Agent or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Administrative Agent. The applicable Loan Parties shall notify the Administrative Agent promptly of any occurrence causing a material loss or decline in value of the Collateral and the estimated (or actual, if available) amount of such loss or decline. Subject in all cases to the provisions of this Agreement (including, without limitation, Section 5.12), any monies received by the Administrative Agent constituting insurance proceeds may, at the option of the Administrative Agent, be applied by the Administrative Agent to the payment of the Obligations in accordance with the terms of this Agreement. (b) In the event any Real Estate that is subject to a Mortgage is located in any area that has been designated by the Federal Emergency Management Agency as a "Special Flood Hazard Area," the applicable Loan Party shall (a) shall obtain and maintain with financially sound and reputable insurance companies, such flood insurance in such reasonable total amount as the Administrative Agent and the Lenders may from time to time reasonably require and otherwise sufficient to comply with all applicable rules and regulations promulgated under the Flood Laws and (b) promptly upon request of the Administrative Agent or any Lender, shall deliver to the Administrative Agent or such Lender as applicable, evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent or such Lender, including, without limitation, evidence of annual renewals of such flood insurance. SECTION 5.06 Maintenance of Properties. Each Loan Party shall, and shall cause each of its Restricted Subsidiaries to, maintain in good repair, working order and condition (ordinary wear and tear excepted) in accordance with the general practice of other businesses of similar character and size, all of those properties useful or necessary to its business, and from time to time, such Loan Party will make or cause to be made all appropriate repairs, renewals or replacements thereof, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. SECTION 5.07 Inspection Rights, Appraisals. 88 11584747

slide108

(a) Each Loan Party shall, and shall cause each of its Restricted Subsidiaries to, permit any of the officers or authorized employees or representatives of the Administrative Agent (including any consultants, accountants, and agents retained by the Administrative Agent), as and when determined by the Administrative Agent, upon reasonable prior notice and during normal business hours, to visit and inspect its properties, to conduct at such Loan Party's premises field examinations of such Loan Party's assets, liabilities, books and records, including examining and making extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested (provided that if the ABL Agent provides the Administrative Agent with a copy of the results of a reasonably acceptable field examination, the Administrative Agent will accept such results instead of conducting its own field examination). The examinations contemplated by this Section 5.07(a) shall be limited to one during each twelve (12) month period unless (1) an Event of Default has occurred and is continuing (during which time there shall be no limit on the number of field examinations) or (2) Availability is at any time less than the greater of (a) \$78,750,000 and (b) 15% of the Maximum Credit Amount (calculated without giving effect to the FILO Reserve), in each case, for a period of three (3) consecutive Business Days, in which case of clause (2), one additional field examination may, and at the written direction of the Required Lenders shall, be done at the expense of the Loan Parties during the subsequent twelve (12) month period. For the avoidance of doubt, all such examinations and evaluations conducted during an Event of Default shall be at the expense of the Loan Parties. Each Loan Party acknowledges that the Administrative Agent may obtain additional field examinations at the Lenders' expense and, after exercising its rights of inspection under this clause (a), may prepare and distribute to the Lenders certain Reports pertaining to such Loan Party's assets for internal use by the Administrative Agent and the Lenders. (b) On an annual basis, at the Administrative Agent's request, the Borrower Representative will provide the Administrative Agent with appraisals or updates thereof of the Loan Parties' inventory (provided that if the ABL Agent provides the Administrative Agent with a copy of the results of a reasonably acceptable inventory appraisal, the Administrative Agent will accept such results instead of conducting its own inventory appraisal), in each case, from an appraiser engaged by and reasonably acceptable to the Administrative Agent, and prepared on a basis reasonably satisfactory to the Administrative Agent, such appraisals and updates to include, without limitation, information required by any applicable Requirement of Law. The appraisals contemplated by this Section 5.07(b) shall be limited to one during each twelve (12) month period unless (1) an Event of Default has occurred and is continuing (during which time there shall be no limit on the number of appraisals) or (2) Availability is at any time less than the greater of (a) \$78,750,000 and (b) 15% of the Maximum Credit Amount (calculated without giving effect to the FILO Reserve), in each case, for a period of three (3) consecutive Business Days, in which case of clause (2), one additional appraisal may, and at the written direction of the Required Lenders shall, be done at the expense of the Loan Parties during the subsequent twelve (12) month period. For the avoidance of doubt, all such appraisals commenced during the existence of an Event of Default shall be at the expense of the Loan Parties. Each Loan Party acknowledges that the Administrative Agent may obtain additional inventory appraisals at the Lenders' expense and, after exercising its rights under this clause (b), may share copies of the appraisals and/or certain Reports summarizing the appraisals for internal use by the Administrative Agent and the Lenders. At any time after the occurrence and during the continuance of an Event of Default, at the Administrative Agent's request, the Borrower Representative will provide the Administrative Agent with appraisals or updates thereof of the Loan Parties' Material Real Estate and Intellectual Property, in each case, from an appraiser engaged by and reasonably acceptable to the Administrative Agent, and prepared on a basis reasonably satisfactory to the Administrative Agent, in all cases at the expense of the Loan Parties. SECTION 5.08 Keeping of Records and Books of Account.

Each Loan Party shall, and shall cause each Restricted Subsidiary of such Loan Party to, maintain and keep proper books of record and 89 11584747.

account which enable such Loan Party and its Restricted Subsidiaries to issue financial statements in accordance with GAAP and as otherwise required by applicable Laws of any Governmental Authority having jurisdiction over such Loan Party or any Restricted Subsidiary of such Loan Party, and in which full, true and correct entries shall be made in all material respects of all its dealings and business and financial affairs. SECTION 5.09 Compliance with Laws and Material Contractual Obligations. Each Loan Party shall, and shall cause each of its Restricted Subsidiaries to, comply with all applicable Requirements of Law, including all Environmental Laws, in all respects, except, where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect (except in the case of Anti-Terrorism Laws and Sanctions, with respect to which compliance shall be governed by Section 5.11). Each Loan Party will, and will cause each Restricted Subsidiary to perform in all material respects its obligations under material agreements to which it is a party, except (A) where the validity or amount thereof is being contested in good faith by appropriate proceedings, or (B) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. The Company will maintain in effect and enforce policies and procedures designed to ensure compliance by the Company, its Restricted Subsidiaries and their respective directors, officers, employees and agents with Anti-Terrorism Laws and applicable Sanctions. SECTION 5.10 Use of Proceeds. The Loan Parties will use the proceeds of the Loans (a) to pay fees and expenses incurred in connection with the Transactions on the Closing Date, (b) to provide working capital to the Borrowers, (c) to make Restricted Payments permitted under Section 6.02(b)(v), and (d) for general corporate purposes of the Borrowers, in each case to the extent not prohibited under the terms of this Agreement or any other Loan Document. No part of the proceeds of any Loan will be used, whether directly or indirectly, (v) for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X, (x) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (y) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (z) in any manner that would result in the violation of any Sanctions applicable to any party hereto. Notwithstanding the foregoing, the covenants made in clauses (x), (y) and (z) of this Section 5.10 shall not be made by nor apply to any Person that qualifies as a corporation that is registered or incorporated under the laws of Canada or any province thereof and that carries on business in whole or in part in Canada within the meaning of Section 2 of the Foreign Extraterritorial Measures (United States) Order, 1992 passed under the Foreign Extraterritorial Measures Act (Canada) in so far as such representations would result in a violation of or conflict with the Foreign Extraterritorial Measures Act (Canada) or any similar law. SECTION 5.11 Anti-Terrorism Laws; International Trade Law Compliance. (a) No Relevant Entity will become a Sanctioned Person, (b) no Relevant Entity, either in its own right or through any third party, will (i) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law, (ii) do business in or with, or directly derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law, (iii) engage in any dealings or transactions prohibited by any Anti-Terrorism Law, or (iv) use the Loans or any proceeds therefrom to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law or would otherwise result in any violation of any Anti-Terrorism Laws or Sanctions; (c) the funds used to repay the Obligations will not be derived from any unlawful activity or in any manner that would cause a party to this Agreement to be in breach of any Anti-Terrorism Laws or Sanctions, (d) each Relevant Entity shall comply with all Anti-Terrorism Laws, and (e) the Company shall promptly notify the Administrative Agent in writing upon the occurrence of a Reportable Compliance Event.

90 11584747

slide110

SECTION 5.12 Casualty. In respect of any loss or damage to the Collateral resulting from fire, vandalism, malicious mischief or any other casualty or physical harm (a "Casualty") which affects a material portion of the Inventory included in the Borrowing Base, the Borrower Representative will and will cause each applicable Loan Party to comply in all respects with the provisions of this Section 5.12. The Borrower Representative shall comply with its notice obligations in respect of Casualties relating to Inventory pursuant to Section 5.02(f). Except during the existence of an Event of Default, the Company or such Loan Party may adjust, settle and compromise any such insurance claim or any proposed condemnation award and shall collect the Net Proceeds thereof and have the right to repair, refurbish, restore, replace or rebuild any asset affected by such Casualty (for the avoidance of doubt, without the obligation to make any mandatory prepayment of the Loans under Section 2.11(b) as a result thereof during the period beginning on the day of such Casualty and ending on the date that any such repair, refurbishment, restoration, replacement or rebuilding is complete). The Company and such Loan Party will in good faith file and prosecute all claims necessary to obtain any such Net Proceeds. If an Event of Default exists and is continuing, then the Administrative Agent may appear in any such proceedings and negotiations and effect such settlement and such collection of any Net Proceeds, and the Borrower Representative and the applicable Loan Party each hereby authorizes the Administrative Agent, at its option, to adjust, settle, compromise and collect any Net Proceeds under any insurance with respect to such Collateral and any Net Proceeds pursuant to any Casualty with respect to such Collateral, and, until such time as such Event of Default no longer exists, each such Loan Party hereby irrevocably appoints the Administrative Agent as its attorney-in-fact, coupled with an interest, for such purposes. **SECTION 5.13 (Reserved).** **SECTION 5.14 Additional Collateral; Further Assurances.** (a) Subject to applicable law, each Loan Party will cause each Restricted Subsidiary that is formed or acquired after the date of this Agreement (and is not an Excluded Subsidiary), that becomes a Restricted Subsidiary after the date hereof (and is not an Excluded Subsidiary) or that ceases to be an Excluded Subsidiary after the date hereof in accordance with the terms of this Agreement within sixty (60) days (in each case, as such time may be extended in the Administrative Agent's sole discretion) to become a Guarantor pursuant to a Joinder Agreement and take all such further actions (including authorizing the filing and recording of financing statements, fixture filings, and other documents) that are required under the Collateral Documents or this Agreement to cause the Collateral and Guaranty Requirement to be satisfied with respect to such Subsidiary. Upon execution and delivery thereof, each such Person (i) shall automatically become a Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the applicable Secured Parties, in any property of such Loan Party which constitutes Collateral, under the applicable Security Agreement. With respect to any Excluded Subsidiary formed or acquired after the date of this Agreement and the Equity Interests of which are directly owned by a Loan Party and required to be pledged to the Administrative Agent pursuant to the applicable Security Agreement, the applicable Loan Party shall, within sixty (60) days (in each case, as such time may be extended in the Administrative Agent's sole discretion) of the formation or acquisition of such Excluded Subsidiary (A) notify the Administrative Agent thereof and (B) deliver to the Administrative Agent an updated schedule of the pledged Equity Interests to the applicable Security Agreement if reasonably requested by the Administrative Agent and confirmation that the original certificates evidencing such pledged Equity Interests (if any) have been delivered to the Administrative Agent, together with appropriate powers executed in blank. (b) The Loan Parties will execute any and all further documents, agreements and instruments, and take all such further actions (including authorizing the filing and recording of financing 91.11584747.



statements, fixture filings, and other documents) which may be required by any Requirement of Law or which the Administrative Agent may, from time to time, reasonably request, to cause the Collateral and Guaranty Requirement to be and remain satisfied at all times. (c) Upon the acquisition by any of the Loan Parties or any of their Subsidiaries after the date hereof of any interest in any Material Real Property, such Loan Party or Subsidiary, as applicable, shall immediately so notify the Administrative Agent, setting forth with specificity a description of the interest acquired, the location of the Material Real Property, any structures or improvements thereon and either an appraisal or such Loan Party's or Subsidiary's good-faith estimate of the current value of such Material Real Property. The Administrative Agent shall notify such Loan Party or Subsidiary, as applicable, whether it intends to require a Mortgage (and any other Real Property Deliverables) with respect to such Material Real Property. Upon receipt of such notice requesting a Mortgage (and any other Real Property Deliverables) such Loan Party or Subsidiary, as applicable, shall promptly and in any event within sixty (60) days after the acquisition of such Material Real Property (or such later time as the Administrative Agent may agree in its sole discretion), deliver one or more Mortgages creating a perfected, first priority Lien (in terms of priority, subject only to Permitted Specified Liens) on such Material Real Property and such other Real Property Deliverables as may be required by the Administrative Agent with respect to such Material Real Property. The Borrowers shall pay all fees and expenses, including, without limitation, reasonable attorneys' fees and expenses, and all title insurance charges and premiums, in connection with each Loan Party's obligations under this Section 5.14(c).

SECTION 5.15 Environmental Laws. Except where the failure to do so would not reasonably be expected to have Material Adverse Effect, the Company and each Restricted Subsidiary shall (i) conduct its operations and keep and maintain all of its real property in compliance with all Environmental Laws, (ii) obtain and renew all environmental permits necessary for its operations and properties, and (iii) implement any and all investigation, remediation, removal and response actions that are necessary to maintain the value and marketability of the Mortgaged Property (if any) or to otherwise comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials into, on, at, under, above or from any of its Real Estate, provided, however, that neither a Loan Party nor any of its Restricted Subsidiaries shall be required to undertake any such investigation, cleanup, removal, remedial or other action to the extent that (a) its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP or (b) the primary obligation therefor is that of an unrelated third-party either pursuant to Environmental Laws or any document of record or contractual agreement or indemnity in favor of the applicable Loan Party, its successors and assigns. **SECTION 5.16 Canadian Pension Plans.** (a) For each existing, or hereafter adopted, Canadian Pension Plan, each Loan Party will, in a timely fashion comply with and perform in all material respects all of its obligations under and in respect of such Canadian Pension Plan, including under any funding agreements and all applicable laws (including any fiduciary, funding, investment and administration obligations), unless any failure to so comply or perform would not reasonably be expected to have a Material Adverse Effect. (b) All employer or employee payments, contributions or premiums required to be remitted, paid to or in respect of each Canadian Pension Plan shall be paid or remitted by each Loan Party in a timely fashion in accordance with the terms thereof, any funding agreements and all applicable laws, unless any failure to so would not reasonably be expected to have a Material Adverse Effect. 92 11584747

slide112

SECTION 5.17 Post-Closing Covenants. The Loan Parties will execute and deliver the documents and complete the tasks set forth on Schedule 5.17, in each case within the time limits specified on such schedule (or such longer period as the Administrative Agent may agree in its sole discretion). ARTICLE VI. NEGATIVE COVENANTS Until the Commitments shall have expired or been terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document (other than contingent or indemnity obligations for which no claim has been made by the Person entitled thereto) shall have been paid in full, each Loan Party executing this Agreement

covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that: SECTION 6.01 Indebtedness. No Loan Party will, nor will it permit any Restricted Subsidiary to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock; and Company shall not permit any of the Restricted Subsidiaries (other than any Loan Party) to issue any shares of Preferred Stock, except: (a) the Incurrence by the Company or any Restricted Subsidiary of Indebtedness pursuant to any Loan Document; (b) the Incurrence by the Company or any Subsidiary of Indebtedness pursuant to any ABL Document in an aggregate amount not to exceed the amounts permitted by the ABL Intercreditor Agreement; (c) Indebtedness, Preferred Stock and Disqualified Stock existing on the date hereof (other than Indebtedness described in clauses (a) and (b) above) and, if such Indebtedness is for borrowed money and is in excess of \$13,750,000, individually or in the aggregate, such amounts outstanding on the date hereof and set forth in Schedule 6.01; (d) Indebtedness (including Finance Lease Obligations) incurred by any Loan Party or any Restricted Subsidiary, Disqualified Stock issued by any Loan Party or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary to finance (whether prior to or within 180 days after) the acquisition, lease, construction, repair, replacement or improvement of property (real or personal) or equipment (whether through the direct purchase of assets or the Equity Interests of any Person owning such assets); provided that, (x) the principal amount of such Indebtedness does not exceed the cost of acquiring, constructing or improving such property (real or personal) or equipment and (y) the principal amount of such Indebtedness, Disqualified Stock and Preferred Stock, when aggregated with the principal amount or liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued pursuant to this clause (d), together with any Refinancing Indebtedness in respect thereof incurred pursuant to clause (n) below, does not exceed at any one time outstanding the greater of \$48,125,000 and 17.5% of Consolidated EBITDA, calculated on a pro forma basis giving effect to such Indebtedness, Disqualified Stock, or Preferred Stock, as applicable, and based on the most recently completed Test Period (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount); (e) Indebtedness incurred by any Loan Party or any Restricted Subsidiary constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including, without limitation, letters of credit in respect of workers' compensation 93 11584747



slide113

claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance and letters of credit in connection with the maintenance of, or pursuant to the requirements of, Environmental Law, and other indebtedness with respect to reimbursement type obligations regarding workers' compensation claims; (f) unsecured indebtedness arising from agreements of a Loan Party or any Restricted Subsidiary providing for indemnification, adjustment of acquisition or purchase price or similar obligations (including earn-outs), in each case, incurred or assumed in connection with the any Investments or any acquisition or disposition of any business, assets or a Subsidiary not prohibited by this Agreement, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition; (g) shares of Preferred Stock of a Restricted Subsidiary issued to the Company or another Restricted Subsidiary; provided that any subsequent issuance or transfer of any Equity Interests or any other event which results in any Restricted Subsidiary that holds such shares of Preferred Stock of another Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Company or another Restricted Subsidiary) shall be deemed, in each case, to be an issuance of shares of Preferred Stock not permitted by this clause (g); (h) without in any way limiting the applicability of Section 6.02, Indebtedness of the Company or a Restricted Subsidiary to the Company or a Restricted Subsidiary; provided that if a Loan Party incurs such Indebtedness to a Restricted Subsidiary that is not a Loan Party (except in respect of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of the Company and its Subsidiaries), such Indebtedness is subordinated in right of payment to the Obligations pursuant to the Intercompany Subordination Agreement; provided that if a U.S. Loan Party incurs such Indebtedness to a Canadian Loan Party (except in respect of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of the Company and its Subsidiaries), such Indebtedness is subordinated in right of payment to the Obligations pursuant to the Intercompany Subordination Agreement; provided, further, that any subsequent issuance or transfer of any Equity Interests or any other event which results in any Restricted Subsidiary holding such Indebtedness ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien but not the transfer thereof upon foreclosure) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (h); (i) Indebtedness incurred pursuant to a Permitted Consigned Inventory Financing; (j) Swap Agreement Obligations that are not incurred for speculative purposes but (A) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Agreement to be outstanding; (B) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (C) for the purpose of fixing or hedging commodity price risk with respect to any commodity purchases or sales and, in each case, extensions or replacements thereof; (k) obligations (including reimbursement obligations) with respect to letters of credit, bank guarantees, warehouse receipts and similar instruments) in respect of indemnities, warranties, statutory obligations, performance, bid, appeal and surety bonds, completion guarantees and similar obligations provided by a Loan Party or any Restricted Subsidiary, in each case incurred in the ordinary course of business or consistent with past practice or industry practice; 94 11584747

slide114

(i) Indebtedness or Disqualified Stock of the Company or Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred pursuant to this clause (i), together with any Refinancing Indebtedness in respect thereof incurred pursuant to clause (n) below, does not exceed at any one time outstanding the greater of \$137,500,000 and 50% of Consolidated EBITDA, calculated on a pro forma basis giving effect to such Indebtedness, Disqualified Stock or Preferred Stock, as applicable, and based on the most recently completed Test Period (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount); (m) any guarantee by a Loan Party or any Restricted Subsidiary of Indebtedness or other obligations of a Loan Party or any Restricted Subsidiary so long as the Incurrence of such Indebtedness Incurred by such Loan Party or such Restricted Subsidiary is not prohibited under the terms of this Agreement, provided that (A) if such Indebtedness is by its express terms subordinated in right of payment to the Obligations by such Restricted Subsidiary, as applicable, any such guarantee with respect to such Indebtedness shall be subordinated in right of payment to the Obligations, substantially to the same extent as such Indebtedness is subordinated to the Obligations, (B) the aggregate principal amount of Indebtedness or other obligations of a Canadian Loan Party guaranteed by a U.S. Loan Party in reliance on this clause (m) shall not exceed at any one time outstanding the greater of \$34,375,000 and 12.5% of Consolidated EBITDA, calculated on a pro forma basis giving effect to such Indebtedness and based on the most recently completed Test Period; and (C) the aggregate principal amount of Indebtedness or other obligations of a Restricted Subsidiary that is not a Loan Party guaranteed by a Loan Party in reliance on this clause (m) shall not exceed at any one time outstanding the greater of \$34,375,000 and 12.5% of Consolidated EBITDA, calculated on a pro forma basis giving effect to such Indebtedness and based on the most recently completed Test Period; (n) the Incurrence by a Loan Party or any Restricted Subsidiary of Indebtedness or Disqualified Stock, or by any Restricted Subsidiary of Preferred Stock, that serves to refund, refinance or defease any Indebtedness Incurred or Disqualified Stock or Preferred Stock issued as permitted under clauses (b), (c), (d), (i) and (n) of this Section 6.01 up to the outstanding principal amount (or, if applicable, the liquidation preference, face amount, or the like) or, if greater, committed amount (only to the extent the committed amount could have been Incurred on the date of initial Incurrence and was deemed Incurred at such time for the purposes of this Section 6.01) of such Indebtedness, Disqualified Stock or Preferred Stock, in each case at the time such Indebtedness was Incurred or Disqualified Stock or Preferred Stock was issued pursuant to clauses (b), (c), (d), (i) and (n) of this Section 6.01, or any Indebtedness, Disqualified Stock or Preferred Stock Incurred or issued to so refund or refinance such Indebtedness, Disqualified Stock or Preferred Stock plus any additional Indebtedness, Disqualified Stock or Preferred Stock incurred or issued to pay premiums (including tender premiums), accrued and unpaid interest, expenses, defeasance costs and fees in connection therewith (subject to the following proviso, "Refinancing Indebtedness") prior to its respective maturity; provided, however, that: (i) such Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded, refinanced or defeased and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness, Disqualified Stock or Preferred Stock being refunded or refinanced that were due on or after the date that is one year following the Maturity Date were instead due on such date; (ii) to the extent such Refinancing Indebtedness refinances (a) Indebtedness junior in right of payment to the Obligations, such Refinancing Indebtedness is junior in right of payment 95 11584747

slide115

to the Obligations, (b) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness is Disqualified Stock or Preferred Stock, (c) Indebtedness secured by a Lien on the Collateral that is pari passu with or junior to the Lien on the Collateral securing the Obligations, such Refinancing Indebtedness (if secured) is secured by a Lien on the Collateral that is, as applicable, pari passu with or junior to the Lien on the Collateral securing the Obligations to the same extent as such Indebtedness being refinanced (or that is junior thereto), and a Senior Representative of such Refinancing Indebtedness acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of the ABL Intercreditor Agreement and/or a junior lien intercreditor agreement or collateral trust agreement, as applicable, reasonably satisfactory to the Administrative Agent reflecting the pari passu or junior-lien status, as applicable, of the Liens securing such Indebtedness as it relates to Collateral and (d) obligations under the ABL Credit Agreement, the Lien on the Collateral securing such Indebtedness shall have the priorities contemplated by the ABL Intercreditor Agreement (or priorities junior thereto), and a Senior Representative of such Refinancing Indebtedness acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of the ABL Intercreditor Agreement; and (ii) such Refinancing Indebtedness shall not include (x) Indebtedness of a Restricted Subsidiary that is not a Loan Party that refinances Indebtedness of the Company or another Loan Party or (y) Indebtedness of the Company or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary; (o) unsecured Indebtedness of the Company that is equity-linked (including, without limitation, Indebtedness that is convertible into Equity Interests of the Company) and not guaranteed by any Subsidiary of the Company in an amount not to exceed \$137,500,000 at any time outstanding; (p) [Reserved]; (q) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided that such Indebtedness is extinguished within five Business Days of its Incurrence; (r) [Reserved]; (s) [Reserved]; (t) Indebtedness of any Loan Party or any Restricted Subsidiary consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business; (u) Indebtedness consisting of Indebtedness of the Company or a Restricted Subsidiary to current or former officers, directors and employees thereof or any direct or indirect parent thereof, their respective

estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of the Company or any direct or indirect parent of the Company to the extent described in Section 6.02(b)(v); (v) Indebtedness in respect of Obligations of the Company or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money or any Swap Agreement Obligations; 96 11584747



slide116

(w) [Reserved]; (x) [Reserved]; (y) Indebtedness of any Person that becomes a Restricted Subsidiary after the date hereof, provided that such Indebtedness (i) exists at the time such Person becomes a Restricted Subsidiary and is not created in contemplation of or in connection with such Person becoming a Restricted Subsidiary (ii) does not exceed \$20,000,000 in the aggregate at any time outstanding; (z) Indebtedness in respect of the financing of insurance premiums in the ordinary course of business or consistent with past practice or industry practice; (aa) Indebtedness to customs brokers, freight forwarders, common carriers, landlords and similar Persons, in each case incurred in the ordinary course of business or consistent with past practice; provided, however, for purposes of this clause (aa), it is understood and agreed that any deferred rent arrangements entered into, or to be entered into, with landlords, such deferred rent arrangements shall only be considered to be in the ordinary course of business or consistent with past practice to the extent such deferred rent arrangements are entered into as a result of the impacts on the Loan Parties business from COVID-19; (bb) Indebtedness in an aggregate amount not to exceed \$137,500,000 at any time outstanding incurred pursuant to a Permitted Wholesale A/R Financing; and (cc) Indebtedness owed on a short-term basis to banks and other financial institutions incurred in the ordinary course of business of the Company and its Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary banking arrangements, including cash management, cash pooling arrangements and related activities to manage cash balances of the Company and its Subsidiaries, including treasury, depository, overdraft, credit, purchasing or debit card, electronic funds transfer and other cash management arrangements and Indebtedness in respect of netting services, overdraft protection, credit card programs, automatic clearinghouse arrangements and similar arrangements. For purposes of determining compliance with this Section 6.01, at the time of incurrence, the Company will be entitled to divide and classify an item of Indebtedness in more than one of the categories of Indebtedness described above (or any portion thereof) (other than clause (b) with respect to the ABL Obligations) without giving pro forma effect to the Indebtedness incurred pursuant to any other clause or paragraph of this Section (or any portion thereof) when calculating the amount of Indebtedness that may be incurred pursuant to any such clause or paragraph (or any portion thereof). Accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock, as applicable, amortization of original issue discount, the accretion of liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an Incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 6.01. In addition, Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; provided that the Incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 6.01. 97 11584747

slide117

For purposes of determining compliance with any U.S. Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower U.S. Dollar equivalent), in the case of revolving credit debt. However, if the Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and the refinancing would cause the applicable U.S. Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of the refinancing, the U.S. Dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of the refinancing Indebtedness does not exceed the principal amount of the Indebtedness being refinanced. Notwithstanding any other provision of this Section 6.01, the maximum amount of Indebtedness that the Loan Parties and Restricted Subsidiaries may incur pursuant to this Section 6.01 shall not be deemed to be exceeded, with respect to any outstanding Indebtedness, solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which the respective Indebtedness is denominated that is in effect on the date of the refinancing. SECTION 6.02 Restricted Payments. (a) No Loan Party shall, and no Loan Party shall permit any of the Restricted Subsidiaries to, directly or indirectly: (i) declare or pay any dividend or make any distribution on account of any Loan Party's or any of the Restricted Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving the Company (other than (A) dividends or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Company, or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary that is not a Wholly Owned Subsidiary, a Loan Party or the Restricted Subsidiary which owns the equity interests of such non-Wholly Owned Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities); (ii) purchase or otherwise acquire or retire for value any Equity Interests of the Company or any direct or indirect parent of the Company; (iii) (x) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment or scheduled maturity, any Junior Indebtedness of the Company or any other Loan Party (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Junior Indebtedness in anticipation of satisfying a sinking fund obligation or principal installment to the extent not prohibited by the terms of any applicable subordination provisions and (B) Indebtedness permitted under clause (h) of Section 6.01); or (iv) in the case of Junior Indebtedness of the type described in clause (c) of the definition of Junior Indebtedness, make any payment on such Indebtedness; or (iv) make any Restricted Investment; 98 11584747.



slide118

(all such payments and other actions set forth in subclauses (i) through (iv) above being collectively referred to as "Restricted Payments"). (b) The provisions of Section 6.02(a) shall not prohibit: (i) the payment of any dividend or distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration or the giving of notice of such irrevocable redemption, as applicable, such payment would have complied with the provisions of this Agreement, provided that if such dividend, distribution or redemption is being made pursuant to Section 6.02(b)(xx), a Reserve (as defined in the ABL Credit Agreement) shall be established by the ABL Agent in an amount equal to the Restricted Payment so declared; (ii) (A) the redemption, repurchase, retirement or other acquisition of any Equity Interests ("Retired Capital Stock") or Junior Indebtedness of the Company or any Loan Party solely in exchange for, or solely out of the proceeds of, the substantially concurrent sale of, Equity Interests of the Company or contributions to the equity capital of the Company (other than any Disqualified Stock or any Equity Interests sold to a Subsidiary of the Company) (collectively, including any such contributions, "Refunding Capital Stock"); and (B) the declaration and payment of dividends on the Retired Capital Stock out of the proceeds of the substantially concurrent sale (other than to a Subsidiary of the Company) of Refunding Capital Stock; (iii) the redemption, repurchase, defeasance, or other acquisition or retirement of any Junior Indebtedness of any Loan Party made by exchange for, or out of the proceeds of the substantially concurrent sale of, new indebtedness of a Loan Party, which is incurred in accordance with Section 6.01 so long as: (A) the principal amount (or accreted value, if applicable) of such new indebtedness does not exceed the principal amount (or accreted value, if applicable), plus any accrued and unpaid interest, of the Junior Indebtedness being so redeemed, repurchased, defeased, acquired or retired for value (plus the amount of any premium required to be paid under the terms of the instrument governing the Junior Indebtedness being so redeemed, repurchased, acquired or retired, plus any tender premiums, plus any defeasance or other costs, fees and expenses incurred in connection therewith); (B) such indebtedness is subordinated as to right of payment and lien priority to the Obligations or the related Guarantee of such Loan Party, as the case may be, at least to the same extent as the applicable Junior Indebtedness so purchased, exchanged, redeemed, repurchased, defeased, acquired or retired for value (it being understood that if the Junior Indebtedness so purchased, exchanged, redeemed, repurchased, defeased, acquired or retired for value is unsecured, such Indebtedness shall be unsecured); (C) such Indebtedness has a final scheduled maturity date equal to or later than the earlier of (x) the final scheduled maturity date of the applicable Junior Indebtedness being so redeemed, repurchased, acquired or retired and (y) 91 days following the Maturity Date; and 99 11584747



(D) such Indebtedness has a Weighted Average Life to Maturity at the time incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the applicable Junior Indebtedness being so redeemed, repurchased, defeased, acquired or retired and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the applicable Junior Indebtedness being redeemed, repurchased, defeased, acquired or retired that were due on or after the date that is one year following the Maturity Date; (iv) so long as no Dominion Period is continuing immediately before or after the making of such Restricted Payment and so long as no Event of Default is continuing immediately before or after the making of such Restricted Payment, a Restricted Payment to pay for the repurchase, retirement or other acquisition for value of Equity Interests of the Company or any direct or indirect parent of

the Company held by any future, present or former employee, director, officer or consultant of the Company or any Restricted Subsidiary of the Company or any direct or indirect parent of the Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; provided, however, that the aggregate Restricted Payments made under this clause (iv) do not exceed in any calendar year an amount equal to (x) \$6,875,000 plus (y) the value of any shares surrendered by any such employee, director, officer or consultant, or otherwise withheld by the Company, in connection with any tax obligation of such employee, director, officer or consultant (or the payment thereof by the Company or any Restricted Subsidiary) in an amount not to exceed \$2,750,000, with unused amounts in any calendar year being permitted to be carried over to the next succeeding calendar year; provided further, however, that such amount in any calendar year may be increased by an amount not to exceed: (A) the cash proceeds received by the Company or any of the Restricted Subsidiaries from the sale of Equity Interests (other than Disqualified Stock) of the Company or any direct or indirect parent of the Company (to the extent contributed to the Company) to employees, directors, officers or consultants of the Company and the Restricted Subsidiaries or any direct or indirect parent of the Company that occurs after the date hereof and during such calendar year; plus (B) the cash proceeds of key man life insurance policies received by the Company or any direct or indirect parent of the Company (to the extent contributed to the Company) or the Restricted Subsidiaries after the date hereof and during such calendar year; (v) the redemption, repurchase, retirement or other acquisition of any Equity Interests indebtedness of the Company with the proceeds of the Closing Date Term Loans or with the proceeds of such Delay Draw Term Loans so long as, at all times after such Closing Date Term Loans or Delay Draw Term Loans, as applicable, are made but prior to such redemption, repurchase, retirement or other acquisition, such Closing Date Term Loans or Delay Draw Term Loans, as applicable, are either: (A) subject to Section 5.17, held in a deposit account subject to a control agreement in form and substance reasonably satisfactory to Administrative Agent or (B) used to pay down the Revolving Loans (as defined in the ABL Credit Agreement); (vi) [Reserved]; (vii) other Restricted Payments that, when taken together with all other Restricted Payments made pursuant to this clause (vii), would not exceed \$40,000,000 after the date hereof, provided, that no Dominion Period exists, in each case, after giving pro forma effect to such

Restricted Payment; 100 11584747



slide120

(vii) the distribution, as a dividend or otherwise, of shares of Equity Interests of Unrestricted Subsidiaries; (ix) [Reserved]; (x) [Reserved]; (xi) payment of Indebtedness created under the Loan Documents; (xii) payment of regularly scheduled interest and principal payments or reimbursement obligations under letters of credit, in each case, as and when due in respect of any Indebtedness permitted by this Agreement, other than payments in respect of the Subordinated Indebtedness prohibited by the subordination provisions thereof; (xiii) payments constituting the refinancings of Indebtedness to the extent such refinanced Indebtedness is permitted by Section 6.01; (xiv) payment of secured Indebtedness that becomes due as a result of (A) any voluntary sale or transfer of any assets (other than assets included in any Borrowing Base) securing such Indebtedness or (B) any casualty or condemnation proceeding (including a disposition in lieu thereof) of any assets (other than assets included in any Borrowing Base) securing such Indebtedness; (xv) subject to the terms of the Intercompany Subordination Agreement, payments of intercompany Indebtedness permitted under Section 6.01 and owed to any Loan Party; (xvi) repurchases of Equity Interests that occur or are deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants; (xvii) Restricted Payments by the Company or any Restricted Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Equity Interests of any such Person; (xviii) payments or distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of the Company and the Restricted Subsidiaries, taken as a whole, that complies with Section 6.08; provided that if such consolidation, amalgamation, merger or transfer of assets constitutes a Change in Control, all Obligations shall have been repaid in full (or the Event of Default specified in Section 7.01(g) shall have been waived); and (xix) any Loan Party or their Restricted Subsidiaries may make Restricted Payments so long as the Borrowers are in Pro Forma Compliance with the Payment Conditions. Notwithstanding anything else set forth in this Section 6.02 or the definition of "Permitted Investments", to the contrary, no Restricted Payment or Investment (other than an Investment in the Company or another Loan Party) of any Material Intellectual Property, Material Real Property, or Equity Interests of the IPCo JV (other than Restricted Payments of the Equity Interests of the IPCo JV to the Company or another Loan Party to the extent that such Restricted Payment (i) does not adversely affect the Administrative Agent's Lien on the Equity Interests of the IPCo JV and (ii) is otherwise permitted by this Agreement and the IPCo JV Consent and Pledge) owned by the Company or another Loan Party shall be permitted under this Agreement without the prior written consent of the Administrative Agent. 101 11584747

slide121

As of the date hereof, all of the Subsidiaries of the Company will be Restricted Subsidiaries. For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Company and the Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Investments in an amount determined as set forth in the last sentence of the definition of "Investments." Such designation will only be permitted if a Restricted Payment or Permitted Investment in such amount would be permitted at such time and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. SECTION 6.03 Limitations on Restrictive Agreements. No Loan Party shall, or shall permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist any consensual encumbrance or consensual restriction which prohibits or limits the ability of: (a) any Loan Party or Restricted Subsidiary to pay dividends or make any other distributions to the Company or any Restricted Subsidiary (1) on its Equity Interests, or (2) with respect to any other interest or participation in, or measured by, its profits; (b) any Loan Party or Restricted Subsidiary to make loans or advances to the Company or any Restricted Subsidiary that is a direct or indirect parent of such Subsidiary; (c) any Loan Party to create, incur or permit to exist any Lien in favor of the Administrative Agent upon the Collateral, except in each case for such encumbrances or restrictions existing under or by reason of: (i) contractual encumbrances or restrictions in effect on the date hereof and, with respect to any such encumbrances in described in Section 6.03(c) which are in a Material Agreement, as set forth on Schedule 6.03, and (B) contractual encumbrances or restrictions pursuant to this Agreement, the other Loan Documents, and, in each case, similar contractual encumbrances effected by any amendments, modifications, restatements, renewals, supplements, refundings, replacements or refinancings of such agreements or instruments; (ii) (A) this Agreement, (B) the ABL Documents, (C) the ABL Intercreditor Agreement, and (D) if applicable, the documents governing a Permitted Consigned Inventory Financing or Permitted Wholesale A/R Financing; (iii) applicable law or any applicable rule, regulation or order; (iv) any agreement or other instrument of a Person acquired by a Loan Party or any Restricted Subsidiary which was in existence at the time of such acquisition (but not created in contemplation thereof or to provide all or any portion of the funds or credit support utilized to consummate such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired; (v) contracts or agreements for the sale of assets to the extent such sale is not prohibited pursuant to the terms hereof, including any restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Equity Interests or assets of such Restricted Subsidiary; (vi) (A) secured Indebtedness otherwise permitted to be incurred pursuant to Section 6.01 and Section 6.07 that limits the right of the debtor to dispose of or grant Liens on the assets 102 11584747.

slide122

securing such Indebtedness and (B) contractual encumbrances or restrictions under any agreement governing any Indebtedness existing as of the Closing Date; (vii) customary net worth provisions contained in real property leases entered into by any Loan Party or Restricted Subsidiary, so long as the Company has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Company and its Restricted Subsidiaries to meet their ongoing obligations; (viii) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business and relating solely to the applicable Joint Venture; (ix) purchase money obligations to the extent not prohibited hereunder for property acquired and Finance Lease Obligations in the ordinary course of business; (x) customary provisions contained in leases, licenses and other similar agreements entered into in the ordinary course of business; (xi) any encumbrance or restriction that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or the assignment or transfer of any such lease, license (including without limitation, licenses of intellectual property) or other contracts; (xii) other Indebtedness, Disqualified Stock or Preferred Stock of the Company or any Restricted Subsidiary, in each case, so long as such encumbrances and restrictions contained in any agreement or instrument will not materially affect any Loan Party's ability to make anticipated principal or interest payments on the Loans (as determined in good faith by the Company), provided that such Indebtedness, Disqualified Stock or Preferred Stock is permitted pursuant to Section 6.01; (xiii) any Investment not prohibited by Section 6.02; (xiv) customary restrictions and conditions contained in the document relating to any Lien, so long as (1) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien, and (2) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.03; (xv) [Reserved]; (xvi) any encumbrances or restrictions of the type referred to in Section 6.03(a), (b), or (c) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xiv) above, provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Company, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing. For purposes of determining compliance with this Section 6.03, (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the

103 11584747



slide123

ability to make distributions on Equity Interests and (ii) the subordination of loans or advances made to the Company or a Restricted Subsidiary to other Indebtedness Incurred by the Company or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances. SECTION 6.04 Sale of Equity Interests and Assets. Except as set forth herein, no Loan Party shall, or shall permit any of its Restricted Subsidiaries to, sell, transfer, convey, assign or otherwise Dispose of any of its properties or other assets, including the Equity Interests of any of its Subsidiaries (whether in a public or a private offering or otherwise), other than: (a) (x) the Disposition of obsolete, no longer used or useful, surplus, uneconomic, negligible or worn out machinery, equipment or other fixed assets; and (y) the Disposition of Intellectual Property (including the abandonment thereof or surrender or transfer for no consideration), in each case under this clause (y): (i) in the ordinary course of business, including pursuant to non-exclusive licenses of Intellectual Property or otherwise as may be required pursuant to the terms of any lease, sublease, license or sublicense, or (ii) which, in the reasonable judgment of the Company or any Subsidiary, are determined to be no longer used or useful, surplus, uneconomic, negligible or obsolete in the conduct of business; (b) (x) the sale of inventory and other assets in the ordinary course of business and (y) in addition to sales of inventory under the preceding clause (x), the sale of slow moving inventory outside of the ordinary course (including in respect of a liquidation thereof); provided that the amount of inventory Disposed of pursuant to this clause (y) shall be capped in an amount not to exceed \$34,375,000 during any fiscal year; provided, further that, with respect to any such sale pursuant to this clause (y) which (in a single transaction or a series of related transactions) decreases the Borrowing Base by \$3,437,500 or more (after giving effect thereto), the Borrower Representative shall have first delivered an updated Borrowing Base Certificate to the Administrative Agent giving pro forma effect to such sale and demonstrating pro forma compliance with Section 6.12; (c) Dispositions permitted by Sections 6.02, 6.07 (solely to the extent such Liens constitute "Dispositions" as a result of the applicable security interest), and 6.08; provided, that this clause (c) shall not permit Dispositions of Material Intellectual Property, Material Real Property, or Equity Interests of the IPCo JV; (d) (1) the sale or issuance of any Subsidiary's Equity Interests to the Company or any Restricted Subsidiary; provided, however, with respect to any such sale, such investment shall not be prohibited by Section 6.02 and (2) the sale or issuance of Equity Interests of the Company to any employee (and, where required by law, to any officer or director) under any employment or compensation plan or to qualify such officers and directors; (e) the sale of assets that do not constitute Eligible Inventory, Eligible In-Transit Inventory, Eligible LC Inventory, Eligible Consigned Inventory, Eligible Trade Accounts, Eligible Credit Card Accounts, Material Real Property, Material Intellectual Property, or Equity Interests of the IPCo JV subsequent to the date hereof, so long as (1) no Default then exists or would result therefrom, (2) each such sale or other disposition is in an arm's-length transaction (and, for purposes hereof, any transaction with an Affiliate that complies with Section 6.05 shall be considered an arm's-length transaction) and the respective Borrower or Restricted Subsidiary receives at least fair market value, and (3) the consideration received by such Borrower or such Restricted Subsidiary consists of at least 75% cash and is paid at the time of the closing of such sale; provided, however, that the following shall be deemed to be cash in respect of assets that are Collateral of the type eligible to be included in the Borrowing Base: (A) the assumption by the transferee of Indebtedness or other liabilities contingent or otherwise of the Company 104 11584747

slide124

or any of its Restricted Subsidiaries (other than Junior Indebtedness) and the valid release of the Company or such Restricted Subsidiary, by all applicable creditors in writing, from all liability on such Indebtedness or other liability in connection with such Disposition, (B) Indebtedness (other than Junior Indebtedness) of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Disposition, to the extent that the Company and each other Restricted Subsidiary are released from any guarantee of payment of such Indebtedness in connection with such Disposition, and (C) any Designated Non-cash Consideration received by the Company or any Restricted Subsidiary in such asset sale having an aggregate Fair Market Value (as determined in good faith by the Company), taken together with all other Designated Non-cash Consideration received pursuant to this clause (e) that is at that time outstanding, not to exceed the greater of \$34,375,000 and 12.5% of Consolidated EBITDA, calculated on a pro forma basis giving effect to such asset disposition and Designated Non-cash Consideration and based on the most recently completed Test Period (with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value); provided, however, with respect a Disposition (in a single transaction or a series of related transactions) consisting of assets constituting Collateral of the type eligible to be included in the Borrowing Base that decreases the Borrowing Base by \$3,437,500 or more (after giving effect thereto), the Borrower Representative shall have first delivered an updated Borrowing Base Certificate to the Administrative Agent giving pro forma effect to such Disposition and demonstrating pro forma compliance with Section 6.12; (f) Subject to compliance with the Payment Conditions, the sale of assets that constitute Eligible Inventory, Eligible In transit Inventory, Eligible LC Inventory, Eligible Consigned Inventory, Eligible Trade Accounts or Eligible Credit Card Accounts subsequent to the date hereof, so long as (1) each such sale or other disposition is in an arm's length transaction and the respective Borrower or Restricted Subsidiary receives at least fair market value and (2) the consideration received by the Company and its Restricted Subsidiaries in connection with such sale consists of at least 75% cash and is paid at the time of the closing of such sale, provided that, with respect to any such sale (in a single transaction or a series of related transactions) consisting of assets constituting Collateral of the type eligible to be included in the Borrowing Base that decreases the Borrowing Base by \$3,437,500 or more (after giving effect thereto), the Borrower Representative shall have first delivered an updated Borrowing Base Certificate to the Administrative Agent giving pro forma effect to such sale and demonstrating pro forma compliance with Section 6.12; (g) the Disposition of cash and Cash Equivalents in connection with the Company's and its Restricted Subsidiaries' business needs, as determined in the reasonable business judgment of the Company or the applicable Restricted Subsidiary; (h) Dispositions of Accounts in connection with compromise, write down or collection thereof in the ordinary course of business and consistent with past practice; (i) leases, subleases, licenses or sublicenses of property (excluding Material Real Property and Material Intellectual Property) which do not materially interfere with the business of Borrowers and their Restricted Subsidiaries and the termination of such leases, subleases, licenses or sublicenses in the ordinary course of business; (j) Dispositions of Equity Interests to directors where required by applicable Requirements of Law or to satisfy other requirements of applicable Requirements of Law with respect to the ownership of Equity Interests of Foreign Subsidiaries; (k) Dispositions of Equity Interests of any Joint Venture to the extent required by the terms of customary buy/sell type arrangements entered into in connection with the formation of such Joint Venture; 105 11584747

slide125

(l) transfer or disposition of property subject to or as a result of a casualty or condemnation (or agreement in lieu of condemnation) (1) upon receipt of net cash proceeds of such casualty or (2) to a Governmental Authority as a result of condemnation (or agreement in lieu of condemnation); (m) bulk sales or other Dispositions of inventory of a Restricted Subsidiary not in the ordinary course of business in connection with store closings, at arm's length, provided, that (1) the Loan Parties and their Restricted Subsidiaries shall not close in the aggregate more than 100 stores during the term of this Agreement, (2) all sales of inventory in connection with store closings pursuant to this clause (m) shall be in accordance with liquidation agreements and with professional liquidators reasonably acceptable to the Administrative Agent and (3) in connection with any Disposition pursuant to this clause (m) involving greater than \$3,437,500 of inventory included in the Borrowing Base, the Company shall have delivered an updated Borrowing Base Certificate after giving effect to such bulk sales and demonstrating pro forma compliance with Section 6.12; (n) (1) any U.S. Loan Party may Dispose of its property to another U.S. Loan Party, (2) any Canadian Loan Party may Dispose of its property to another Canadian Loan Party, (3) any Canadian Loan Party may Dispose of its property to a U.S. Loan Party, (4) any U.S. Loan Party may Dispose of its property to a Canadian Loan Party; provided that any Disposition in reliance on this clause (4) for less than Fair Market Value (as determined in good faith by the Company) shall be deemed an Investment and must be made in compliance with clause (1) of the definition of Permitted Investments, (5) any U.S. Loan Party may Dispose of its property to a Canadian Loan Party in the ordinary course of business, (6) any Restricted Subsidiary that is not a Loan Party may Dispose of its property to the Company or any other Restricted Subsidiary, (7) any Loan Party may Dispose of its property to a Restricted Subsidiary that is not a Loan Party; provided that any Disposition in reliance on this clause (7) for less than Fair Market Value (as determined in good faith by the Company) shall be deemed an Investment and must be made in compliance with clause (1) of the definition of Permitted Investments; provided, however, with respect a Disposition (in a single transaction or a series of related transactions) consisting of assets constituting Collateral of the type eligible to be included in the Borrowing Base that decreases the Borrowing Base by \$3,437,500 or more (after giving effect thereto), the Borrower Representative shall have first delivered an updated Borrowing Base Certificate to the Administrative Agent giving pro forma effect to such Disposition and demonstrating pro forma compliance with Section 6.12; (o) Dispositions of any property (excluding Material Intellectual Property, Material Real Property, and Equity Interests of the IPCo JV) to the extent that (1) (x) such property is exchanged for credit against the purchase price of similar replacement property or (y) such Disposition represents an exchange of assets (including a combination of Cash Equivalents and assets) for assets related to a Similar Business of comparable or greater market value or usefulness to the business of the Company and the Restricted Subsidiaries as a whole, as determined in good faith by the Company or (2) such Disposition represents a swap of assets or lease, assignment or sublease of any real or personal property in exchange for services (including in connection with any outsourcing arrangements) or comparable or greater value or usefulness to the business of the Company and its Restricted Subsidiaries as a whole, as determined in good faith by the Company, or (2) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property; (p) Dispositions of assets which constitute Investments or Restricted Payments, in each case, not prohibited by Section 6.02; (q) Dispositions of property (other than Collateral of the type eligible to be included in the Borrowing Base, Material Intellectual Property, Equity Interests of the IPCo JV and Material Real Property) in connection with (i) Sale/Lesseeback Transactions for fair value (as determined at the time of the consummation thereof in good faith by the applicable Loan Party or Restricted Subsidiary) so long as 106 11564747



(x) 75% of the consideration received by such Loan Party or Restricted Subsidiary from such Sale/Leaseback Transaction is in the form of cash and (ii) any Sale/Leaseback Transactions between Excluded Subsidiaries; (r) Dispositions pursuant to any Permitted Wholesale A/R Financing of wholesale Accounts, proceeds of such accounts receivable and other assets which are customarily transferred in connection with the financing or securitization of accounts receivable, in each case, either for Fair Market Value (as determined in good faith by the Company) or for another price consistent with customary or market practice for the sale of accounts receivable in connection with the financing or securitization of accounts receivable (as determined in good faith by the Company); (s) Dispositions of assets or issuances of the Company or any Restricted Subsidiary or sale of Equity Interests of the Company or any Restricted

Subsidiary which assets or Equity Interests so Disposed or issued, in any single transaction or related series of transactions, have a fair market value (as determined in good faith by the Company) of less than \$6,875,000 per fiscal year; (t) Dispositions arising from foreclosure or any similar action with respect to any property or other asset of the Company or any of its Restricted Subsidiaries; (u) any Disposition of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary; (v) any Disposition of Equity Interests of a Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than the Company or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), in each case following the date hereof, made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition; (w) Dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements; (x) to the extent constituting a Disposition, any surrender, expiration or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind; (y) Dispositions of real property, other than Material Real Property, (x) for the purpose of resolving minor title disputes or defects, including encroachments and lot line adjustments, (y) for the purpose of granting easements, rights of way or access and egress agreements, or (z) to any Governmental Authority in consideration of the grant, issuance, consent or approval of or to any development agreement, change of zoning or zoning variance, permit or authorization in connection with the conduct of any Loan Party's business, in each case which does not materially interfere with the business conducted on such real property; and (z) any Disposition of assets (other than Eligible Inventory, Eligible In-Transit Inventory, Eligible LC Inventory, Eligible Consigned Inventory, Eligible Trade Accounts, Eligible Credit Card Accounts, Material Intellectual Property, Material Real Property, and Equity Interests of the IPCo JV) in the ordinary course of business to the extent replaced by substitute assets. Notwithstanding anything else set forth in this Section 6.04 to the contrary, no Disposition (other than a Disposition to another Loan Party) of any Material Intellectual Property, Material Real Property, 107 11584747



slide127

or Equity Interests of the IPCo JV owned by the Company or another Loan Party shall be permitted under this Agreement without the prior written consent of the Administrative Agent. SECTION 6.05 Affiliate Transactions. No Loan Party shall, and no Loan Party shall permit any of the Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each of the foregoing, an "Affiliate Transaction") involving aggregate consideration in excess of \$6,875,000 or services and goods with a market value (as determined in good faith by the Company) in excess of \$6,875,000, provided that, the foregoing shall not apply to the following: (a) Affiliate Transactions on terms that are not materially less favorable to the relevant Loan Party or the Restricted Subsidiary than those that could have been obtained in a comparable transaction by the relevant Loan Party or such Restricted Subsidiary with an unrelated Person; (b) transactions between or among the Company and/or any of the Restricted Subsidiaries (or any entity that becomes a Restricted Subsidiary as a result of such transaction); (c) Restricted Payments permitted by Section 6.02 and Permitted Investments; (d) the payment of reasonable and customary fees and reimbursement of out-of-pocket expenses paid to, and indemnity provided on behalf of, officers, directors, employees or consultants of the Company, any Restricted Subsidiary, or any direct or indirect parent of the Company; (e) transactions in which the Company or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (a) of this Section 6.05; (f) payments or loans (or cancellation of loans) to officers, directors, employees or consultants which are approved by a majority of the Board of Directors of the Company in good faith; (g) any agreements or transactions disclosed on Schedule 6.05 hereto and any amendment thereto (so long as any such agreement together with all amendments thereto, taken as a whole, is not more disadvantageous to the Lenders in any material respect than the original agreement as in effect on the date hereof) or any transaction contemplated thereby as determined in good faith by the Company; (h) the issuance of Equity Interests (other than Disqualified Stock) of the Company to any Person; (i) (A) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement, which are fair to Company and the Restricted Subsidiaries in the reasonable determination of the Board of Directors or the senior management of Company, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party or (B) transactions with Joint Ventures or Unrestricted Subsidiaries entered into in the ordinary course of business and consistent with past practice; provided, however, with respect to any consideration made to a Loan Party or its Restricted Subsidiaries by Joint Ventures, the applicable Loan Party or Restricted Subsidiary shall receive at least Fair Market Value for the goods or services of such transaction; 108

11584747

slide128

(i) the issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, management equity plans, stock option and stock ownership plans or similar employee benefit plans approved by the Board of Directors of the Company, or the Board of Directors of a Restricted Subsidiary, as applicable, in good faith; (k) any contribution to the capital of the Company; (l) transactions permitted by and complying with, Section 6.08; (m) transactions between the Company or any Restricted Subsidiary and any Person, a director of which is also a director of the Company or any direct or indirect parent of Company; provided, however, that such director abstains from voting as a director of the Company or such direct or indirect parent of the Company, as the case may be, on any matter involving such other Person; (n) pledges of Equity Interests of Unrestricted Subsidiaries; (o) the formation and maintenance of any consolidated group or subgroup for tax accounting or cash pooling or management purposes in the ordinary course of business and not for the purpose of circumventing any covenant set forth in this Agreement; (p) any employment agreements entered into by the Company or any Restricted Subsidiary and their respective officers and employees in the ordinary course of business; (q) transactions undertaken in good faith (as certified by a responsible financial or accounting officer of the Company in an Officer's Certificate) for the purpose of improving the consolidated tax efficiency of the Company and its Subsidiaries and not for the purpose of circumventing any covenant set forth in this Agreement; (r) non-exclusive licenses of Intellectual Property to or among Borrowers and their respective Subsidiaries; (s) advances for commissions, travel and similar purposes in the ordinary course of business to directors, officers and employees; and (t) the transfer by a Loan Party or a Restricted Subsidiary to a Special Purpose Receivables Subsidiary, and the purchase by such Special Purpose Receivables Subsidiary, of wholesale accounts receivable, proceeds of such accounts receivable and other property customarily transferred in connection with the financing or securitization of accounts receivable for Fair Market Value (as determined in good faith by the Company) or for another price consistent with customary or market practice for the sale of accounts receivable in connection with the financing or securitization of accounts receivable (as determined in good faith by the Company).
SECTION 6.06 Amendments of Certain Documents: Line of Business. No Loan Party shall amend its charter, bylaws or other organizational documents in any manner materially adverse to the interest of the Lenders or such Loan Party's duty or ability to repay the Obligations. No Loan Party shall engage in any business other than the (i) operation of designer and name brand shoe stores and related accessories or operation of licensed shoe departments substantially as conducted and operated by such Loan Party or Subsidiary during the fiscal year in existence as of the date hereof, (ii) marketing, designing, sourcing and distributing footwear, handbags, accessories and apparel and licensing related intellectual property and (iii) any other business reasonably related, incidental, ancillary or complementary thereto or that is a reasonable extension, development or expansion thereof ("Similar Business"). 109 11584747



slide129

SECTION 6.07 Liens. No Loan Party shall, and no Loan Party shall permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur or suffer to exist any Lien securing Indebtedness of such Loan Party or any Restricted Subsidiary, other than Permitted Liens, on any asset or property of such Loan Party or Restricted Subsidiary. With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any increased Amount of such Indebtedness. The "Increased Amount" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or in the form of common stock of the Company, the payment of dividends on Preferred Stock in the form of additional shares of Preferred Stock of the same class, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness described in clause (3) of the definition of "Indebtedness." **SECTION 6.08 Mergers, Amalgamations, Fundamental Changes, Etc.** (a) No Loan Party shall, or shall permit any of its Restricted Subsidiaries to, directly or indirectly, by operation of law or otherwise, enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that: (i) (x) any U.S. Loan Party may consolidate, amalgamate or merge into another U.S. Loan Party or another Person that becomes a U.S. Loan Party (provided, however, with respect to any such consolidation, amalgamation or merger involving the Company, the Company shall be the surviving person) and (y) any Canadian Loan Party may consolidate, amalgamate or merge into another Canadian Loan Party or another Person that becomes a Canadian Loan Party (provided, however, with respect to any such consolidation, amalgamation or merger involving the Canadian Borrower, the Canadian Borrower shall be a surviving person); (ii) (x) any Domestic Subsidiary or Canadian Subsidiary may be merged, amalgamated or consolidated with or into a U.S. Loan Party (provided that such U.S. Loan Party shall be the continuing or surviving entity) and (y) any Canadian Subsidiary may be merged, amalgamated or consolidated with or into a Canadian Loan Party (provided that such Canadian Loan Party shall be the continuing or surviving entity); (iii) any Subsidiary that is not a Loan Party may be merged, amalgamated or consolidated with or into any other Subsidiary that is not a Loan Party; provided that if one Subsidiary to such merger, amalgamation or consolidation is a Wholly Owned Subsidiary, the Wholly Owned Subsidiary shall be the continuing or surviving entity; (iv) (x) any U.S. Loan Party may Dispose of any or all of its assets to another U.S. Loan Party, (y) any Canadian Guarantor may Dispose of any or all of its assets to another Canadian Loan Party or any U.S. Loan Party, and (z) any Subsidiary which is not a Loan Party may Dispose of any or all of its assets to, or enter into any merger, amalgamation or consolidation with, (1) a Borrower or any Guarantor (upon voluntary liquidation or otherwise), or (2) a Subsidiary that is not a Guarantor if the Subsidiary making the Disposition is not a Guarantor; provided that any such Disposition by a Wholly Owned Subsidiary must be to a Wholly Owned Subsidiary. 110 11584747



(v) any Investment not prohibited by Section 6.02 may be structured as a merger, consolidation or amalgamation; (vi) any Subsidiary may be dissolved or liquidated so long the Dispositions of assets of such Person in connection with such liquidation or dissolution are to Persons entitled to receive such assets in accordance with Section 6.04; (vii) any Subsidiary may enter into any merger, amalgamation or consolidation in connection with, or to effectuate, a Disposition not otherwise prohibited by Section 6.04; and (viii) any Restricted Subsidiary may dispose of any or all of its assets in connection with, or to effectuate, a Disposition not otherwise prohibited by Section 6.04. (b) No Loan Party shall (a) change its name as it appears in official filings in the state or province of incorporation or organization, (b) change its chief executive office, (c) change the type of entity that it is, (d) change its organization identification number, if any, issued by its state or province of incorporation or other organization, or (e) change its state or province of incorporation or organization, in each case, unless the Administrative Agent shall have received written notice of such change within ten (10) days (or such longer period as the Administrative Agent may agree in its sole discretion) following such change and any reasonable action requested by the Administrative Agent in connection with such change to continue at all times following such change for the Administrative Agent to have a valid, legal and perfected security interest in all the Collateral in which a security interest may be perfected by a filing under the Uniform Commercial Code (or its equivalent in any applicable jurisdiction), for the benefit of the Secured Parties have been made or will have been made within ten (10) days (or such longer period as the Administrative Agent may agree in its sole discretion) following such change. (c)

No Loan Party shall change its fiscal year from the basis in effect on the date hereof without having first provided to the Administrative Agent thirty (30) days' prior written notice thereof. (d) No Loan Party will change the basis of accounting upon which its financial statements are prepared for purposes of this Agreement, other than changes to comply with changes in GAAP, without providing to the Administrative Agent prompt notice thereof; it being acknowledged that with respect to calculations of the applicable Borrowing Base pursuant to this Agreement (but not for any other purpose, including any financial reporting pursuant to any Requirement of Law) such change must be approved in writing by the Administrative Agent, not to be unreasonably withheld. SECTION 6.09 Sanctions, Anti-Terrorism Laws. No Loan Party shall, directly or indirectly, nor shall any Loan Party permit any Subsidiary to directly or indirectly, use the proceeds of any Loans or lend, contribute or otherwise make available such proceeds to any Subsidiary (i) to fund, finance or facilitate any activities of or business with any individual or entity, or in any Sanctioned Country, that, at the time of such funding, is the subject of Sanctions except (A) as otherwise permitted pursuant to a license granted by the Office of Foreign Assets Control of the U.S. Department of the Treasury or (B) otherwise to the extent permissible for a Person required to comply with Sanctions, or (ii) in any other manner that will result in a violation of Sanctions by any party hereto. No Loan Party shall, directly or indirectly, nor shall any Loan Party permit any Subsidiary to directly or indirectly, use the proceeds of any Loans for any purpose which would breach any Anti-Terrorism Laws applicable to any Loan Party or Subsidiary, including the United States Foreign Corrupt Practices Act of 1977, the Corruption of Foreign Public Officials Act (Canada), the UK Bribery Act 2010, and other Anti-Corruption Laws in any jurisdiction in which any Loan Party or any of its Subsidiaries is located or is doing material business. Notwithstanding the foregoing, the representations and covenants made in this Section 6.09 shall not be made by nor apply to any Person that qualifies as a corporation that is registered or incorporated under 111 11584747

slide131

the laws of Canada or any province thereof and that carries on business in whole or in part in Canada within the meaning of Section 2 of the Foreign Extraterritorial Measures (United States) Order, 1992 passed under the Foreign Extraterritorial Measures Act (Canada) in so far as such representations would result in a violation of or conflict with the Foreign Extraterritorial Measures Act (Canada) or any similar law. SECTION 6.10 Restrictions on Certain Subsidiaries. Each of Ebays, Article II JV and BC/VC shall not own, acquire, lease, possess or otherwise maintain any material assets except those held by such entities on the date hereof. SECTION 6.11 Canadian Pension Plans. The Loan Parties shall not (a) contribute to or assume an obligation to contribute to any Canadian Defined Benefit Plan, without the prior written consent of the Administrative Agent (consent not to be unreasonably withheld), or (b) acquire an interest in any Person (other than pursuant to a Permitted Acquisition) if such Person sponsors, maintains or contributes to, or at any time in the five-year period preceding such acquisition has sponsored, maintained, or contributed to a Canadian Defined Benefit Plan, without the prior written consent of the Administrative Agent (consent not to be unreasonably withheld). SECTION 6.12 Consolidated Net Leverage Ratio. At any time that a Covenant Testing Event has occurred and is continuing, the Company will not permit the Consolidated Net Leverage Ratio, calculated on a trailing twelve (12) month basis as of the last day of each fiscal month, to be more than (i) 2.00:1.00 for any trailing twelve (12) month period from the Closing Date and through and including July 29, 2023, (ii) 2.25:1.00 for any trailing twelve (12) month period from July 30, 2023 through and including February 3, 2024, and (iii) thereafter 2.50:1.00. SECTION 6.13 Disposal of Assets of iPCo JV and Other IP Entities. No Loan Party which owns any Equity Interests in iPCo JV or any other IP Entity (as defined in the Security Agreement) shall, at any time, vote, agree or otherwise consent to the sale or other Disposition of any Specified Intellectual Property (as defined in the Security Agreement) of iPCo JV or such other IP Entity, in all cases, (a) unless such Disposition is expressly permitted by Section 6.04 or (b) without the prior written consent of the Administrative Agent. ARTICLE VII. EVENTS OF DEFAULT If any of the following events shall occur and shall not have been waived in accordance with Section 9.02, it shall constitute an "Event of Default" (it being understood and agreed that such events shall give effect to the grace period, if any, explicitly provided for such event as set forth below): (a) any Loan Party (i) shall fail to pay any principal of any Loan when and as the same shall become due and payable (whether by maturity, required prepayment, acceleration, demand or otherwise), and in the currency required hereunder or (ii) shall fail to pay any interest on any Loan, fees or any other amounts hereunder or under any other Loan Document within three (3) Business Days after the same shall become due and payable; or (b) any representation or warranty made or deemed made by or on behalf of any Loan Party in any Loan Document (whether made on behalf of itself or otherwise) or by any Loan Party (or any of its officers) in connection with any Loan Document, or in any certificate, other instrument or statement furnished pursuant to the provisions hereof or thereof (including, without limitation, any representation made in any Borrowing Base Certificate), shall prove to have been incorrect in any material respect when 112 11584747

slide132

made or deemed made (other than a representation, warranty, certification or statement qualified by materiality or reference to the absence of a Material Adverse Effect, in which event such representation, warranty, certification or statement shall prove to have been false or misleading in any respect); or (c) (i) any Loan Party shall fail to perform or observe any covenant contained in Section 5.01, 5.02(a), 5.03 (solely as to the existence of each Borrower), 5.07, 5.10, 5.11, 5.17, Article VI, Section 6(i) of the U.S. Security Agreement or Section 6(i) of the Canadian Security Agreement, (ii) any Loan Party shall fail to perform or observe any covenant contained in Section 5.02 (other than 5.02(a)), 5.05 or 5.15 if the failure to perform or observe such covenant shall continue unremedied for five (5) Business Days; and (iii) any Loan Party shall fail to perform or observe such other term, covenant or agreement contained in any other Section of this Agreement or any Loan Document on its part to be performed or observed if the failure to perform or observe such other term, covenant or agreement shall remain unremedied for 30 days after the earlier to occur of (x) the Administrative Agent's (given at the request of any Lender) notifying a Responsible Officer of the Borrower Representative of such default; or (y) the obtaining of knowledge of such default by any Responsible Officer of any Loan Party; or (d) a default or breach shall occur under (i) any ABL Document or (ii) any other agreement, document or instrument to which any Loan Party is a party that is not cured within any applicable grace period therefor, and such default or breach (A) involves the failure to make any payment when due in respect of any Indebtedness (other than the Obligations) of any Loan Party in an aggregate amount of not less than \$41,250,000, or (B) causes or permits any holder of such other Indebtedness or a trustee thereof, with the giving of notice, if required, to cause such Indebtedness or a portion thereof in excess of \$41,250,000 in the aggregate outstanding principal amount to become due prior to its stated maturity, or cash collateral in respect thereof (in excess of \$41,250,000) is demanded as a result of any such breach or default, in each case, regardless of whether such right is exercised, by such holder or trustee; provided that this clause (d)(ii)(B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such indebtedness; or (e) any Loan Party shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against any Loan Party seeking to adjudicate it bankrupt or insolvent, or seeking receivership, interim receivership, liquidation, winding up, reorganization, arrangement, adjustment, rescheduling, protection, relief, or composition, of it or its debts under any Insolvency Laws, or seeking the entry of an order for relief or the appointment of a receiver, interim receiver, monitor, trustee, custodian, sequestrator, conservator or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of sixty (60) days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, interim receiver, monitor, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or any Loan Party shall take any corporate action to authorize any of the actions set forth above in this subsection (e); or (f) one or more judgments or orders for the payment of money in excess of \$37,500,000 in the aggregate shall be rendered against any Loan Party and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of forty-five (45) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; provided, however, that any such judgment or order shall not give rise to an Event of Default under this subsection (f) if and so long as (A) the amount of such judgment or order which remains unsatisfied is covered by a valid and binding policy of insurance between the respective Loan Party and a third-party insurer covering full payment of such 113 11584747.



unsatisfied amount and (B) such insurer has been notified, and has not disputed the claim made for payment, of the amount of such judgment or order; or (g) a Change in Control shall have occurred; or (h) any of the following events or conditions shall have occurred and such event or condition, when aggregated with any and all other such events or conditions set forth in this subsection (h), has resulted or is reasonably expected to result in liabilities of the Loan Parties and/or the ERISA Affiliates in an aggregate amount that would have a Material Adverse Effect: (i) any ERISA Event shall have occurred with respect to a Plan; or (ii) any of the Loan Parties or any of the ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan; or (iii) any of the Loan Parties or any of the ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent or is being terminated, within the meaning of Title IV of ERISA, or has been determined to be in "endangered" or "critical" status within the meaning of Section 432 of the Code or Section 305 of ERISA and, as a result of such insolvency, termination or determination, the aggregate annual contributions of the Loan Parties and the ERISA Affiliates to all of the Multiemployer Plans that are insolvent, being terminated or in endangered or critical status at such time have been or will be increased over the amounts contributed to such Multiemployer Plans for the plan years of such Multiemployer Plans immediately preceding the plan year in which such reorganization, insolvency or termination occurs; or (iv) any failure to satisfy the applicable minimum funding standards under Section 412(a) of the Code or Section 302(a) of ERISA, whether or not waived, shall exist with respect to one or more of the Plans; or (v) any Lien shall exist on the property and assets of any of the Loan Parties or any of the ERISA Affiliates in favor of the PBGC; (vi) a Canadian Pension Event shall have occurred; or (vii) any Lien arises (save for contribution amounts not yet due) in connection with any Canadian Pension Plans; or (i) any provision of any Loan Document, at any time after its execution and delivery and for any reason, ceases to be in full force and effect (other than as a result of the gross negligence or willful misconduct of the Administrative Agent); or any Loan Party or any Affiliate thereof contests in writing the validity or enforceability of any provision of any Loan Document, or any Loan Party denies in writing that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind in writing any provision of any Loan Document or seeks to avoid or limit any Lien purported to be created under any Collateral Document; or (ii) any Lien purported to be created under any Collateral Document shall cease to be, or shall be asserted by any Loan Party or any Affiliate thereof not to be, a valid and perfected Lien on a material portion of the Collateral, with the priority required by the applicable Collateral Document (other than as a result of the gross negligence or willful misconduct of the Administrative Agent), or 114 11584747



slide134

(i) there shall occur any material uninsured damage (for the avoidance of doubt, for purposes hereof, except with respect to Material Intellectual Property or Material Real Property, any loss insured by self-insurance or subject to a deductible or combination of deductibles not in excess of \$3,437,500 with respect to any otherwise insured occurrence shall not constitute uninsured damage) to or loss, theft or destruction of any of the Collateral with a book value (determined in accordance with GAAP) in excess of \$13,750,000 in the aggregate, as to which the Loan Parties do not repair, restore or replace the damaged or destroyed property within 180 days after the occurrence of such damaged or destruction, or any of the Loan Parties' assets with a book value (determined in accordance with GAAP) in excess of \$13,750,000 in the aggregate are attached, seized, levied upon or subjected to a writ or distress warrant; or such come within the possession of any receiver, manager, receiver and manager, trustee, custodian or assignee for the benefit of creditors and the same is not cured within forty-five (45) days thereafter; then, and in every such Event of Default (other than an Event of Default with respect to the Loan Parties described in clause (e) of this Article), and at any time thereafter during the continuance of such Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower Representative, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, whereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Loan Parties accrued hereunder, shall become due and payable immediately, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties; and in the case of any event with respect to the Loan Parties described in clause (e) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Loan Parties accrued hereunder, shall automatically become due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, increase the rate of interest applicable to the Loans and other Obligations to the extent set forth in this Agreement and exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC or the PPSA, as applicable, or (k) Subordination. (i) the subordination provisions of the documents evidencing or governing any Junior Indebtedness, or provisions of the ABL Intercreditor Agreement (or any other Intercreditor Agreement entered into by the Administrative Agent after the Closing Date), any such provisions being referred to as the "Intercreditor Provisions", shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Indebtedness; provided, however that no Event of Default shall occur with respect to this clause (k)(i) to the extent that (1) any Intercreditor Provision ceases to be effective or fails to be enforceable as a result of any action or inaction by the Administrative Agent, any Lender hereunder, or the ABL Agent or (2) any Intercreditor Provision ceases to be effective in accordance with the terms hereof, the terms of the ABL Intercreditor Agreement or the terms of any other Intercreditor Agreement; or (ii) any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in writing (A) the effectiveness, validity or enforceability of any of the Intercreditor Provisions, (B) that the Intercreditor Provisions exist for the benefit of the Credit Parties, or (C) 115 11584747

slide135

In the case of Junior Indebtedness, that all payments of principal or premium and interest on the applicable Junior Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Intercreditor Provisions. **ARTICLE VIII. THE ADMINISTRATIVE AGENT** **SECTION 8.01** Appointment. Each of the Lenders, on behalf of itself and any of its Affiliates that are Secured Parties hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the U.S., each of the Lenders hereby grants to the Administrative Agent any required powers of attorney to execute any Collateral Document governed by the laws of such jurisdiction on such Lender's behalf. The provisions of this Article are solely for the benefit of the Administrative 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 the Administrative 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. The Lenders and the other Secured Parties hereby irrevocably authorize and instruct the Administrative Agent to, without any further consent of any Lender or any other Secured Party, enter into the ABL Intercreditor Agreement and any other intercreditor agreement with the collateral agent or other representatives of the holders of Indebtedness that is permitted to be secured by a Lien on the Collateral that is permitted (including with respect to priority) under this Agreement and to subject the Liens on the Collateral securing the Obligations to the provisions thereof (any of the foregoing, an "Intercreditor Agreement"). The Lenders and the other Secured Parties irrevocably agree that (x) the Administrative Agent may rely exclusively on a certificate of a Responsible Officer of the Borrower Representative as to whether any such other Liens are permitted and (y) the ABL Intercreditor Agreement or any other Intercreditor Agreement referred to in the foregoing sentence, entered into by the Administrative Agent, shall be binding on the Secured Parties, and each Lender and other Secured Party hereby agrees that it will take no actions contrary to the provisions of the ABL Intercreditor Agreement or, if entered into and if applicable, any other Intercreditor Agreement. For the purposes of the grant of security by any Borrower or any other Loan Party pursuant to the laws of the Province of Quebec, each of the Lenders, on behalf of itself and any of its Affiliates that are Secured Parties hereby irrevocably appoints and authorizes the Administrative Agent to act as the hypothecary representative (in such capacity, the "Attorney") of the Secured Parties, as contemplated under Article 2692 of the Civil Code of Québec, and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec granted by any Loan Party in favour of the Attorney, and to exercise such powers and duties that are conferred upon the Attorney under any applicable deed of hypothec. The Attorney shall: (a) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Attorney pursuant to any deed of hypothec, applicable laws or otherwise, (b) benefit from and be subject to all provisions hereof with respect to the Administrative Agent mutatis mutandis, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Lenders, and (c) be entitled to delegate from time to time any of its powers or duties under any deed of hypothec on such 116 11584747



terms and conditions as it may determine from time to time. Any person who becomes a Lender hereunder shall, by its execution of an Assignment and Assumption, be deemed to have consented to and confirmed the appointment of the Attorney as aforesaid and to have ratified, as of the date it becomes a Lender hereunder, all actions taken by the Attorney in such capacity. The substitution of the Administrative Agent pursuant to the provisions of this Article VII shall also constitute the substitution of the Attorney and any successor Administrative Agent shall automatically (and without any further act or formality) become the successor Attorney for the purposes of each deed of hypothec referred to above. SECTION 8.02 Rights as a Lender. The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank 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 the Administrative Agent hereunder. SECTION 8.03 Duties and Obligations. The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative 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 the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any Subsidiary that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02).

as provided in Section 9.02) 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. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower Representative or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any 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 the Administrative Agent. The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Ineligible Institutions or Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is an Ineligible Institution or a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Ineligible Institution or Disqualified Institution. SECTION 8.04 Reliance. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper 117-11584747.

slide137

Person. The Administrative 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. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. SECTION 8.05 Actions through Sub-Agents. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent. SECTION 8.06 Resignation. Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders and the Borrower Representative. Upon receipt of any such resignation, the Required Lenders shall have the right, in consultation with the Borrower Representative and with the consent of the Borrower Representative (unless an Event of Default shall have occurred and be continuing), to appoint a successor; provided, however, in no event shall any successor Administrative Agent be a Disqualified Institution without the prior written consent of the Borrower Representative. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by its successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents. The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor, unless otherwise agreed by the Borrowers and such successor. Notwithstanding the foregoing, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders and the Borrowers, whereupon, on the date of effectiveness of such resignation stated in such notice, (a) the retiring Administrative 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 the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this paragraph (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action under any Collateral 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 Administrative Agent, provided that until the time the Required Lenders appoint a successor Administrative Agent as provided herein, (i) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (ii) all notices and other communications required or contemplated to be given or made to the Administrative Agent 118 11584747



slide138

shall also directly be given or made to each Lender. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article, Section 2.17(d) and Section 9.03, 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 Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above. SECTION 8.07 Non-Reliance. (a) Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and letters of credit 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 the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder. Each Lender shall, independently and without reliance upon the Administrative Agent 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 the Borrowers and their Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder 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. (b) Each Lender hereby agrees that (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) shall not be liable for any information contained in any Report; (iii) the 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 the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use and it will not share the 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 the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender. SECTION 8.08 Other Agency Titles. No bookrunner, lead arranger, syndication agent, or documentation agent shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender 119 1158477



slide139

hereby makes the same acknowledgments with respect to the relevant Lenders in their respective capacities as bookrunners, lead arrangers, syndication agents, or documentation agents, as applicable, as it makes with respect to the Administrative Agent in the preceding paragraph. **SECTION 8.09 Not Partners or Co-Venturers; Administrative 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 case of the Administrative Agent) authorized to act for, any other Lender. The Administrative 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. (b) In its capacity, the Administrative Agent is a 'representative' of the Secured Parties within the meaning of the term 'secured party' as defined in the New York Uniform Commercial Code. Each Lender authorizes the Administrative Agent to enter into each of the Collateral Documents to which it is a party and to take all action contemplated by such documents. Each Lender agrees that no Secured Party (other than the Administrative Agent) shall have the right individually to seek to realize upon the security granted by any Collateral Document, it being understood and agreed that such rights and remedies may be exercised solely by the Administrative Agent for the benefit of the Secured Parties upon the terms of the Collateral Documents. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties. **SECTION 8.10 Erroneous Payments.** (a) Each Lender hereby agrees that (i) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Lender (whether or not known to such Lender) (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise;

individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Lender shall promptly, but in no event later than one (1) Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the Fed Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect and (ii) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this clause (a) shall be conclusive, absent manifest error. (b) Without limiting immediately preceding clause (a), if any Lender receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) that (x) is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment 120 11584747

slide140

or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) such Lender otherwise becomes aware was transmitted, or received, in error (in whole or in part); (i) (A) in the case of immediately preceding clause (x) or (y), an error shall be presumed to have been made (and that it is deemed to have knowledge of such error at the time of receipt of such Erroneous Payment) or (B) in the case of immediately preceding clause (z), an error has been made, in each case, with respect to such payment, prepayment or repayment; and (ii) such Lender shall promptly (and, in all events, within one (1) Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 8.10(b). (c) The parties hereto agree that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower Representative or any other Loan Party; provided, that this Section 8.10(c) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increase (or accelerating the due date for), the Obligations of the Borrower Representative or any other Loan Party relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower Representative or any other Loan Party for the express purpose of making such Erroneous Payment. (d) Each party's obligations under this Section 8.10 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by (or the replacement of a Lender, the termination of the Aggregate Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document. SECTION 8.11 No Reliance on Administrative Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants, assignees, may rely on Administrative Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA PATRIOT Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any Sanctions or other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any of their Borrowers, their Affiliates or their agents, the other Loan Documents or the transactions hereunder or contemplated hereby: (i) any identity verification procedures, (ii) any recordkeeping, (iii) comparisons with government lists, (iv) customer notices or (v) other procedures required under the CIP Regulations or such Sanctions or Anti-Terrorism Laws. ARTICLE IX. MISCELLANEOUS SECTION 9.01 Notices. 121 11584747

slide141

(a) Except in the case of notices and other communications expressly permitted to be given by telephone or otherwise, all notices and other communications provided for herein shall be in writing and shall be delivered by Electronic Systems (and subject in each case to paragraph (b) below) or by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows: (i) if to any Loan Party, to the Borrower Representative at: Designer Brands Inc. 810 DSW Drive Columbus, Ohio 43219 Attention: Jared Poff, CFO Email: jaredpoff@designerbrands.com and Designer Brands Inc. 810 DSW Drive Columbus, Ohio 43219 Attention: Michelle Krall, Esq., General Counsel Email: michellekrall@dswinc.com with a copy to (which shall not constitute notice): Vorys, Sater, Seymour and Pease LLP 52 E. Gay Street Columbus, Ohio 43215 Attention: Nici Workman, Esq. Email: nworkman@vorys.com (ii) if to the Administrative Agent at: PLC Agent LLC 100 Federal Street Floor 20 Boston, MA 02110 Attention: Roger Malouf Email: rmalouf@pathlightcapital.com with a copy to (which shall not constitute notice): Choate, Hall & Stewart LLP Two International Place Boston, MA 02110 Attention: Mark Silva Email: msilva@choate.com (iii) if to any other Lender, to it at its address or facsimile number set forth in its Administrative Questionnaire. 122 11584747



slide142

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (ii) sent by facsimile shall be deemed to have been given when received, provided that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient, or (iii) delivered through Electronic Systems to the extent provided in paragraph (b) below shall be effective as provided in such paragraph. (b) Notices and other communications to the Lenders hereunder may be delivered or furnished by Electronic Systems pursuant to procedures approved by the Administrative Agent. Each of the Administrative Agent and the Borrower Representative (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. In the case of notices from the Borrower Representative to the Administrative Agent, such acceptable and approved Electronic Systems include email to the Administrative Agent at the email addresses identified above or as otherwise designated in writing pursuant to Section 9.01(c) below. All such notices and other communications (i) sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement), and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its email address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient. (c) Any party hereto may change its address, facsimile number or email address for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt. (d) Electronic Systems. (i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System. (ii) Any Electronic System used by the Administrative Agent is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or any Electronic System. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrowers or the other Loan Parties, any Lender or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of or any Borrower's, any Loan Party's or the Administrative Agent's transmission of communications through an Electronic System (other than for direct or actual damages resulting from the gross negligence, bad faith or willful misconduct of, or the material breach of the Loan Documents by, such Person, in each case, as determined by a final 123 11584747

slide143

and non-appealable judgment of a court of competent jurisdiction). "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent or any Lender by means of electronic communications pursuant to this Section, including through an Electronic System.

SECTION 9.02 Waivers; Amendments. (a) No failure or delay by the Administrative Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single

or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time. (b) Except as provided in the first sentence of Section 2.08(a) (with respect to any commitment increase), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders (or the Administrative Agent acting at the direction of the Required Lenders) (with a copy of all such amendments provided to the Administrative Agent) or (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (ii) reduce or forgive the principal amount of any Loan or reduce the rate of interest thereon, or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby (except (1) in connection with the waiver of applicability of any post-default increase in interest rates, which waiver shall be effective with the consent of the Required Lenders or (2) that any amendment or modification of defined terms used in the determination of the Borrowing Base shall not constitute a reduction in the rate of interest or fees for purposes of this clause (i)), (iii) postpone any scheduled date of payment of the principal amount of any Loan, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby (except (1) in connection with the waiver of applicability of any post-default increase in interest rates, which waiver shall be effective with the consent of the Required Lenders and (2) that any amendment or modification of defined terms used in the determination of the Borrowing Base shall not constitute a reduction in the rate of interest or fees for purposes of this clause (ii)), (iv) change Section 2.18(b) or (d) in a manner that would alter the manner in which payments are shared, without the written consent of each Lender (other than any Defaulting Lender), (v) [reserved], (vi) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (other than any Defaulting Lender) directly affected thereby, 124 11584747



slide144

(vii) change Section 2.20, without the consent of each Lender (other than any Defaulting Lender), (viii) release any Borrower from the Obligations or Loan Party from its obligation under its Loan Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender), (ix) except as provided in clause (c) of this Section or in any Collateral Document, release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender), or (x) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written consent of each Lender, provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent (it being understood that any amendment to Section 2.20 shall require the consent of the Administrative Agent). The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04, and this Agreement may be amended without any additional consents in connection with a Successor Rate in the manner contemplated by Section 2.14. Additionally, without the consent of any Lender, the Loan Parties and the Administrative Agent may, in their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law or this Agreement or in each case to otherwise enhance the rights or benefits of any Lender under any Loan Document. Notwithstanding the foregoing, the Fee Letter and any other fee letters entered into after the date hereof may be amended in accordance with the terms thereof. (c) The Secured Parties hereby irrevocably authorize the Administrative Agent, without further consent by the Secured Parties, (i) to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (A) upon the termination of all the Commitments, payment and satisfaction in full in cash of all Obligations (other than Unliquidated Obligations), (B) constituting property being sold or disposed of to a Person that is not (and is not required to become) a Loan Party in a transaction permitted by this Agreement (and the Administrative Agent may rely conclusively on any certificate to that effect, without further inquiry), and, to the extent that the property being sold or disposed of constitutes 100% of the Equity Interest of a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary, (C) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction not prohibited under this Agreement, (D) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII, (E) constituting property of a Loan Party that is being released as a Loan Party as provided below, and (F) constituting property which is or becomes an Excluded Asset, and (ii) to release any Loan Guaranty provided by any Loan Party (A) that is dissolved as permitted under Section 6.08 in connection with a voluntary liquidation or dissolution thereof permitted by such Section, (B) upon the disposition of all of the outstanding Equity Interests of a Subsidiary of the Company (other than the Canadian Borrower) to a Person other than a Borrower or a Subsidiary in a transaction permitted by Section 6.05 (and the Administrative Agent may rely conclusively on any such certificate to that effect provided by any Loan Party without further inquiry), or (C) that becomes an Excluded Subsidiary (and the Administrative Agent may rely conclusively on any such certificate to that effect provided by any Loan Party without further inquiry). Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral. In connection with the foregoing, the Lenders and other Secured Parties hereby authorize the Administrative Agent to execute and deliver any instruments, 125 11584747



documents, and agreements necessary or desirable to evidence and confirm the release of any Loan Party or Collateral pursuant to the foregoing provisions of this Section 9.02(c), all without the further consent or joinder of any Lender or any other Secured Party. In connection with any release hereunder, the Administrative Agent shall promptly (and the Lenders and the Secured Parties hereby authorize the Administrative Agent to) take such action and execute any such documents as may be reasonably requested by the Loan Parties and at the Loan Parties' expense in connection with the release of any Liens created by any Loan Document in respect of such Subsidiary, property or asset, as applicable; provided, that the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower Representative containing such certifications as the Administrative Agent shall reasonably request. (d) If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a "Non-Consenting Lender"), then the Borrowers may elect to replace a Non-Consenting Lender as a Lender party to this Agreement (except that the Borrowers may not elect to replace PLC Agent LLP or any Affiliate or Approved Fund thereof), provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrowers and the Administrative Agent shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrowers shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. (e) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower Representative only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency. SECTION 9.03 Expenses; Indemnity; Damage Waiver. (a) Except as otherwise provided in this Agreement, the Loan Parties shall, jointly and severally, pay all (i) reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable and documented fees, charges and disbursements of counsel (in each case limited to one primary law firm in the U.S., one primary law firm in Canada, and one law firm in any other relevant jurisdiction, except in the case of actual or perceived conflicts of interest, in which case, such additional counsel for the affected persons) for the Administrative Agent, in connection with the syndication and distribution (including, without limitation, via the internet or through an Electronic System) of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated); (ii) [reserved] and (iii) reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Lender, including the reasonable fees, charges and disbursements of any counsel (in each case limited to one primary law firm in the U.S., one primary law firm in Canada, and one law firm in any other relevant jurisdiction, except in the case of actual or perceived conflicts of interest, in which case, such additional counsel for the affected persons) for the Administrative Agent or 126 11584747.



any Lender, in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made hereunder, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans (in each case limited to one primary law firm in the U.S., one primary law firm in Canada, and one law firm in any other relevant jurisdiction, except in the case of actual or perceived conflicts of interest, in which case, such additional counsel for the affected persons). Subject to Section 5.07, such reasonable and documented out-of-pocket expenses shall be paid by the applicable Borrower.

ocket expenses being reimbursed by the Loan Parties under this Section may include, without limiting the generality of the foregoing, fees, costs and expenses incurred in connection with: (i) appraisals and insurance reviews; (ii) field examinations and the preparation of Reports based on the fees charged by a third party retained by the Administrative Agent or the reasonable and documented internally allocated fees for each Person employed by the Administrative Agent with respect to each field examination; (iii) fees and other charges for (A) lien and title searches and title insurance and (B) recording Mortgages (if applicable), filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens; (iv) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and (v) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral. All of the foregoing fees, costs and expenses may be charged to the Borrowers as Loans or to another deposit account, all as described in Section 2.18(c). (b) The Loan Parties, subject to Section 9.20, shall, jointly and severally, indemnify the Administrative Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable and documented fees, charges and disbursements of any outside counsel for any Indemnitee (in each case limited to one primary law firm in the U.S., one primary law firm in Canada, and one law firm in any other relevant jurisdiction, except in the case of actual or perceived conflicts of interest, in which case, such additional counsel for the affected persons), incurred by any Indemnitee or asserted against any Indemnitee by any Person arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement and the other Loan Documents or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby, (ii) any Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by a Loan Party or a Subsidiary, or any Environmental Liability related in any way to a Loan Party or a Subsidiary, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation or proceeding is brought by the Loan Parties or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or 127 11584747



slide147

related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith, or willful misconduct of such Indemnitee or (y) arise from any claim, litigation, investigation, arbitration or proceeding (a "Proceeding") that does not directly or primarily involve an act or omission of the Company or any of its Affiliates and that is brought by an Indemnitee against any other Indemnitee (other than any Proceeding against any Indemnitee solely in its capacity or in fulfilling its role as the Administrative Agent, bookrunner, arranger or any similar role hereunder). This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim. (c) To the extent that any Loan Party fails to pay any amount required to be paid by it to the Administrative Agent (or any sub-agent thereof) (or any Related Party of any of the foregoing) under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent (or any Related Party thereof), as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (it being understood that the Loan Parties' failure to pay any such unpaid amount shall not relieve any Loan Party of any default in the payment thereof); provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent in its capacity as such or against any Related Party of any of the foregoing acting for the Administrative Agent in connection with such capacity. (d) To the extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet) (other than for direct or actual damages resulting from the gross negligence, bad faith or willful misconduct of, or the material breach of the Loan Documents by, such Indemnitee, in each case, as determined by a final and non-appealable judgment of a court of competent jurisdiction) or (ii) on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or the use of the proceeds thereof, provided that, nothing in this paragraph (d) shall relieve any Loan Party of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party. (e) All amounts due under this Section shall be payable not later than 10 days after written demand therefor. (f) Notwithstanding the foregoing, no Canadian Loan Party shall have any liability under this Section 9.03 for any expenses or indemnities that do not arise from the commitments or extensions of credit to the Canadian Loan Parties, the conduct or alleged conduct of any Canadian Loan Party, any Default relating to any Canadian Loan Party, any services provided to any Canadian Loan Party or any enforcement action against any Canadian Loan Party. SECTION 9.04 Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Loan Party without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective 128 11584747



slide148

Successors and assigns permitted hereby. Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement. (b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (in each case, such consent not to be unreasonably withheld, conditioned or delayed) of: (A) the Borrower Representative, provided that the Borrower Representative shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 10 Business Days after having received notice thereof, and provided further that no consent of the Borrower Representative shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee; and (B) the Administrative Agent shall be required for assignments in respect of the Loan if such assignment is to a Person that is not a Lender with a Commitment in respect of such Loan, an Affiliate of such Lender or an Approved Fund with respect to such Lender. (ii) Assignments shall be subject to the following additional conditions: (A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower Representative and the Administrative Agent otherwise consent, provided that no such consent of the Borrower Representative shall be required if an Event of Default has occurred and is continuing; (B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement (including on a pro rata basis with respect to U.S. Term Loans, Canadian Term Loans, U.S. Delay Draw Commitments and Canadian Delay Draw Commitments); (C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 and the tax forms required by Section 2.17(f); and (D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent all "know your customer" documents requested by the Administrative Agent pursuant to anti-money laundering rules and regulations, and an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Company, the other Loan Parties and their

Related 129 11584747

slide149

Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws. For the purposes of this Section 9.04(b), the terms "Approved Fund" and "Ineligible Institution" have the following meanings: "Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender. "Ineligible Institution" means a (a) natural person, (b) Defaulting Lender, (c) holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that such holding company, investment vehicle or trust shall not constitute an Ineligible Institution if it (x) has not been established for the primary purpose of acquiring any Loans or Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than \$25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business, (d) a Loan Party or a Subsidiary or other Affiliate of a Loan Party, or (e) subject to Section 9.04(e) below, a Disqualified Institution. (iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any part hereunder arising from that Lender's having been a Defaulting Lender). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section. (iv) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at one of its U.S. offices a copy of each Assignment and

Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of and stated interest on the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior written notice. 130 11584747



slide150

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.07(b), 2.18(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph. (c) Any Lender may, without the consent of the Borrowers, the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") other than an Ineligible Institution in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged; (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (C) the Borrowers, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f)) and (g) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under this Agreement or any other Loan Document (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such 131 11584747

slide151

participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. (d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest, provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. (e) Without limiting the foregoing, with respect to Disqualified Institutions: (i) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the "Trade Date") on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Company has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Institution after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of "Disqualified Institution"), (x) such assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrowers of an Assignment and Assumption with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Institution. Any assignment in violation of this Section 9.04(e) shall not be void, but the other provisions of this Section 9.04(e) shall apply. (ii) If any assignment or participation is made to any Disqualified Institution without the Company's prior written consent in violation of clause (i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrowers may, at their sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Commitment of such Disqualified Institution and repay all obligations of the Borrowers owing to such Disqualified Institution in connection with such Commitment, and/or (B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.04), all of its interest, rights and obligations under this Agreement to one or more assignees permitted under this Section 9.04 at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder. (iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to the Lenders by the Borrowers, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) 132 11584747



for purposes of voting any plan of reorganization or plan of liquidation pursuant to any Insolvency Laws (a "Relevant Plan"), each Disqualified Institution party hereto hereby agrees (1) not to vote on such Relevant Plan, (2) if such Disqualified Institution does vote on such Relevant Plan notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the U.S. Bankruptcy Code (or any similar provision in any other Insolvency Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Relevant Plan in accordance with Section 1126(c) of the U.S. Bankruptcy Code (or any similar provision in any other Insolvency Laws) and (3) not to contest any request by any party for a determination by the applicable bankruptcy court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2). (iv) The Administrative Agent shall have the right, and the Company hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Institutions provided by the Company and any updates thereto from time to time (collectively, the "DQ List") on Syndtrak or a substantially similar electronic transmission system, including that portion of such electronic transmission system that is designated for "public side" Lenders and/or (B) provide the DQ List to each Lender requesting the same. SECTION 9.05 Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof. SECTION 9.06 Counterparts; Integration; Effectiveness; Electronic Execution. (a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. (b) Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to 133 11584747



be signed in connection with this Agreement and the transactions contemplated hereby or thereby shall be deemed to include Electronic Signatures, deliveries 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, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. SECTION 9.07 Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. SECTION 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Loan Party against any of and all the Secured Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmatured; provided that the foregoing authorization shall not entitle any Lender to apply any deposit (i) of any Canadian Loan Party to the satisfaction of any of the U.S. Secured Obligations or (ii) to the extent that such deposit constitutes an Excluded Asset. The applicable Lender shall notify the Borrower Representative and the Administrative Agent promptly after any such set-off or application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. In the event that any Defaulting Lender shall exercise any right of setoff under this Section, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions in Section 2.20 and pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent and Borrower Representative a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. NOTWITHSTANDING THE FOREGOING, NO LENDER AND NO PARTICIPANT SHALL EXERCISE ANY RIGHT OF SETOFF, BANKER'S LIEN, OR THE LIKE AGAINST ANY DEPOSIT ACCOUNT OR PROPERTY OF ANY LOAN PARTY HELD OR MAINTAINED BY SUCH LENDER WITHOUT THE WRITTEN CONSENT OF THE ADMINISTRATIVE AGENT. SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process. (a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of New York; provided, however, that if the laws of any jurisdiction other than New York shall govern in regard to the validity, perfection or effect of perfection of any lien or in regard to procedural matters affecting enforcement of any liens in collateral, such laws of such other jurisdictions shall continue to apply to that extent. (b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. Federal or New York State court sitting in New York, 134 11584747.

slide154

New York in any action or proceeding arising out of or relating to any Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction. (c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. (d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law. SECTION 9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. SECTION 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement. SECTION 9.12 Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the information (as defined below), except that information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over such Person (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by any Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or 135 11584747.



slide155

obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any information relating to the Loan Parties received by it from any of the Administrative Agent or any Lender, (h) to any Lender's financing sources, provided that prior to any disclosure, such financing source is informed of the confidential nature of the information and instructed to keep such information confidential, (i) to any current or prospective investors, members and partners of the Administrative Agent, any Lender or their Affiliates, provided that prior to any disclosure, such investor or partner is informed of the confidential nature of the information and instructed to keep such information confidential, (j) with the consent of the Borrower Representative or (k) to the extent such information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than any Loan Party and, as far as such recipient is aware, has not been made available as a result of a breach of any obligation of confidentiality of such source with respect to such information; provided that, in the case of clause (c), the party disclosing such information shall provide to the Borrower Representative prior written notice (except where prohibited by applicable law or where not reasonably commercially practicable, in which case, prompt written notice shall be provided) of such disclosure to the extent permitted by applicable law and, in the case of a subpoena, the applicable Governmental Authority has not otherwise requested that the disclosing party refrain from disclosing to the Borrower Representative the existence of such subpoena and, in each case, such disclosing party shall cooperate with the Borrower Representative to the extent commercially reasonable with respect to a protective order for, or other confidential treatment of, such disclosure. For the purposes of this Section, "Information" means all information received from the Loan Parties relating to the Loan Parties or their business, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Loan Parties under circumstances in which, as far as such recipient is aware, such information has not been made available as a result of a breach of any obligation of confidentiality of such source with respect to such information. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12 FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE COMPANY, AND ITS AFFILIATES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS. ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE LOAN PARTIES OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE COMPANY, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE LOAN PARTIES AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS. 136 11584747



SECTION 9.13 Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U of the Board) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, no any Lender shall be obligated to extend credit to the Borrowers in violation of any Requirement of Law. **SECTION 9.14 USA PATRIOT Act.** Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act. **SECTION 9.15 Canadian Anti-Money Laundering Legislation.** (a) Each Loan Party acknowledges that, pursuant to the Proceeds of Crime Act and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws, in each case in any jurisdiction in which any Loan Party or any of its Subsidiaries is located or is doing material business (collectively, including any guidelines or orders thereunder, "AML Legislation"), the Lenders may be required to obtain, verify and record information regarding the Loan Parties and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Loan Parties, and the transactions contemplated hereby. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of a Lender or the Administrative Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence. (b) If the Administrative Agent has ascertained the identity of any Loan Party or any authorized signatories of the Loan Parties for the purposes of applicable AML Legislation, then the Administrative Agent: (i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and the Administrative Agent within the meaning of the applicable AML Legislation; and (ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness. Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that neither the Administrative Agent nor any other Agent has any obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any Loan Party or any such authorized signatory in doing so. **SECTION 9.16 Disclosure.** Each Loan Party and each Lender hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the

Loan Parties and their respective Affiliates. 137 11584747

slide157

SECTION 9.17 Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the other Secured Parties, in assets which, in accordance with Article 9 of the UCC, the PPSA or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

SECTION 9.18 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Fed Funds Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.19 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Lenders are arm's-length commercial transactions between such Borrower and its Affiliates, on the one hand, and the Lenders and their Affiliates, on the other hand, (B) such Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) such Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Lenders and their Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for such Loan Party or any of its Affiliates, or any other Person and (B) no Lender or any of its Affiliates has any obligation to such Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except, in the case of a Lender, those obligations expressly set forth herein and in the other Loan Documents; and (iii) each of the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of such Loan Party and its Affiliates, and no Lender or any of its Affiliates has any obligation to disclose any of such interests to such Loan Party or its Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against each of the Lenders and their Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.20 Obligations of Foreign Subsidiaries. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, none of the Canadian Loan Parties, any Excluded Domestic Subsidiary, nor any Foreign Subsidiary of the Company shall be liable or in any manner responsible for, or be deemed to have guaranteed, directly or indirectly, whether as a primary obligor, guarantor, indemnitor, or otherwise, and none of their assets shall secure, directly or indirectly, any obligations (including principal, interest, fees, penalties, premiums, expenses, charges, reimbursements, indemnities or any other U.S. Obligations) in respect of any U.S. Loan Party under this Agreement, any other Loan Document or any other agreement executed and/or delivered in connection with any of the foregoing (provided that, for the avoidance of doubt, the U.S. Loan Parties shall be jointly and severally liable for the U.S. Obligations and the Canadian Obligations). 138 11584747



slide158

SECTION 9.21 [Reserved]. SECTION 9.22 Judgment Currency. If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the "Original Currency") into another currency (the "Second Currency"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase the Original Currency with the Second Currency at the Spot Rate on the date two Business Days preceding that on which judgment is given. Each Loan Party agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date the Administrative Agent receives payment of any sum so adjudged to be due hereunder in the Second Currency, the Administrative Agent may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency as a result of such judgment, each Loan Party agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify the Administrative Agent against such loss. The term "rate of exchange" in this Section means the Spot Rate at which the Administrative Agent, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any premium and costs of exchange payable in connection with such purchase. SECTION 9.23 Waiver of Immunity. To the extent that any Loan Party has, or hereafter may be entitled to claim or may acquire, for itself, any Collateral or other assets of the Loan Parties, any immunity (whether sovereign or otherwise) from suit, jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution or otherwise) with respect to itself, any Collateral or any other assets of the Loan Parties, such Loan Party hereby waives such immunity in respect of its obligations hereunder and under any promissory notes evidencing the Loans hereunder and any other Loan Document to the fullest extent permitted by applicable law and, without limiting the generality of the foregoing, agrees that the waivers set forth in this Section shall be effective to the fullest extent now or hereafter permitted under the Foreign Sovereign Immunities Act of 1976 (as amended, and together with any successor legislation) and are, and are intended to be, irrevocable for purposes thereof. SECTION 9.24 Process Agent. Each Canadian Loan Party hereby irrevocably designates and appoints the Borrower Representative, in the case of any suit, action or proceeding brought in the United States as its designee, appointee and agent to receive, accept and acknowledge for and on its behalf, and in respect of its property, service of any and all legal process, summons, notices and documents that may be served in any action or proceeding arising out of or in connection with this Agreement or any other Loan Document. Such service may be made by mailing (by registered or certified mail, postage prepaid) or delivering a copy of such process to such Canadian Loan Party in care of the Borrower Representative at the Borrower Representative's address set forth in Section 9.01, and each such Canadian Loan Party hereby irrevocably authorizes and directs the Borrower Representative to accept such service on its behalf. As an alternative method of service, each Canadian Loan Party irrevocably consents to the service of any and all process in any such action or proceeding by the mailing (by registered or certified mail, postage prepaid) of copies of such process to the Borrower Representative or such Canadian Loan Party at its address specified in Section 9.01. Each Canadian Loan Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. SECTION 9.25 Termination and Release of Collateral. 139 11584747



(a) Liens in Collateral will be released, and applicable Loan Parties shall be released of their obligations under the Loan Documents, in accordance with the terms of Section 9.02(c) hereof. (b) In connection with the termination of all Commitments, payment and satisfaction in full in cash of all Obligations (other than Unliquidated Obligations), the Administrative Agent, on behalf of the Lenders, agrees to negotiate in good faith with the Borrower Representative, and to execute and deliver, a customary payoff letter in form and substance reasonably satisfactory to the Administrative Agent and the Borrower Representative, which payoff letter shall provide for, among other things, (i) an acknowledgment of the termination of all Loan Documents, other than any terms thereunder that expressly survive termination, (ii) delivery to the Borrower Representative or its designee of all property pledged to the Administrative Agent or any Lender

(including without limitation stock or other certificates, notes receivable, certificates of title, change of address forms and other instruments) or, if applicable, lost collateral affidavits with respect thereto, (iii) delivery to the Borrower Representative of the original promissory notes executed in connection with the Obligations marked "CANCELLED", (iv) delivery to the Borrower Representative or its designee of mortgage or deed of trust releases against any real property of any Loan Party or property subject to any title laws and other like releases, revocations of direct pay notices to account debtors, releases of deposit account control agreements, Collateral Access Agreements and similar instruments or documents, (v) delivery to the Borrower Representative or its designee of UCC-3 termination statements with respect to the UCC and PSA discharge filings made by the Administrative Agent in respect of each Loan Party, as applicable, and (vi) a release of liability from the Loan Parties in favor of the Secured Parties. SECTION 9.26 Publicity. Each Loan Party and each Lender hereby authorizes the Administrative Agent, at its sole expense, after providing prior notice thereof to the Borrower Representative, to reference this Agreement and the syndication and arrangement of the loan facility contemplated herein (but not the individual Lenders, bookrunners or arrangers) in connection with marketing, press release or other transactional announcements or updates; provided that the content of any such marketing, press release or other transactional announcements or updates shall be reasonably acceptable to the Borrower Representative. (it being understood that tombstones used in pitchbooks by Administrative Agent (as opposed to public announcements) referencing the syndication and arrangement of this Agreement and the loan facility contemplated herein, or inclusion of same on lists or in other formats (other than public announcements), in each case providing the same information as is typically included on tombstones, shall not require prior notice thereof to, or acceptance by, the Borrower Representative). SECTION 9.27 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 an Affected 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 140 1158474?



slide160

any such liability under this Agreement or any other Loan Document or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

SECTION 9.28 Certain ERISA Matters. Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, to and for the benefit of the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that at least one of the following is and will be true: (a) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more U.S. Benefit Plans in connection with the Loans or the Commitments; (b) the transaction exemption set forth in one or more prohibited transaction exceptions (or "PTEs"), such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, and the conditions for exemptive relief thereunder are and will continue to be satisfied in connection therewith; (c) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14); (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement; (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or (d) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

ARTICLE X.

U.S. GUARANTY SECTION 10.01 Guaranty. Each U.S. Loan Party hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally and irrevocably guarantees to the Secured Parties, the prompt payment and performance when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and all reasonable and documented costs and expenses, including, without limitation, all court costs and attorneys' and paralegals' fees (subject to the limitations set forth in Section 9.03) and expenses paid or incurred by the Administrative Agent and the Lenders in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, any Borrower, any Loan Party or any other guarantor of all or any part of the Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the "U.S. Guaranteed Obligations"). Each U.S. Loan Party further 141 11584747



slide161

agrees that the U.S. Guaranteed 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 guarantee notwithstanding any such extension or renewal. All terms of the U.S. Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the U.S. Guaranteed Obligations. SECTION 10.02 Guaranty of Payment.

This U.S. Guaranty is a guaranty of payment and not of collection. Each U.S. Loan Party waives any right to require the Administrative Agent or any Lender to sue any other Loan Party, any other guarantor of, or any other Person obligated for, all or any part of the U.S. Guaranteed Obligations (each, a "U.S. Obligated Party"), or to enforce its rights against any collateral securing all or any part of the U.S. Guaranteed Obligations. SECTION 10.03 No Discharge or Diminishment of Loan Guaranty. Except as otherwise provided for herein, the obligations of each U.S. Loan Party hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the U.S. Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of the U.S. Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Loan Party or any other Obligated Party liable for any of the U.S. Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any U.S. Obligated Party or their assets or any resulting release or discharge of any obligation of any U.S. Obligated Party; or (iv) the existence of any claim, setoff or other rights which any U.S. Loan Party may have at any time against any U.S. Obligated Party, the Administrative Agent, any Lender or any other Person, whether in connection therewith or in any unrelated transaction. (a) The obligations of each U.S. 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 U.S. Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any U.S. Obligated Party, of the U.S. Guaranteed Obligations or any part thereof. (b) Further, the obligations of any U.S. Loan Party hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the U.S. Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the U.S. Guaranteed Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for the obligations of any Loan Party for all or any part of the U.S. Guaranteed Obligations or any obligations of any other U.S. Obligated Party liable for any of the U.S. Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent or any Lender with respect to any collateral securing any part of the U.S. Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the U.S. Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such U.S. Loan Party or that would otherwise operate as a discharge of any U.S. Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of the U.S. Guaranteed Obligations). SECTION 10.04 Defenses Waived. To the fullest extent permitted by applicable law, each U.S. Loan Party hereby waives any defense based on or arising out of any defense of any U.S. Loan Party or the unenforceability of all or any part of the U.S. Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any U.S. Loan Party or any other U.S. Obligated Party, other than the indefeasible payment in full in cash of the Guaranteed Obligations. Without limiting the generality of the foregoing, each U.S. Loan Party irrevocably waives acceptance hereof, presentment, 142 11584747.



demand, protest and, to the fullest extent permitted by 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 U.S. Obligated Party or any other Person. Each U.S. 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. The Administrative Agent may, at its election, foreclose on any Collateral securing all or a part of the U.S. Guaranteed Obligations and 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 such Collateral, compromise or adjust any part of the U.S. Guaranteed Obligations, make any other accommodation with any U.S. Obligated Party or exercise any other right or remedy available to it against any U.S. Obligated Party, without affecting or impairing in any way the liability of such U.S. Loan Party under this U.S. Guaranty except to the extent the U.S. Guaranteed Obligations have been fully and indefeasibly paid in cash. To the fullest extent permitted by applicable law, each U.S. 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 U.S. Loan Party against any U.S. Obligated Party or any security. SECTION 10.05 Rights of Subrogation. No U.S. Loan Party will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification, that it has against any U.S. Obligated Party or any Collateral, until the Loan Parties have fully performed all their obligations to the Administrative Agent, the Lenders, and the other Secured Parties. SECTION 10.06 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the U.S. Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of any Loan Party or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each U.S. Loan Party's obligations under this U.S. Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Lenders, or the other Secured Parties are in possession of this U.S. Guaranty. If acceleration of the time for payment of any of the U.S. Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Loan Party, all such amounts otherwise subject to acceleration under the terms of any

agreement relating to the U.S. Guaranteed Obligations shall nonetheless be payable by the U.S. Loan Parties forthwith on demand by the Administrative Agent. SECTION 10.07 Information. Each U.S. Loan Party assumes all responsibility for being and keeping itself informed of each Loan Party's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the U.S. Guaranteed Obligations and the nature, scope and extent of the risks that each U.S. Loan Party assumes and incurs under this U.S. Guaranty, and agrees that none of the Administrative Agent or any Lender shall have any duty to advise any U.S. Loan Party of information known to it regarding those circumstances or risks. SECTION 10.08 [Reserved.] SECTION 10.09 [Reserved.] SECTION 10.10 Maximum Liability. The provisions of this U.S. 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 U.S. Loan Party under this U.S. Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such U.S. Loan Party's liability under this U.S. Guaranty, then, notwithstanding any other provision of this U.S. Guaranty to the contrary, the amount of such liability shall, without any further action by the U.S. Loan Party or the Lenders, be automatically 143 11584747.



slide163

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 U.S. Loan Party's "Maximum U.S. Liability"). This Section with respect to the Maximum U.S. Liability of each U.S. Loan Party is intended solely to preserve the rights of the Lenders to the maximum extent not subject to avoidance under applicable law, and no U.S. Loan Party nor any other Person or entity shall have any right or claim under this Section with respect to such Maximum U.S. Liability, except to the extent necessary so that the obligations of any U.S. Loan Party hereunder shall not be rendered voidable under applicable law. Each U.S. Loan Party agrees that the U.S. Guaranteed Obligations may at any time and from time to time exceed the Maximum U.S. Liability of each U.S. Loan Party without impairing this U.S. Guaranty or affecting the rights and remedies of the Lenders hereunder; provided that nothing in this sentence shall be construed to increase any U.S. Loan Party's obligations hereunder beyond its Maximum U.S. Liability. SECTION 10.11 Contribution. In the event any U.S. Loan Party (a "Paying U.S. Loan Party") shall make any payment or payments under this U.S. Guaranty or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations under this U.S. Guaranty, each other U.S. Loan Party (each a "Non-Paying U.S. Loan Party") shall contribute to such Paying U.S. Loan Party an amount equal to such Non-Paying U.S. Loan Party's Applicable Share of such payment or payments made, or losses suffered, by such Paying U.S. Loan Party. For purposes of this Section, each Non-Paying U.S. Loan Party's "Applicable Share" with respect to any such payment or loss by a Paying U.S. Loan Party shall be determined as of the date on which such payment or loss was made by reference to the ratio of (a) such Non-Paying U.S. Loan Party's Maximum U.S. 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 U.S. Loan Party's Maximum U.S. Liability has not been determined, the aggregate amount of all monies received by such Non-Paying U.S. Loan Party from the other U.S. Loan Parties after the date hereof (whether by loan, capital infusion or by other means) to (b) the aggregate Maximum U.S. Liability of all U.S. Loan Parties hereunder (including such Paying U.S. Loan Party) 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 U.S. Liability has not been determined for any U.S. Loan Party, the aggregate amount of all monies received by such U.S. Loan Parties from the other Loan Parties after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any U.S. Loan Party's several liability for the entire amount of the U.S. Guaranteed Obligations (up to such U.S. Loan Party's Maximum U.S. Liability). Each of the U.S. Loan Parties covenants and agrees that its right to receive any contribution under this U.S. Guaranty from a Non-Paying U.S. Loan Party shall be subordinate and junior in right of payment to the payment in full in cash of the U.S. Guaranteed Obligations. This provision is for the benefit of both the Administrative Agent, the Lenders and the U.S. Loan Parties and may be enforced by any one, or more, or all of them in accordance with the terms hereof. SECTION 10.12 Liability Cumulative. The liability of each Loan Party as a Loan Party under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative 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. SECTION 10.13 (Reserved). SECTION 10.14 Common Enterprise. Each Loan Party represents and warrants that the successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has 144 11584747



determined that it may reasonably be expected to derive benefit), directly and indirectly, from (i) successful operations of each of the other Loan Parties and (ii) the credit extended by the Lenders to the Borrowers hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest. ARTICLE XI. CANADIAN GUARANTY SECTION 11.01 Guaranty. Each Canadian Loan Party hereby agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to the Secured Parties, the prompt payment and performance when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Canadian Secured Obligations and all reasonable costs and expenses, including, without limitation, all reasonable and documented court costs and attorneys' fees and expenses paid or incurred by the Administrative Agent and any Lender in endeavoring to collect all or any part of the Canadian Secured Obligations from, or in prosecuting any action against, the Canadian Borrower, any Canadian Guarantor or any other guarantor of all or any part of the Canadian Secured Obligations (such costs and expenses, together with the Canadian Secured Obligations, collectively the "Canadian Guaranteed Obligations"). Each Canadian Loan Party further agrees that the Canadian Guaranteed 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 guarantee notwithstanding any such extension or renewal. All terms of this Canadian Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Canadian Guaranteed Obligations. SECTION 11.02 Guarantee of Payment. This Canadian Guaranty is a Guarantee of payment and not of collection. Each Canadian Loan Party waives any right to require the Administrative Agent, or any Lender or any other Secured Party to sue any other Loan Party, any other guarantor, or any other Person obligated for all or any part of the Canadian Guaranteed Obligations (each, a "Canadian Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Canadian Guaranteed Obligations. In addition, as an original and independent obligation under this Canadian Guaranty, each Canadian Loan Party shall: (a) indemnify each Canadian Obligated Party and its successors, endorsees, transferees and assigns and keep the Canadian Obligated Parties indemnified against all costs, losses, expenses and liabilities of whatever kind resulting from the failure by the Loan Parties or any of them, to make due and punctual payment of any of the Canadian Secured Obligations or resulting from any of the Canadian Secured Obligations being or becoming void, voidable, unenforceable or ineffective against any Loan Party (including, but without limitation, all legal and other costs, charges and expenses incurred by each Canadian Obligated Party, or any of them, in connection with preserving or enforcing, or attempting to preserve or enforce, its rights under this Canadian Guaranty); and (b) pay on demand the amount of such costs, losses, expenses and liabilities whether or not any of the Canadian Obligated Parties has attempted to enforce any rights against any Loan Party or any other Person or otherwise. SECTION 11.03 No Discharge or Diminishment of Canadian Guaranty. 145 11584747

slide165

(a) Except as otherwise provided for herein, the obligations of each Canadian 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 in cash of the Canadian Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of the Canadian Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of the Canadian Loan Party or any other Canadian Obligated Party liable for any of the Canadian Guaranteed Obligations; (iii) any insolvency, bankruptcy, winding-up, liquidation, reorganization or other similar proceeding affecting any Canadian Obligated Party or their assets or any resulting release or discharge of any obligation of any Canadian Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Canadian Loan Party may have at any time against any Canadian Obligated Party, the Administrative Agent, any Lender or any other person, whether in connection herewith or in any unrelated transactions. (b) The obligations of each Canadian 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 Canadian Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Canadian Obligated Party, of the Canadian Guaranteed Obligations or any part thereof. (c) Further, the obligations of any Canadian Loan Party hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, or any Lender or any other Secured Party to assert any claim or demand or to enforce any remedy with respect to all or any part of the Canadian Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Canadian Guaranteed Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for the obligations of any Canadian Loan Party for all or any part of the Canadian Guaranteed Obligations or any obligations of any other Canadian Obligated Party liable for any of the Canadian Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, or any Lender or any other Secured Party with respect to any collateral securing any part of the Canadian Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Canadian Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Canadian Loan Party or that would otherwise operate as a discharge of any Canadian Loan Party as a matter of law or equity (other than the payment in full in cash of the Canadian Guaranteed Obligations). SECTION 11.04 Defenses Waived. To the fullest extent permitted by applicable law, each Canadian Loan Party hereby waives any defense based on or arising out of any defense of any Canadian Loan Party or the unenforceability of all or any part of the Canadian Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any Canadian Loan Party, other than the payment in full in cash of the Canadian Guaranteed Obligations. Without limiting the generality of the foregoing, each Canadian Loan Party irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by 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 Canadian Obligated Party, or any other Person. Each Canadian 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. The Administrative Agent may, at its election, foreclose on, or otherwise enforce against, any Collateral securing all or a part of the Canadian Guaranteed Obligations and 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 such Collateral, compromise or adjust any part of the Canadian Guaranteed Obligations, make



slide166

Obligations have been fully paid in cash. To the fullest extent permitted by applicable law, each Canadian 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 Canadian Loan Party against any Canadian Obligated Party or any security. SECTION 11.05 Rights of Subrogation. No Canadian Loan Party will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification, that it has against any Canadian Obligated Party, or any Collateral, until the Loan Parties have fully performed all their obligations to the Administrative Agent and the Lenders. SECTION 11.06 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Canadian Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of any Canadian Loan Party or otherwise, each Canadian Loan Party's obligations under this Canadian Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent and the Lenders or other Secured Parties are in possession of this Canadian Guaranty. If acceleration of the time for payment of any of the Canadian Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Canadian Loan Party, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Canadian Guaranteed Obligations shall nonetheless be payable by the Canadian Loan Parties promptly on demand by the Administrative Agent. SECTION 11.07 Information. Each Canadian Loan Party assumes all responsibility for being and keeping itself informed of the other Canadian Loan Party's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Canadian Guaranteed Obligations and the nature, scope and extent of the risks that each Canadian Loan Party assumes and incurs under this Canadian Guaranty, and agrees that neither the Administrative Agent nor any Lender shall have any duty to advise any Canadian Loan Party of information known to it regarding those circumstances or risks. SECTION 11.08 Maximum Canadian Liability. In any action or proceeding involving any corporate law, or any provincial, territorial, state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Canadian Loan Party under this Canadian Guaranty would otherwise be held or determined to be void, voidable, avoidable, invalid or unenforceable on account of the amount of such Canadian Loan Party's liability under this Canadian Guaranty, then, notwithstanding any other provision of this Canadian Guaranty to the contrary, the amount of such liability shall, without any further action by the Canadian Loan Parties or the Administrative 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 Canadian Loan Party's "Maximum Canadian Liability"). This Section with respect to the Maximum Canadian Liability of each Canadian Loan Party is intended solely to preserve the rights of the Administrative Agent and the Lenders to the maximum extent not subject to avoidance under applicable law, and no Canadian Loan Party nor any other Person shall have any right to claim under this Section with respect to such Maximum Canadian Liability, except to the extent necessary so that the obligations of any Canadian Loan Party hereunder shall not be rendered voidable under applicable law. Each Canadian Loan Party agrees that the Canadian Guaranteed Obligations may at any time and from time to time exceed the Maximum Canadian Liability of each Canadian Loan Party without impairing this Canadian Guaranty or affecting the rights and remedies of the Administrative Agent, or the Lenders hereunder, provided that, nothing in this sentence shall be construed to increase any Canadian Loan Party's obligations hereunder beyond its Maximum Canadian Liability. SECTION 11.09 Contribution. In the event any Canadian Loan Party (a "Paying Canadian Loan Party") shall make any payment or payments under this Canadian Guaranty or shall suffer any loss 147 11584747.



as a result of any realization upon any collateral granted by it to secure its obligations under this Canadian Guaranty, each other Canadian Loan Party (each a "Non-Paying Canadian Loan Party") shall contribute to such Paying Canadian Loan Party an amount equal to such Non-Paying Canadian Loan Party's "Applicable Percentage" of such payment or payments made, or losses suffered, by such Paying Canadian Loan Party. For purposes of this Article XI, each Non-Paying Canadian Loan Party's "Applicable Percentage" with respect to any such payment or loss by a Paying Canadian Loan Party shall be determined as of the date on which such payment or loss was made by reference to the ratio of (i) such Non-Paying Canadian Loan Party's Maximum Canadian 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 Canadian Loan Party's Maximum Canadian Liability has not been determined, the aggregate amount of all monies received by such Non-Paying Canadian Loan Party from the other Canadian Loan Parties after the date hereof (whether by loan, capital infusion or by other means) to (ii) the aggregate Maximum Canadian Liability of all Canadian Loan Parties hereunder (including such Paying Canadian Loan Party) 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 Canadian Liability has not been determined for any Canadian Loan Party, the aggregate amount of all monies received by such Canadian Loan Parties from the other Canadian Loan Parties after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Canadian Loan Party's several liability for the entire amount of the Canadian Guaranteed Obligations (up to such Canadian Loan Party's Maximum Canadian Liability). Each of the Canadian Loan Parties covenants and agrees that its right to receive any contribution under this Canadian Guaranty from a Non-Paying Canadian Loan Party shall be subordinate and junior in right of payment to the payment in full in cash of the Canadian Guaranteed Obligations. This provision is for the benefit of all of the Administrative Agent, the Lenders and the Canadian Loan Parties and may be enforced by any one, or more, or all of them in accordance with the terms hereof. SECTION 11.10 Liability Cumulative. The liability of each Canadian Loan Party under this Article XI is in addition to and shall be cumulative with all liabilities of each Canadian Loan Party to the Administrative Agent and the Lenders under this Agreement and the other Loan Documents to which such Canadian Loan Party is a party or in respect of any obligations or liabilities of the other Canadian Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary. SECTION 11.11 Common Enterprise. Each Canadian Loan Party represents and warrants that the successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Canadian Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (i) successful operations of each of the other Loan Parties and (ii) the credit extended by the Lenders to the Borrowers hereunder, both in their separate capacities and as members of the group of companies. Each Canadian Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest. ARTICLE XII. THE BORROWER REPRESENTATIVE 148

11584747



slide168

SECTION 12.01 Appointment; Nature of Relationship. The Company is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the "Borrower Representative") hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article XII. Additionally, the Borrowers hereby appoint the Borrower Representative as their agent to receive all of the proceeds of the Loans into such accounts as the Borrower Representative shall designate to the Administrative Agent in writing from time to time, at which time the Borrower Representative shall promptly disburse such Loans to the appropriate Borrower(s). The Administrative Agent and the Lenders, and their respective officers, directors, agents or employees, shall not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 12.01. SECTION 12.02 Powers. The Borrower Representative shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative shall have no implied duties to the Borrowers, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative. SECTION 12.03 Employment of Agents. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through Responsible Officers. SECTION 12.04 Notices. Each Loan Party shall promptly notify the Borrower Representative of the occurrence of any Default hereunder referring to this Agreement describing such Default and stating that such notice is a "notice of default". In the event that the Borrower Representative receives such a notice, the Borrower Representative shall give notice thereof to the Administrative Agent and the Lenders pursuant to Section 5.02. SECTION 12.05 Successor Borrower Representative. Upon the prior written consent of the Administrative Agent, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative (it being understood that such successor must be a Borrower). The Administrative Agent shall give prompt written notice of such resignation to the Lenders. SECTION 12.06 Execution of Loan Documents; Borrowing Base Certificate. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Administrative Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as shall be necessary or appropriate to effect the purposes of the Loan Documents, including, without limitation, the Borrowing Base Certificates and the Compliance Certificates. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Borrowers. SECTION 12.07 Reporting. Each Borrower hereby agrees that such Borrower shall furnish promptly after each fiscal month to the Borrower Representative a copy of its Borrowing Base Certificate and any other certificate or report required hereunder or requested by the Borrower Representative shall rely to prepare the Borrowing Base Certificates and Compliance Certificate required pursuant to the provisions of this Agreement. 149.11584747



slide170



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written. U.S. BORROWER: DESIGNER BRANDS INC. By: Name: Jared A. Poff Title: Executive Vice President, Chief Financial Officer and Chief Administrative Officer CANADIAN BORROWER: DESIGNER BRANDS CANADA INC. By: Name: Jared A. Poff Title: Executive Vice President [Signature]

[Page to Term Credit Agreement](#)

slide171

OTHER LOAN PARTIES: DSW SHOE WAREHOUSE, INC. By: Name: Jared A. Poff Title: Executive Vice President BRAND CARD SERVICES LLC By: Name: Jared A. Poff Title: Executive Vice President DSW INFORMATION TECHNOLOGY LLC By: Name: Jared A. Poff Title: Executive Vice President ETAILDIRECT LLC By: Name: Jared A. Poff Title: Executive Vice President [Signature Page to Term Credit Agreement]



slide172

EBUY'S, INC. By: Name: Jared A. Poff Title: Executive Vice President DSW MS LLC By: Name: Jared A. Poff Title: Executive Vice President DSW LEASED BUSINESS DIVISION LLC AKA AFFILIATED BUSINESS GROUP By: Name: Jared A. Poff Title: Executive Vice President 810 AC LLC By: Name: Jared A. Poff Title: Executive Vice President RETAIL VENTURES SERVICES, INC. By: Name: Jared A. Poff Title: Executive Vice President [Signature Page to Term Credit Agreement]

slide173

CAMUTO LLC By: Name: Jared A. Poff Title: Executive Vice President DESIGNER BRAND LICENSING LLC By: Name: Jared A. Poff Title: Executive Vice President VCJS LLC By: Name: Jared A. Poff Title: Executive Vice President VCS GROUP, LLC By: Name: Jared A. Poff Title: Executive Vice President VINCENT CAMUTO LLC By: Name: Jared A. Poff Title: Executive Vice President [Signature Page to Term Credit Agreement]

slide174

CCI OPERATIONS LLC By: Name: Jared A. Poff Title: Executive Vice President VC FOOTWEAR LLC By: Name: Jared A. Poff Title: Executive Vice President VC LINE BUILDING SERVICES LLC By: Name: Jared A. Poff Title: Executive Vice President HOT ON TIME LLC By: Name: Jared A. Poff Title: Executive Vice President SOLE SOCIETY GROUP INC. By: Name: Jared A. Poff Title: Executive Vice President [Signature Page to Term Credit Agreement]



slide175

TOPO ATHLETIC LLC By: Name: Jared A. Poff Title: Executive Vice President, Interim CFO DESIGNER BRANDS PARTNERS LLC By: Name: Jared A. Poff Title: Executive Vice President DBI BRANDS MANAGEMENT LLC By: Name: Jared A. Poff Title: Executive Vice President DBI TRADE CO., LLC By: Name: Laura Noonan Title: Senior Director – Global Compliance [Signature Page to Term Credit Agreement]

slide176



PLC AGENT LLC, as Administrative Agent By: Pathlight Capital LP, Its Sole Member By: Pathlight GP LLC, Its General Partner By: Name: Roger Malouf Title: Managing Director PATHLIGHT CAPITAL FUND II LP, as a Lender By: Pathlight Partners II GP, LLC, Its General Partner By: Name: Roger Malouf Title: Managing Director PATHLIGHT CAPITAL FUND III LP, as a Lender By: Pathlight Partners III GP LLC, Its General Partner By: Name: Roger Malouf Title: Managing Director [Signature Page to Term Credit Agreement]

slide178



slide179

Standard Deleted cell #11584747v1<Exchange> - DBI // Pathlight - Conformed Credit Agreement Moved cell Legend: Split/Merged cell Insertion Document comparison by Workshare Compare on Thursday, September 21, 2023 3:29:29 PM Padding cell Document 2 ID Deletion Statistics: Document 1 ID iManage://IMANAGE/Exchange/11584747/4 Count Moved from Insertions 12 Moved to Deletions iManage://IMANAGE/Exchange/11584747/1 6 Description Moved from Style change 0 Moved to #11584747v4<Exchange> - DBI // Pathlight - Term Credit Agreement (Conformed through First Amendment) 0 Format change Style changes 0 Moved deletion Format changes Input: 0 Rendering set Total changes Inserted cell 18 Description



slide180

EXHIBIT 31.1

CERTIFICATIONS

I, Douglas M. Howe, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Designer Brands Inc.;
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
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.

December 5, 2023 June 4, 2024

By: /s/ Douglas M. Howe
Douglas M. Howe
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATIONS

I, Jared A. Poff, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Designer Brands Inc.;
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
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.

December 5, 2023 June 4, 2024

By: /s/ Jared A. Poff
Jared A. Poff
Executive Vice President, Chief Financial Officer and Chief Administrative Officer
(Principal Financial Officer)

EXHIBIT 32.1

**CERTIFICATION PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002* 1350 CERTIFICATION***

In connection with the Quarterly Report of Designer Brands Inc. (the "Company") on Form 10-Q for the fiscal quarter ended **October 28, 2023** **May 4, 2024** as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Douglas M. Howe, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to §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 result of operations of the Company.

December 5, 2023 June 4, 2024

By: /s/ Douglas M. Howe
Douglas M. Howe
Chief Executive Officer
(Principal Executive Officer)

* This Certification is being furnished as required by Rule 13a-14(b) under the Exchange Act of 1934 (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code, and shall not be deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section. This Certification shall not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Exchange Act, except as otherwise stated in such filing.

A signed original of this written statement required by 18 U.S.C. § 1350 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

EXHIBIT 32.2

**CERTIFICATION PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002* 1350 CERTIFICATION***

In connection with the Quarterly Report of Designer Brands Inc. (the "Company") on Form 10-Q for the fiscal quarter ended **October 28, 2023** **May 4, 2024** as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jared A. Poff, Executive Vice President, Chief Financial Officer and Chief Administrative Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to §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 result of operations of the Company.

December 5, 2023 June 4, 2024

By: /s/ Jared A. Poff
Jared A. Poff
Executive Vice President, Chief Financial Officer and Chief Administrative Officer
(Principal Financial Officer)

* This Certification is being furnished as required by Rule 13a-14(b) under the Exchange Act of 1934 (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code, and shall not be deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section. This Certification shall not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Exchange Act, except as otherwise stated in such filing.

A signed original of this written statement required by 18 U.S.C. § 1350 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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.

©2024, Refinitiv. All rights reserved. Patents Pending.