

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

**FORM 10-Q**

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

For the Quarterly Period Ended October 31, 2021

**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: 1-16497

**MOVADO GROUP, INC.**

(Exact Name of Registrant as Specified in its Charter)

New York  
(State or Other Jurisdiction  
of Incorporation or Organization)

650 From Road, Ste. 375  
Paramus, New Jersey  
(Address of Principal Executive Offices)

13-2595932  
(IRS Employer  
Identification No.)

07652-3556  
(Zip Code)

(201) 267-8000  
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	MOV	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 that 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, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer   
Smaller reporting company  Emerging growth company

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

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

The number of shares outstanding of the registrant's Common Stock and Class A Common Stock as of November 18, 2021 were 16,377,425 and 6,536,960 respectively.

**MOVADO GROUP, INC.**  
**Index to Quarterly Report on Form 10-Q**  
**October 31, 2021**

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**PART I – FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**MOVADO GROUP, INC.**

**CONSOLIDATED BALANCE SHEETS**

(In thousands, except share and per share amounts)

(Unaudited)

	October 31, 2021	January 31, 2021	October 31, 2020
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	\$ 201,814	\$ 223,811	\$ 163,218
Trade receivables, net	136,373	76,931	103,506
Inventories	170,714	152,580	176,841
Other current assets	20,151	23,479	24,014
Income taxes receivable	7,099	24,850	4,014
Total current assets	<u>536,151</u>	<u>501,651</u>	<u>471,593</u>
Property, plant and equipment, net	19,365	22,349	24,002
Operating lease right-of-use assets	68,669	76,070	77,932
Deferred and non-current income taxes	41,687	42,507	54,748
Other intangibles, net	14,511	17,081	17,123
Other non-current assets	60,634	59,599	56,380
Total assets	<u>\$ 741,017</u>	<u>\$ 719,257</u>	<u>\$ 701,778</u>
<b>LIABILITIES AND EQUITY</b>			
Current liabilities:			
Accounts payable	\$ 29,473	\$ 28,187	\$ 35,562
Accrued liabilities	69,975	51,124	59,612
Accrued payroll and benefits	19,798	18,047	12,693
Current operating lease liabilities	13,853	15,861	14,210
Income taxes payable	11,936	14,452	11,275
Total current liabilities	<u>145,035</u>	<u>127,671</u>	<u>133,352</u>
Loans payable to bank	—	21,230	37,266
Deferred and non-current income taxes payable	20,354	21,895	20,893
Non-current operating lease liabilities	62,853	68,412	71,658
Other non-current liabilities	53,212	50,115	45,179
Total liabilities	<u>281,454</u>	<u>289,323</u>	<u>308,348</u>
Commitments and contingencies (Note 11)			
Redeemable noncontrolling interest	2,445	2,600	2,772
Equity:			
Preferred Stock, \$0.01 par value, 5,000,000 shares authorized; no shares issued	—	—	—
Common Stock, \$0.01 par value, 100,000,000 shares authorized; 28,478,373, 28,078,241 and 28,077,806 shares issued and outstanding, respectively	284	281	281
Class A Common Stock, \$0.01 par value, 30,000,000 shares authorized; 6,536,960, 6,610,509 and 6,608,548 shares issued and outstanding, respectively	65	65	65
Capital in excess of par value	220,294	214,043	212,730
Retained earnings	387,959	341,641	313,696
Accumulated other comprehensive income	87,730	92,540	85,879
Treasury Stock, 12,095,713, 11,492,591 and 11,492,591 shares, respectively, at cost	<u>(241,983)</u>	<u>(223,306)</u>	<u>(223,306)</u>
Total Movado Group, Inc. shareholders' equity	<u>454,349</u>	<u>425,264</u>	<u>389,345</u>
Noncontrolling interest	2,769	2,070	1,313
Total equity	<u>457,118</u>	<u>427,334</u>	<u>390,658</u>
Total liabilities, redeemable noncontrolling interest and equity	<u>\$ 741,017</u>	<u>\$ 719,257</u>	<u>\$ 701,778</u>

**See Notes to Consolidated Financial Statements**

**MOVADO GROUP, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands, except per share amounts)  
(Unaudited)

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2021	2020	2021	2020
Net sales	\$ 217,746	\$ 169,863	\$ 526,418	\$ 328,067
Cost of sales	92,172	77,410	228,189	158,365
Gross profit	125,574	92,453	298,229	169,702
Selling, general and administrative	84,171	69,386	218,937	181,795
Impairment of goodwill and intangible assets (Note 6)	—	—	—	155,919
Total operating expenses	84,171	69,386	218,937	337,714
Operating income/(loss)	41,403	23,067	79,292	(168,012)
Non-operating income/(expense):				
Other income	86	8	443	31
Gain on sale of a non-operating asset	—	—	—	1,317
Interest expense	(133)	(608)	(582)	(1,469)
Income/(loss) before income taxes	41,356	22,467	79,153	(168,133)
Provision/(benefit) for income taxes (Note 12)	9,561	7,524	18,206	(26,365)
Net income/(loss)	31,795	14,943	60,947	(141,768)
Less: Net income attributable to noncontrolling interests	390	118	723	15
Net income/(loss) attributable to Movado Group, Inc.	<u>\$ 31,405</u>	<u>\$ 14,825</u>	<u>\$ 60,224</u>	<u>\$ (141,783)</u>
<b>Basic income/(loss) per share:</b>				
Weighted basic average shares outstanding	23,095	23,285	23,248	23,223
Net income/(loss) per share attributable to Movado Group, Inc.	\$ 1.36	\$ 0.64	\$ 2.59	\$ (6.11)
<b>Diluted income/(loss) per share:</b>				
Weighted diluted average shares outstanding	23,600	23,375	23,679	23,223
Net income/(loss) per share attributable to Movado Group, Inc.	\$ 1.33	\$ 0.63	\$ 2.54	\$ (6.11)

See Notes to Consolidated Financial Statements

**MOVADO GROUP, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
(In thousands)  
(Unaudited)

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2021	2020	2021	2020
<b>Net income/(loss)</b>	\$ 31,795	\$ 14,943	\$ 60,947	\$ (141,768)
<b>Other comprehensive income/(loss):</b>				
Net unrealized gain/(loss) on investments, net of tax provision/(benefit) of \$5, \$1, \$13 and \$(10), respectively	14	1	39	(31)
Amortization of prior service cost, net of tax provision of \$4, \$4, \$12 and \$12, respectively	14	14	43	42
Foreign currency translation adjustments	(2,784)	(245)	(4,892)	818
Total other comprehensive (loss)/income, net of taxes	(2,756)	(230)	(4,810)	829
<b>Less:</b>				
<b>Comprehensive income/(loss) attributable to noncontrolling interests:</b>				
Net income	390	118	723	15
Foreign currency translation adjustments	(11)	(58)	(179)	198
Total comprehensive income/(loss) attributable to noncontrolling interests	\$ 379	\$ 60	\$ 544	\$ 213
<b>Total comprehensive income/(loss) attributable to Movado Group, Inc.</b>	<u>\$ 28,660</u>	<u>\$ 14,653</u>	<u>\$ 55,593</u>	<u>\$ (141,152)</u>

See Notes to Consolidated Financial Statements

**MOVADO GROUP, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)  
(Unaudited)

	<b>Nine Months Ended October 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Cash flows from operating activities:</b>		
Net income/(loss) attributable to Movado Group, Inc.	\$ 60,224	\$ (141,783)
<b>Adjustments to reconcile net (loss)/income to net cash used in operating activities:</b>		
Impairment of goodwill and intangible assets	—	155,919
Non-cash corporate initiatives	—	6,685
Gain on sale of a non-operating asset	—	(1,317)
Depreciation and amortization	9,401	10,546
Transactional (gains)/losses	(277)	231
Provision for inventories and accounts receivable	3,557	2,066
Deferred income taxes	909	(31,536)
Stock-based compensation	3,965	3,848
Other	957	306
<b>Changes in assets and liabilities:</b>		
Trade receivables	(62,393)	(26,835)
Inventories	(23,755)	(7,073)
Other current assets	4,962	(821)
Accounts payable	2,033	40
Accrued liabilities	22,581	15,929
Accrued payroll and benefits	1,866	6,124
Income taxes receivable	17,216	—
Income taxes payable	(3,479)	516
Other non-current assets	637	(347)
Other non-current liabilities	290	796
Net cash provided by/(used in) operating activities	38,694	(6,706)
<b>Cash flows from investing activities:</b>		
Capital expenditures	(3,637)	(2,428)
Long-term investments	(1,100)	—
Proceeds from sale of a non-operating asset	—	1,317
Trademarks and other intangibles	(193)	(118)
Net cash used in investing activities	(4,930)	(1,229)
<b>Cash flows from financing activities:</b>		
Repayment of bank borrowings	(21,140)	(47,699)
Proceeds from bank borrowings	—	30,879
Stock repurchase	(17,023)	—
Dividends paid	(16,226)	—
Stock awards and options exercised and other changes	496	(497)
Debt issuance cost	(99)	(300)
Net cash used in financing activities	(53,992)	(17,617)
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	(1,786)	2,926
Net decrease in cash, cash equivalents and restricted cash	(22,014)	(22,626)
Cash, cash equivalents, and restricted cash at beginning of year	224,423	186,438
Cash, cash equivalents, and restricted cash at end of period	\$ 202,409	\$ 163,812
<b>Reconciliation of cash, cash equivalents, and restricted cash:</b>		
Cash and cash equivalents	\$ 201,814	\$ 163,218
Restricted cash included in other non-current assets	595	594
Cash, cash equivalents, and restricted cash	\$ 202,409	\$ 163,812

See Notes to Consolidated Financial Statements

**MOVADO GROUP, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**NOTE 1 – BASIS OF PRESENTATION**

The accompanying interim unaudited Consolidated Financial Statements have been prepared by Movado Group, Inc. (the “Company”), in a manner consistent with that used in the preparation of the annual audited Consolidated Financial Statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended January 31, 2021 (the “2021 Annual Report on Form 10-K”). The unaudited Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America, which require the Company to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the dates of the unaudited Consolidated Financial Statements and the reported amounts of revenues and expenses during the periods reported. Actual results could differ from those estimates. In the opinion of management, the accompanying unaudited Consolidated Financial Statements reflect all adjustments, consisting of only normal and recurring adjustments, necessary for a fair statement of the financial position and results of operations for the periods presented. The consolidated balance sheet data at January 31, 2021 is derived from the audited annual financial statements, which are included in the Company’s 2021 Annual Report on Form 10-K and should be read in connection with these interim unaudited financial statements. Operating results for the interim periods presented are not necessarily indicative of the results that may be expected for the full year.

**NOTE 2 – IMPACT OF THE COVID-19 PANDEMIC**

The COVID-19 pandemic and related public health measures materially impacted the Company’s operating results for the fiscal year ended January 31, 2021 and continue to materially affect how the Company and its customers and suppliers operate their businesses. In response to the pandemic, in the first quarter of fiscal 2021 government authorities began to mandate various restrictions, including travel restrictions, quarantines and other social distancing requirements. In mid-March 2020, the Company and the majority of the Company’s wholesale customers temporarily closed all of their retail stores due to health concerns associated with COVID-19. The impact of these closures was partially offset by strong growth in e-commerce sales, by both the Company and many of its retail customers. During fiscal 2021, the Company further responded to the pandemic by taking actions to enhance its financial liquidity and flexibility, including minimizing non-essential operating expenses and capital expenditures, applying for available government payroll subsidies, and temporarily suspending the Company’s share repurchase program and regular quarterly dividends. The Company also committed to a restructuring plan (the “Restructuring Plan”) on June 29, 2020 (see Note 5 – Restructuring Provision for further discussion). Although the Company reopened all of its retail stores during the second quarter of fiscal 2021 and most of the Company’s brick and mortar wholesale customers have reopened the vast majority of their retail locations as well, the discretionary consumer goods segment remains challenged at brick-and-mortar retail locations in many regions and supply chains and shipping operations continue to be impacted by the pandemic. In addition, during the 2021 fiscal year and continuing through the third quarter of fiscal 2022, the Company has implemented remote work policies and employed additional safety measures for on-site work. These policies and measures have caused strain for, and may have adversely impacted the productivity of, certain employees.

Although the full magnitude of the effects on the Company’s business is difficult to predict at this time, the COVID-19 pandemic is expected to continue to impact the Company’s results of operations for the foreseeable future. In addition to unpredictable regional resurgences of COVID-19 cases which often result in the reimposition or tightening of containment and mitigation measures, the ongoing economic impacts and health concerns associated with the pandemic will likely continue to affect supply chains, shipping operations, consumer behavior, spending levels, shopping preferences and tourism. Nevertheless, the pandemic’s adverse impact on the Company has significantly diminished in recent quarters and the Company believes that based on the Company’s current expectations, cash flows from operations and its credit lines and cash on-hand, the Company has adequate funds to support its operating, capital and debt service requirements and expects to maintain compliance with its debt covenants for the next twelve months subsequent to the issuance of these financial statements.

The Company evaluates its long-lived assets, operating lease right of use assets, goodwill and intangible assets for indicators of impairment at least annually in the fourth quarter of each fiscal year or whenever events or changes in circumstances indicate that their carrying amounts may not be recoverable. Given the substantial reduction in the Company’s sales and the reduced cash flow projections as a result of closures of the Company’s retail stores and those of its wholesale customers due to the COVID-19 pandemic, as well as the significant decline in the Company’s market capitalization, the Company determined that a triggering event occurred during the first quarter of fiscal 2021 and that an impairment assessment was warranted for goodwill and intangible assets. This analysis resulted in impairment charges related to goodwill of \$133.7 million and intangible assets of \$22.2 million in the first quarter of fiscal 2021. See Note 6 – Goodwill and Intangible Assets – for a further discussion of these impairments.

### NOTE 3 – RECENT ACCOUNTING PRONOUNCEMENTS

In March 2020, the FASB issued ASU 2020-04, “Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting”. This guidance provides practical expedients for contract modifications and certain hedging relationships associated with the transition from reference rates that are expected to be discontinued. This guidance is applicable for the Company’s borrowing instruments, which use LIBOR as a reference rate, and is effective immediately, but is only available through December 31, 2022. The Company is evaluating the optional expedients and exceptions in the guidance and while transition from LIBOR could have an adverse impact on the market for or value of any LIBOR-linked securities, loans, derivatives or other financial instruments or extensions held by or due, the Company does not expect such nor the adoption of this standard to have a material impact on its Consolidated Financial Statements.

### NOTE 4 – EARNINGS PER SHARE AND CASH DIVIDENDS

The Company presents net income/(loss) attributable to Movado Group, Inc. after adjusting for noncontrolling interests, as applicable, per share on a basic and diluted basis. Basic earnings per share is computed using weighted-average shares outstanding during the period. Diluted earnings per share is computed using the weighted-average number of shares outstanding adjusted for dilutive common stock equivalents.

The number of shares used in calculating basic and diluted earnings (loss) per share is as follows (in thousands):

	<u>Three Months Ended October 31,</u>		<u>Nine Months Ended October 31,</u>	
	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>
Weighted average common shares outstanding:				
Basic	23,095	23,285	23,248	23,223
Effect of dilutive securities:				
Stock awards and options to purchase shares of common stock	505	90	431	—
Diluted	<u>23,600</u>	<u>23,375</u>	<u>23,679</u>	<u>23,223</u>

For the three months ended October 31, 2021 and 2020, approximately 269,000 and 889,000, respectively, of potentially dilutive common stock equivalents were excluded from the computation of diluted earnings per share because their effect would have been antidilutive. For the nine months ended October 31, 2021 and 2020, approximately 406,000 and 815,000, respectively, of potentially dilutive common stock equivalents were excluded from the computation of diluted earnings per share because their effect would have been antidilutive. For the nine months ended October 31, 2020, the Company also had approximately 80,000 stock options outstanding that could potentially dilute earnings per share in future periods that were excluded from the computation of diluted EPS because their effect would have been anti-dilutive given the net loss during the period.

On August 26, 2021, the Company declared a quarterly cash dividend of \$0.20 per share payable on September 22, 2021, to shareholders of record on September 8, 2021. The total dividend of \$4.6 million was paid on September 22, 2021. On May 27, 2021, the Company declared a quarterly cash dividend of \$0.20 per share payable on June 23, 2021, to shareholders of record on June 9, 2021. The total dividend of \$4.7 million was paid on June 23, 2021. On March 25, 2021, the Company declared a quarterly cash dividend of \$0.20 per share payable on April 21, 2021, to shareholders of record on April 7, 2021. The total dividend of \$4.6 million was paid on April 21, 2021. In addition, the Company paid a cash dividend on February 5, 2021 in the amount of \$2.3 million to shareholders of record on January 21, 2021 of \$0.10 per share. During the first, second and third quarters of fiscal 2021 the Company did not declare quarterly cash dividends.

### NOTE 5 – RESTRUCTURING PROVISION

On June 29, 2020, the Company committed to a Restructuring Plan as part of the Company’s corporate initiatives to reduce operating expenses and adjust cash flows in light of the ongoing economic challenges resulting from the COVID-19 pandemic and its impact on the Company’s business. The Restructuring Plan was completed during the second quarter of fiscal 2021, although cash severance will be paid over time and such payments continue in the current fiscal year. Of the total \$12.6 million provision recorded in fiscal 2021, \$8.3 million has been paid out through the third quarter of fiscal 2022 (\$6.7 million of which was paid out during fiscal 2021), approximately \$0.8 million is expected to result in cash payments during the remainder of the current fiscal year and fiscal 2023 with the remaining \$1.3 million resulting in non-cash use (\$2.1 million had been used in fiscal 2021). The Company expects annual savings in the range of \$14 million to \$16 million in respect of severance and employee-related initiatives and property-related initiatives (the latter being contained within Other in the table below).



A summary rollforward of the provision related to the Company's corporate initiatives, including the provision associated with the Restructuring Plan, is as follows for the nine months ended October 31, 2021 (in thousands):

	Balance January 31, 2021	Provision	Non-Cash Use	Cash Payments	Balance October 31, 2021
<b>Restructuring Plan:</b>					
Severance and Employee Related (1)	\$ 2,378	\$ —	\$ —	\$ (1,580)	\$ 798
Other (2)	51	—	(36)	(9)	6
<b>Other Corporate Initiatives:</b>					
Severance and Employee Related	—	—	—	—	—
Inventory (3)	407	—	(45)	—	362
Accounts receivable (4)	926	—	—	—	926
Other (2)	19	—	—	(18)	1
<b>Total</b>	<b>\$ 3,781</b>	<b>\$ —</b>	<b>\$ (81)</b>	<b>\$ (1,607)</b>	<b>\$ 2,093</b>

A summary rollforward of the provision related to the Company's corporate initiatives, including the provision associated with the Restructuring Plan, is as follows for the nine months ended October 31, 2020 (in thousands):

	Balance January 31, 2020	Provision	Non-Cash Use	Cash Payments	Balance October 31, 2020
<b>Restructuring Plan:</b>					
Severance and Employee Related	\$ —	\$ 7,110	\$ —	\$ (3,944)	\$ 3,166
Other (2)	—	1,033	(315)	(651)	67
<b>Other Corporate Initiatives:</b>					
Severance and Employee Related	—	936	—	(936)	—
Inventory (3)	—	3,507	(250)	—	3,257
Accounts receivable (4)	—	1,075	—	—	1,075
Other	—	1,728	(1,518)	(182)	28
<b>Total</b>	<b>\$ —</b>	<b>\$ 15,389</b>	<b>\$ (2,083)</b>	<b>\$ (5,713)</b>	<b>\$ 7,593</b>

The following amounts are included in the Consolidated Balance Sheet at October 31, 2021:

- (1) \$0.4 million included in Accrued payroll and benefits and \$0.4 million included in Capital in excess of par value.
- (2) Balance included in Accrued liabilities.
- (3) Reserve included in Inventories.
- (4) Reserve included in Trade receivables, net.

At October 31, 2020, included in Other is approximately a \$1.5 million write-off related to unrefunded deposits for a canceled global customer event.

The corporate initiative costs by operating segment are as follows:

	For the Three Months Ended October 31, 2020 Provision	For the Nine Months Ended October 31, 2020 Provision
<b>Watch and Accessory Brands:</b>		
United States	\$ 594	\$ 11,929
International	187	3,460
Total Watch and Accessory Brands	781	15,389
Total Company Stores	—	—
<b>Total Consolidated</b>	<b>\$ 781</b>	<b>\$ 15,389</b>
Cost of sales	\$ 43	\$ 3,551
Selling, general and administrative	738	11,838
<b>Total</b>	<b>\$ 781</b>	<b>\$ 15,389</b>

There was no provision for restructuring during the first, second and third quarters of fiscal 2022.

#### NOTE 6 – GOODWILL AND INTANGIBLE ASSETS

The Company performs its annual impairment assessment of goodwill as well as brand intangibles at the beginning of the fourth quarter of each fiscal year or if an event occurs that would more likely than not reduce the fair value below its carrying amount.

During the three months ended April 30, 2020, in light of the COVID-19 pandemic that resulted in the closing of the Company's stores and of the vast majority of the stores of the Company's wholesale customers (resulting in a decrease in revenues and gross margin), a decrease in customer spending and decline in the Company's market capitalization, the Company concluded that a triggering event had occurred during the first quarter of fiscal 2021, resulting in the need to perform a quantitative interim impairment assessment over the Company's Olivia Burton, MVMT and Company Stores' long-lived assets as well as the Watch and Accessory Brands reporting unit.

The Company performed recoverability tests for the long-lived assets of MVMT, Olivia Burton and the Company Stores as of April 30, 2020. The Company concluded that the carrying amounts of the long-lived assets of Olivia Burton and the Company Stores were recoverable, while the long-lived assets of MVMT may not be recoverable. Utilizing a royalty rate to determine discounted projected future cash flows in the valuation of MVMT's trade name and a discounted cash flow method for the valuation of MVMT's customer relationships, the Company concluded that the fair values of MVMT's tradenames and customer relationships did not exceed their carrying values. As a result, the Company recorded impairment charges in the Watch and Accessory Brands segment totaling \$22.2 million in the first quarter of fiscal 2021, decreasing MVMT's trade name to \$2.4 million and MVMT's customer relationships to zero.

After adjusting the carrying value of MVMT's intangible assets, the Company completed an interim quantitative impairment test of goodwill as of April 30, 2020 in which the Company compared the fair value of the Watch and Accessory Brands reporting unit to its respective carrying value. An impairment test of goodwill was not performed for the Company Stores reporting unit as there was no goodwill at this reporting unit. The fair value estimate for the Watches and Accessory reporting unit was based on the income and market approaches. The discounted cash flow method under the income approach involves estimating the cash flows in a discrete forecast period and a terminal value based on the Gordon Growth Model and discounting at a rate of return that reflects the relative risk of the cash flows. The market approach involves applying valuation multiples to the operating performance of the Watch and Accessory Brands reporting unit derived from comparable publicly traded companies based on the relative historical and projected operations of the reporting unit.

The key estimates and assumptions used in the discounted cash flows model included the Company's discount rate, revenue growth rates, EBIT margins and long-term growth rate. The Company's assumptions were based on the actual historical performance of the reporting units and took into account the recent severe and continued weakening of operating results as well as the anticipated rate of recovery, and implied risk premiums based on market prices of the Company's common stock as of the assessment date. The significant estimates in the market approach model included identifying similar companies with comparable business factors such as size, growth, profitability, risk and return on investment and assessing comparable revenue and earnings multiples in estimating the fair value of the reporting unit. The excess of the Watch and Accessory Brands unit's carrying value over the estimate of the fair value was recorded in the Watch and Accessory Brands segment as the goodwill impairment charge in the first quarter of 2021, totaling \$133.7 million which resulted in zero goodwill remaining.

There were no triggering events during the first nine months of fiscal 2022.

The changes in the carrying amount of other intangible assets during the nine months ended October 31, 2021 are as follows (in thousands):

	Trade names	Customer relationships	Other (1)	Total
Weighted Average Amortization Period (in years)	<b>10</b>	<b>6</b>	<b>10</b>	
Balance at January 31, 2021	\$ 10,860	\$ 5,168	\$ 1,053	\$ 17,081
Additions	—	—	193	193
Amortization	(1,233)	(1,274)	(192)	(2,699)
Foreign exchange impact	11	(58)	(17)	(64)
Balance at October 31, 2021	<u>\$ 9,638</u>	<u>\$ 3,836</u>	<u>\$ 1,037</u>	<u>\$ 14,511</u>

(1) Other includes fees paid related to trademarks.

Amortization expense for intangible assets was \$0.9 million for both the three months ended October 31, 2021 and 2020, respectively, and \$2.7 million and \$3.0 million for the nine months ended October 31, 2021 and 2020, respectively.

## NOTE 7 – INVENTORIES

Inventories consisted of the following (in thousands):

	October 31, 2021	January 31, 2021	October 31, 2020
Finished goods	\$ 129,131	\$ 107,246	\$ 130,515
Component parts	38,996	40,735	42,438
Work-in-process	2,587	4,599	3,888
	<u>\$ 170,714</u>	<u>\$ 152,580</u>	<u>\$ 176,841</u>

## NOTE 8 – DEBT AND LINES OF CREDIT

On October 12, 2018, the Company, together with Movado Group Delaware Holdings Corporation, Movado Retail Group, Inc. and Movado LLC (together with the Company, the “U.S. Borrowers”), each a wholly owned domestic subsidiary of the Company, and Movado Watch Company S.A. and MGI Luxury Group S.A. (collectively, the “Swiss Borrowers” and, together with the U.S. Borrowers, the “Borrowers”), each a wholly owned Swiss subsidiary of the Company, entered into an Amended and Restated Credit Agreement (the “Credit Agreement”) with the lenders party thereto and Bank of America, N.A. as administrative agent (in such capacity, the “Agent”). The Credit Agreement amended and restated the Company’s prior credit agreement dated as of January 30, 2015 and extended the maturity of the \$100.0 million senior secured revolving credit facility (the “Facility”) provided thereunder to October 12, 2023. The Facility includes a \$15.0 million letter of credit subfacility, a \$25.0 million swingline subfacility and a \$75.0 million sublimit for borrowings by the Swiss Borrowers, with provisions for uncommitted increases to the Facility of up to \$50.0 million in the aggregate subject to customary terms and conditions.

On June 5, 2020, the Company and its lenders entered into an amendment (the “Second Amendment”) to the Credit Agreement effective as of April 30, 2020. Among other things, the Second Amendment provided for temporary relief with respect to the financial maintenance covenants in the Credit Agreement starting April 30, 2020 while also temporarily tightening certain covenants and temporarily increasing the interest rate and commitment fee. These temporary changes to the Credit Agreement ended as a result of the Company’s achievement of certain financial milestones as of and for the periods ending January 31, 2021. In addition, the Second Amendment increased the LIBOR floor for loans under the Credit Agreement from 0% to 1.00% and reduced the minimum EBITDA financial covenant level to \$35.0 million starting with the four-quarter period ending July 31, 2021.

Effective October 29, 2021, the Company and its lenders entered into an additional amendment (the “Third Amendment”) to the Credit Agreement. Among other things, the Third Amendment extends the maturity of the Facility to October 29, 2026; reinstates the 0% LIBOR floor; reduces the commitment fee at certain leverage ratios; allows the Company to net up to \$25 million of cash and cash equivalents held in U.S. accounts from total debt for purposes of determining compliance with the leverage ratio financial covenant; and increases the Company’s general basket for making investments under the Credit Agreement’s operating covenants.

As of October 31, 2021, and October 31, 2020, there was zero and \$37.3 million (of which all but \$10 million was denominated in Swiss Francs), respectively, in loans outstanding under the Facility. Availability under the Facility was reduced by the aggregate number of letters of credit outstanding, issued in connection with retail and operating facility leases to various landlords and for Canadian payroll to the Royal Bank of Canada, totaling approximately \$0.3 million at both October 31, 2021 and October 31, 2020. At October 31, 2021, the letters of credit have expiration dates through May 31, 2022. As of October 31, 2021, and October 31, 2020, availability under the Facility was \$99.7 million and \$62.4 million, respectively.

The Company had weighted average borrowings under the Facility of zero and \$44.5 million during the three months ended October 31, 2021 and 2020, respectively, with a weighted average interest rate of 3.75% during the three months ended October 31, 2020. The Company had weighted average borrowings under the Facility of \$6.5 million and \$60.5 million during the nine months ended October 31, 2021 and 2020, respectively, with a weighted average interest rate of 2.79% and 2.37% during the nine months ended October 31, 2021 and 2020, respectively.

A Swiss subsidiary of the Company maintains unsecured lines of credit with an unspecified maturity with a Swiss bank. As of October 31, 2021, and 2020, these lines of credit totaled 6.5 million Swiss Francs for both periods, with a dollar equivalent of \$7.1 million for both periods. As of October 31, 2021, and 2020, there were no borrowings against these lines. As of October 31, 2021 and 2020, two European banks had guaranteed obligations to third parties on behalf of two of the Company's foreign subsidiaries in the dollar equivalent of \$1.3 million for both periods, in various foreign currencies, of which \$0.6 million, in both periods, was a restricted deposit as it relates to lease agreements.

Cash paid for interest, including unused commitments fees, was \$0.4 million and \$1.3 million for the nine-month period ended October 31, 2021 and October 31, 2020, respectively.

#### NOTE 9 – DERIVATIVE FINANCIAL INSTRUMENTS

As of October 31, 2021, the Company's entire net forward contracts hedging portfolio consisted of 15.7 million Chinese Yuan equivalent, 20.0 million Swiss Francs equivalent, 19.8 million U.S. dollars equivalent, 25.6 million Euros equivalent and 6.9 million British Pounds equivalent with various expiry dates ranging through April 22, 2022. These forward contracts are not designated as qualified hedges in accordance with ASC 815, *Derivatives and Hedging*, and, therefore, changes in the fair value of these derivatives are recognized in earnings in the period they arise. Net gains or losses related to these forward contracts are included in cost of sales and selling and general and administrative expenses in the Consolidated Statements of Operations. The cash flows related to these foreign currency contracts are classified in operating activities.

See Note 10 – Fair Value Measurements for fair value and presentation in the Consolidated Balance Sheets for derivatives.

For the quarter ended October 31, 2021, the Company did not have any cash flow hedges.

#### NOTE 10 – FAIR VALUE MEASUREMENTS

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Accounting guidance establishes a fair value hierarchy which prioritizes the inputs used in measuring fair value into three broad levels as follows:

- Level 1 – Quoted prices in active markets for identical assets or liabilities.
- Level 2 – Inputs, other than the quoted prices in active markets, that are observable either directly or indirectly.
- Level 3 – Unobservable inputs based on the Company's assumptions.

The guidance requires the use of observable market data if such data is available without undue cost and effort.

The following tables present the fair value hierarchy for those assets and liabilities measured at fair value on a recurring basis as of October 31, 2021 and 2020 and January 31, 2021 (in thousands):

	Balance Sheet Location	Fair Value at October 31, 2021			
		Level 1	Level 2	Level 3	Total
<b>Assets:</b>					
Available-for-sale securities	Other current assets	\$ 235	\$ —	\$ —	\$ 235
Short-term investment	Other current assets	168	—	—	168
SERP assets - employer	Other non-current assets	882	—	—	882
SERP assets - employee	Other non-current assets	47,886	—	—	47,886
Defined benefit plan assets	Other non-current liabilities	—	—	28,655	28,655
Hedge derivatives	Other current assets	—	26	—	26
Total		<u>\$ 49,171</u>	<u>\$ 26</u>	<u>\$ 28,655</u>	<u>\$ 77,852</u>
<b>Liabilities:</b>					
SERP liabilities - employee	Other non-current liabilities	\$ 47,886	\$ —	\$ —	\$ 47,886
Hedge derivatives	Accrued liabilities	—	74	—	74
Total		<u>\$ 47,886</u>	<u>\$ 74</u>	<u>\$ —</u>	<u>\$ 47,960</u>

	Balance Sheet Location	Fair Value at January 31, 2021			
		Level 1	Level 2	Level 3	Total
<b>Assets:</b>					
Available-for-sale securities	Other current assets	\$ 184	\$ —	\$ —	\$ 184
Short-term investment	Other current assets	162	—	—	162
SERP assets - employer	Other non-current assets	605	—	—	605
SERP assets - employee	Other non-current assets	46,673	—	—	46,673
Defined benefit plan assets	Other non-current liabilities	—	—	25,837	25,837
<b>Total</b>		<b>\$ 47,624</b>	<b>\$ —</b>	<b>\$ 25,837</b>	<b>\$ 73,461</b>
<b>Liabilities:</b>					
SERP liabilities - employee	Other non-current liabilities	\$ 46,673	\$ —	\$ —	\$ 46,673
Hedge derivatives	Accrued liabilities	—	13	—	13
<b>Total</b>		<b>\$ 46,673</b>	<b>\$ 13</b>	<b>\$ —</b>	<b>\$ 46,686</b>

	Balance Sheet Location	Fair Value at October 31, 2020			
		Level 1	Level 2	Level 3	Total
<b>Assets:</b>					
Available-for-sale securities	Other current assets	\$ 143	\$ —	\$ —	\$ 143
Short-term investment	Other current assets	156	—	—	156
SERP assets - employer	Other non-current assets	1,020	—	—	1,020
SERP assets - employee	Other non-current assets	42,040	—	—	42,040
Defined benefit plan assets	Other non-current liabilities	—	—	25,206	25,206
<b>Total</b>		<b>\$ 43,359</b>	<b>\$ —</b>	<b>\$ 25,206</b>	<b>\$ 68,565</b>
<b>Liabilities:</b>					
SERP liabilities - employee	Other non-current liabilities	\$ 42,040	\$ —	\$ —	\$ 42,040
Hedge derivatives	Accrued liabilities	—	12	—	12
<b>Total</b>		<b>\$ 42,040</b>	<b>\$ 12</b>	<b>\$ —</b>	<b>\$ 42,052</b>

The fair values of the Company's available-for-sale securities are based on quoted market prices. The fair value of the short-term investment, which is a guaranteed investment certificate, is based on its purchase price plus one half of a percent calculated annually. The assets related to the Company's defined contribution supplemental executive retirement plan ("SERP") consist of both employer (employee unvested) and employee assets which are invested in investment funds with fair values calculated based on quoted market prices. The SERP liability represents the Company's liability to the employees in the plan for their vested balances. The hedge derivatives are entered into by the Company principally to reduce its exposure to Swiss Franc and Euro exchange rate risks. Fair values of the Company's hedge derivatives are calculated based on quoted foreign exchange rates and quoted interest rates. The carrying amount of debt approximated fair value as of January 31, 2021, and October 31, 2020, due to the availability and floating rate for similar instruments.

The Company sponsors a defined benefit pension plan in Switzerland. The plan covers certain international employees and is based on years of service and compensation on a career-average pay basis. The assets within the plan are classified as a Level 3 asset within the fair value hierarchy and consist of an investment in pooled assets and include separate employee accounts that are invested in equity securities, debt securities and real estate. The values of the separate accounts invested are based on values provided by the administrator of the funds that cannot be readily derived from or corroborated by observable market data. The value of the assets is part of the funded status of the defined benefit plan and included in other non-current liabilities in the consolidated balance sheets at October 31, 2021, January 31, 2021 and October 31, 2020.

There were no transfers between any levels of the fair value hierarchy for any of the Company's fair value measurements.

See Note 6 – Goodwill and Intangible Assets for a discussion on the Company’s impairment charges taken in fiscal year 2021 for certain of its nonfinancial assets measured at fair value on a nonrecurring basis due to a change in circumstances that triggered an interim impairment test, and the valuation techniques used to measure the fair value. The most significant unobservable inputs (Level 3) used to estimate the fair values of the Company’s Watch and Accessory Brands unit’s goodwill and MVMT’s intangible assets are discount rates, which was 17.5% for both.

#### *Investments Without Readily Determinable Fair Values*

From time to time the Company may make minority investments in growth companies in the consumer products sector and other sectors relevant to its business, including certain of the Company’s suppliers and customers, as well as in venture capital funds that invest in such companies. During the third quarter of fiscal 2022, the Company invested \$1.1 million in a privately held company and in venture capital funds (see Note 11 - Commitments and Contingencies for discussion of commitments made related to venture capital funds). The Company will regularly evaluate the carrying value of its investments. There were no adjustments to the original cost value during the three and nine months ended October 31, 2021. The amounts are recorded in Other non-current assets in the Consolidated Balance Sheet at October 31, 2021.

#### **NOTE 11 – COMMITMENTS AND CONTINGENCIES**

The Company has minimum commitments related to the Company’s license agreements and endorsement agreements with brand ambassadors. The Company sources, distributes, advertises and sells watches pursuant to its exclusive license agreements with unaffiliated licensors. Royalty amounts under the license agreements are generally based on a stipulated percentage of revenues, although most of these agreements contain provisions for the payment of minimum annual royalty amounts. The license agreements have various terms, and some have renewal options, provided that minimum sales levels are achieved. Additionally, the license agreements require the Company to pay minimum annual advertising amounts.

The Company believes that income tax reserves are adequate; however, amounts asserted by taxing authorities could be greater or less than amounts accrued and reflected in the consolidated balance sheet. Accordingly, the Company could record adjustments to the amounts for federal, state, and foreign liabilities in the future as the Company revises estimates or settles or otherwise resolves the underlying matters. In the ordinary course of business, the Company may take new positions that could increase or decrease unrecognized tax benefits in future periods.

In December 2016, U.S. Customs and Border Protection (“U.S. Customs”) issued an audit report concerning the methodology used by the Company to allocate the cost of certain watch styles imported into the U.S. among the component parts of those watches for tariff purposes. The report disputes the reasonableness of the Company’s historical allocation formulas and proposes an alternative methodology that would imply \$5.1 million in underpaid duties over the five-year period covered by the statute of limitations, plus possible penalties and interest. The Company believes that U.S. Customs’ alternative duty methodology and estimate are not consistent with the Company’s facts and circumstances and is disputing U.S. Customs’ position. Since February 2017, the Company has been providing U.S. Customs with supplemental analyses and information in response to U.S. Customs’ information requests. Most recently, the Company received summonses from U.S. Customs in December 2020 requesting additional information regarding component part costs and the Company’s procedures for allocating the value of imported watches among the component parts. The Company responded to these summonses in January 2021. Although the Company disagrees with U.S. Customs’ position and believes that the information it has provided supports the reasonableness of its historical allocation formulas, it cannot predict with any certainty the outcome of this matter. The Company intends to continue to work with U.S. Customs to reach a mutually satisfactory resolution.

The purchase consideration for the MVMT business included two future contingent payments that combined could total up to \$100 million. Based on updated revenue and EBITDA (as defined in the acquisition agreement) performance expectations during the earn-out period for MVMT, the Company remeasured the contingent consideration to zero at January 31, 2020.

From time to time the Company may make minority investments in growth companies in the consumer products sector and other sectors relevant to its business, including certain of the Company's suppliers and customers, as well as in venture capital funds that invest in such companies. During the second quarter of fiscal 2022, the Company committed to invest up to \$1,000,000 in a venture capital fund that makes investments in securities of portfolio companies whose primary business focus is accelerating innovation in retail and consumer goods. The Company satisfied \$600,000 in capital calls in respect of this commitment during the third quarter of fiscal 2022. In addition, during the third quarter of fiscal 2022, the Company committed to invest up to \$10,000,000 in two related venture capital and venture growth funds that make investments in equity and equity-oriented securities of privately held companies in media, entertainment, information technology and technology-related fields, as well as in digital assets. The Company may be called upon to satisfy capital calls in respect of this commitment at any time during a period generally ending ten years after the first capital call, which may be made at any time.

Starting in July 2018, the Trump administration announced a series of lists covering thousands of categories of Chinese origin products subject to potential U.S. special tariffs, including watches. U.S. Customs subsequently issued various rulings regarding, among other things, the application of the special tariffs to China-sourced components of watches containing non-Chinese movements. A U.S. Customs ruling effective August 1, 2021 holds that the special tariff does not apply to China-sourced watch cases that are imported as part of a watch containing a non-Chinese movement. Pending greater clarity on the retroactive effect of this ruling, for the time being the Company continues to maintain an accrual for Chinese watch case imports prior to August 1, 2021.

The Company is involved in legal proceedings and claims from time to time, in the ordinary course of its business. Legal reserves are recorded in accordance with the accounting guidance for contingencies. Contingencies are inherently unpredictable and it is possible that results of operations, balance sheets or cash flows could be materially and adversely affected in any particular period by unfavorable developments in, or resolution or disposition of, such matters. For those legal proceedings and claims for which the Company believes that it is probable that a reasonably estimable loss may result, the Company records a reserve for the potential loss. For proceedings and claims where the Company believes it is reasonably possible that a loss may result that is materially in excess of amounts accrued for the matter, the Company either discloses an estimate of such possible loss or range of loss or includes a statement that such an estimate cannot be made. As of October 31, 2021, the Company is party to legal proceedings and contingencies, the resolution of which is not expected to materially affect its financial condition, future results of operations beyond the amounts accrued, or cash flows.

#### **NOTE 12 – INCOME TAXES**

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) which provided economic relief to assist American families and companies during the COVID-19 global pandemic. The CARES Act allowed U.S. net operating losses generated in fiscal 2019, 2020, and 2021 to be carried back up to five years to prior taxable years with a U.S. statutory tax rate of 35.0% and to offset 100% of regular taxable income in such years (the “CARES Act NOL Carryback Provision”). The Company generated a U.S. net operating loss in fiscal 2021 which was carried back to prior taxable years.

The Company recorded an income tax provision of \$9.6 million and \$7.5 million for the three months ended October 31, 2021 and 2020, respectively.

The effective tax rate was 23.1% and 33.5% for the three months ended October 31, 2021 and 2020, respectively. The significant components of the effective tax rate changed primarily due to the U.S. tax on Global Intangible Low-Taxed Income with no related tax credits and excess tax deficiencies related to stock-based compensation, both of which were recognized in the prior year, partially offset by changes in jurisdictional earnings.

The Company recorded an income tax provision of \$18.2 million and an income tax benefit of \$26.4 million for the nine months ended October 31, 2021 and 2020, respectively.

The effective tax rate was 23.0% and 15.7% for the nine months ended October 31, 2021 and 2020, respectively. The significant components of the effective tax rate changed primarily due to prior year impairments of the portion of goodwill of the Watch and Accessory Brands reporting unit which is not tax deductible and the recording of valuation allowances on certain foreign deferred tax assets in the current year, partially offset by the CARES Act NOL Carryback Provision in the prior year.

At October 31, 2021, the Company had no deferred tax liability for the undistributed foreign earnings of approximately \$272.4 million because the Company intends to permanently reinvest such earnings in its foreign operations. It is not practicable to estimate the tax liability related to a future distribution of these permanently reinvested foreign earnings.

## NOTE 13 – EQUITY

The components of equity for the nine months ended October 31, 2021 and 2020 are as follows (in thousands):

<b>Movado Group, Inc. Shareholders' Equity</b>										
	Preferred Stock	Common Stock (1)	Class A Common Stock (2)	Capital in Excess of Par Value	Retained Earnings	Accumulated Other Comprehen- sive Income	Treasury Stock	Noncontrollin- g Interest	Total Movado Group, Inc. Shareholders' Equity	Redeemable Noncontrollin- g Interest
Balance, January 31, 2021	\$ —	\$ 281	\$ 65	\$ 214,043	\$ 341,641	\$ 92,540	\$ (223,306)	\$ 2,070	\$ 427,334	\$ 2,600
Net income/(loss) attributable to Movado Group, Inc.					60,224			735	60,959	(12)
Dividends (\$0.60 per share)					(13,906)				(13,906)	
Stock options exercised		3		2,147			(1,654)		496	
Stock repurchase							(17,023)		(17,023)	
Supplemental executive retirement plan				139					139	
Stock-based compensation expense				3,965					3,965	
Net unrealized gain on investments, net of tax provision of \$13						39			39	
Amortization of prior service cost, net of tax provision of \$12						43			43	
Foreign currency translation adjustment (3)						(4,892)		(36)	(4,928)	(143)
Balance, October 31, 2021	<u>\$ —</u>	<u>\$ 284</u>	<u>\$ 65</u>	<u>\$ 220,294</u>	<u>\$ 387,959</u>	<u>\$ 87,730</u>	<u>\$ (241,983)</u>	<u>\$ 2,769</u>	<u>\$ 457,118</u>	<u>\$ 2,445</u>
<b>Movado Group, Inc. Shareholders' Equity</b>										
	Preferred Stock	Common Stock (1)	Class A Common Stock (2)	Capital in Excess of Par Value	Retained Earnings	Accumulated Other Comprehen- sive Income	Treasury Stock	Noncontrollin- g Interest	Total Movado Group, Inc. Shareholders' Equity	Redeemable Noncontrollin- g Interest
Balance, January 31, 2020	\$ —	\$ 279	\$ 65	\$ 208,473	\$ 455,479	\$ 85,050	\$ (222,809)	\$ 707	\$ 527,244	\$ 3,165
Net (loss)/income attributable to Movado Group, Inc.					(141,783)			571	(141,212)	(556)
Stock options exercised		2		(2)			(497)		(497)	
Supplemental executive retirement plan				69					69	
Stock-based compensation expense (4)				4,190					4,190	
Net unrealized loss on investments, net of tax benefit of \$10						(31)			(31)	
Amortization of prior service cost, net of tax provision of \$12						42			42	
Foreign currency translation adjustment (3)						818		35	853	163
Balance, October 31, 2020	<u>\$ —</u>	<u>\$ 281</u>	<u>\$ 65</u>	<u>\$ 212,730</u>	<u>\$ 313,696</u>	<u>\$ 85,879</u>	<u>\$ (223,306)</u>	<u>\$ 1,313</u>	<u>\$ 390,658</u>	<u>\$ 2,772</u>

- (1) Each share of common stock is entitled to one vote per share on all matters submitted to a vote of the shareholders.
- (2) Each share of class A common stock is entitled to 10 votes per share on all matters submitted to a vote of the shareholders. Each holder of class A common stock is entitled to convert, at any time, any and all of such shares into the same number of shares of common stock. Each share of class A common stock is converted automatically into common stock in the event that the beneficial or record ownership of such shares of class A common stock is transferred to any person, except to certain family members or affiliated persons deemed "permitted transferees" pursuant to the Company's Restated Certificate of Incorporation, as amended. The class A common stock is not publicly traded, and consequently, there is currently no established public trading market for these shares.
- (3) The currency translation adjustment is not adjusted for income taxes to the extent that it relates to permanent investments of earnings in international subsidiaries.
- (4) Includes \$0.4 million related to the Restructuring Plan of the corporate initiatives.



## NOTE 14 – TREASURY STOCK

On August 29, 2017, the Board approved a share repurchase program under which the Company was authorized to purchase up to \$50.0 million of its outstanding common stock from time to time. This authorization expired on August 29, 2020. On March 25, 2021, the Board approved a share repurchase program under which the Company is authorized to purchase up to \$25.0 million of its outstanding common stock through September 30, 2022, depending on market conditions, share price and other factors. On November 23, 2021, the Board approved a share repurchase program under which the Company is authorized to purchase up to an additional \$50.0 million of its outstanding common stock through November 23, 2024, depending on market conditions, share price and other factors. Under both share repurchase programs, the Company is permitted to purchase shares of its common stock from time to time through open market purchases, repurchase plans, block trades or otherwise.

During the nine months ended October 31, 2021, the Company repurchased a total of 548,402 shares of its common stock under the March 25, 2021 share repurchase program at a total cost of \$17.0 million, or an average of \$31.04 per share. During the nine months ended October 31, 2020, the Company did not repurchase shares of its common stock.

At October 31, 2021, \$8.0 million remains available for purchase under the Company's March 25, 2021 repurchase program and all \$50.0 million remains available for purchase under the Company's November 23, 2021 repurchase program.

There were 54,720 and 49,283 shares of common stock repurchased during the nine months ended October 31, 2021 and 2020, respectively, as a result of the surrender of shares in connection with the vesting of certain stock awards. At the election of an employee, shares having an aggregate value on the vesting date equal to the employee's withholding tax obligation may be surrendered to the Company.

## NOTE 15 – ACCUMULATED OTHER COMPREHENSIVE INCOME

The accumulated balances at October 31, 2021 and 2020, and January 31, 2021, related to each component of accumulated other comprehensive income (loss) are as follows (in thousands):

	October 31, 2021	January 31, 2021	October 31, 2020
Foreign currency translation adjustments	\$ 88,274	\$ 93,166	\$ 86,163
Available-for-sale securities	163	124	93
Unrecognized prior service cost related to defined benefit pension plan	(301)	(344)	(325)
Net actuarial loss related to defined benefit pension plan	(406)	(406)	(52)
Total accumulated other comprehensive income	<u>\$ 87,730</u>	<u>\$ 92,540</u>	<u>\$ 85,879</u>

## NOTE 16 – REVENUE

### Disaggregation of Revenue

The following table presents the Company's net sales disaggregated by customer type. Sales and usage-based taxes are excluded from net sales (in thousands):

Customer Type	For the Three Months Ended October 31,		For the Nine Months Ended October 31,	
	2021	2020	2021	2020
Wholesale	\$ 178,988	\$ 135,605	\$ 404,106	\$ 248,977
Direct to consumer	37,612	33,508	119,447	77,500
After-sales service	1,146	750	2,865	1,590
Net Sales	<u>\$ 217,746</u>	<u>\$ 169,863</u>	<u>\$ 526,418</u>	<u>\$ 328,067</u>

The Company's revenue from contracts with customers is recognized at a point in time. The Company's net sales disaggregated by geography are based on the location of the Company's customer (see Note 18 – Segment and Geographic Information).

## Wholesale Revenue

The Company's wholesale revenue consists primarily of revenues from independent distributors, department stores, chain stores, independent jewelry stores and third-party e-commerce retailers. The Company recognizes and records its revenue when obligations under the terms of a contract with the customer are satisfied, and control is transferred to the customer. Transfer of control passes to wholesale customers upon shipment or upon receipt depending on the agreement with the customer and shipping terms. Wholesale revenue is measured as the amount of consideration the Company ultimately expects to receive in exchange for transferring goods. Wholesale revenue is included entirely within the Watch and Accessory Brands segment (see Note 18 – Segment and Geographic Information), consistent with how management makes decisions regarding the allocation of resources and performance measurement.

## Direct to Consumer Revenue

The Company's direct to consumer revenue primarily consists of revenues from the Company's outlet stores, the Company's owned e-commerce websites, concession stores and consumer repairs. The Company recognizes and records its revenue when obligations under the terms of a contract with the customer are satisfied, and control is transferred to the customer. Control passes to outlet store customers at the time of sale and to substantially all e-commerce upon shipment. Prior to January 1, 2021, the requirements for recognizing revenue for all e-commerce were met upon delivery to the customer. Direct to Consumer revenue is included in either the Watch and Accessory Brands segment or Company Stores Segment based on how the Company makes decisions about the allocation of resources and performance measurement. Revenue derived from outlet stores and related e-commerce is included within the Company Stores Segment. Other Direct to Consumer revenue (i.e., revenue derived from other Company-owned e-commerce websites, concession stores and consumer repairs) is included within the Watch and Accessory Brands segment. (See Note 18 – Segment and Geographic Information).

## After-Sales Service

All watches sold by the Company come with limited warranties covering the movement against defects in materials and workmanship.

The Company's after-sales service revenues consists of out of warranty service provided to customers and authorized third party repair centers, and sale of watch parts. The Company recognizes and records its revenue when obligations under the terms of a contract with the customer are satisfied and control is transferred to the customer. After-sales service revenue is measured as the amount of consideration the Company ultimately expects to receive in exchange for transferring goods. Revenue from after sales service, including consumer repairs, is included entirely within the Watch and Accessory Brands segment, consistent with how management makes decisions about the allocation of resources and performance measurement.

## NOTE 17 – STOCK-BASED COMPENSATION

Under the Company's Employee Stock Option Plan, as amended and restated as of April 4, 2013 (the "Plan"), the Compensation Committee of the Board of Directors, which consists of three of the Company's non-employee directors, has the authority to grant participants incentive stock options, nonqualified stock options, restricted stock, stock appreciation rights and stock awards, for up to 11,000,000 shares of common stock.

### Stock Options:

Stock options granted to participants under the plan generally become exercisable after three years and remain exercisable until the tenth anniversary of the date of grant. All stock options granted under the Plan have an exercise price equal to or greater than the fair market value of the Company's common stock on the grant date.

The table below presents the weighted average assumptions used with the Black-Scholes option-pricing model for the calculation of the fair value of stock options granted during the nine months ended October 31, 2021 and October 31, 2020.

	Nine Months Ended October 31, 2021	Nine Months Ended October 31, 2020
Expected volatility	51.61 %	50.79 %
Expected life in years	6.0	6.0
Risk-free interest rates	0.89 %	0.34 %
Dividend rate	2.90 %	4.29 %
Weighted average fair value per option at date of grant	\$ 10.23	\$ 3.87

The fair value of the stock options, less expected forfeitures, is amortized on a straight-line basis over the vesting term. Total compensation expense for stock option grants recognized during the three months ended October 31, 2021 and 2020 was \$0.4 million and \$0.1 million, respectively. Total compensation expense for stock option grants recognized during the nine months ended October 31, 2021 and 2020 was \$1.1 million and \$0.2 million, respectively. As of October 31, 2021, there was \$3.0 million of unrecognized compensation cost related to unvested stock options. These costs are expected to be recognized over a weighted-average period of 2.2 years. Total consideration received for stock option exercises during the nine months ended October 31, 2021 and 2020 was \$2.1 million (offset by \$1.7 million of shares repurchased as a result of the surrender of shares in connection with the vesting of certain stock awards), and zero, respectively.

The following table summarizes the Company's stock options activity during the first nine months of fiscal 2022:

	Outstanding Options	Weighted Average Exercise Price per Option	Option Price Per Share	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value \$(000)
Options outstanding at January 31, 2021 (561,110 options exercisable)	1,111,110	\$ 21.90	\$12.42-\$42.12	6.9	\$ 2,975
Granted	201,875	\$ 27.62	\$ 27.62		
Exercised	(88,191)	\$ 24.38	\$16.87-\$30.36		
Cancelled	—				
Options outstanding at October 31, 2021	1,224,794	\$ 22.66	\$12.42-\$42.12	6.8	\$ 13,602
Exercisable at October 31, 2021	484,919	\$ 28.86		3.3	\$ 2,726
Expected to vest at October 31, 2021	678,324	\$ 18.47		9.0	\$ 10,058

The fair value of stock options exercised during the first nine months of fiscal 2022 was \$0.9 million and the intrinsic value was \$0.8 million. There were no stock options exercised during the first nine months of fiscal 2021.

#### Stock Awards:

Under the Plan, the Company can also grant stock awards to employees and directors. For the three months ended October 31, 2021 and 2020, compensation expense for stock awards was \$0.8 million and \$1.0 million, respectively. For the nine months ended October 31, 2021 and 2020, compensation expense for stock awards was \$2.9 million and \$4.0 million (of which \$0.4 million is included in the Restructuring Plan of the corporate initiatives), respectively. As of October 31, 2021, there was \$3.8 million of unrecognized compensation cost related to unvested stock awards. These costs are expected to be recognized over a weighted-average period of 1.9 years.

The following table summarizes the Company's stock awards activity during the first nine months of fiscal 2022:

	Number of Stock Award Units	Weighted-Average Grant Date Fair Value	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value \$(000's)
Units outstanding at January 31, 2021	415,994	\$ 29.17		
Units granted	129,497	\$ 27.82		
Units vested	(230,928)	\$ 31.66		
Units forfeited	(5,521)	\$ 29.55		
Units outstanding at October 31, 2021	309,042	\$ 26.74	1.9	\$ 10,291

Outstanding stock awards can be classified as either time-based stock awards or performance-based stock awards. Time-based stock awards vest over time subject to continued employment. Performance-based stock awards vest over time subject both to continued employment and to the achievement of corporate financial performance goals. Upon the vesting of a stock award, shares are issued from the pool of authorized shares. For performance-based stock awards, the number of shares issued related to the performance units granted can vary from 0% to 150% of the target number of underlying stock award units, depending on the extent of the achievement of

predetermined financial goals. The total fair value of stock award units that vested during the first nine months of fiscal 2022 was \$7.3 million. The number of shares issued related to the remaining stock awards are established at grant date.

#### NOTE 18 – SEGMENT AND GEOGRAPHIC INFORMATION

The Company conducts its business in two operating segments: Watch and Accessory Brands and Company Stores. The Company’s Watch and Accessory Brands segment includes the designing, manufacturing and distribution of watches and, to a lesser extent, jewelry and other accessories, of owned and licensed brands, in addition to revenue generated from after-sales service activities and shipping. The Company Stores segment includes the Company’s retail outlet business. The Chief Executive Officer of the Company is the chief operating decision maker (“CODM”) and regularly reviews operating results for each of the two operating segments to assess performance and makes operating decisions about the allocation of the Company’s resources.

The Company divides its business into two major geographic locations: United States operations and International, which includes the results of all non-U.S. Company operations. The allocation of geographic revenue is based upon the location of the customer. The Company’s International operations in Europe, the Middle East, the Americas (excluding the United States) and Asia accounted for 39.8%, 7.6%, 5.6% and 4.4%, respectively, of the Company’s total net sales for the three months ended October 31, 2021. For the three months ended October 31, 2020, the Company’s International operations in Europe, the Middle East, the Americas (excluding the United States) and Asia accounted for 41.9%, 6.6%, 6.5% and 6.4%, respectively, of the Company’s total net sales. The Company’s International operations in Europe, the Middle East, the Americas (excluding the United States) and Asia accounted for 34.9%, 8.0%, 6.0% and 4.7%, respectively, of the Company’s total net sales for the nine months ended October 31, 2021. For the nine months ended October 31, 2020, the Company’s International operations in Europe, the Middle East, Asia and the Americas (excluding the United States) accounted for 40.4%, 7.3%, 7.0% and 6.0%, respectively, of the Company’s total net sales.

#### Operating Segment Data for the Three Months Ended October 31, 2021 and 2020 (in thousands):

	Net Sales	
	2021	2020
Watch and Accessory Brands:		
Owned brands category	\$ 69,433	\$ 55,774
Licensed brands category	122,098	95,576
After-sales service and all other	2,795	758
Total Watch and Accessory Brands	194,326	152,108
Company Stores	23,420	17,755
Consolidated total	\$ 217,746	\$ 169,863

	Operating Income (3)(5)	
	2021	2020
Watch and Accessory Brands	\$ 34,854	\$ 19,810
Company Stores	6,549	3,257
Consolidated total	\$ 41,403	\$ 23,067

#### Operating Segment Data as of and for the Nine Months Ended October 31, 2021 and 2020 (in thousands):

	Net Sales	
	2021	2020
Watch and Accessory Brands:		
Owned brands category	\$ 178,706	\$ 112,757
Licensed brands category	273,801	177,674
After-sales service and all other	4,277	3,152
Total Watch and Accessory Brands	456,784	293,583
Company Stores	69,634	34,484
Consolidated total	\$ 526,418	\$ 328,067

	Operating Income/(Loss) (3)(4)(5)	
	2021	2020
Watch and Accessory Brands	\$ 59,357	\$ (169,756)
Company Stores	19,935	1,744
Consolidated total	\$ 79,292	\$ (168,012)

	Total Assets		
	October 31, 2021	January 31, 2021	October 31, 2020
Watch and Accessory Brands	\$ 679,112	\$ 659,681	\$ 640,652
Company Stores	61,905	59,576	61,126
Consolidated total	<u>\$ 741,017</u>	<u>\$ 719,257</u>	<u>\$ 701,778</u>

**Geographic Location Data for the Three Months Ended October 31, 2021 and 2020 (in thousands):**

	Net Sales		Operating Income/(Loss) (3)(5)	
	2021	2020	2021	2020
United States (1)	\$ 92,783	\$ 65,485	\$ 6,996	\$ (6,684)
International (2)	124,963	104,378	34,407	29,751
Consolidated total	<u>\$ 217,746</u>	<u>\$ 169,863</u>	<u>\$ 41,403</u>	<u>\$ 23,067</u>

United States and International net sales are net of intercompany sales of \$118.7 million and \$100.5 million for the three months ended October 31, 2021 and 2020, respectively.

**Geographic Location Data as of and for the Nine Months Ended October 31, 2021 and 2020 (in thousands):**

	Net Sales		Operating Income/(Loss) (3)(4)(5)	
	2021	2020	2021	2020
United States (1)	\$ 244,163	\$ 128,785	\$ 16,575	\$ (140,993)
International (2)	282,255	199,282	62,717	(27,019)
Consolidated total	<u>\$ 526,418</u>	<u>\$ 328,067</u>	<u>\$ 79,292</u>	<u>\$ (168,012)</u>

United States and International net sales are net of intercompany sales of \$279.1 million and \$172.4 million for the nine months ended October 31, 2021 and 2020, respectively.

- (1) The United States operating income/(loss) included \$21.6 million and \$16.3 million of unallocated corporate expenses for the three months ended October 31, 2021 and 2020, respectively. The United States operating income/(loss) included \$43.5 million and \$28.4 million of unallocated corporate expenses for the nine months ended October 31, 2021 and 2020, respectively.
- (2) The International operating income included \$28.9 million and \$23.0 million of certain intercompany profits related to the Company's supply chain operations for the three months ended October 31, 2021 and 2020, respectively. The International operating income/(loss) included \$59.7 million and \$45.3 million of certain intercompany profits related to the Company's supply chain operations for the nine months ended October 31, 2021 and 2020, respectively.
- (3) For the three months ended October 31, 2021 and 2020, and for the nine months ended October 31, 2021 and 2020, in the United States locations of the Watch and Accessory Brands segment, operating income/(loss) included a charge of \$0.1 million, \$0.5 million, \$0.3 million and \$1.5 million, respectively, related to the amortization of intangible assets and the MVMT brand's deferred compensation. In addition, in the International locations of the Watch and Accessory Brands segment for the three months ended October 31, 2021 and 2020, and for the nine months ended October 31, 2021 and 2020, operating income/(loss) included a charge of \$0.7 million, \$0.6 million, \$2.1 and \$2.0 million, respectively, related to the amortization of acquired intangible assets as a result of the Company's acquisition of the Olivia Burton brand.
- (4) For the nine months ended October 31, 2020, in the United States locations of the Watch and Accessory Brands segment, operating loss included a charge of \$99.7 million, related to the impairment of goodwill and intangible assets associated with the MVMT brand. In addition, in the International locations of the Watch and Accessory Brands segment, for the nine months ended October 31, 2020, operating loss included a charge of \$56.2 million related to the impairment of goodwill associated with the Olivia Burton brand and City Time Joint Venture.
- (5) For the three months ended October 2020, in the United States locations and the International locations of the Watch and Accessory Brands segment, operating (loss)/income included a charge of \$0.6 million and \$0.2 million, respectively, related to the corporate initiatives that the Company took in response to the impact on its business due to the COVID-19 pandemic. For the nine months ended October 2020, in the United States locations and the International locations of the Watch and Accessory Brands segment, operating loss included a charge of \$11.9 million and \$3.5 million, respectively, related to the corporate initiatives that the Company took in response to the impact on its business due to the COVID-19 pandemic.

	Total Assets		
	October 31, 2021	January 31, 2021	October 31, 2020
United States	\$ 370,185	\$ 352,517	\$ 300,351
International	370,832	366,740	401,427
Consolidated total	<u>\$ 741,017</u>	<u>\$ 719,257</u>	<u>\$ 701,778</u>

	Property, Plant and Equipment, Net		
	October 31, 2021	January 31, 2021	October 31, 2020
United States	\$ 12,836	\$ 14,792	\$ 15,884
International	6,529	7,557	8,118
Consolidated total	<u>\$ 19,365</u>	<u>\$ 22,349</u>	<u>\$ 24,002</u>

## FORWARD-LOOKING STATEMENTS

Statements in this Quarterly Report on Form 10-Q, including, without limitation, statements under Item 2 "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere in this report, as well as statements in future filings by the Company with the Securities and Exchange Commission (the "SEC"), in the Company's press releases and oral statements made by or with the approval of an authorized executive officer of the Company, which are not historical in nature, are intended to be, and are hereby identified as, "forward-looking statements" for purposes of the safe harbor provided by the Private Securities Litigation Reform Act of 1995. These statements are based on current expectations, estimates, forecasts and projections about the Company, its future performance, the industry in which the Company operates and management's assumptions. Words such as "expects", "anticipates", "targets", "goals", "projects", "intends", "plans", "believes", "seeks", "estimates", "may", "will", "should" and variations of such words and similar expressions are also intended to identify such forward-looking statements. The Company cautions readers that forward-looking statements include, without limitation, those relating to the Company's future business prospects, projected operating or financial results, revenues, working capital, liquidity, capital needs, inventory levels, plans for future operations, expectations regarding capital expenditures, operating efficiency initiatives and other items, cost savings initiatives, and operating expenses, effective tax rates, margins, interest costs, and income as well as assumptions relating to the foregoing. Forward-looking statements are subject to certain risks and uncertainties, some of which cannot be predicted or quantified. Actual results and future events could differ materially from those indicated in the forward-looking statements, due to several important factors herein identified, among others, and other risks and factors identified from time to time in the Company's reports filed with the SEC, including, without limitation, the following: general economic and business conditions which may impact disposable income of consumers in the United States and the other significant markets (including Europe) where the Company's products are sold; uncertainty regarding such economic and business conditions, including inflation and tightness in the labor market; trends in consumer debt levels and bad debt write-offs; general uncertainty related to possible terrorist attacks, natural disasters, pandemics, including the effect of the COVID-19 pandemic and other diseases on travel and traffic in the Company's retail stores and the stores of its wholesale customers; supply disruptions, delivery delays and increased shipping costs as a result of the COVID-19 pandemic and power outages in China; adverse impact on the Company's wholesale customers and customer traffic in the Company's stores as a result of increased uncertainty and economic disruption caused by the COVID-19 pandemic; uncertainty relating to the availability and efficacy of vaccines and treatments for COVID-19; the impact of the United Kingdom's exit from the European Union; defaults on or downgrades of sovereign debt and the impact of any of those events on consumer spending; changes in consumer preferences and popularity of particular designs, new product development and introduction; decrease in mall traffic and increase in e-commerce; the ability of the Company to successfully implement its business strategies, competitive products and pricing, including price increases to offset increased costs; the impact of "smart" watches and other wearable tech products on the traditional watch market; seasonality; availability of alternative sources of supply in the case of the loss of any significant supplier or any supplier's inability to fulfill the Company's orders; the loss of or curtailed sales to significant customers; the Company's dependence on key employees and officers; the ability to successfully integrate the operations of acquired businesses without disruption to other business activities; the possible impairment of acquired intangible assets including goodwill if the carrying value of any reporting unit were to exceed its fair value; risks associated with the Company's minority investments in early-stage growth companies and venture capital funds that invest in such companies; volatility in reported earnings resulting from changes in the estimated fair value of contingent acquisition consideration; the continuation of the Company's major warehouse and distribution centers; the continuation of licensing arrangements with third parties; losses possible from pending or future litigation and administrative proceedings; the ability to secure and protect trademarks, patents and other intellectual property rights; the ability to lease new stores on suitable terms in desired markets and to complete construction on a timely basis; the ability of the Company to successfully manage its expenses on a continuing basis; information systems failure or breaches of network security; complex and quickly-evolving regulations regarding privacy and data protection; the continued availability to the Company of financing and credit on favorable terms; business disruptions; and general risks associated with doing business outside the United States including, without limitation, import duties, tariffs (including retaliatory tariffs), quotas, political and economic stability, changes to existing laws or regulations, and success of hedging strategies with respect to currency exchange rate fluctuations.

These risks and uncertainties, along with the risk factors discussed under Item 1A. "Risk Factors" in the Company's 2021 Annual Report on Form 10-K, should be considered in evaluating any forward-looking statements contained in this report or incorporated by reference herein. All forward-looking statements speak only as of the date of this report or, in the case of any document incorporated by reference, the date of that document. All subsequent written and oral forward-looking statements attributable to the Company or any person acting on its behalf are qualified by the cautionary statements in this section. The Company undertakes no obligation to update or publicly release any revisions to forward-looking statements to reflect events, circumstances or changes in expectations after the date of this report.

## Critical Accounting Policies and Estimates

The Company's Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States and those significant policies are more fully described in Note 1 to the Company's consolidated financial statements and contained in the Company's 2021 Annual Report on Form 10-K and are incorporated by reference herein. The preparation of these financial statements and the application of certain critical accounting policies require management to make judgments based on estimates and assumptions that affect the information reported. On an on-going basis, management evaluates its estimates and judgments, including those related to sales discounts and markdowns, product returns, bad debt, inventories, income taxes, warranty obligations, useful lives of property, plant and equipment, impairments, stock-based compensation and contingencies and litigation. Management bases its estimates and judgments about the carrying values of assets and liabilities that are not readily apparent from other sources on historical experience, contractual commitments and on various other factors that are believed to be reasonable under the circumstances. Actual results could differ from these estimates.

Critical accounting policies are those that are most important to the portrayal of the Company's financial condition and the results of operations and require management's most difficult, subjective and complex judgments as a result of the need to make estimates about the effect of matters that are inherently uncertain. As of October 31, 2021, there have been no material changes to any of the Company's critical accounting policies except the Company accounts for its equity securities without readily determinable fair values at cost, less impairment, plus/minus subsequent observable price changes, and performs an assessment each quarter to determine whether or not a triggering event has occurred that results in changes in fair value. These investments were not material to the Company's consolidated financial statements (\$1.1 million) and are included in Other non-current assets in the accompanying consolidated balance sheets.

## Overview

The Company conducts its business in two operating segments: Watch and Accessory Brands and Company Stores. The Company's Watch and Accessory Brands segment includes the designing, manufacturing and distribution of watches and, to a lesser extent, jewelry and other accessories, of owned and licensed brands, in addition to revenue generated from after-sales service activities and shipping. The Company Stores segment includes the Company's retail outlet business in the United States and Canada. The Company also operates in two major geographic locations: United States and International, the latter of which includes the results of all non-U.S. Company operations.

The Company divides its watch and accessory business into two principal categories: the owned brands category and the licensed brands category. The owned brands category consists of the Movado®, Concord®, Ebel®, Olivia Burton® and MVMT® brands. Products in the licensed brands category include the following brands manufactured and distributed under license agreements with the respective brand owners: Coach®, Tommy Hilfiger®, HUGO BOSS®, Lacoste® and SCUDERIA FERRARI®.

Gross margins vary among the brands included in the Company's portfolio and also among watch models within each brand. Watches in the Company's owned brands category generally earn higher gross margin percentages than watches in the licensed brands category. The difference in gross margin percentages within the licensed brands category is primarily due to the impact of royalty payments made on the licensed brands. Gross margins in the Company's e-commerce business generally earn higher gross margin percentages than those of the traditional wholesale business. Gross margins in the Company's outlet business are affected by the mix of product sold and may exceed those of the wholesale business since the Company earns margins on its outlet store sales from manufacture to point of sale to the consumer.

## Recent Developments and Initiatives

### COVID-19

The COVID-19 pandemic and related public health measures materially impacted the Company's operating results for the fiscal year ended January 31, 2021 and continue to materially affect how the Company and its customers and suppliers operate their businesses. In response to the pandemic, in the first quarter of fiscal 2021 government authorities began to mandate various restrictions, including travel restrictions, quarantines and other social distancing requirements. In mid-March 2020, the Company and the majority of the Company's wholesale customers temporarily closed all of their retail stores due to health concerns associated with COVID-19. The impact of these closures was partially offset by strong growth in e-commerce sales, by both the Company and many of its retail customers. During fiscal 2021, the Company further responded to the pandemic by taking actions to enhance its financial liquidity and flexibility, including minimizing non-essential operating expenses and capital expenditures, applying for available government payroll subsidies, and temporarily suspending the Company's share repurchase program and regular quarterly dividends. The Company also committed to a restructuring plan (the "Restructuring Plan") on June 29, 2020 (see Note 5 – Restructuring Provision for further discussion). Although the Company reopened all of its retail stores during the second quarter of fiscal 2021 and most of the Company's brick and mortar wholesale customers have reopened the vast majority of their retail locations as well, the discretionary consumer goods segment remains challenged at brick-and-mortar retail locations in many regions and supply chains and shipping operations continue to



be impacted by the pandemic. In addition, during the 2021 fiscal year and continuing through the third quarter of fiscal 2022, the Company has implemented remote work policies and employed additional safety measures for on-site work. These policies and measures have caused strain for, and may have adversely impacted the productivity of, certain employees.

Although the full magnitude of the effects on the Company's business is difficult to predict at this time, the COVID-19 pandemic is expected to continue to impact the Company's results of operations for the foreseeable future. In addition to unpredictable regional resurgences of COVID-19 cases which often result in the reimposition or tightening of containment and mitigation measures, the ongoing economic impacts and health concerns associated with the pandemic will likely continue to affect supply chains, shipping operations, consumer behavior, spending levels, shopping preferences and tourism. Nevertheless, the pandemic's adverse impact on the Company has significantly diminished in recent quarters and the Company believes that based on the Company's current expectations, cash flows from operations and its credit lines and cash on-hand, the Company has adequate funds to support its operating, capital and debt service requirements and expects to maintain compliance with its debt covenants for the next twelve months subsequent to the issuance of the accompanying unaudited Consolidated Financial Statements.

### ***Fiscal 2021 Impairments***

During the three months ended April 30, 2020, in light of the COVID-19 pandemic that resulted in the closing of the Company's stores and of the vast majority of the stores of the Company's wholesale customers (resulting in a decrease in revenues and gross margin), a decrease in customer spending and the recent decline in global equity markets, the Company concluded that a triggering event had occurred during the first quarter of fiscal 2021, resulting in the need to perform a quantitative interim impairment assessment over the Company's Olivia Burton, MVMT and Company Stores' long-lived assets as well as the Watch and Accessory Brands reporting unit.

The Company made revisions to its internal forecasts, resulting in a reduction in both current and future expected cash flows, due to the COVID-19 pandemic and the uncertain business environment. As a result, during the first quarter of fiscal 2021, the Company recorded impairment charges related to goodwill of \$133.7 million and intangible assets related to MVMT's tradename and customer relationships of \$22.2 million.

### **Results of Operations Overview**

The following is a discussion of the results of operations for the three and nine months ended October 31, 2021 compared to the three and nine months ended October 31, 2020, along with a discussion of the changes in financial condition during the first nine months of fiscal 2022. The Company's results of operations for the first nine months of fiscal 2022 should not be deemed indicative of the results that the Company will experience for the full year of fiscal 2022. See "Recent Developments and Initiatives" above. See also "Risk Factors" of our Annual Report on Form 10-K for the fiscal year ended January 31, 2021 filed with the Securities and Exchange Commission on March 25, 2021.

### **Results of operations for the three months ended October 31, 2021 as compared to the three months ended October 31, 2020**

*Net Sales:* Comparative net sales by business segment were as follows (in thousands):

	Three Months Ended October 31,	
	2021	2020
<b>Watch and Accessory Brands:</b>		
United States	\$ 70,752	\$ 48,403
International	123,574	103,705
Total Watch and Accessory Brands	194,326	152,108
<b>Company Stores:</b>		
United States	22,031	17,082
International	1,389	673
Total Company Stores	23,420	17,755
Net Sales	<u>\$ 217,746</u>	<u>\$ 169,863</u>

Comparative net sales by categories were as follows (in thousands):

	Three Months Ended October 31,	
	2021	2020
<b>Watch and Accessory Brands:</b>		
Owned brands category	\$ 69,433	\$ 55,774
Licensed brands category	122,098	95,576
After-sales service and all other	2,795	758
<b>Total Watch and Accessory Brands</b>	<b>194,326</b>	<b>152,108</b>
Company Stores	23,420	17,755
<b>Net Sales</b>	<b>\$ 217,746</b>	<b>\$ 169,863</b>

### *Net Sales*

Net sales for the three months ended October 31, 2021 were \$217.7 million, \$47.9 million or 28.2% above the prior year period. For the three months ended October 31, 2021, fluctuations in foreign currency exchange rates positively impacted net sales by \$2.5 million when compared to the prior year period.

### *Watch and Accessory Brands Net Sales*

Net sales for the three months ended October 31, 2021 in the Watch and Accessory Brands segment were \$194.3 million, above the prior year period by \$42.2 million, or 27.8%. The increase in net sales was primarily due to increased volumes resulting from higher demand with growth in the Company's wholesale customers, growth in online retailers, both in the Company's owned and wholesale customers' e-commerce websites, and to a lesser extent, limited price increases. Prior period net sales were negatively impacted by restrictions affecting some stores of the Company's wholesale customers during a portion of the period due to the COVID-19 pandemic. Some of these restrictions have continued into fiscal 2022. There were increases in net sales in both the United States and International locations of the Watch and Accessory Brands segment.

### *United States Watch and Accessory Brands Net Sales*

Net sales for the three months ended October 31, 2021 in the United States locations of the Watch and Accessory Brands segment were \$70.7 million, above the prior year period by \$22.3 million, or 46.2%, resulting from net sales increases across most brands in both the owned and licensed brand categories. The net sales recorded in the owned brands category increased by \$16.1 million, or 43.1%, and net sales recorded in the licensed brand category increased \$4.7 million, or 41.9%.

### *International Watch and Accessory Brands Net Sales*

Net sales for the three months ended October 31, 2021 in the International locations of the Watch and Accessory Brands segment were \$123.6 million, above the prior year by \$19.9 million, or 19.2%, which included fluctuations in foreign currency exchange rates which favorably impacted net sales by \$2.5 million when compared to the prior year period. The increase in net sales was across all brands in the licensed brand category, partially offset by a decrease in the owned brands category across most brands. The net sales increase recorded in the licensed brands category was \$21.9 million, or 25.9% and is due to sales increases in all regions. The net sales decrease in the owned brands category was \$2.4 million, or 13.0%, primarily due to net sales decreases in Asia, Europe and the Middle East.

### *Company Stores Net Sales*

Net sales for the three months ended October 31, 2021 in the Company Stores segment were \$23.4 million, \$5.7 million or 31.9% above the prior year period. The net sales increase is primarily the result of increased traffic in the Company's retail stores, the addition of three new store openings and MCS.com. As of October 31, 2021 and 2020, the Company operated 50 and 47 retail outlet locations, respectively.

### *Gross Profit*

Gross profit for the three months ended October 31, 2021 was \$125.6 million or 57.7% of net sales as compared to \$92.5 million or 54.4% of net sales in the prior year period. The increase in gross profit of \$33.1 million was primarily due to higher net sales combined with a higher gross margin percentage. The increase in the gross margin percentage of approximately 330 basis points for the three months ended October 31, 2021 resulted primarily from a favorable impact of sales mix of approximately 320 basis points and increased

leveraging of certain fixed costs as a result of higher sales of approximately 20 basis points, partially offset by an approximately 10 basis point impact due to increased shipping costs.

#### *Selling, General and Administrative (“SG&A”)*

SG&A expenses for the three months ended October 31, 2021 were \$84.2 million, representing an increase from the prior year period of \$14.8 million, or 21.3%. The prior year period included corporate initiative charges primarily in response to the COVID-19 pandemic of \$0.7 million consisting of \$0.6 million in other restructuring charges and \$0.1 million in severance and payroll related. Excluding these charges SG&A expenses would have increased \$15.5 million primarily from higher marketing expenses of \$7.6 million; an increase in performance-based compensation of \$3.7 million; an increase in consulting charges of \$1.6 million; an increase in payroll related expenses of \$1.2 million primarily due to government subsidies received in the prior year period in response to the COVID-19 pandemic and an increase in credit card fees and sales commissions of \$0.6 million due to higher sales in the current year period. For the three months ended October 31, 2021, fluctuations in foreign currency rates related to the foreign subsidiaries negatively impacted SG&A expenses by \$0.5 million when compared to the prior year period.

#### *Watch and Accessory Brands Operating Income*

For the three months ended October 31, 2021, the Company recorded operating income of \$34.9 million in the Watch and Accessory Brands segment which includes \$21.6 million of unallocated corporate expenses as well as \$28.9 million of certain intercompany profits related to the Company’s supply chain operations. For the three months ended October 31, 2020, the Company recorded operating income of \$19.8 million in the Watch and Accessory Brands segment which included \$16.3 million of unallocated corporate expenses as well as \$23.0 million of certain intercompany profits related to the Company’s supply chain operations. The increase in operating income was the result of an increase in gross profit of \$27.6 million, partially offset by an increase in SG&A expenses of \$12.5 million when compared to the prior year period. The increase in gross profit was primarily the result of higher net sales and also reflected a higher gross margin percentage primarily due to a favorable change in sales mix partially offset by increased shipping costs. The SG&A expenses for the prior year period included corporate initiatives charges primarily in response to the COVID-19 pandemic of \$0.7 million consisting of \$0.6 million in other restructuring charges and \$0.1 million in severance and payroll related. Without these charges SG&A expense would have increased \$13.2 million. The underlying increase in SG&A expenses of \$13.2 million resulted primarily from higher marketing expenses of \$6.6 million; an increase in performance-based compensation of \$3.6 million; an increase in consulting charges of \$1.6 million; and an increase in payroll related expenses of \$1.0 million primarily due to government subsidies received in the prior year period in response to the COVID-19 pandemic. For the three months ended October 31, 2021, fluctuations in foreign currency exchange rates positively impacted the Watch and Accessory Brands segment operating income by \$0.4 million when compared to the prior year period.

#### *U.S. Watch and Accessory Brands Operating Income/(Loss)*

In the United States locations of the Watch and Accessory Brands segment, for the three months ended October 31, 2021, the Company recorded operating income of \$0.8 million which includes unallocated corporate expenses of \$21.6 million. For the three months ended October 31, 2020 the Company recorded an operating loss of \$9.8 million in the United States locations of the Watch and Accessory Brands segment which included unallocated corporate expenses of \$16.3 million. The improvement in operating income was the result of higher gross profit of \$16.6 million, partially offset by an increase in SG&A expenses of \$6.0 million when compared to the prior year period. The increase in gross profit of \$16.6 million was due to higher net sales, combined with a higher gross margin percentage. The SG&A expenses for the prior year period included corporate initiatives charges primarily in response to the COVID-19 pandemic consisting of \$0.6 million in other restructuring charges. Without these charges SG&A expense would have increased \$6.6 million. The underlying increase in SG&A expenses of \$6.6 million resulted primarily from higher marketing expenses of \$4.1 million and an increase in performance-based compensation of \$2.7 million.

#### *International Watch and Accessory Brands Operating Income*

In the International locations of the Watch and Accessory Brands segment, for the three months ended October 31, 2021, the Company recorded operating income of \$34.1 million which includes \$28.9 million of certain intercompany profits related to the Company's International supply chain operations. For the three months ended October 31, 2020 the Company recorded operating income of \$29.6 million in the International locations of the Watch and Accessory Brands segment which included \$23.0 million of certain intercompany profits related to the Company's supply chain operations. The increase in operating income was primarily related to a higher gross profit of \$11.0 million, partially offset with higher SG&A expenses of \$6.5 million. The increase in gross profit of \$11.0 million was due to higher net sales partially offset with a slightly lower margin percentage. The SG&A expenses for the prior year period included corporate initiatives charges primarily in response to the COVID-19 pandemic of \$0.1 million in severance and payroll related. Without these charges SG&A expense would have increased \$6.6 million. The underlying increase in SG&A expenses of \$6.6 million resulted primarily from higher marketing expenses of \$2.5 million; an increase of consulting charges of \$1.4 million; an increase in payroll related expenses of \$1.3 million primarily due to government subsidies received in the prior year period in response to the COVID-19 pandemic; and an increase in performance-based compensation of \$0.9 million. Fluctuation in foreign currency exchange rates positively impacted operating income by \$0.4 million when compared to the prior year period.

#### *Company Stores Operating Income*

The Company recorded operating income of \$6.5 million and \$3.2 million in the Company Stores segment for the three months ended October 31, 2021 and 2020, respectively. The increase in operating income of \$3.3 million was primarily related to higher gross profit of \$5.5 million mainly due to higher net sales and a higher gross margin percentage partially due to reduced promotions, partially offset by a \$2.2 million increase in SG&A expenses. The increase in SG&A expenses was primarily due to higher marketing expenses of \$1.0 million; an increase in rent and rent related of \$0.3 million due to the opening of new company stores; an increase in credit card fees and sales commissions of \$0.3 million due to higher sales in the current year period as compared to the prior year period; and an increase of \$0.2 million in payroll related and performance-based compensation expense. As of October 31, 2021, and 2020, the Company operated 50 and 47 retail outlet locations, respectively.

#### *Other Non-Operating Income*

The Company recorded other income of \$0.1 million primarily due to the non-service components of the Company's Swiss pension plan for the three months ended October 31, 2021.

#### *Interest Expense*

Interest expense was \$0.1 million and \$0.6 million for the three months ended October 31, 2021 and 2020, respectively. The decrease was primarily due to no borrowings under the Company's revolving credit facility during the current year period partially offset by higher unused credit line fees during the three months ended October 31, 2021 as compared to the three months ended October 31, 2020.

#### *Income Taxes*

The Company recorded an income tax provision of \$9.6 million and \$7.5 million for the three months ended October 31, 2021 and 2020, respectively.

The effective tax rate was 23.1% and 33.5% for the three months ended October 31, 2021 and 2020, respectively. The significant components of the effective tax rate changed primarily due to the U.S. tax on Global Intangible Low-Taxed Income with no related tax credits and excess tax deficiencies related to stock-based compensation, both of which were recognized in the prior year, partially offset by changes in jurisdictional earnings.

#### *Net Income Attributable to Movado Group, Inc.*

The Company recorded net income attributable to Movado Group, Inc. of \$31.4 million and \$14.8 million for the three months ended October 31, 2021 and 2020, respectively.

### **Results of operations for the nine months ended October 31, 2021 as compared to the nine months ended October 31, 2020**

*Net Sales:* Comparative net sales by business segment were as follows (in thousands):

	Nine Months Ended October 31,	
	2021	2020
<b>Watch and Accessory Brands:</b>		
United States	\$ 177,307	\$ 95,605
International	279,477	197,978
<b>Total Watch and Accessory Brands</b>	<b>456,784</b>	<b>293,583</b>
<b>Company Stores:</b>		
United States	66,856	33,180
International	2,778	1,304
<b>Total Company Stores</b>	<b>69,634</b>	<b>34,484</b>
<b>Net Sales</b>	<b>\$ 526,418</b>	<b>\$ 328,067</b>

Comparative net sales by categories were as follows (in thousands):

	Nine Months Ended October 31,	
	2021	2020
<b>Watch and Accessory Brands:</b>		
Owned brands category	\$ 178,706	\$ 112,757
Licensed brands category	273,801	177,674
After-sales service and all other	4,277	3,152
<b>Total Watch and Accessory Brands</b>	<b>456,784</b>	<b>293,583</b>
<b>Company Stores</b>	<b>69,634</b>	<b>34,484</b>
<b>Net Sales</b>	<b>\$ 526,418</b>	<b>\$ 328,067</b>

#### *Net Sales*

Net sales for the nine months ended October 31, 2021 were \$526.4 million, \$198.4 million or 60.5% above the prior year period. This increase is primarily as a result of the partial recovery from the ongoing COVID-19 pandemic. For the nine months ended October 31, 2021, fluctuations in foreign currency exchange rates positively impacted net sales by \$12.1 million when compared to the prior year period.

#### *Watch and Accessory Brands Net Sales*

Net sales for the nine months ended October 31, 2021 in the Watch and Accessory Brands segment were \$456.8 million, above the prior year period by \$163.2 million, or 55.6%. The increase in net sales was primarily due to increased volumes resulting from higher demand with growth in the Company's wholesale customers and growth in online retailers, both in the Company's owned and wholesale customers' e-commerce websites, due to the partial recovery from the ongoing COVID-19 pandemic. Prior period net sales were negatively impacted by closures and restrictions affecting the stores of the Company's wholesale customers during a portion of the period due to the COVID-19 pandemic. Some of these restrictions have continued into fiscal 2022. There were increases in net sales in both the United States and International locations of the Watch and Accessory Brands segment.

#### *United States Watch and Accessory Brands Net Sales*

Net sales for the nine months ended October 31, 2021 in the United States locations of the Watch and Accessory Brands segment were \$177.3 million, above the prior year period by \$81.7 million, or 85.5%, resulting from net sales increases across all brands in both the owned and licensed brand categories primarily due to the partial recovery from the ongoing COVID-19 pandemic. The net sales recorded in the owned brands category increased by \$63.4 million, or 86.0%, and net sales recorded in the licensed brand category increased \$17.2 million, or 82.5%.

#### *International Watch and Accessory Brands Net Sales*

Net sales for the nine months ended October 31, 2021 in the International locations of the Watch and Accessory Brands segment were \$279.5 million, above the prior year by \$81.5 million, or 41.2%, which included fluctuations in foreign currency exchange rates which favorably impacted net sales by \$12.1 million when compared to the prior year period. The increase in net sales was across most brands in both the owned and licensed brand categories primarily due to the partial recovery from the ongoing COVID-19 pandemic. The net sales increase recorded in the owned brands category was \$2.5 million, or 6.5% and is due to sales increases in most regions. The net sales increase in the licensed brands category was \$79.0 million, or 50.3%, due to net sales increases across all regions.

### *Company Stores Net Sales*

Net sales for the nine months ended October 31, 2021 in the Company Stores segment were \$69.6 million, \$35.2 million or 101.9% above the prior year period. The net sales increase is primarily the result of all of the Company's retail stores being open during the period as compared to the closure of the Company's retail stores during part of the prior year period in response to the COVID-19 pandemic, lessened restrictions on the Company's retail stores during the period as compared to the same period in the prior year and the addition of three new store openings. As of October 31, 2021 and 2020, the Company operated 50 and 47 retail outlet locations, respectively.

### *Gross Profit*

Gross profit for the nine months ended October 31, 2021 was \$298.2 million or 56.7% of net sales as compared to \$169.7 million or 51.7% of net sales in the prior year period. The increase in gross profit of \$128.5 million was primarily due to higher net sales combined with a higher gross margin percentage. The increase in the gross margin percentage of approximately 500 basis points for the nine months ended October 31, 2021 resulted primarily from a favorable impact of sales mix of approximately 320 basis points, the non-recurrence of a prior year charge related to an increase in inventory reserves in response to the COVID-19 pandemic of approximately 110 basis points, increased leveraging of certain fixed costs as a result of higher sales of approximately 40 basis points and a positive impact of fluctuations in foreign exchange rates of approximately 40 basis points, partially offset by an approximately 10 basis point impact due to increased shipping costs.

### *Selling, General and Administrative ("SG&A")*

SG&A expenses for the nine months ended October 31, 2021 were \$218.9 million, representing an increase from the prior year period of \$37.1 million, or 20.4%. The prior year period included corporate initiative charges primarily in response to the COVID-19 pandemic of \$11.8 million consisting of \$8.0 million in severance and payroll related, \$1.5 million in write-off of unrefunded trade show deposits, \$1.2 million in other restructuring charges and \$1.1 million in additional accounts receivable reserves. Excluding these charges SG&A expenses would have increased \$48.9 million primarily from higher marketing expenses of \$26.1 million; an increase in performance-based compensation of \$10.3 million; an increase in payroll related expenses of \$6.9 million primarily due to the non-reoccurrence of the furloughing of employees and temporary salary reductions during a portion of the prior year period in response to the COVID-19 pandemic; an increase in credit card fees and sales commissions of \$2.7 million due to higher sales in the current year period; and an increase in consulting and recruiting charges of \$2.1 million. The increase in SG&A was partially offset by a decrease of \$0.8 million in customer and sales promotions. For the nine months ended October 31, 2021, fluctuations in foreign currency rates related to the foreign subsidiaries negatively impacted SG&A expenses by \$2.2 million when compared to the prior year period.

### *Impairment of Goodwill and Intangible Assets*

As a result of the economic conditions caused by the response to COVID-19, the Company performed a quantitative assessment of its goodwill and long-lived intangible assets at April 30, 2020. The Company recorded a goodwill impairment of \$133.7 million related to the Company's Watch and Accessory Brands reporting unit as the carrying value of goodwill exceeded the fair value at April 30, 2020. The Company also recorded a \$22.2 million impairment charge related to MVMT's trade name and customer relationships as the carrying amount of these long-lived intangible assets exceeded the fair value.

### *Watch and Accessory Brands Operating Income/(Loss)*

For the nine months ended October 31, 2021 the Company recorded operating income of \$59.4 million in the Watch and Accessory Brands segment which includes \$43.5 million of unallocated corporate expenses as well as \$59.7 million of certain intercompany profits related to the Company's supply chain operations. For the nine months ended October 31, 2020, the Company recorded an operating loss of \$169.8 million in the Watch and Accessory Brands segment, which included goodwill and intangible asset impairment charges of \$133.7 million and \$22.2 million, respectively. Without these charges, for the nine months ended October 31, 2020, operating loss would have been \$13.9 million which included \$28.4 million of unallocated corporate expenses as well as \$45.3 million of certain intercompany profits related to the Company's supply chain operations. In addition to the asset impairments in the prior year period, the increase in operating income was the result of an increase in gross profit of \$102.3 million, which included corporate initiatives costs in the prior year period of \$3.5 million comprising an increase in inventory reserves, partially offset by an increase in SG&A expenses of \$29.0 million when compared to the prior year period. The increase in gross profit was primarily the result of higher net sales and also a higher gross margin percentage primarily due to a favorable change in sales mix partially offset by increased shipping costs. The SG&A expenses for the prior year period included corporate initiatives charges primarily in response to the COVID-19 pandemic of \$11.8 million consisting of \$8.0 million in severance and payroll related, \$1.5 million in write-off of unrefunded trade show deposits, \$1.2 million in other restructuring charges and \$1.1 million in additional accounts receivable reserves. Without these charges SG&A expense would have increased \$40.8 million. The underlying increase in SG&A expenses of \$40.8 million resulted primarily from higher marketing expenses of \$23.3 million; an increase in performance-based compensation of \$9.7 million; an increase in payroll related expenses of \$4.7 million primarily due to the non-reoccurrence of the furloughing of employees and temporary salary reductions during a portion of the prior year period in response to the COVID-19 pandemic; an increase in consulting and recruiting charges of \$2.1 million; and an increase in credit card fees and sales commissions of \$1.7 million due to higher sales in the current year period. The

increase in SG&A expense was partially offset by a decrease of \$0.7 million in customer and sales promotions. For the nine months ended October 31, 2021, fluctuations in foreign currency exchange rates positively impacted the Watch and Accessory Brands segment operating income by \$3.0 million when compared to the prior year period.

#### *U.S. Watch and Accessory Brands Operating Loss*

In the United States locations of the Watch and Accessory Brands segment, for the nine months ended October 31, 2021, the Company recorded an operating loss of \$2.7 million, which includes unallocated corporate expenses of \$43.5 million. For the nine months ended October 31, 2020 the Company recorded an operating loss of \$142.6 million in the United States locations of the Watch and Accessory Brands segment which included goodwill and intangible asset impairment charges of \$77.5 million and \$22.2 million, respectively. Without these charges, for the nine months ended October 31, 2020, operating loss would have been \$42.9 million, which included unallocated corporate expenses of \$28.4 million. In addition to these assets impairments in the prior year period, the decrease in operating loss was the result of higher gross profit of \$58.5 million, which included corporate initiative costs in the prior year period of \$3.5 million comprising an increase in inventory reserves, partially offset by an increase in SG&A expenses of \$18.3 million when compared to the prior year period. The increase in gross profit of \$58.5 million was due to higher net sales, combined with a higher gross margin percentage. The SG&A expenses for the prior year period included corporate initiatives charges primarily in response to the COVID-19 pandemic of \$8.4 million primarily consisting of \$6.3 million in severance and payroll related, \$1.1 million in additional accounts receivable reserves and \$1.0 million in other restructuring charges. Without these charges SG&A expense would have increased \$26.7 million. The underlying increase in SG&A expenses of \$26.7 million resulted primarily from higher marketing expenses of \$14.0 million; an increase in performance-based compensation of \$8.8 million; an increase in payroll related expenses of \$2.6 million primarily due to the non-reoccurrence of the furloughing of employees and temporary salary reductions during a portion of the prior year period in response to the COVID-19 pandemic; an increase in credit card fees and sales commission of \$0.7 million due to higher sales in the current year period; and an increase in consulting and recruiting charges of \$0.3 million.

#### *International Watch and Accessory Brands Operating Income/(Loss)*

In the International locations of the Watch and Accessory Brands segment, for the nine months ended October 31, 2021 the Company recorded operating income of \$62.1 million, which includes \$59.7 million of certain intercompany profits related to the Company's International supply chain operations. For the nine months ended October 31, 2020 the Company recorded an operating loss of \$27.2 million in the International locations of the Watch and Accessory Brands segment which included goodwill impairment charges of \$56.2 million. Without this charge, for the nine months ended October 31, 2020, the Company would have generated operating income of \$29.0 million, which included \$45.3 million of certain intercompany profits related to the Company's supply chain operations. In addition to the goodwill impairment charge, the increase in operating income was primarily related to higher gross profit of \$43.8 million, partially offset by higher SG&A expenses of \$10.7 million. The increase in gross profit of \$43.8 million was due to higher net sales partially offset with a slightly lower gross margin percentage. The SG&A expenses for the prior year period included corporate initiatives charges primarily in response to the COVID-19 pandemic of \$3.4 million consisting of \$1.7 million in severance and payroll related, \$1.5 million in write-off of unrefunded trade show deposits and \$0.2 million in other restructuring charges. Without these charges SG&A expense would have increased \$14.1 million. The underlying increase in SG&A expenses of \$14.1 million resulted primarily from higher marketing expenses of \$9.3 million; an increase in payroll related expenses of \$2.1 million primarily due to the non-reoccurrence of the furloughing of employees and temporary salary reductions during a portion of the prior year period in response to the COVID-19 pandemic; an increase in consulting and recruiting charges of \$1.8 million; an increase in sales commissions and credit card fees of \$1.0 million due to higher sales in the current year period; and an increase in performance-based compensation of \$0.9 million. The increase in SG&A expenses was partially offset by a decrease of \$0.7 million in customer and sales promotions. Fluctuation in foreign currency exchange rates positively impacted operating income by \$3.0 million when compared to the prior year period.

#### *Company Stores Operating Income*

The Company recorded operating income of \$19.9 million and \$1.7 million in the Company Stores segment for the nine months ended October 31, 2021 and 2020, respectively. The improvement in operating income of \$18.2 million was primarily related to higher gross profit of \$26.3 million mainly due to higher net sales and a higher gross margin percentage, partially offset by a \$8.1 million increase in SG&A expenses. The increase in SG&A expenses was primarily due to higher marketing expenses of \$2.8 million; an increase in payroll related expenses of \$2.2 million primarily due to company stores being open throughout the period (as compared to the significant closures during the prior year period); an increase in credit card fees and sales commissions of \$1.1 million due to higher sales in the current year period as compared to the prior year period, an increase in rent and rent related of \$0.7 million due to the opening of new

company stores; and an increase in performance-based compensation of \$0.6 million. As of October 31, 2021, and 2020, the Company operated 50 and 47 retail outlet locations, respectively.

#### *Other Non-Operating Income*

The Company recorded other income of \$0.4 million primarily due to the final settlement related to a sale of a building in an international location in the prior year period and the non-service components of the Company's Swiss pension plan for the nine months ended October 31, 2021.

The Company recorded a gain on sale of a non-operating asset of \$1.3 million related to a sale of a building in an international location for the nine months ended October 31, 2020.

#### *Interest Expense*

Interest expense was \$0.6 million and \$1.5 million for the nine months ended October 31, 2021 and 2020, respectively. The decrease was primarily due to lower weighted average borrowings outstanding under the Company's revolving credit facility partially offset by a higher weighted average interest rate and higher unused credit line fees during the nine months ended October 31, 2021 as compared to the nine months ended October 31, 2020.

#### *Income Taxes*

The Company recorded an income tax provision of \$18.2 million and an income tax benefit of \$26.4 million for the nine months ended October 31, 2021 and 2020, respectively.

The effective tax rate was 23.0% and 15.7% for the nine months ended October 31, 2021 and 2020, respectively. The significant components of the effective tax rate changed primarily due to prior year impairments of the portion of goodwill of the Watch and Accessory Brands reporting unit which is not tax deductible and the recording of valuation allowances on certain foreign deferred tax assets in the current year, partially offset by the CARES Act NOL Carryback Provision in the prior year.

#### *Net Income/(Loss) Attributable to Movado Group, Inc.*

The Company recorded net income attributable to Movado Group, Inc. of \$60.2 million and net loss attributable to Movado Group, Inc. of \$141.8 million for the nine months ended October 31, 2021 and 2020, respectively.

## **LIQUIDITY AND CAPITAL RESOURCES**

During fiscal 2021 the Company's cash generated from operations was negatively impacted due to the COVID-19 pandemic. During fiscal 2021, the Company responded to the pandemic by taking actions to enhance its financial liquidity and flexibility, including minimizing non-essential operating expenses and capital expenditures, applying for available government payroll subsidies, and temporarily suspending the Company's share repurchase program and regular quarterly dividends. The Company also committed to the Restructuring Plan. Although the COVID-19 pandemic is expected to continue to impact the Company's results of operations for the foreseeable future, the pandemic's adverse impact on the Company has significantly diminished in recent quarters and the Company believes that based on the Company's current expectations, cash flows from operations and its credit lines and cash on-hand, the Company has adequate funds to support its operating, capital and debt service requirements and expects to maintain compliance with its debt covenants for the next twelve months subsequent to the issuance of the accompanying unaudited Consolidated Financial Statements.

At October 31, 2021 the Company had working capital of \$391.1 million as compared to \$338.2 million at October 31, 2020. The increase in working capital was primarily the result of an increase in cash of \$38.6 million and an increase in accounts receivable resulting primarily from higher sales partially offset by an increase in accrued liabilities. The Company defines working capital as the difference between current assets and current liabilities.

The Company had \$38.7 million of cash provided by operating activities for the nine months ended October 31, 2021 as compared to \$6.7 million of cash used in operating activities for the nine months ended October 31, 2020. Cash provided by operating activities for the nine months ended October 31, 2021 included net income attributable to the Movado Group, Inc. of \$60.2 million, positively adjusted by \$18.5 million related to non-cash items. Cash provided by operating activities for the nine months ended October 31, 2021 included an increase in accrued liabilities of \$22.6 million primarily due to timing of payments and a decrease in income taxes receivable of \$17.2 million due to a receipt of a U.S. federal income tax refund. Cash used in operating activities included an increase in trade receivables of \$62.4 million as a result of higher sales, an increase in investment in inventories of \$23.8 million primarily to support sales growth and a decrease in income taxes payable of \$3.5 million primarily due to the timing of payments.



Cash used in investing was \$4.9 million for the nine months ended October 31, 2021 as compared to \$1.2 million for the nine months ended October 31, 2020. The cash used in the nine months ended October 31, 2021 was primarily related to capital expenditures of \$3.6 million primarily due to the Company's opening of three new stores (two in Canada), website platform upgrades and the construction of shop-in-shops at some of the Company's wholesale customers and \$1.1 million of long-term investments. The prior year period included proceeds from a sale of a non-operating asset in Switzerland of \$1.3 million.

Cash used by financing activities was \$54.0 million for the nine months ended October 31, 2021 as compared to cash used by financing activities of \$17.6 million for the nine months ended October 31, 2020. The cash used in the nine months ended October 31, 2021 included repayment of bank borrowings of \$21.1 million, \$17.0 million in stock repurchased in the open market, \$16.2 million in dividends paid (\$2.3 million of which had been declared in January 2021) and \$1.7 million of shares repurchased as a result of the surrender of shares in connection with the vesting of certain stock awards, partially offset by \$2.2 million received in connection with stock options exercised. Cash used in financing activities for the nine months ended October 31, 2020 included net repayment of bank borrowings of \$16.8 million.

On October 12, 2018, the Company, together with Movado Group Delaware Holdings Corporation, Movado Retail Group, Inc. and Movado LLC (together with the Company, the "U.S. Borrowers"), each a wholly owned domestic subsidiary of the Company, and Movado Watch Company S.A. and MGI Luxury Group S.A. (collectively, the "Swiss Borrowers" and, together with the U.S. Borrowers, the "Borrowers"), each a wholly owned Swiss subsidiary of the Company, entered into an Amended and Restated Credit Agreement (the "Credit Agreement") with the lenders party thereto and Bank of America, N.A. as administrative agent (in such capacity, the "Agent"). The Credit Agreement amended and restated the Company's prior credit agreement dated as of January 30, 2015 and extended the maturity of the \$100.0 million senior secured revolving credit facility (the "Facility") provided thereunder to October 12, 2023. The Facility includes a \$15.0 million letter of credit subfacility, a \$25.0 million swingline subfacility and a \$75.0 million sublimit for borrowings by the Swiss Borrowers, with provisions for uncommitted increases to the Facility of up to \$50.0 million in the aggregate subject to customary terms and conditions.

On June 5, 2020, the Company and its lenders entered into an amendment (the "Second Amendment") to the Credit Agreement effective as of April 30, 2020. Among other things, the Second Amendment provided for temporary relief with respect to the financial maintenance covenants in the Credit Agreement starting April 30, 2020 while also temporarily tightening certain covenants and temporarily increasing the interest rate and commitment fee. These temporary changes to the Credit Agreement ended as a result of the Company's achievement of certain financial milestones as of and for the periods ending January 31, 2021. In addition, the Second Amendment increased the LIBOR floor for loans under the Credit Agreement from 0% to 1.00% and reduced the minimum EBITDA financial covenant level to \$35.0 million starting with the four-quarter period ending July 31, 2021.

Effective October 29, 2021, the Company and its lenders entered into an additional amendment (the "Third Amendment") to the Credit Agreement. Among other things, the Third Amendment extends the maturity of the Facility to October 29, 2026; reinstates the 0% LIBOR floor; reduces the commitment fee at certain leverage ratios; allows the Company to net up to \$25 million of cash and cash equivalents held in U.S. accounts from total debt for purposes of determining compliance with the leverage ratio financial covenant; and increases the Company's general basket for making investments under the Credit Agreement's operating covenants. The foregoing summary of the Third Amendment is qualified by reference to the full text of the amendment, which is attached hereto as Exhibit 4.1 and incorporated herein by reference.

As of October 31, 2021, and October 31, 2020, there was zero and \$37.3 million (of which all but \$10 million was denominated in Swiss Francs), respectively, in loans outstanding under the Facility. Availability under the Facility was reduced by the aggregate number of letters of credit outstanding, issued in connection with retail and operating facility leases to various landlords and for Canadian payroll to the Royal Bank of Canada, totaling approximately \$0.3 million at both October 31, 2021 and October 31, 2020. At October 31, 2021, the letters of credit have expiration dates through May 31, 2022. As of October 31, 2021, and October 31, 2020, availability under the Facility was \$99.7 million and \$62.4 million, respectively. For additional information regarding the Facility, see Note 8 – Debt and Lines of Credit to the Consolidated Financial Statements.

The Company had weighted average borrowings under the Facility of zero and \$44.5 million during the three months ended October 31, 2021 and 2020, respectively, with a weighted average interest rate of 3.75% during the three months ended October 31, 2020. The Company had weighted average borrowings under the Facility of \$6.5 million and \$60.5 million, with a weighted average interest rate of 2.79% and 2.37%, during the nine months ended October 31, 2021 and 2020, respectively.

A Swiss subsidiary of the Company maintains unsecured lines of credit with an unspecified maturity with a Swiss bank. As of October 31, 2021, and 2020, these lines of credit totaled 6.5 million Swiss Francs for both periods, with a dollar equivalent of \$7.1 million for both periods. As of October 31, 2021, and 2020, there were no borrowings against these lines. As of October 31, 2021 and 2020, two European banks had guaranteed obligations to third parties on behalf of two of the Company's foreign subsidiaries in the dollar equivalent of \$1.3 million for both periods, in various foreign currencies, of which \$0.6 million, in both periods, was a restricted deposit as it relates to lease agreements.

Cash paid for interest, including unused commitments fees, was \$0.4 million and \$1.3 million for the nine-month period ended October 31, 2021 and October 31, 2020, respectively.

From time to time the Company may make minority investments in growth companies in the consumer products sector and other sectors relevant to its business, including certain of the Company's suppliers and customers, as well as in venture capital funds that invest in such companies. During the second quarter of fiscal 2022, the Company committed to invest up to \$1,000,000 in a venture capital fund that makes investments in securities of portfolio companies whose primary business focus is accelerating innovation in retail and consumer goods. The Company satisfied \$600,000 in capital calls in respect of this commitment during the third quarter of fiscal 2022. In addition, during the third quarter of fiscal 2022, the Company committed to invest up to \$10,000,000 in two related venture capital and venture growth funds that make investments in equity and equity-oriented securities of privately held companies in media, entertainment, information technology and technology-related fields, as well as in digital assets. The Company may be called upon to satisfy capital calls in respect of this commitment at any time during a period generally ending ten years after the first capital call, which may be made at any time.

On January 11, 2021, with the consent of its bank group, the Company's Board of Directors declared a cash dividend of \$0.10 per share, which was paid on February 5, 2021 in the amount of \$2.3 million, to shareholders of record on January 21, 2021. The Company paid additional cash dividends of \$0.20 per share or \$4.6 million during the three months ended April 30, 2021, \$0.20 per share or \$4.7 million during the three months ended July 31, 2021 and \$0.20 per share or \$4.6 million during the three months ended October 31, 2021. The Company did not pay cash dividends during the nine months ended October 31, 2020. Although the Company currently expects to continue to declare cash dividends in the future, the decision of whether to declare any future cash dividend, including the amount of any such dividend and the establishment of record and payment dates, will be determined, in each quarter, by the Board of Directors, in its sole discretion.

On August 29, 2017, the Board approved a share repurchase program under which the Company was authorized to purchase up to \$50.0 million of its outstanding common stock from time to time. This authorization expired on August 29, 2020. On March 25, 2021, the Board approved a share repurchase program under which the Company is authorized to purchase up to \$25.0 million of its outstanding common stock through September 30, 2022, depending on market conditions, share price and other factors. On November 23, 2021, the Board approved a share repurchase program under which the Company is authorized to purchase up to an additional \$50.0 million of its outstanding common stock through November 23, 2024, depending on market conditions, share price and other factors. Under both share repurchase programs, the Company is permitted to purchase shares of its common stock from time to time through open market purchases, repurchase plans, block trades or otherwise. During the nine months ended October 31, 2021, the Company repurchased a total of 548,402 shares of its common stock under the March 25, 2021 share repurchase program at a total cost of \$17.0 million, or an average of \$31.04 per share. At October 31, 2021, \$8.0 million remains available for purchase under the Company's March 25, 2021 repurchase program and all \$50.0 million remains available for purchase under the Company's November 23, 2021 repurchase program. During the nine months ended October 31, 2020, the Company did not repurchase any shares of its common stock.

#### **Off-Balance Sheet Arrangements**

The Company does not have off-balance sheet financing or unconsolidated special-purpose entities.

#### **Accounting Changes and Recent Accounting Pronouncements**

See Note 3- Recent Accounting Pronouncements to the accompanying unaudited Consolidated Financial Statements for a description of certain accounting changes and recent accounting pronouncements which may impact the Company's Consolidated Financial Statements in future reporting periods.

### *Item 3. Quantitative and Qualitative Disclosures About Market Risk*

#### **Foreign Currency Exchange Rate Risk**

The Company's primary market risk exposure relates to foreign currency exchange risk (see Note 9 – Derivative Financial Instruments to the Consolidated Financial Statements). A significant portion of the Company's purchases are denominated in Swiss Francs and, to a lesser extent, the Japanese Yen. The Company also sells to third-party customers in a variety of foreign currencies, most notably the Euro, Swiss Franc and the British Pound. The Company reduces its exposure to the Swiss Franc, Euro, British Pound, Chinese Yuan and Japanese Yen exchange rate risk through a hedging program. Under the hedging program, the Company manages most of its foreign currency exposures on a consolidated basis, which allows it to net certain exposures and take advantage of natural offsets. The earnings impact is mostly offset by the effects of currency movements on the underlying hedged transactions. To the extent that the Company does not engage in a hedging program, any change in the Swiss Franc, Euro, British Pound, Chinese Yuan and Japanese Yen exchange rates to local currency would have an equal effect on the Company's earnings.

From time to time the Company uses forward exchange contracts, which do not meet the requirements of qualified hedges, to offset its exposure to certain foreign currency receivables and liabilities. These forward contracts are not designated as qualified hedges and, therefore, changes in the fair value of these derivatives are recognized in earnings in the period they arise, thereby offsetting the current earnings effect resulting from the revaluation of the related foreign currency receivables and liabilities.

As of October 31, 2021, the Company's entire net forward contracts hedging portfolio consisted of 15.7 million Chinese Yuan equivalent, 20.0 million Swiss Francs equivalent, 19.8 million U.S. dollars equivalent, 25.6 million Euros equivalent and 6.9 million British Pounds equivalent with various expiry dates ranging through April 22, 2022, compared to a portfolio of 21.6 million Chinese Yuan equivalent, 6.0 million Swiss Francs equivalent, 20.0 million U.S. dollars equivalent, 24.0 million Euros equivalent and 5.6 million British Pounds equivalent with various expiry dates ranging through January 12, 2021, as of October 31, 2020. If the Company were to settle its Swiss Franc forward contracts at October 31, 2021, the net result would be an immaterial loss. As of October 31, 2021, the Company's British Pound, Chinese Yuan, US Dollar and Euro forward contracts had no gain or loss. The Company had no cash flow hedges as of October 31, 2021 and October 31, 2020, respectively.

#### **Commodity Risk**

The Company considers its exposure to fluctuations in commodity prices to be primarily related to gold used in the manufacturing of the Company's watches. Under its hedging program, the Company can purchase various commodity derivative instruments, primarily futures contracts. When held, these derivatives are documented as qualified cash flow hedges, and the resulting gains and losses on these derivative instruments are first reflected in other comprehensive income, and later reclassified into earnings, partially offset by the effects of gold market price changes on the underlying actual gold purchases. The Company did not hold any future contracts in its gold hedge portfolio as of October 31, 2021 and 2020, thus, any changes in the gold purchase price will have an equal effect on the Company's cost of sales.

#### **Debt and Interest Rate Risk**

Floating rate debt at October 31, 2021 and 2020 totaled zero and \$37.3 million (25 million in Swiss francs and \$10 million), respectively. During the nine months ended October 31, 2021, the Company had weighted average borrowings of \$6.5 million with a weighted average interest rate of 2.79%. The Company does not hedge these interest rate risks. Based on the average floating rate debt outstanding during the nine months ended October 31, 2021, a one-percent increase or decrease in the average interest rate during the period would have resulted in a change to interest expense of approximately \$48,000 for the nine months ended October 31, 2021.

### *Item 4. Controls and Procedures*

#### **Evaluation of Disclosure Controls and Procedures**

The Company's disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives. However, it should be noted that a control system, no matter how well conceived or operated, can only provide reasonable, not absolute, assurance that its objectives will be met and may not prevent all errors or instances of fraud.

The Company, under the supervision and with the participation of its management, including the Chief Executive Officer and the Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures, as such terms are defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended. Based on that evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective at a reasonable assurance level as of the end of the period covered by this report.

**Changes in Internal Control Over Financial Reporting**

There have been no changes in the Company's internal control over financial reporting during the three months ended October 31, 2021, that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

## PART II – OTHER INFORMATION

### *Item 1. Legal Proceedings*

The Company is involved in legal proceedings and claims from time to time, in the ordinary course of its business. Legal reserves are recorded in accordance with the accounting guidance for contingencies. Contingencies are inherently unpredictable and it is possible that results of operations, balance sheets or cash flows could be materially and adversely affected in any particular period by unfavorable developments in, or resolution or disposition of, such matters. For those legal proceedings and claims for which the Company believes that it is probable that a reasonably estimable loss may result, the Company records a reserve for the potential loss. For proceedings and claims where the Company believes it is reasonably possible that a loss may result that is materially in excess of amounts accrued for the matter, the Company either discloses an estimate of such possible loss or range of loss or includes a statement that such an estimate cannot be made.

In December 2016, U.S. Customs and Border Protection (“U.S. Customs”) issued an audit report concerning the methodology used by the Company to allocate the cost of certain watch styles imported into the U.S. among the component parts of those watches for tariff purposes. The report disputes the reasonableness of the Company’s historical allocation formulas and proposes an alternative methodology that would imply \$5.1 million in underpaid duties over the five-year period covered by the statute of limitations, plus possible penalties and interest. The Company believes that U.S. Customs’ alternative duty methodology and estimate are not consistent with the Company’s facts and circumstances and is disputing U.S. Customs’ position. Since February 2017, the Company has been providing U.S. Customs with supplemental analyses and information in response to U.S. Customs’ information requests. Most recently, the Company received summonses from U.S. Customs in December 2020 requesting additional information regarding component parts costs and the Company’s procedures for allocating the value of imported watches among the component parts. The Company responded to these summonses in January 2021. Although the Company disagrees with U.S. Customs’ position and believes that the information it has provided supports the reasonableness of its historical allocation formulas, it cannot predict with any certainty the outcome of this matter. The Company intends to continue to work with U.S. Customs to reach a mutually-satisfactory resolution.

Starting in July 2018, the Trump administration announced a series of lists covering thousands of categories of Chinese origin products subject to potential U.S. special tariffs, including watches. U.S. Customs subsequently issued various rulings regarding, among other things, the application of the special tariffs to China-sourced components of watches containing non-Chinese movements. A U.S. Customs ruling effective August 1, 2021 holds that the special tariff does not apply to China-sourced watch cases that are imported as part of a watch containing a non-Chinese movement. Pending greater clarity on the retroactive effect of this ruling, for the time being the Company continues to maintain an accrual for Chinese watch case imports prior to August 1, 2021.

In addition to the above matters, the Company is involved in other legal proceedings and contingencies, the resolution of which is not expected to materially affect its financial condition, future results of operations, or cash flows.

### *Item 1A. Risk Factors*

As of October 31, 2021, there have been no material changes to any of the risk factors previously reported in the Company’s 2021 Annual Report on Form 10-K.

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

On August 29, 2017, the Board approved a share repurchase program under which the Company was authorized to purchase up to \$50.0 million of its outstanding common stock from time to time. This authorization expired on August 29, 2020. On March 25, 2021, the Board approved a share repurchase program under which the Company is authorized to purchase up to \$25.0 million of its outstanding common stock through September 30, 2022, depending on market conditions, share price and other factors. On November 23, 2021, the Board approved a share repurchase program under which the Company is authorized to purchase up to an additional \$50.0 million of its outstanding common stock through November 23, 2024, depending on market conditions, share price and other factors. Under both share repurchase programs, the Company is permitted to purchase shares of its common stock from time to time through open market purchases, repurchase plans, block trades or otherwise. During the three months ended October 31, 2021, the Company repurchased a total of 214,402 shares of its common stock under the March 25, 2021 share repurchase program at a total cost of \$7.0 million, or an average of \$32.87 per share.

At the election of an employee, upon the vesting of a stock award or the exercise of a stock option, shares of common stock having an aggregate value on the vesting of the award or the exercise date of the option, as the case may be, equal to the employee's withholding tax obligation may be surrendered to the Company by netting them from the vested shares issued. Similarly, shares having an aggregate value equal to the exercise price of an option may be tendered to the Company in payment of the option exercise price and netted from the shares of common stock issued upon the option exercise. There were no shares repurchased during the three months ended October 31, 2021 as a result of the surrender of shares of common stock in connection with the vesting of certain restricted stock awards and stock options.

The following table summarizes information about the Company's purchases for the three months ended October 31, 2021 of equity securities that are registered by the Company pursuant to Section 12 of the Securities Exchange Act of 1934, as amended:

#### Issuer Repurchase of Equity Securities

Period	Total Number of Shares Purchased	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Amount that May Yet Be Purchased Under the Plans or Programs
August 1, 2021 – August 31, 2021	41,115	\$ 31.34	41,115	\$ 13,735,857
September 1, 2021 – September 30, 2021	100,885	33.43	100,885	10,363,028
October 1, 2021 – October 31, 2021	72,402	32.95	72,402	7,977,391
Total	<u>214,402</u>	<u>\$ 32.87</u>	<u>214,402</u>	<u>\$ 7,977,391</u>

Item 6. Exhibits

- 4.1 [Third Amendment, dated October 28, 2021, to the Amended and Restated Credit Agreement, dated as of October 12, 2018, among the Company, certain U.S. and Swiss subsidiaries thereof, the lenders party thereto and Bank of America, N.A. as administrative agent.](#)
- 10.1 [Second Amendment dated August 25, 2021 to the Amended and Restated License Agreement with Tapestry, Inc. Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed August 31, 2021.](#)
- 10.2 [Amendment # 3 dated October 13, 2021 to the License Agreement between Movado Group, Inc. and Ferrari S.p.A. Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed October 19, 2021.](#)
- 31.1 [Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 31.2 [Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 32.1 [Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 32.2 [Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 101 The following financial information from Movado Group, Inc.'s Quarterly Report on Form 10-Q for the quarter ended October 31, 2021 filed with the SEC, formatted in Inline Extensible Business Reporting Language (iXBRL): (i) the Consolidated Balance Sheets; (ii) the Consolidated Statements of Operations; (iii) the Consolidated Statements of Comprehensive Income; (iv) the Consolidated Statements of Cash Flows; and (v) the Notes to the Consolidated Financial Statements. XBRL Instance Document – the XBRL Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL Document.
- 104 Cover Page Interactive Data File, formatted in Inline Extensible Business Reporting Language (iXBRL).

**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.

**MOVADO GROUP, INC.**

(Registrant)

Dated: November 23, 2021

By: /s/ Sallie A. DeMarsilis

Sallie A. DeMarsilis  
Executive Vice President,  
Chief Operating Officer,  
Chief Financial Officer and  
Principal Accounting Officer



**AMENDMENT NO. 3 TO CREDIT AGREEMENT**

This AMENDMENT NO. 3 TO CREDIT AGREEMENT (this “Amendment”), dated as of October 28, 2021 (the “Amendment Date”), is made by and among Movado Group, Inc., a New York corporation (“Parent”), Movado Group Delaware Holdings Corporation, a Delaware corporation, Movado LLC, a Delaware limited liability company, Movado Retail Group, Inc., a New Jersey corporation, MGI Luxury Group S.A., a company organized and existing under the laws of Switzerland, Movado Watch Company SA, a company organized and existing under the laws of Switzerland (collectively, with Parent, the “Borrowers”), MGI Luxury Group, B.V., a private company with limited liability incorporated under the laws of the Netherlands (“MGI BV”), Movado Group Nederland B.V., a private company with limited liability incorporated under the laws of the Netherlands (“Nederland BV” and, together with MGI BV, the “Guarantors” and, collectively with the Borrowers, the “Loan Parties”), the Lenders party hereto and Bank of America, N.A., in its capacity as administrative agent (in such capacity, the “Administrative Agent”) under that certain Amended and Restated Credit Agreement, dated as of October 12, 2018 (as amended, modified, extended, restated, replaced, or supplemented from time to time and in effect immediately prior to this Amendment, the “Existing Credit Agreement”, and as amended pursuant hereto and as further amended, modified, extended, restated, replaced, or supplemented from time to time, the “Credit Agreement”), by and among the Borrowers, the Guarantors, the Lenders, and the Administrative Agent. Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Credit Agreement.

WHEREAS, the Borrowers have requested that the Administrative Agent and the Lenders make certain amendments to the Credit Agreement, including, but not limited to, extending the Maturity Date to October 28, 2026 and, subject to the terms and conditions herein, the Administrative Agent and the Lenders have agreed to such amendments, on the terms provided herein, to be effective as of the Amendment Date; and

WHEREAS, the Loan Parties, the Administrative Agent and the Lenders each acknowledge that the terms of this Amendment constitute a modification to, and not a novation or extinguishment of, the Credit Agreement and the other Loan Documents and except as expressly modified herein, all terms, conditions, rights and obligations as set out in the Loan Documents are hereby reaffirmed and shall otherwise remain in full force and effect as originally written and agreed.

NOW, THEREFORE, in consideration of the foregoing premises, which are confirmed by the parties hereto as a true, correct and substantive part of this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**1. Amendments to Existing Credit Agreement.**

- (a) Effective on and as of the Amendment Date, the Existing Credit Agreement (excluding the schedules and exhibits thereto, which shall remain in full force and effect, except as specifically referenced in this Section 1) is hereby amended as set forth in Exhibit A attached hereto (i) to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and (ii) to insert the double underlined text (indicated textually in the same manner as the following example: double-underlined text).
- (b) Schedule 1.01(b) to the Credit Agreement is hereby amended and restated as set forth on Annex 1 attached hereto.
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**2. Conditions to Effectiveness.** This Amendment shall become effective as of the Amendment Date, provided that each of the following conditions to effectiveness shall have been satisfied in each case in form and substance acceptable to the Administrative Agent:

(a) Amendment. The Administrative Agent shall have received a counterpart signature page to this Amendment duly executed and delivered by each of the Loan Parties and each of the Lenders.

(b) Officer's Certificate. The Administrative Agent shall have received an Officer's Certificate dated the Amendment Date, certifying as to (i) the Organization Documents of each Loan Party (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority), or in lieu thereof a certification from each Loan Party that its Organization Documents have not changed from those previously delivered to the Administrative Agent, (ii) the resolutions of the governing body of each Loan Party (including, with respect to a Swiss Loan Party, (a) a copy of minutes of a meeting (or of a circular resolution) of the board of directors of such Swiss Loan Party approving the Loan Documents to which it is a party and (b) a copy of minutes of a meeting of the general meeting of shareholders of such Swiss Loan Party approving the Loan Documents to which it is a party), (iii) the good standing, existence or its equivalent of each Loan Party and (iv) of the incumbency (including specimen signatures) of the Responsible Officers of each Loan Party.

(c) Legal Opinions of Counsel. The Administrative Agent shall have received an opinion or opinions (including, local counsel opinions and an inhouse counsel opinion) of counsel for the Loan Parties, dated the Amendment Date and addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent.

(d) Projections. The Administrative Agent and the Lenders shall have received copies of a set of projections including the projected financial performance of the Parent and its Subsidiaries through the Maturity Date prepared in good faith based upon assumptions believed to be reasonable at the time prepared and at the time provided, each in form and substance reasonably satisfactory to each of them.

(e) Perfection Certificate; Information Certificate; Lien Searches. The Administrative Agent shall have received, in form and substance reasonably satisfactory to the Administrative Agent (i) a completed Perfection Certificate for each Domestic Loan Party and a completed Information Certificate for each Swiss Borrower, (ii) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Domestic Loan Party and each other jurisdiction deemed reasonably appropriate by the Administrative Agent, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens, (iii) tax lien, judgment and bankruptcy searches in such jurisdictions as are deemed reasonably appropriate by the Administrative Agent and (iv) any filing and recordation necessary or desirable, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral.

(f) Liability, Casualty, Property and Business Interruption Insurance. The Administrative Agent shall have received copies of certificates of insurance, declaration pages and endorsements of insurance requested by the Administrative Agent evidencing liability, casualty, property, terrorism and business interruption insurance meeting the requirements set forth herein or in the Collateral Documents or as required by the Administrative Agent.

(g) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate signed by a Responsible Officer of Parent as to the financial condition, solvency and

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related matters of the Parent and its Subsidiaries, after giving effect to this Amendment and the other transactions contemplated hereby.

(h) Financial Condition Certificate. The Administrative Agent shall have received a certificate or certificates executed by a Responsible Officer of the Parent as of the Amendment Date, (i) as to certain financial matters, substantially in the form of Exhibit N and (ii) certifying that the conditions precedent set forth in paragraph (i), (j), (k) and (l) of this Section 2 are satisfied.

(i) Material Adverse Effect. There shall not have occurred since January 31, 2021 any event or condition that has had or could be reasonably expected, either individually or in the aggregate, to have a Material Adverse Effect.

(j) No Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after reasonably diligent investigation, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any Subsidiary or against any of their properties or revenues that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect except for the Watch Tariff Matter.

(k) Consents. The Administrative Agent shall have received evidence that all members, boards of directors, governmental, shareholder and material third party consents and approvals necessary in connection with the execution and delivery by any Loan Party of this Amendment and the other Loan Documents have been obtained and are in full force and effect

(l) Existing Indebtedness of the Loan Parties. The Administrative Agent and the Lenders shall be satisfied that there is no outstanding Indebtedness for borrowed money of any Borrower and any of their Subsidiaries (other than Indebtedness permitted to exist pursuant to Section 7.02 of the Credit Agreement).

(m) Fees and Expenses. The Administrative Agent and the Lenders shall have received all fees and expenses (including the fees and expenses of counsel (including any local counsel) for the Administrative Agent invoiced at least one Business Day prior to the Amendment Date), if any, owing pursuant to the Loan Documents, including the payment to (i) the Administrative Agent and Arranger, for their respective accounts, in Dollars, the fees specified in that certain Fee letter dated September 27, 2021 (the "Bank of America Fee Letter"), between the Parent, Bank of America, N.A. and Arranger and (ii) PNC Capital Markets, LLC, the fees specified in that certain Fee letter dated October 20, 2021 (the "PNC Fee Letter" and, together with the Bank of America Fee Letter, the "Third Amendment Fee Letter"), among PNC Bank, National Association, PNC Capital Markets LLC and the Parent.

(n) Due Diligence. The Lenders shall have completed a due diligence investigation of the Borrowers and its Subsidiaries in scope, and with results, satisfactory to the Lenders, including, without limitation, U.S. Department of Treasury Office of Foreign Assets Control, Foreign Corrupt Practices Act ("FCPA") and "know your customer" due diligence.

(o) Licensing Requirements. The Administrative Agent, Swingline Lender and L/C Issuer and each Lender shall have obtained all applicable licenses, consents, permits and approvals as deemed necessary by such Lender in order to execute and perform the transactions contemplated by the Loan Documents.

(p) KYC Information.

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- (i) Upon the request of any Lender made at least ten (10) days prior to the Amendment Date, the Borrowers shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, in each case at least three (3) Business Days prior to the Amendment Date.
- (ii) At least three (3) Business Days prior to the Amendment Date, any Borrower that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall deliver, to any requesting Lender, a Beneficial Ownership Certification in relation to such Borrower.
- (g) Other Documents; Additional Information. All other documents, additional information and materials provided for herein or which the Administrative Agent or any other Lender may reasonably request or require.

**3. Representations and Warranties.** Each of the Loan Parties represents and warrants to the Lenders and the Administrative Agent that:

- (a) The execution, delivery and performance of this Amendment and the transactions contemplated hereby have been duly authorized by all necessary corporate or other organizational action by the Guarantors and the Borrowers, as applicable, and do not and will not (i) contravene the terms of any of such Person’s Organization Documents or (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (A) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, except for any conflict, breach or contravention that, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any Law in any material respect;
  - (b) Each of this Amendment, the Credit Agreement, the Third Amendment Fee Letter and the other Loan Documents have been duly executed and delivered by each Loan Party that is party thereto, as applicable and constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principals of equity;
  - (c) No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (i) the execution, delivery or performance by, or enforcement against, any Loan Party of this Amendment, the Third Amendment Fee Letter or any other Loan Document, (ii) the grant by any Loan Party of the Liens granted by it pursuant to the Loan Documents, (iii) the perfection or maintenance of the Liens created under the Loan Documents (including the first priority nature thereof) or (iv) the exercise by the Administrative Agent or any Lender of its rights under the Credit Agreement or the Loan Documents or the remedies in respect of the Collateral pursuant to the Loan Documents, other than (A) authorizations, approvals, actions, notices and filings which have been duly obtained and (B) filings to perfect the Liens created by the Loan Documents;
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(d) Before and after giving effect to this Amendment, the representations and warranties made by each Loan Party contained in Article II of the Credit Agreement, Article V of the Credit Agreement and each other Loan Document are (i) with respect to representations and warranties that contain a materiality qualification, true and correct on and as of the date hereof and (ii) with respect to representations and warranties that do not contain a materiality qualification, true and correct in all material respects as of the date hereof (except that the representations and warranties contained in Sections 5.05(a) and (b) of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b) of the Credit Agreement, respectively), except, in each case, for such representations and warranties that relate solely to an earlier date shall be true and correct as of such earlier date (or with respect to such representations and warranties that do not contain a materiality qualification, be true and correct in all material respects as of such earlier date); and

(e) Before and after giving effect to this Amendment, no Default or Event of Default under the Credit Agreement shall have occurred and be continuing.

**4. No Waiver; Reservation of Rights.** This Amendment shall not, by implication or otherwise, constitute a waiver of any Default or Event of Default or limit, impair, constitute a waiver of or otherwise affect any rights or remedies of the Administrative Agent or the Lenders under the Credit Agreement or the other Loan Documents, nor alter, modify, amend or in any way affect any of the terms, obligations or covenants contained in the Credit Agreement or the Loan Documents, all of which shall continue in full force and effect, except to the extent expressly amended in Section 2 hereof. The Loan Parties hereby acknowledge that the Administrative Agent and the Lenders have not made any agreement or commitment to modify the Loan Documents other than as expressly set forth herein, and nothing in this Amendment shall be construed to imply any willingness on the part of the Administrative Agent or the Lenders to grant any future consent or waiver of any of the terms and conditions of the Credit Agreement or the other Loan Documents. The Lender Parties hereby reserve all rights and remedies available to them under the Loan Documents and applicable law.

**5. Ratification, etc.** Except as expressly amended hereby, the Credit Agreement and all other Loan Documents are hereby ratified and confirmed in all respects and shall continue in full force and effect. This Amendment and the Credit Agreement shall hereafter be read and construed together as a single document, and all references in the Credit Agreement, any other agreements or instruments related to the Credit Agreement shall hereafter refer to the Credit Agreement as amended by this Amendment. The Loan Parties, the Agent and the Lenders agree that the guarantees, the liens, assignments and security interests created by the Loan Documents, except to the extent previously released, shall continue and carry forward until the occurrence of the Facility Termination Date. The Loan Parties further agree that such guarantees, liens, assignments and security interests are hereby ratified and affirmed as valid and subsisting against the property described in the Loan Documents and that this Amendment shall in no manner vitiate, affect or impair the Loan Documents (except as expressly modified in this Agreement) and that such guarantees, liens, assignments, and security interests shall not in any manner be waived, released, altered or modified. Each Guarantor hereby reaffirms its guarantee contained in Article X of the Credit Agreement of the prompt payment of the Guaranteed Obligations in full when due, and acknowledges and agrees that such guarantee is and shall remain in full force and effect after giving effect to this Amendment. The Loan Parties acknowledge and agree that the Obligations include, and the Borrowers owe to Administrative Agent and Lenders, all of Administrative Agent and the Lenders' reasonable expenses, costs and fees, including reasonable attorneys' fees actually incurred in the enforcement of the Loan Documents and drafting and negotiation of this Amendment to the extent set forth in Section 11.04 of the Credit Agreement. The Loan Parties acknowledge and agree that, as of the Amendment Date, there are no offsets, defenses or claims against any part of the obligations under the Loan Documents. The execution of this Amendment shall not operate as a novation, or waiver of any right, power or remedy of the Administrative Agent, the L/C Issuer, the Lenders or Secured Parties, or

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waiver of any provision of any of the Loan Documents. The Loan Parties agree and acknowledge that this Amendment shall be deemed a Loan Document. All references in the Loan Documents to the Credit Agreement shall be deemed to be references to the Credit Agreement, as amended by this Amendment.

**6. Waiver and Release.** The Loan Parties warrant and represent to the Administrative Agent and the Lenders that the loans evidenced by the Loan Documents are not subject to any credits, charges, claims, or rights of offset or deduction of any kind or character whatsoever and, as a material part of the consideration for the Agent and the Lenders entering into this Agreement, each Loan Party agrees as follows (the “Release Provision”):

(a) EACH LOAN PARTY HEREBY RELEASES AND FOREVER DISCHARGES THE ADMINISTRATIVE AGENT AND THE LENDERS AND EACH OF THEIR PREDECESSORS, SUCCESSORS, ASSIGNS, OFFICERS, MANAGERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, ATTORNEYS, REPRESENTATIVES, PARENT CORPORATIONS, SUBSIDIARIES, AND AFFILIATES (HEREINAFTER ALL OF THE ABOVE COLLECTIVELY REFERRED TO AS “RELEASED PARTIES”) JOINTLY AND SEVERALLY FROM ANY AND ALL CLAIMS, COUNTERCLAIMS, DEMANDS, DAMAGES, DEBTS, AGREEMENTS, COVENANTS, SUITS, CONTRACTS, OBLIGATIONS, LIABILITIES, ACCOUNTS, OFFSETS, RIGHTS, ACTIONS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER OCCURRING PRIOR TO THE DATE HEREOF AND ARISING OUT OF OR RELATED TO THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION FOR CONTRIBUTION AND INDEMNITY, WHETHER ARISING AT LAW OR IN EQUITY, PRESENTLY POSSESSED, WHETHER KNOWN OR UNKNOWN, WHETHER LIABILITY BE DIRECT OR INDIRECT, LIQUIDATED OR UNLIQUIDATED, PRESENTLY ACCRUED, WHETHER ABSOLUTE OR CONTINGENT, FORESEEN OR UNFORESEEN, AND WHETHER OR NOT HERETOFORE ASSERTED, SPECIFICALLY EXCLUDING, HOWEVER, CLAIMS ARISING FROM THE GROSS NEGLIGENCE AND/OR WILLFUL MISCONDUCT OF ANY OF THE RELEASED PARTIES, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION (“CLAIMS”), WHICH SUCH LOAN PARTY MAY HAVE OR CLAIM TO HAVE AGAINST ANY RELEASED PARTIES.

(b) Each Loan Party agrees not to sue any Released Parties or in any way assist any other Person in suing any Released Parties with respect to any Claim released herein. The Release Provision may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of the release contained herein.

(c) Each Loan Party acknowledges, warrants, and represents to Released Parties that:

(i) Each Loan Party has read and understands the effect of the Release Provision. Each Loan Party has had the assistance of independent counsel of its own choice, or has had the opportunity to retain such independent counsel, in reviewing, discussing, and considering all the terms of the Release Provision; and if counsel was retained, counsel for each Loan Party has read and considered the Release Provision and advised each Loan Party to execute the same. Before execution of this Agreement, each Loan Party has had adequate opportunity to make whatever investigation or inquiry it may deem necessary or desirable in connection with the subject matter of the Release Provision.

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(ii) No Loan Party is acting in reliance on any representation, understanding, or agreement not expressly set forth herein. Each Loan Party acknowledges that the Released Parties have not made any representation with respect to the Release Provision except as expressly set forth herein.

(iii) Each Loan Party has executed this Agreement and the Release Provision thereof as its free and voluntary act, without any duress, coercion, or undue influence exerted by or on behalf of any Person.

(iv) Each Loan Party is the sole owner of the Claims released by the Release Provision, and no Loan Party has heretofore conveyed or assigned any interest in any such Claims to any other Person.

(d) Each Loan Party understands that the Release Provision was a material consideration in the agreement of the Administrative Agent and the Lenders to enter into this Agreement.

(e) It is the express intent of the Loan Parties that the release and discharge set forth in the Release Provision be construed as broadly as possible in favor of the Released Parties so as to foreclose forever the assertion by each Loan Party of any Claims released hereby against Released Parties.

(f) If any term, provision, covenant, or condition of the Release Provision is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of the provisions shall remain in full force and effect

**7. Counterparts; Governing Law.** This Amendment may, if agreed by the Administrative Agent, be in the form of an Electronic Record and may be executed using Electronic Signatures (including, without limitation, facsimile and .pdf) and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record. This Amendment may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Amendment. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Bank pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Bank has agreed to accept such Electronic Signature, the Bank shall be entitled to rely on any such Electronic Signature without further verification and (b) upon the request of the Bank any Electronic Signature shall be promptly followed by a manually executed, original counterpart. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time. THIS AMENDMENT SHALL BE GOVERNED BY AND INTERPRETED AND DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

**8. Post-Closing Covenants.** Promptly and in any event within thirty (30) days after the Amendment Date (or such later date as may be agreed to in writing by the Administrative Agent in its sole discretion), the Loan Parties hereby covenant and agree to deliver to the Administrative Agent endorsements of insurance requested by the Administrative Agent evidencing liability, casualty, property, terrorism and business interruption insurance meeting the requirements set forth herein or in the Collateral Documents or as required by the Administrative Agent. Any failure by the Loan Parties to deliver or

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cause to be delivered to the Administrative Agent any of such documents or to take or cause to be taken any such actions within such required period set forth in this Section 8 will, upon written notice by the Administrative Agent to the Loan Parties, constitute an Event of Default under the Credit Agreement.

**THIS AMENDMENT, THE CREDIT AGREEMENT AS AMENDED BY THIS AMENDMENT, AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

*[remainder of page intentionally left blank; signature pages follow]*

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**IN WITNESS WHEREOF**, intending to be legally bound, the parties hereto have duly executed this Amendment No. 3 to Credit Agreement as of the day and year first above written.

**BORROWERS:** MOVADO GROUP, INC.

By: /s/ Mitchell Sussis Name: Mitchell  
Sussis  
Title: Senior Vice President and Secretary

MOVADO GROUP DELAWARE HOLDINGS CORPORATION

By: /s/ Mitchell Sussis Name: Mitchell  
Sussis

Title: President and Secretary MOVADO, LLC

By: /s/ Mitchell Sussis Name: Mitchell  
Sussis

Title: President and Secretary MOVADO RETAIL

GROUP, INC.

By: /s/ Mitchell Sussis Name: Mitchell  
Sussis Title: Secretary

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MGI LUXURY GROUP S.A.

By: /s/ Mitchell Sussis Name: Mitchell Sussis

Title: Authorized Signatory MOVADO WATCH

COMPANY SA

By: /s/ Mitchell Sussis Name: Mitchell Sussis

Title: Authorized Signatory

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**GUARANTORS** MGI LUXURY GROUP, B.V.

By: /s/ James Edward Halpin Name: James  
Edward Halpin Title: Director A

By: /s/ Jan Sebastian Donner Name: Jan Sebastian  
Donner Title: Director B

MOVADO GROUP NEDERLAND, B.V.

By: /s/ Jan Sebastian Donner Name: Jan Sebastian  
Donner Title: Director A

By: /s/ James Edward Halpin Name: James  
Edward Halpin Title: Director B

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**ADMINISTRATIVE AGENT:** BANK OF AMERICA, N.A.,  
as Administrative Agent

By: /s/ Ronaldo Naval Name: Ronaldo Naval  
Title: Vice President

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**LENDERS:** BANK OF AMERICA, N.A.,

as a Lender, L/C Issuer and Swingline Lender

By: /s/ Jana Baker Name: Jana Baker  
Title: Senior Vice President

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PNC BANK, NATIONAL ASSOCIATION  
as a Lender

By: /s/ Blaise Schultheis Name: Blaise Schultheis  
Title: Vice President

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SCHEDULE 1.01(b)  
to  
Credit Agreement

Lender	Revolving Commitment	Applicable Percentage
Bank of America, N.A.	\$70,000,000	70.000000000%
PNC Bank, National Association	\$30,000,000	30.000000000%
<b>Total</b>	<b>\$100,000,000</b>	<b>100%</b>

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**EXHIBIT A**

**Conformed Copy of the Credit Agreement to incorporate amendments in redline form**

*(See attached.)*

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Published CUSIP Number: 62458DAE8 - Deal Published CUSIP  
Number: 62458DAF5 - Rev

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of October 12, 2018 among

MOVADO GROUP, INC.,  
MOVADO GROUP DELAWARE HOLDINGS CORPORATION, MOVADO LLC,  
MOVADO RETAIL GROUP, INC., MGI LUXURY  
GROUP S.A., and MOVADO WATCH COMPANY SA  
as the Borrowers,

CERTAIN SUBSIDIARIES OF THE BORROWERS PARTY HERETO,  
as the Guarantors,

BANK OF AMERICA, N.A.,  
as Administrative Agent, Swingline Lender and L/C Issuer,

and

THE LENDERS PARTY HERETO

~~MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED BANK OF AMERICA-~~  
~~MERRILL LYNCH,~~  
BOFA SECURITIES, INC.,

as Sole Lead Arranger and Sole Bookrunner and

PNC BANK, NATIONAL ASSOCIATION,  
as Syndication Agent

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Exhibit G Form of Revolving Note  
Exhibit H Form of Secured Party Designation Notice  
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Exhibit Q Designated Borrower Request and Assumption Agreement  
Exhibit R Designated Borrower Notice

## AMENDED AND RESTATED CREDIT AGREEMENT

This **AMENDED AND RESTATED CREDIT AGREEMENT** is entered into as of October 12, 2018, among MOVADO GROUP, INC., a New York corporation (the "Parent"), MOVADO GROUP DELAWARE HOLDINGS CORPORATION, a Delaware corporation ("MGDH"), MOVADO LLC, a Delaware limited liability company ("MLLC"), MOVADO RETAIL GROUP, INC., a New Jersey corporation ("Retail"), MGI LUXURY GROUP S.A., a company organized and existing under the laws of Switzerland ("MGI SA"), and MOVADO WATCH COMPANY SA, a company organized and existing under the laws of Switzerland ("Movado SA"), and together with MGI SA, the "Foreign Borrowers"), certain Subsidiaries of the Parent party hereto from time to time pursuant to Section 2.18 (each a "Designated Borrower" and, together with Parent, MGDH, MLLC, Retail and the Foreign Borrowers, the "Borrowers" and each a "Borrower"), the Guarantors (defined herein), the Lenders (defined herein), and BANK OF AMERICA, N.A., as Administrative Agent, Swingline Lender and L/C Issuer.

### PRELIMINARY STATEMENTS:

WHEREAS, the Domestic Borrowers, certain Guarantors, the Administrative Agent and certain of the Lenders are parties to that certain Credit Agreement, dated as of January 30, 2015 (as amended, restated, supplemented or otherwise modified and as in effect immediately prior to the Closing Date, the "Existing Credit Agreement"), pursuant to which the Lenders thereunder have made loans and other extensions of credit to the Domestic Borrowers thereunder;

WHEREAS, the Borrowers have requested that the Existing Credit Agreement be amended and restated, and the Lenders and the Administrative Agent are willing to amend and restate the Existing Credit Agreement; and

WHEREAS, the parties hereto agree that on the Closing Date (defined below), the Existing Credit Agreement and all Schedules and Exhibits thereto are hereby amended and restated in their entirety as set forth herein and in the Schedules and Exhibits hereto and shall remain in full force and effect only as set forth herein.

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

## ARTICLE I

### DEFINITIONS AND ACCOUNTING TERMS

#### **1.01 Defined Terms.**

As used in this Agreement, the following terms shall have the meanings set forth below:

"Acquisition" means the acquisition, whether through a single transaction or a series of related transactions, of (a) a majority of the Voting Stock or other controlling ownership interest in another Person (including the purchase of an option, warrant or convertible or similar type security to acquire such a controlling interest at the time it is exercised by the holder thereof), whether by purchase of such equity or other ownership interest or upon the exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person, excluding

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any ordinary course Capital Expenditures or replacements of existing assets, or (c) Equity Interests in a joint venture from the joint venture partners of any Loan Party or Subsidiary; provided that, in the case of this clause (c), after such Acquisition, such Loan Party or Subsidiary shall own at least a majority of the Voting Stock or other controlling ownership interest of such joint venture.

“Additional Secured Obligations” means all obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that Additional Secured Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

“Administrative Agent” means Bank of America (or any of its designated branch offices or affiliates) in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent under any of the Loan Documents.

“Administrative Agent’s Office” means, with respect to any currency, the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 1.01(a) with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify the Borrowers and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

“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 Person specified.

“Aggregate Commitments” means the Revolving Commitments of all the Lenders. The Aggregate Commitments on the Closing Date shall be \$100,000,000.

“Agreement” means this Credit Agreement, including all schedules, exhibits and annexes hereto.

“Agreement Currency” has the meaning specified in Section 11.22.

“Alternative Currency” means each of the following currencies: Canadian Dollars, Euros, Swiss Francs and Sterling, together with each other Eligible Currency (other than Dollars) that is approved in accordance with Section 1.09; provided that any currency that is an Alternative Currency must be an Eligible Currency.

“Alternative Currency Daily Rate” means, for any day, with respect to any Credit Extension:

(a) denominated in Sterling, the rate per annum equal to SONIA determined pursuant to the definition thereof plus the SONIA Adjustment;

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(b) denominated in Swiss Francs, the rate per annum equal to SARON determined pursuant to the definition thereof plus the SARON Adjustment; and

(c) denominated in any other Alternative Currency (to the extent such Loans denominated in such currency will bear interest at a daily rate), the daily rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.09(a) plus the adjustment (if any) determined by the Administrative Agent and the relevant Lenders pursuant to Section 1.09(a);

provided, that, if any Alternative Currency Daily Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. Any change in an Alternative Currency Daily Rate shall be effective from and including the date of such change without further notice.

“Alternative Currency Daily Rate Loan” means a Loan that bears interest at a rate based on the definition of “Alternative Currency Daily Rate.” All Alternative Currency Daily Rate Loans must be denominated in an Alternative Currency.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

“Alternative Currency Loan” means an Alternative Currency Daily Rate Loan or an Alternative Currency Term Rate Loan, as applicable.

“Alternative Currency Term Rate” means, for any Interest Period, with respect to any Credit Extension:

(a) denominated in Euros, the rate per annum equal to the Euro Interbank Offered Rate (“EURIBOR”), as 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) on the day that is two TARGET Days preceding the first day of such Interest Period with a term equivalent to such Interest Period;

(b) denominated in Canadian dollars, the rate per annum equal to the Canadian Dollar Offered Rate (“CDOR”), as 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) (in such case, the “CDOR Rate”) on the Rate Determination Date with a term equivalent to such Interest Period;

(c) denominated in any other Alternative Currency (to the extent such Loans denominated in such currency will bear interest at a term rate), the term rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.09(a) plus the adjustment (if any) determined by the Administrative Agent and the relevant Lenders pursuant to Section 1.09(a);

provided, that, if any Alternative Currency Term Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

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“Alternative Currency Term Rate Loan” means a Loan that bears interest at a rate based on the definition of “Alternative Currency Term Rate.” All Alternative Currency Term Rate Loans must be denominated in an Alternative Currency.

“Applicable Authority” shall mean (a) with respect to Dollars, a Relevant Governmental Body and (b) with respect to any Alternative Currency, the applicable administrator for the Relevant Rate for such Alternative Currency or any Governmental Authority having jurisdiction over the Administrative Agent or such administrator.

“Applicable Percentage” means, in respect of the Revolving Facility with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Facility represented by such Lender’s Revolving Commitment at such time, subject to adjustment as provided in Section 2.15. If the Revolving Commitments of all of the Lenders to make Revolving Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Commitments have expired, then the Applicable Percentage of each Lender in respect of the Revolving Facility shall be determined based on the Applicable Percentage of such Revolving Lender in respect of the Revolving Facility most recently in effect, giving effect to any subsequent assignments and to any Lender’s status as a Defaulting Lender at the time of determination. The initial Applicable Percentage of each Revolving Lender in respect of the Revolving Facility is set forth opposite the name of such Lender on Schedule 1.01(b) or in the Assignment and Assumption pursuant to which such Revolving Lender becomes a party hereto or in any documentation executed by such Lender pursuant to Section 2.19, as applicable.

“Applicable Rate” means, for any day, the rate per annum set forth below opposite the applicable “Level” then in effect (based on the Consolidated Net Leverage Ratio), it being understood that the Applicable Rate (a) for Revolving Loans that are Base Rate Loans shall be the percentage set forth under the column “Applicable Rate for Base Rate Loans,” (b) for Revolving Loans that are Eurocurrency Rate Loans, and for the Letter of Credit Fees, shall be the percentage set forth under the column “Applicable Rate for Eurocurrency Rate Loans and Letter of Credit Fees,” (c) for Revolving Loans that are Alternative Currency Term Rate Loans, shall be the percentage set forth under the column “Applicable Rate for Alternative Currency Term Rate Loans,” (d) for Revolving Loans that are Alternative Currency Daily Rate Loans, shall be the percentage set forth under the column “Applicable Rate for Alternative Currency Daily Rate Loans,” and (ee) for the commitment fee shall be the percentage set forth under the column “Commitment Fee”:

Level	Consolidated <u>Net</u> Leverage Ratio	Applicable Rate for Eurocurrency Rate Loans and Letter of Credit Fees	Applicable Rate for <del>Base</del> <u>Alternative Currency</u> Daily Rate Loans	<u>Applicable Rate for Alternative Currency Term Rate Loans</u>	<u>Applicable Rate for Base Rate Loans</u>	Commitment Fee
1	≤ 0.75:1	1.000%	<del>1.000%</del> <u>1.000%</u>	<u>1.000%</u>	0.000%	0.250%
2	> 0.75:1 but < 1.25:1	1.250%	<u>1.250%</u>	<u>1.250%</u>	0.250%	0.300%
3	> 1.25:1 but ≤ 1.75:1	1.500%	<del>0.500%</del> <u>1.500%</u>	<u>1.500%</u>	<del>0.350%</del> <u>0.500%</u>	<u>0.300%</u>
4	> 1.75:1	1.750%	<del>0.750%</del> <u>1.750%</u>	<u>1.750%</u>	<del>0.400%</del> <u>0.750%</u>	<u>0.350%</u>

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Level 3 shall apply, as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the first Business Day following the date on which such Compliance Certificate is delivered.

Notwithstanding anything to the contrary contained in this definition, (a) the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b) and (b) the Applicable Rate and Commitment Fee ~~during in effect after the Suspension Period~~Third Amendment Effective Date shall be ~~as~~-set forth ~~below:~~in Level 1 until the first Business Day immediately following the date on which a Compliance Certificate is delivered to the Administrative Agent pursuant to Section 6.02(a) for the first full fiscal quarter to occur following the Third Amendment Effective Date.

	Applicable Rate for Eurocurrency Rate Loans and Letter of Credit Fees	Applicable Rate for Base Rate Loans	Commitment Fee
Suspension Period:	2.750%	1.750%	0.450%

Any adjustment in the Applicable Rate shall be applicable to all Credit Extensions then existing or subsequently made or issued.

“Applicable Time” means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Applicant Borrower” has the meaning specified in Section 2.18.

“Appropriate Lender” means, at any time, (a) with respect to the Revolving Facility, a Lender that has a Revolving Commitment or holds a Revolving Loan under the Revolving Facility at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03, the Revolving Lenders and (c) with respect to the Swingline Sublimit, (i) the Swingline Lender and (ii) if any Swingline Loans are outstanding pursuant to Section 2.04(a), the Revolving Lenders.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means ~~Merrill Lynch, Pierce, Fenner & Smith Incorporated (or any other registered broker dealer wholly owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or~~

~~related businesses may be transferred following the date of this Agreement~~ BofA Securities, Inc., in its capacity as sole lead arranger and sole bookrunner.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit B or any other form (including an electronic documentation form generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease.

“Audited Financial Statements” means the audited Consolidated balance sheet of the Parent and its Subsidiaries for the fiscal year ended January 31, 2018, and the related Consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Parent and its Subsidiaries, including the notes thereto.

“Authorization to Share Insurance Information” means the authorization substantially in the form of Exhibit O (or such other form as required by each of the Loan Party’s insurance companies).

“Auto-Extension Letter of Credit” has the meaning specified in Section 2.03(b)(iv).

“Availability Period” means the period from and including the Closing Date to the earliest of (i) the Maturity Date, (ii) the date of termination of the Aggregate Commitments pursuant to Section 2.06, and (iii) the date of termination of the Revolving Commitment of each Lender to make Revolving Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

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

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate of interest per annum equal to the highest of (a) the Federal Funds Rate plus 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” and (c) the ~~LIBOR Daily Floating~~ Eurocurrency Rate plus 1.00%, subject to the interest rate floors set forth therein; provided that if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general

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economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

“Base Rate Loan” means a Revolving Loan that bears interest based on the Base Rate. Base Rate Loans are only available to Domestic Borrowers and Domestic Designated Borrowers and as Loans denominated in Dollars.

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

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

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

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowers” has the meaning specified in the introductory paragraph hereto.

“Borrowing” means a Revolving Borrowing or a Swingline Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located ~~and~~; provided that,

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any such day that is also a London Banking Day;

(b) if such day relates to any interest rate settings as to ~~a Eurocurrency Rate~~ an Alternative Currency Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such ~~Eurocurrency Rate~~ Alternative Currency Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such ~~Eurocurrency Rate~~ Alternative Currency Loan, means a Business Day that is also a TARGET Day;

(c) if such day relates to any interest rate settings as to ~~a Eurocurrency Rate~~ an Alternative Currency Loan denominated in ~~a currency~~ (i) Sterling, means a day other than ~~Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between~~ a day banks are closed for general business in the London ~~or other applicable offshore interbank market for such currency~~ because such day is a Saturday, Sunday or a legal holiday under the laws of the United Kingdom; (ii) Swiss Francs, means a day other than when banks are closed for settlement and payments of foreign exchange transactions in Zurich because such day is a Saturday, Sunday or a legal holiday under the laws of Switzerland; and

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(d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than ~~Dollars or Euro~~, Sterling or Swiss Francs in respect of a ~~Eurocurrency Rate~~ Alternative Currency Loan denominated in a currency other than ~~Dollars or Euro~~, Sterling or Swiss Francs, or any other dealings in any currency other than ~~Dollars or Euro~~, Sterling or Swiss Francs to be carried out pursuant to this Agreement in respect of any such ~~Eurocurrency Rate~~ Alternative Currency Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Canadian Dollar” means the lawful currency of Canada.

“Capital Expenditures” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations). For purposes of this definition, the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment or with insurance proceeds shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such equipment for the equipment being traded in at such time or the amount of such insurance proceeds, as the case may be.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“Cash Collateralize” means, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuer or Swingline Lender (as applicable) or the Lenders, as collateral for L/C Obligations, the Obligations in respect of Swingline Loans, or obligations of the Revolving Lenders to fund participations in respect of either thereof (as the context may require), (a) cash or deposit account balances,

(a) backstop letters of credit entered into on terms and from issuers satisfactory to the Administrative Agent and the L/C Issuer and in amounts not less than the amounts specified in this Agreement or otherwise satisfactory to the Administrative Agent and the L/C Issuer, and/or (c) if the Administrative Agent and the L/C Issuer or Swingline Lender shall agree, in their sole discretion, other credit support, in each case, in Dollars and pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer or Swingline Lender (as applicable).

“Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by each Borrower or any of its Subsidiaries free and clear of all Liens (other than Permitted Liens):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than three hundred sixty days (360) days from the date of acquisition thereof; provided that the full faith and credit of the United States is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$500,000,000, in each case with maturities of not more than twelve (12) months from the date of acquisition thereof;

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(c) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) entered into with any bank meeting the qualifications specified in clause (b);

(d) commercial paper issued by any Person organized under the laws of any state of the United States and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than nine months from the date of acquisition thereof;

(e) Investments, classified in accordance with GAAP as current assets of any Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody’s or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b), (c) and (d) of this definition; and

(f) with respect to Foreign Subsidiaries, any obligations, instruments or documents reasonably equivalent to any of the foregoing, as set forth in Parent’s investment policy in effect from time to time, a copy of which shall be delivered to, and which shall be reasonably acceptable to, the Administrative Agent.

“Cash Management Agreement” means any agreement that is not prohibited by the terms hereof to provide treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit cards, p-cards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

“Cash Management Bank” means any Person in its capacity as a party to a Cash Management Agreement that, at the time it enters into a Cash Management Agreement with a Loan Party or any Subsidiary, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement (even if such Person ceases to be a Lender or such Person’s Affiliate ceased to be a Lender); provided, however, that for any of the foregoing to be included as a “Secured Cash Management Agreement” on any date of determination by the Administrative Agent, the applicable Cash Management Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) and the Parent must have delivered a Secured Party Designation Notice to the Administrative Agent prior to such date of determination.

“CFC” means a Person that is a “controlled foreign corporation” under Section 957 of the Code.

“CFC Holding Company” means any Subsidiary substantially all of the assets of which are one or more CFCs, either directly or indirectly through other entities that are disregarded entities or partnerships for U.S. federal income tax purposes, and all such entities (i) have no material assets (excluding equity interests in each other) other than equity interests of such CFCs, (ii) do not incur, and are not otherwise liable for, any material Indebtedness (other than intercompany indebtedness permitted pursuant to Section 7.02), and (iii) do not conduct any material business or activities other than the ownership of such equity interests and/or receivables and other immaterial assets and activities reasonably related or ancillary thereto.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether



or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted ~~or~~, issued or implemented.

“Change of Control” means an event or series of events by which: (a) the Parent ceases to own and control, beneficially and of record, directly or indirectly, all outstanding Equity Interests in all Borrowers other than the Parent; (b) members of the Grinberg Family cease to own and control, beneficially and of record, at least thirty percent (30%) of the total voting power of the outstanding Equity Interests of the Parent; (c) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of a greater percentage of the total voting power of the outstanding Equity Interests of the Parent than the percentage of the total voting power of the outstanding Equity Interests of the Parent then “beneficially owned” (as defined in Rules 13d-3 and 13d-5 of the Exchange Act), directly or indirectly, by the members of the Grinberg Family; (d) Continuing Directors cease to be a majority of the members of the board of directors of the Parent; or (e) all or substantially all of a Borrower’s assets are sold or transferred, other than sale or transfer to another Borrower.

“Closing Date” means the date hereof.

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

“Collateral” means all of the “Collateral” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Security Agreement, each Joinder Agreement, each of the collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.14, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Secured Obligations.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute.

“Communication” means this Agreement, any Loan Document and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document.

“Compliance Certificate” means a certificate substantially in the form of Exhibit A to the Second Amendment.

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SONIA, SARON or any proposed Successor Rate for an Alternative Currency, as applicable, any conforming changes to the definitions of “Base Rate”, “Base Rate”, “SONIA”, “SARON”, “Interest Period”, 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 definition of “Business Day”, “U.S. Government Securities Business Day”, timing of borrowing requests or prepayment,

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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 for such Alternative Currency (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 for such Alternative Currency 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 (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated” means, when used with reference to financial statements or financial statement items of the Parent and its Subsidiaries or any other Person, such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

“Consolidated Capital Expenditures” means, for any period, for the Parent and its Subsidiaries on a Consolidated basis, all Capital Expenditures, but excluding expenditures to the extent made with the proceeds of any Involuntary Disposition used to purchase property that is useful in the business of the Parent and its Subsidiaries.

“Consolidated EBITDA” means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Parent and its Subsidiaries in accordance with GAAP, (a) Consolidated Net Income for such period plus (b) the following to the extent deducted in calculating such Consolidated Net Income (without duplication): (i) Consolidated Interest Charges, (ii) the provision for federal, state, local and foreign income taxes payable, (iii) depreciation and amortization expense and (iv) non-cash charges and losses (excluding any such non-cash charges or losses to the extent there were cash charges with respect to such charges and losses in past accounting periods) and (v) business optimization expenses, streamlining costs, exit or disposal costs, facilities closure costs, brand exiting or discontinuance costs and other restructuring, severance or similar charges, reserves or expenses, including losses arising from the disposition of discontinued inventory or excess components and raw materials, non-recurring charges for acquisition-related expenses and non-recurring cash charges or unusual or non-recurring cash expenses and cash losses, provided that the amount added-back pursuant to this clause (v) shall not exceed \$10,000,000 in any four fiscal quarter period; ~~provided, further, that an additional aggregate \$10,000,000 may be added back pursuant to this clause (v) with respect to applicable costs, charges and other amounts incurred during the fiscal year ending on January 31, 2021,~~ less (c) without duplication and to the extent reflected as a gain or otherwise included in the calculation of Consolidated Net Income for such period, non-cash gains (excluding any such non-cash gains to the extent there were cash gains with respect to such gains in past accounting periods).

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Parent and its Subsidiaries on a Consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all purchase money Indebtedness; (c) the maximum amount available to be drawn under issued and outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments; (d) all obligations (including, without limitation, earnout obligations) of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (e) all Attributable Indebtedness; (f) all obligations to purchase, redeem, retire, defease or otherwise make any payment prior to the Maturity Date in respect of any Equity Interests or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the

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greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (g) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (f) above of Persons other than the Parent or any Subsidiary; and (h) all Indebtedness of the types referred to in clauses (a) through (g) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Parent or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Parent or such Subsidiary.

~~“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA for the Measurement Period ending on such date, or if a Measurement Period is not ending on such date, the Measurement Period most recently ended prior to such date.~~

“Consolidated Net Income” means, at any date of determination, the net income (or loss) of the Parent and its Subsidiaries on a Consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such Measurement Period, (b) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that the Parent’s equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the Parent or a Subsidiary as a dividend or other distribution, (c) any gain or loss from currency translation gains or losses (or similar charges) or net gains or losses related to currency remeasurements of Indebtedness (including any net loss or gain in respect of Swap Contracts for currency exchange risk entered in relation to Indebtedness), in each case for such Measurement Period and (d) any net income (or loss) of any discontinued operations for such Measurement Period.

~~“Consolidated Net Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date minus up to \$25,000,000 of unrestricted and unencumbered (except for Liens in favor of the Administrative Agent and Liens permitted under Section 7.01(j)) cash and Cash Equivalents maintained in accounts in the United States to (b) Consolidated EBITDA for the Measurement Period ending on such date, or if a Measurement Period is not ending on such date, the Measurement Period most recently ended prior to such date.~~

“Contingent Obligation” means any obligation of a Person arising from a guaranty, indemnity or other assurance of payment or performance of any Indebtedness, lease, dividend or other obligation (“primary obligations”) of another obligor (“primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty, endorsement, co-making or sale with recourse of an obligation of a primary obligor; (b) obligation to make take-or-pay or similar payments regardless of nonperformance by any other party to an agreement; and (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth or solvency of the primary obligor, (iv) to purchase assets or services for the purpose of assuring the ability of the primary obligor to perform a primary obligation, or (v) otherwise to assure or hold harmless the holder of any primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

“Continuing Directors” means the (i) directors of the Parent on the Closing Date and (ii) directors of the Parent whose election by the board of directors of the Parent, or whose nomination for election to the board of directors of the Parent by the shareholders of the Parent, was approved by a vote of at least a

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majority of the directors of the Parent who were either directors of the Parent on the Closing Date or whose election or nomination was previously so approved.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

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

“Cost of Acquisition” means, with respect to any Acquisition, as at the date of entering into any agreement therefor, (i) the sum of the following (without duplication): (a) the value of the Equity Interests of any Borrower or any Subsidiary to be transferred in connection with such Acquisition, (b) the amount of any cash and fair market value of other property (excluding property described in clause (a) and the unpaid principal amount of any debt instrument) given as consideration in connection with such Acquisition, (c) the amount (determined by using the face amount or the amount payable at maturity, whichever is greater) of any Indebtedness incurred, assumed or acquired by any Borrower or any Subsidiary in connection with such Acquisition, (d) all additional purchase price amounts in the form of earnouts and other contingent obligations that should be recorded on the financial statements of any Borrower and its Subsidiaries in accordance with GAAP in connection with such Acquisition, (e) all amounts paid in respect of covenants not to compete and consulting agreements that should be recorded on the financial statements of the Parent and its Subsidiaries in accordance with GAAP, and other affiliated contracts in connection with such Acquisition, and (f) the aggregate fair market value of all other consideration given by any Borrower or any Subsidiary in connection with such Acquisition, less (ii) the amount of any cash and the fair market value of any Cash Equivalents received or obtained in connection with such Acquisition. For purposes of determining the Cost of Acquisition for any transaction, the Equity Interests of a Borrower shall be valued in accordance with GAAP.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

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

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) with respect to any Obligation for which a rate is specified, a rate per annum equal to two percent (2%) in excess of the rate otherwise applicable thereto and (b) with respect to any Obligation for which a rate is not specified or available, a rate per annum equal to the Base Rate plus the Applicable Rate for Revolving Loans that are Base Rate Loans plus two percent (2%), in each case, to the fullest extent permitted by applicable Law.

“Defaulting Lender” means, subject to Section 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrowers in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer, the Swingline Lender

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or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due,

(b) has notified the Borrowers, the Administrative Agent, the L/C Issuer or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrowers, to confirm in writing to the Administrative Agent and the Borrowers that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrowers), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrowers, the L/C Issuer, the Swingline Lender and each other Lender promptly following such determination.

"Designated Borrower" has the meaning specified in the introductory paragraph hereto.

"Designated Borrower Request and Assumption Agreement" means the notice substantially in the form of Exhibit Q attached hereto.

"Designated Borrower Notice" means the notice substantially in the form of Exhibit R attached hereto.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory is the subject of any Sanction.

"Designated Lender" shall have the meaning set forth in Section 2.19.

"Disposition" or "Dispose" means the sale, transfer, license, lease, or other disposition (including any Sale and Leaseback Transaction and any transfer of assets as a result of a division of any Loan Party or any Subsidiary into two or more Persons) of any property by any Loan Party or Subsidiary (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, but excluding any Involuntary Disposition.

"Dollar" and "\$" mean lawful money of the United States.

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“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

“Domestic Borrower” means Parent, MGDH, MLLC, Retail and each Domestic Designated Borrower party hereto from time to time.

“Domestic Designated Borrower” means any Designated Borrower that is organized under the laws of any political subdivision of the United States.

“Domestic Guarantor” means any Guarantor that is organized under the laws of any political subdivision of the United States.

“Domestic Loan Party” means any Loan Party that is organized under the laws of any political subdivision of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“Dutch Civil Code” means the *Burgerlijk Wetboek*.

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

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

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

[“Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.](#)

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.06 (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

“Eligible Currency” means any lawful currency other than Dollars that is readily available, freely transferable and convertible into Dollars in the international interbank market available to the Lenders in such market and as to which a Dollar Equivalent may be readily calculated. If, after the designation of any currency as an Alternative Currency, any change in currency controls or exchange regulations or any change in the national or international financial, political or economic conditions is imposed in the country in which such currency is issued, which results in, in the reasonable opinion of the Administrative Agent and the L/C Issuer, (a) such currency no longer being readily available, freely transferable and convertible into Dollars, (a) a Dollar Equivalent no longer being readily calculable with respect to such currency, (c) such currency

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being impracticable for the Lenders to provide or (d) no longer being a currency in which the L/C Issuer is willing to make the applicable Credit Extensions (each of (a), (b), (c), and (d) a “Disqualifying Event”), then the Administrative Agent shall promptly notify the Lenders and the Borrowers, and such country’s currency shall no longer be an Alternative Currency until such time as the Disqualifying Event(s) no longer exist. Within five (5) Business Days after receipt of such notice from the Administrative Agent, the applicable Borrowers shall repay all Loans for which they are liable in such currency to which the Disqualifying Event applies or convert such Loans into the Dollar Equivalent of Revolving Loans in Dollars, subject to the other terms contained herein.

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

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

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974, [as amended, and the rules and the rules and regulations promulgated thereunder.](#)

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with any Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which

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constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Borrower or any ERISA Affiliate or (i) a failure by any Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by any Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

“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.

“EURIBOR” has the meaning specified in clause (a) of the definition of “Alternative Currency Term Rate.”

“Euro” and “€” mean the single currency of the Participating Member States.

“Eurocurrency Rate” means:

(a) for any Interest Period, with respect to any Credit Extension:

(i) denominated in a ~~LIBOR Quoted Currency~~ Dollars, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the “LIBOR Rate”) at or about 11:00 a.m. (London time) on the Rate Determination Date, for deposits in ~~the relevant currency~~ Dollars, with a term equivalent to such Interest Period; and

~~(ii) denominated in Canadian Dollars, the rate per annum equal to the Canadian Dollar Offered Rate, or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at or about 10:00 a.m. (Toronto, Ontario time) on the Rate Determination Date with a term equivalent to such Interest Period;~~

(b) for any interest rate calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at or about 11:00 a.m. (London time) determined two (2) Business Days prior to such date for Dollar deposits being delivered in the London interbank market for deposits in Dollars with a term of one (1) month commencing that day;

provided that (i) to the extent a comparable or successor rate is approved by the Administrative Agent in connection with any rate set forth in this definition, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent and (ii) if the Eurocurrency Rate shall be less than ~~one~~ zero percent (~~1.00~~ 0.00%), such rate shall be deemed to be ~~one~~ zero percent (~~1.00~~ 0.00%) for purposes of this Agreement.

“Eurocurrency Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate”. Eurocurrency Rate Loans may only be denominated in Dollars ~~or in an~~

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~~Alternative Currency. All Loans denominated in an Alternative Currency or made to a Foreign Borrower must be Eurocurrency Rate Loans.~~

“Event of Default” has the meaning specified in Section 8.01.

“Existing Credit Agreement” has the meaning specified in the Preamble.

“Existing Loan Agreement” means that certain Amended and Restated Loan and Security Agreement dated as of July 17, 2009 by and among the Borrowers, the lenders party thereto and the Administrative Agent.

“Existing Letters of Credit” means those certain outstanding standby letters of credit, each listed on Schedule 2.03 and outstanding under the Existing Loan Agreement.

“Excluded Property” means, with respect to any Loan Party, (i) the Equity Interests of any Foreign Subsidiary or CFC Holding Company entitled to vote (within the meaning of Treas. Reg. Section 1.956 2(c)(2)) and directly owned by a Loan Party in excess of 65% of the aggregate outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956 2(c)(2)) issued by such Foreign Subsidiary or CFC Holding Company, (ii) any rights or interests in or arising under any contract, lease, permit, license, charter or license agreement covering real or personal property, as such, if under the terms of such contract, lease, permit, charter or license agreement, the valid grant of a security interest or Lien therein to Administrative Agent is prohibited or would violate or create a right of termination in favor of any other party thereto under such contract, lease, permit, charter or license agreement, and such prohibition or restriction has not been or is not waived or the consent of the other party to such contract, lease, permit, charter or license agreement has not been or is not otherwise obtained, provided, that the forgoing exclusion shall in no way be construed (A) to apply if any such prohibition or restriction is unenforceable under the UCC or other applicable Laws or (B) so as to limit, impair or otherwise affect Administrative Agent's unconditional continuing security interests in and Liens upon any rights or interests of any Borrower in or to monies due or to become due under any such contract, lease, permit, license, charter or license agreement (including any “Accounts”, as such term is defined in the UCC), (iii) any assets with respect to which the granting of a pledge or security interest is prohibited by applicable Laws (in each case, except to the extent that such prohibition is unenforceable after giving effect to the applicable anti-assignment provisions of Article 9 of the UCC), (iv) any application for a trademark that would be invalidated, canceled, voided or abandoned due to the grant and/or enforcement of such security interest or Lien, including all such United States and foreign trademark applications that are based on an intent-to-use the mark in commerce, unless and until such time that the grant and/or enforcement of the security interest or Lien will not cause such trademark to be invalidated, canceled, voided or abandoned, (v) any asset owned by any Loan Party that is subject to a Lien permitted by Section 7.01(e), (f), (i) or (n), but only to the extent that the grant of such Lien is prohibited by, or violates or creates a right of termination in favor of any other party thereto under the agreements giving rise to or governing such Lien or the obligations secured by such Lien, (vi) any Third Party Funds, (vii) any motor vehicles or other assets subject to certificates of title and (viii) those specifically identified assets as to which the Administrative Agent shall determine in its sole discretion that the cost or other consequence of obtaining a security interest therein or the perfection thereof are excessive in relation to the value afforded to the Secured Parties thereby; provided, however that Excluded Property shall not include any proceeds, substitutions or replacements of Excluded Property (unless such proceeds, substitutions or replacements would constitute Excluded Property) and provided, further, if any Excluded Property would otherwise have constituted Collateral, when such property shall cease to be Excluded Property, such property shall be deemed at all times from and thereafter to constitute Collateral.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Loan Party of, or the grant by such Loan Party of

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a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 10.11 and any other "keepwell", support or other agreement for the benefit of such Loan Party and any and all guarantees of such Loan Party's Swap Obligations by other Loan Parties) at the time the Guaranty of such Loan Party, or grant by such Loan Party of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or Lien is or becomes excluded in accordance with the first sentence of this definition.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Revolving Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Revolving Commitment (other than pursuant to an assignment request by any Borrower under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a) or (c), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA. Notwithstanding anything to the contrary contained in this definition, "Excluded Taxes" shall not include any withholding tax imposed at any time on payments made by or on behalf of a Foreign Borrower to any Lender hereunder or under any other Loan Document, provided that such Lender shall have complied with Section 3.01(e).

"Facility Office" means the office designated by the applicable Lender through which such Lender will perform its obligations under this Agreement.

"Facility Termination Date" means the date as of which all of the following shall have occurred: (a) the Aggregate Commitments have terminated, (b) all Obligations have been paid in full (other than contingent indemnification obligations), and (c) all Letters of Credit have terminated or expired (other than Letters of Credit which have been Cash Collateralized in accordance with the terms hereof or as to which other arrangements with respect thereto satisfactory to the Administrative Agent and the L/C Issuer shall have been made).

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

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

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

“Federal Funds Rate” means, for any day, the rate per annum equal to calculated by the weighted average of the rates Federal Reserve Bank of New York based on overnight such day’s federal funds transactions with members of by depository institutions (as determined in such manner as the Federal Reserve System, as Bank of New York shall set forth on its public website from time to time) and published by on the Federal Reserve Bank of New York on the Business Day next succeeding such day Business Day, by the Federal Reserve Bank of New York as the federal funds effective rate; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as reasonably determined by the Administrative Agent determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Fee Letter” means (a) the letter agreement, dated August 31, 2018, between the Parent, the Administrative Agent and the Arranger, (b) the Second Amendment Fee Letter (as defined in the Second Amendment), (c) the letter agreement, dated September 27, 2021, between the Parent, the Administrative Agent and the Arranger and (d) the PNC Fee Letter (as defined in the Third Amendment).

“Financial Condition Certificate” means a financial condition certificate substantially in the form of Exhibit N.

“Foreign Borrower Sublimit” means an amount equal to \$75,000,000. The Foreign Borrower Sublimit is part of, and not in addition to, the Revolving Facility.

“Foreign Borrowers” has the meaning specified in the introductory paragraph hereto

“Foreign Government Scheme or Arrangement” has the meaning specified in Section 5.12(e).

“Foreign Guarantor” means any Guarantor organized under the laws of a jurisdiction other than the United States, a State thereof or the District of Columbia.

“Foreign Lender” means, with respect to any Borrower, (a) if such Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if such Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Loan Party” means a Foreign Borrower or a Foreign Guarantor.

“Foreign Obligation Loan Documents” means all legal documentation entered into between the applicable Foreign Subsidiary and the Foreign Obligation Provider in connection with the Foreign Subsidiary Secured Obligations

“Foreign Obligation Provider” has the meaning set forth in the definition of Foreign Subsidiary Secured Obligations.

“Foreign Obligor” means a Loan Party that is a Foreign Subsidiary.

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“Foreign Plan” has the meaning specified in Section 5.12(e).

“Foreign Subsidiary” means any Subsidiary organized under the laws of a jurisdiction other than the United States, a State thereof or the District of Columbia.

“Foreign Subsidiary Secured Obligations” means all unpaid principal of, accrued and unpaid interest and fees and reimbursement obligations, and all expenses, reimbursements, indemnities and other obligations under or with respect to, any loans, letters of credit, acceptances, guarantees, overdraft facilities, other credit extensions or accommodations or similar obligations and any other Additional Secured Obligations owing by any Foreign Subsidiary to any Lender or any office, branch or Affiliate of any Lender (each a “Foreign Obligation Provider”).

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Exposure” means, at any time there is a Defaulting Lender that is a Revolving Lender,

(a) with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Applicable Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Funding Indemnity Letter” means a funding indemnity letter, substantially in the form of Exhibit L.

“GAAP” means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) including, without limitation, the FASB Accounting Standards Codification, that are applicable to the circumstances as of the date of determination, consistently applied and subject to Section 1.03.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or the European Central Bank).

“Grinberg Family” means Efraim Grinberg, his siblings and children and the spouses, heirs and estates of any of such foregoing Persons and shall include, without limitation, any trusts of which any such Persons are trustees, either alone or with others, and/or beneficiaries, and any partnerships, limited partnerships, limited liability companies, corporations or other entities of which any of such Persons is a general partner or managing member or otherwise controls such entity directly or indirectly through other entities.

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“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed or expressly undertaken by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness or obligation to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guaranteed Obligations” has the meaning set forth in Section 10.01.

“Guarantors” means, collectively, (a) the Parent, MGI BV, Nederland BV and the other Subsidiaries of the Parent as are or may from time to time become parties to this Agreement pursuant to Section 6.13 ~~or the Movado SA Equity Transfer Conditions~~, (b) with respect to Additional Secured Obligations owing by any Loan Party, or any of its Subsidiaries or Affiliates, any Foreign Subsidiary Secured Obligations and any Swap Obligation of a Specified Loan Party (determined before giving effect to Sections 10.01 and 10.11) under the Guaranty, the Domestic Borrowers and (c) with respect to Additional Secured Obligations owing by any Foreign Loan Party, or any of its Subsidiaries or Affiliates that are Foreign Subsidiaries, any Foreign Subsidiary Secured Obligations and any Swap Obligation of a Specified Loan Party (determined before giving effect to Sections 10.01 and 10.11) that is a Foreign Loan Party under the Guaranty, the Foreign Borrowers, subject, in the case of each Foreign Loan Party, to the limitations otherwise set forth in this Agreement.

“Guaranty” means, collectively, the Guarantee made by the Guarantors under Article X in favor of the Secured Parties, together with each other guaranty delivered pursuant to Section 6.13.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, natural gas, natural gas liquids, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, contaminants or compounds of any nature in any form regulated pursuant to any Environmental Law.

“Hedge Bank” means any Person in its capacity as a party to a Swap Contract that, at the time it enters into a Swap Contract required by or not prohibited under Article VI or VII, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Contract (even if such Person ceases to be a Lender or such Person’s Affiliate ceased to be a Lender); provided, that in the case of a Secured Hedge Agreement with a Person who is no longer a Lender (or Affiliate of a Lender), such Person shall be considered a Hedge Bank only through the stated termination date (without extension or renewal) of such Secured Hedge Agreement; and provided, further, that for any of the foregoing to be included as a “Secured Hedge

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Agreement” on any date of determination by the Administrative Agent, the applicable Hedge Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) and the Parent must have delivered a Secured Party Designation Notice to the Administrative Agent prior to such date of determination.

“Honor Date” has the meaning set forth in Section 2.03(c).

“IFRS” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby letters of credit), bankers’ acceptances, bank guaranties and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations (including, without limitation, all earnout obligations to the extent included as indebtedness or liabilities in accordance with GAAP) of such Person to pay the deferred purchase price of property or services, (other than trade accounts payable in the ordinary course of business and not past due for more than ninety (90) days);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

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“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and

(b) to the extent not otherwise described in clause (a), Other Taxes. “Indemnitees” has the meaning specified in Section 11.04(b).

“Information” has the meaning specified in Section 11.07.

“Information Certificate” means the information certificate delivered pursuant to Section 4.01 hereof.

“Intellectual Property” has the meaning set forth in the Security Agreement.

“Intercompany Debt” has the meaning specified in Section 7.02.

“Interest Payment Date” means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurocurrency Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; ~~and~~, (b) as to any Base Rate Loan or Swingline Loan, the last Business Day of each March, June, September and December and the Maturity Date, (c) as to any Alternative Currency Daily Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made, and (d) as to any Alternative Currency Term Rate Loan, the last day of each Interest Period applicable to such Loan; provided, however, that if any Interest Period for an Alternative Currency Term Rate Loan exceeds three months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates.

“Interest Period” means, as to each Eurocurrency Rate Loan or Alternative Currency Term Rate, the period commencing on the date such Eurocurrency Rate Loan or Alternative Currency Term Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan or an Alternative Currency Term Rate Loan and ending on the date one (1), ~~two (2)~~, three (3) or six (6) months thereafter, as selected by each Borrower in its Loan Notice, or such other period that is twelve (12) months or less requested by each Borrower and consented to by all of the Lenders, in each case, subject to availability for the interest rate applicable to the relevant currency; provided that:

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

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

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

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person (including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guarantees Indebtedness

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of such other Person), or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“Involuntary Disposition” means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any Subsidiary.

“IRS” means the United States Internal Revenue Service.

“ISP” means, ~~with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of, International Banking Law & Practice, Inc Chamber of Commerce Publication No. 590~~ (or such later version thereof as may be in effect at the ~~applicable time of issuance~~).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and any Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit D executed and delivered in accordance with the provisions of Section 6.13.

“Judgment Currency” has the meaning specified in Section 11.22.

“Landlord Waiver” means a landlord or warehouse waiver substantially in the form of Exhibit M.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means, with respect to each Revolving Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Borrowing. All L/C Borrowings shall be denominated in Dollars.

“L/C Commitment” means, as to each L/C Issuer, its obligation to issue Letters of Credit to the Borrowers pursuant to Section 2.03 in an aggregate principal amount at any one time outstanding not to exceed \$15,000,000, as such amount may be adjusted from time to time in accordance with this Agreement.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means Bank of America, through itself or through one of its designated Affiliates or branch offices, in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

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“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts (including all L/C Borrowings). For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” means each of the Persons identified as a “Lender” on the signature pages hereto, each other Person that becomes a “Lender” in accordance with this Agreement and their successors and assigns, and, unless the context requires otherwise, the Swingline Lender, but excluding any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. The term “Lender” shall include any Designated Lender.

“Lending Office” means, as to the Administrative Agent, the L/C Issuer or any Lender, the office or offices of such Person described as such in such Person’s Administrative Questionnaire, or such other office or offices as such Person may from time to time notify the Borrowers and the Administrative Agent; which office may include any Affiliate of such Person or any domestic or foreign branch of such Person or such Affiliate.

“Letter of Credit” means any standby letter of credit issued hereunder. Letters of Credit may be issued in Dollars or in an Alternative Currency.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven (7) days prior to the Maturity Date (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Sublimit” means an amount equal to the lesser of (a) \$15,000,000 and (b) the Revolving Facility. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Facility.

“LIBOR” has the meaning specified in the definition of Eurocurrency Rate.

“LIBOR Daily Floating Rate” ~~means~~ has the meaning specified in the definition of Eurocurrency Rate.

~~(a) the fluctuating rate of interest, which can change on each Business Day, equal to LIBOR, or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at or about 11:00 a.m., London time, two (2) Business Days prior to the date in question, for Dollar deposits with a term equivalent to a one (1) month term beginning on that date (in such case, the “One Month LIBOR Rate”); and~~

~~(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the One Month LIBOR Rate;~~

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~~provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that (i) to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent and (ii) if the LIBOR Daily Floating Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.~~

~~“LIBOR Quoted Currency” means Dollars, Euro, Sterling, Yen and Swiss Francs, in each case as long as there is a published LIBOR rate with respect thereto.~~

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to any Borrower under Article II in the form of a Revolving Loan or a Swingline Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) the Collateral Documents, (e) the Fee Letter, (f) each Issuer Document, (g) each Joinder Agreement, (h) each Designated Borrower Request and Assumption Agreement, (i) the Reaffirmation Agreement, (j) any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.14 and (k) all other certificates, agreements, documents and instruments executed and delivered, in each case, by or on behalf of any Loan Party pursuant to the foregoing (but specifically excluding any Secured Hedge Agreement or any Secured Cash Management Agreement).

“Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans or Alternative Currency Term Rate, pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit E or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the applicable Borrower.

“Loan Parties” means, collectively, the Borrowers, each Designated Borrower and each Guarantor.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurocurrency market.

“Mandatory Cost” means any amount incurred periodically by any Lender during the term of the Revolving Facility which constitutes fees, costs or charges imposed on lenders generally in the jurisdiction in which such Lender is domiciled, subject to regulation, or has its Facility Office by any Governmental Authority.

“Master Agreement” has the meaning set forth in the definition of “Swap Contract.”

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Loan Parties and their respective Subsidiaries, taken as a whole; (b) a material impairment of the rights

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and remedies of the Administrative Agent or any Lender under any Loan Document, or of the ability of the Loan Parties (taken as a whole) to perform their obligations under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party; ~~provided, that, during the period from the Second Amendment Effective Date through the date that is 90 days after the Second Amendment Effective Date, the impacts of the COVID-19 pandemic on the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Loan Parties and their respective Subsidiaries, taken as a whole, will be disregarded in determining the accuracy of the representations made in Sections 5.05(c), 5.07 and 5.17 to the extent such event or circumstance has been (a) publicly disclosed by the Borrower in its securities filings (including, without limitation, any Form 10-Q) prior to the Second Amendment Execution Date or (b) disclosed to the Administrative Agent for distribution to the Lenders prior to the Second Amendment Execution Date.~~

“Material Contract” means, with respect to any Person, each contract or agreement (a) to which such Person is a party involving aggregate consideration payable to or by such Person of \$10,000,000 or more in any year or (b) otherwise material to the business, condition (financial or otherwise), operations, performance, properties or prospects of such Person or (c) any other contract, agreement, permit or license, written or oral, of any Borrower and its Subsidiaries as to which the breach, nonperformance, cancellation or failure to renew by any party thereto, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

“Material Domestic Subsidiary” means any Domestic Subsidiary of the Parent that, together with its Subsidiaries, (a) generates more than 5% of Consolidated EBITDA on a Pro Forma Basis for the applicable Measurement Period or (b) has total assets (including equity interests in other Subsidiaries and excluding investments that are eliminated in consolidation) of equal to or greater than 5% of the total assets of the Parent and its Subsidiaries, on a consolidated basis as of the end of such Measurement Period; provided, however, that if at any time there are Domestic Subsidiaries which are not classified as “Material Domestic Subsidiaries” but which collectively (i) generate more than 20% of Consolidated EBITDA on a Pro Forma Basis for the applicable Measurement Period or (ii) have total assets (including equity interests in other Subsidiaries and excluding investments that are eliminated in consolidation) of equal to or greater than 20% of the total assets of the Parent and its Subsidiaries on a Consolidated basis as of the end of such Measurement Period, then the Parent shall promptly designate one or more of such Domestic Subsidiaries as Material Domestic Subsidiaries and cause any such Domestic Subsidiaries to comply with the provisions of Section 6.13 such that, after such Domestic Subsidiaries become Guarantors hereunder, the Domestic Subsidiaries that are not Guarantors shall (A) generate less than 20% of Consolidated EBITDA for the applicable Measurement Period and (B) have total assets of less than 20% of the total assets of the Parent and its Subsidiaries on a Consolidated basis as of the end of such Measurement Period.

“Maturity Date” means October ~~1228, 2023~~2026; provided, however, that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Measurement Period” means, at any date of determination (a) for purposes of Section 7.11, the period of four (4) fiscal quarters of the Parent ending on such date and (b) for purposes of determining Pro Forma Compliance, the most recently completed four (4) fiscal quarters of the Parent for which financial statements have been delivered pursuant to Section 6.01.

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during any period when a Lender constitutes a Defaulting Lender, an amount equal to 105% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of

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Section 2.14(a)(i), (a)(ii) or (a)(iii), an amount equal to 105% of the Outstanding Amount of all L/C Obligations, and (c) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

“MGI B.V.BV” means MGI Luxury Group B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands having its corporate seat (*statutaire zetel*) in Amsterdam, the Netherlands, its registered office at Prins Bernhardplein 200, 1097 JB Amsterdam, the Netherlands and registered with the Dutch Chamber of Commerce under 642095470.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

~~“Movado SA Equity Transfer” means (a) if MGI BV is the direct parent entity of Nederland BV at the time of such transfer, (i) the contribution by the Parent of 100% of the outstanding shares of Movado SA to MGI BV and (ii) the contribution by MGI BV of 100% of the outstanding shares of Movado SA to Nederland BV in each case on or about January 31, 2019 or (b) if the Parent is the direct parent entity of Nederland BV at the time of such transfer pursuant to transactions otherwise permitted by the terms of this Agreement, the contribution by the Parent of 100% of the outstanding shares of Movado SA to Nederland BV on or about January 31, 2019.~~

~~“Movado SA Equity Transfer Conditions” means: (a) the joinder of MGI BV (in the case of a Movado SA Equity Transfer described in clause (a) of the definition thereof) and Nederland BV as Foreign Guarantors hereunder pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent (which shall include customary Dutch law provisions to be agreed and amendments to any schedules to this Agreement or any other Loan Documents necessary to reflect the joinders and pledges contemplated hereunder) and (b) the execution by MGI BV (in the case of a Movado SA Equity Transfer described in clause (a) of the definition thereof) and Nederland BV of a pledge agreement under New York law in form and substance reasonably satisfactory to the Administrative Agent pursuant to which~~

~~(i) in the case of a Movado SA Equity Transfer described in clause (a) of the definition thereof, MGI BV will pledge its equity interests in Nederland BV to the Administrative Agent in its capacity as administrative agent for the Secured Parties to secure MGI BV’s obligations hereunder as a Foreign Guarantor and (ii) Nederland BV will pledge its equity interests in Movado SA to the Administrative Agent in its capacity as administrative agent for the Secured Parties to secure Nederland BV’s obligations hereunder as a Foreign Guarantor.~~

“Movado SA” has the meaning specified in the introductory paragraph hereto.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including any Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Nederland B.V.BV” means Movado Group Nederland B.V, a Dutch private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands having its corporate seat (*statutaire zetel*) in Amsterdam, the Netherlands, its registered office at Prins Bernhardplein 200, 1097 JB Amsterdam, the Netherlands and registered with the Dutch Chamber of Commerce under 34242495.

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“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Extension Notice Date” has the meaning specified in Section 2.03(b)(iv).

~~“Non-LIBOR Quoted Currency” means any currency other than a LIBOR Quoted Currency.~~

“Non-Swiss-Controlled Group Member” means, with respect to any Swiss Loan Party, the Parent and all direct and indirect Subsidiaries of the Parent other than those Subsidiaries that are also direct or indirect Subsidiaries of such Swiss Loan Party.

“Note” means any Revolving Note.

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit P or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

“Obligations” means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, or Letter of Credit and (b) all obligations for any costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, arising under any Loan Document, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof pursuant to any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Officer’s Certificate” means a certificate substantially the form of Exhibit J or any other form approved by the Administrative Agent.

~~“One Month LIBOR Rate” has the meaning specified in the definition of LIBOR Daily Floating Rate.~~

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction and including, with respect to a Swiss Loan Party, (i) a copy of a recent and up-to-date extract from the relevant commercial register pertaining to it certified by such commercial register and (ii) a recent and up-to-date copy of its articles of association, certified by the relevant commercial register); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction); (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization

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(or equivalent or comparable documents with respect to any non-U.S. jurisdiction) and (d) with respect to all entities, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction).

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“Outstanding Amount” means (a) with respect to Revolving Loans and Swingline Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Loans and Swingline Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate Dollar Equivalent amount of the L/C Obligations as of such date, including as a result of any reimbursements by any Borrower of Unreimbursed Amounts.

“Overnight Rate” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent, the L/C Issuer, or the Swingline Lender, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, an overnight rate determined by the Administrative Agent or the L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

“Parent” has the meaning specified in the introductory paragraph hereto.

“Participant” has the meaning specified in Section 11.06(d).

“Participant Register” has the meaning specified in Section 11.06(d).

“Participating Member State” means any member state of the European Union that adopts or has adopted the Euro as its lawful currency in accordance with legislation of the European Union relating to economic and monetary union.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302

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of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

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

“Perfection Certificate” means the perfection certificate delivered pursuant to Section 4.01 hereof.

“Permitted Acquisition” means an Acquisition by a Loan Party or Subsidiary of a Person or division, line of business or other business unit of a Person to be acquired in such Acquisition (the “Target”) that is, or is engaged in, a type of business (or is comprised of assets used in a type of business) permitted to be engaged in by the Borrowers and their Subsidiaries pursuant to the terms of this Agreement (a “Permitted Business”), in each case so long as:

- (a) no Default shall then exist or would exist after giving effect thereto;
  - (b) the Loan Parties shall demonstrate to the reasonable satisfaction of the Administrative Agent that, after giving effect to the Acquisition, on a Pro Forma Basis, (i) the Loan Parties are in Pro Forma Compliance and (ii) the Consolidated Net Leverage Ratio shall be at least 0.25 to 1.0 less than the then applicable level set forth in Section 7.11, calculated using the same Measurement Period used to determine Pro Forma Compliance;
  - (c) the applicable Loan Parties shall have complied with Sections 6.13 and 6.14, as applicable;
  - (d) the Administrative Agent, on behalf of the Secured Parties, shall have received not less than (i) ten (10) Business Days (or such shorter period as the Administrative Agent may agree) prior to the consummation of any Permitted Acquisition having a Cost of Acquisition in excess of \$50,000,000, (A) written notice of the proposed Acquisition and a description of the material terms of such Acquisition and (B) a due diligence package relative to the proposed Acquisition, including forecasted balance sheets, profit and loss statements, and cash flow statements of the Person to be acquired, all prepared on a basis consistent with such Person’s historical financial statements, together with appropriate supporting details and a statement of underlying assumptions for the one (1) year period following the date of the proposed Acquisition, on a quarter by quarter basis and (ii) five (5) Business Days (or such shorter period as the Administrative Agent may agree) prior to the consummation of such Permitted Acquisition, (A) copies of the acquisition agreement and other material documents relative to the proposed Acquisition and (B) a Permitted Acquisition Certificate, executed by a Responsible Officer of the Parent certifying that such Permitted Acquisition complies with the requirements of this Agreement;
  - (e) such Acquisition shall not be a “hostile” Acquisition and shall have been approved by the board of directors (or equivalent) and/or shareholders (or equivalent) of the applicable Loan Party and the Target;
  - (f) after giving effect to such Acquisition and any Borrowings made in connection therewith, the aggregate principal amount of Revolving Loans available to be borrowed under Section 2.01 hereof shall be at least \$15,000,000; and
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(g) with respect to any Acquisitions by any Subsidiary that is not a Loan Party, the aggregate Cost of Acquisition for all such Permitted Acquisitions following the Closing Date and during the term of this Agreement shall not exceed \$75,000,000; ~~and.~~

(h) ~~the Suspension Period shall not be in effect as of the date of such Acquisition.~~

“Permitted Acquisition Certificate” means a certificate substantially the form of Exhibit F or any other form approved by the Administrative Agent.

“Permitted Business” has the meaning set forth in the definition of “Permitted Acquisition.”

“Permitted Liens” has the meaning set forth in Section 7.01.

“Permitted Tax Distributions” means, for so long as any Borrower is treated as a partnership for federal income tax purposes, aggregate cash distributions by any Borrower to its members in amounts sufficient to allow such members to pay their estimated and final federal, state and local income tax liabilities, based on the Effective Tax Rate (as defined herein), deemed to arise from the taxable income of the Person making such distribution (such taxable income calculated taking into account any additional deductions or losses available to a member as a result of any basis adjustment pursuant to Section 743 of the Code and taking into account losses, if any, of the distributing Person from prior periods which are permitted to be applied by the members to offset income in the current period, such losses to be applied on a member-by-member basis so that the excess losses of one member shall not be netted hereunder against the taxable income of another member) without regard to the amount of the members’ actual federal, state and local income tax liabilities. Such distributions may be made not more frequently than quarterly with respect to each period for which an installment of estimated tax would be required to be paid by the members of the Person making such distribution (and then, not more than thirty (30) days prior to the due date of the taxes which are the subject of such distribution), except that an additional final distribution may be made after the final taxable income of any Borrower for any fiscal year has been determined in an amount equal to the excess of the income tax liability of the members of the applicable Borrower as computed herein with respect to the immediately preceding taxable year over the aggregate amount of any prior Permitted Tax Distributions made to the members with respect to such taxable year; provided, the maximum aggregate amount of Permitted Tax Distributions for any such period made to each member shall not exceed the product of (a) the taxable income of the Person making such distribution (calculated as described above) allocable to such member (taking into account any additional deductions or losses available to the members as a result of any basis adjustment pursuant to Section 743 and taking into account losses, if any, of the distributing Person from prior periods which are permitted to be applied by such member to offset income in the current period) for such period, multiplied by (b) the Effective Tax Rate allocable to such member. The Effective Tax Rate shall be equal to the sum of (i) the highest individual or corporate marginal federal income tax rate applicable to any member for the applicable year and (ii) the percentage with respect to state and local income tax rates for that year that the board of managers of the Person making the Permitted Tax Distributions determines in good faith is appropriate (provided that such percentage shall not exceed the highest state and local income tax rates applicable to any member).

“Permitted Transfers” means (a) Dispositions of inventory in the ordinary course of business; (b) Dispositions of property to any Borrower or any Subsidiary; provided, that if the transferor of such property is a Loan Party then the transferee thereof must be a Loan Party; (c) Dispositions of accounts receivable in connection with the collection or compromise thereof; (d) licenses, sublicenses, leases or subleases granted to third parties not interfering in any material respect with the business of any Borrower and its Subsidiaries; (d) the sale or disposition of Cash Equivalents in the ordinary course of business and (f) Resale Transactions.

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

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of any Borrower or any ERISA Affiliate or any such Plan to which any Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.02.

“Pledged Equity” has the meaning specified in the Security Agreement.

“Pro Forma Basis” and “Pro Forma Effect” means, for any Disposition of all or substantially all of a division or a line of business or for any Acquisition, whether actual or proposed, for purposes of determining compliance with the financial covenants set forth in Section 7.11 or a test based on the Consolidated Net Leverage Ratio with respect to a Measurement Period, each such transaction or proposed transaction shall be deemed to have occurred on and as of the first day of the relevant Measurement Period, and the following pro forma adjustments shall be made:

(a) in the case of an actual or proposed Disposition, all income statement items (whether positive or negative) attributable to the line of business or the Person subject to such Disposition shall be excluded from the results of any Borrower and its Subsidiaries for such Measurement Period as if such Disposition was consummated on the first day of the applicable Measurement Period;

(b) in the case of an actual or proposed Acquisition, income statement items (whether positive or negative) attributable to the property, line of business or the Person subject to such Acquisition shall be included in the results of any Borrower and its Subsidiaries for such Measurement Period, and such pro forma calculations may reflect operating expense reductions and other operating improvements and synergies from the applicable event projected by the Parent in good faith to be realized based on actions to be taken within 12 months after the applicable Acquisition is consummated, net of the amount of actual benefits realized during such Measurement Period from such actions and all costs required to achieve such reductions, improvements and synergies, in each case, as if such Acquisition was consummated on the first day of the applicable Measurement Period; provided that all such expense reductions, improvements and synergies reflected pursuant to this Section shall not exceed 5% of the Consolidated EBITDA of the Parent and its Subsidiaries and the Target on a pro forma basis;

(c) interest, fees and other expenses accrued during the relevant Measurement Period on, and the principal of, any Indebtedness repaid or to be repaid or refinanced in such transaction shall be excluded from the results of any Borrower and its Subsidiaries for such Measurement Period as if such Indebtedness were repaid or refinanced on the first day of the applicable Measurement Period; and

(d) any Indebtedness actually or proposed to be incurred or assumed in such transaction shall be deemed to have been incurred as of the first day of the applicable Measurement Period, and interest thereon shall be deemed to have accrued from such day on such Indebtedness at the applicable rates provided therefor (and in the case of interest that does or would accrue at a formula or floating rate, at the rate in effect at the time of determination), taking into account any Swap Contract applicable to such Indebtedness, and shall be included in the results of any Borrower and its Subsidiaries for such Measurement Period.

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“Pro Forma Compliance” means, with respect to any transaction, that such transaction does not cause, create or result in a Default after giving Pro Forma Effect, based upon the results of operations for the most recently completed Measurement Period to (a) such transaction and (b) all other transactions which are contemplated or required to be given Pro Forma Effect hereunder that have occurred on or after the first day of the relevant Measurement Period.

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

“Public Lender” has the meaning specified in Section 6.02.

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Rate Determination Date” means two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Administrative Agent; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, then “Rate Determination Date” means such other day as otherwise reasonably determined by the Administrative Agent).

“Reaffirmation Agreement” means that certain Omnibus Reaffirmation of Loan Documents dated as of the Closing Date by and among the Domestic Borrowers and the Administrative Agent.

“Real Property” means any real property owned by a Loan Party.

“Recipient” means (a) the Administrative Agent, (b) any Lender, or (c) the L/C Issuer, as applicable.

“Reduction Amount” has the meaning set forth in Section 2.05(b)(viii).

“Register” has the meaning specified in Section 11.06(c).

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

“Relevant Governmental Body” means (a) with respect to Loans denominated in Dollars, the FRB and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB and/or the Federal Reserve Bank of New York, or any successor thereto (b) with respect to Loans denominated in Sterling, the Bank of England, or a committee officially endorsed or convened by the Bank of England or, in each case, any successor thereto, (c) with respect to Loans denominated in Euros, the European Central Bank, or a committee officially endorsed or convened by the European Central Bank or, in each case, any successor thereto, (d) with respect to Loans denominated in Swiss Francs, the Swiss National Bank, or a committee officially endorsed or convened by the Swiss National Bank or, in each case, any successor thereto, and (e) with respect to Loans denominated in any other Alternative Currency, (i) the central bank for the currency in which such Loan is denominated or any central bank or other supervisor which is responsible for supervising either (x) such Successor Rate or (y) the administrator of such

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Successor Rate or (ii) any working group or committee officially endorsed or convened by (w) the central bank for the currency in which such Successor Rate is denominated, (x) any central bank or other supervisor that is responsible for supervising either (A) such Successor Rate or (B) the administrator of such Successor Rate, (y) a group of those central banks or other supervisors or (z) the Financial Stability Board or any part thereof.

“Relevant Rate” means with respect to any Credit Extension denominated in (a) Dollars, LIBOR, (b) Sterling, SONIA, (c) Swiss Francs, SARON, (d) Euros, EURIBOR, and (e) Canadian Dollars, the CDOR Rate, as applicable, and, in each case, if such rate is replaced pursuant to Section 3.03(c) or (d), any replacement rate in respect thereof.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Revolving Loans, a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swingline Loan, a Swingline Loan Notice.

“Required Lenders” means, at any time, (i) Lenders having Total Credit Exposures representing at least 66-2/3% of the Total Credit Exposures of all Lenders or (ii) if one Lender holds more than 66-2/3% of the Total Credit Exposures, at least two (2) Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; provided that, the amount of any participation in any Swingline Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swingline Lender or L/C Issuer, as the case may be, in making such determination.

“Resale Transaction” means the sale, transfer or other disposition by any Borrower or Subsidiary of any asset acquired after the Closing Date pursuant to an Acquisition that is not necessary for the operation of the business of Borrowers and their Subsidiaries; provided that within 180 days after the consummation of such Permitted Acquisition, the Administrative Agent receives written notice from a Borrower identifying such asset with reasonable specificity and stating such that such asset is being held for disposition in a Resale Transaction.

“Rescindable Amount” has the meaning as defined in Section 2.12(b)(ii).

“Resignation Effective Date” has the meaning set forth in Section 9.06.

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

“Responsible Officer” means the chief executive officer, president, chief operating officer, chief financial officer, treasurer, assistant treasurer, controller, secretary, director or member or any other duly appointed authorized signatory of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and 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. To the extent requested by the Administrative Agent, each Responsible Officer will provide an

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incumbency certificate and to the extent requested by the Administrative Agent, appropriate authorization documentation, in form and substance reasonably satisfactory to the Administrative Agent.

“Restricted Payment” means (a) any dividend or other distribution (including without limitation Permitted Tax Distributions), direct or indirect, on account of any shares (or equivalent) of any class of Equity Interests of the Parent or any of its Subsidiaries, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Equity Interests of the Parent or any of its Subsidiaries, now or hereafter outstanding, and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding.

“Revaluation Date” means (a) with respect to any Revolving Loan, each of the following: (i) each date of a Revolving Borrowing of ~~a Eurocurrency Rate Loan denominated in~~ an Alternative Currency Loan, (ii) each date of a continuation of ~~a Eurocurrency Rate Loan denominated in~~ an Alternative Currency Loan pursuant to Section 2.02, and (iii) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance, amendment and/or extension of a Letter of Credit denominated in an Alternative Currency, (ii) each date of any payment by the L/C Issuer under any Letter of Credit denominated in an Alternative Currency, (iii) in the case of all Existing Letters of Credit denominated in Alternative Currencies, the Closing Date, and (iv) such additional dates as the Administrative Agent or the L/C Issuer shall determine or the Required Lenders shall require.

“Revolving Borrowing” means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of Eurocurrency Rate Loans or Alternative Currency Term Rate Loans, having the same Interest Period made by each of the Revolving Lenders pursuant to Section 2.01.

“Revolving Commitment” means, as to each Revolving Lender, its obligation to (a) make Revolving Loans to the Borrowers pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swingline Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01(b) under the caption “Revolving Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The Revolving Commitments of all of the Revolving Lenders on the Closing Date shall be \$100,000,000.

“Revolving Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender’s participation in L/C Obligations and Swingline Loans at such time.

“Revolving Facility” means, at any time, the amount of the Aggregate Commitments at such time.

“Revolving Lender” means, at any time, (a) so long as any Revolving Commitment is in effect, any Lender that has a Revolving Commitment at such time or (b) if the Revolving Commitments have terminated or expired, any Lender that has a Revolving Loan or a participation in L/C Obligations or Swingline Loans at such time.

“Revolving Loan” has the meaning specified in Section 2.01.

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“Revolving Note” means a promissory note made by each Borrower in favor of a Revolving Lender evidencing (a) Revolving Loans made by such Revolving Lender, substantially in the form of Exhibit G or (b) Swingline Loans made by such Revolving Lender, substantially in the form of Exhibit I.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sale and Leaseback Transaction” means, with respect to any Loan Party or any Subsidiary, any arrangement, directly or indirectly, with any Person whereby such Loan Party or such Subsidiary shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Same Day Funds” means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

“Sanction(s)” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

[“SARON” means, with respect to any applicable determination date, the Swiss Average Rate Overnight as administered by the SARON Administrator and published on the fifth Business Day preceding such date on the applicable Reuters screen page \(or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time\); provided, however, that if such determination date is not a Business Day, SARON means such rate that applied on the first Business Day immediately prior thereto.](#)

[“SARON Adjustment” means, with respect to SARON, 0.0031% per annum.](#)

[“SARON Administrator” means the SIX Swiss Exchange AG \(or any successor administrator of the Swiss Average Rate Overnight\).](#)

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

“Second Amendment” means that certain Amendment No. 2 to Credit Agreement by and among the Loan Parties, the Administrative Agent and the Lenders party thereto dated as of June 5, 2020 and effective as of the Second Amendment Effective Date.

“Second Amendment Effective Date” means April 30, 2020.

“Second Amendment Execution Date” means June 5, 2020.

“Secured Cash Management Agreement” means any Cash Management Agreement between any Loan Party, or any of its Subsidiaries, and any Cash Management Bank.

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“Secured Hedge Agreement” means any interest rate, currency, foreign exchange, or commodity Swap Contract required or permitted under Article VI or VII between any Loan Party, or any of its Subsidiaries, and any Hedge Bank.

“Secured Obligations” means all Obligations, all Foreign Subsidiary Secured Obligations and all Additional Secured Obligations.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders (including Designated Lenders), the L/C Issuer, the Hedge Banks, the Cash Management Banks, Foreign Obligation Providers, the Indemnitees and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“Secured Party Designation Notice” means a notice from any Lender or an Affiliate of a Lender and the Parent (such notice by the Parent not to be unreasonably delayed) substantially in the form of Exhibit H.

“Securities Act” means the Securities Act of 1933, including all amendments thereto and regulations promulgated thereunder.

“Security Agreement” means the security and pledge agreement, dated as of ~~the Closing Date~~ [January 30, 2015](#), executed in favor of the Administrative Agent by each of the Loan Parties.

“Securitization Transaction” means, with respect to any Person, any financing transaction or series of financing transactions (including factoring arrangements) pursuant to which such Person or any Subsidiary of such Person may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate of such Person.

“Significant Subsidiary” means any Foreign Subsidiary of the Parent that as of any date of determination (a) generates more than 5% of Consolidated EBITDA on a Pro Forma Basis for the applicable Measurement Period or (b) has total assets (including Equity Interests in other Subsidiaries and excluding investments that are eliminated in consolidation) of equal to or greater than 5% of the total assets of the Parent and its Subsidiaries, on a consolidated basis as of the end of such Measurement Period.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) 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, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) 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 an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the 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.

“SONIA” means, with respect to any applicable determination date, [the Sterling Overnight Index Average Reference Rate as administered by the SONIA Administrator and published on the fifth Business Day preceding such date on the applicable Reuters screen page \(or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time\); provided,](#)

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however, that if such determination date is not a Business Day, SONIA means such rate that applied on the first Business Day immediately prior thereto.

“SONIA Adjustment” means, with respect to SONIA, 0.1193% per annum.

“SONIA Administrator” means the Bank of England (or any successor administrator of the Sterling Overnight Index Average).

“Special Notice Currency” means at any time an Alternative Currency, other than the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe.

“Specified Loan Party” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.11).

“Spot Rate” for a currency means the rate determined by the Administrative Agent or the L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

“Sterling” and means the lawful currency of the United Kingdom.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Parent.

~~“Suspension Period” means the period from the Second Amendment Effective Date through the Suspension Period Termination Date.~~

~~“Suspension Period Termination Conditions” means (a) Consolidated EBITDA for and as of the end of the Measurement Period ending on the proposed Suspension Period Termination Date, or, if a Measurement Period is not ending on such date, the Measurement Period most recently ended prior to such date, is at least \$35,000,000 and (b) the Consolidated Leverage Ratio as of the proposed Suspension Period Termination Date is less than or equal to the ratio of 2.50 to 1.00.~~

~~“Suspension Period Termination Date” means the earlier of (a) the date on which the Compliance Certificate for the period ending July 31, 2021 is delivered to Administrative Agent in accordance with Section 6.02(a) or (b) the date upon which the Administrative Agent receives a certificate of a Responsible Officer of the Parent certifying that the Suspension Period Termination Conditions have been satisfied together with supporting calculations demonstrating such satisfaction in form and substance satisfactory to the Administrative Agent.~~

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“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and

(b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligations” means with respect to any Loan Party any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swingline Borrowing” means a borrowing of a Swingline Loan pursuant to Section 2.04.

“Swingline Lender” means Bank of America, in its capacity as provider of Swingline Loans, or any successor swingline lender hereunder.

“Swingline Loan” has the meaning specified in Section 2.04(a).

“Swingline Loan Notice” means a notice of a Swingline Borrowing pursuant to Section 2.04(b), which shall be substantially in the form of Exhibit I or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Parent.

“Swingline Sublimit” means an amount equal to the lesser of (a) \$25,000,000 and (b) the Revolving Facility. The Swingline Sublimit is part of, and not in addition to, the Revolving Facility.

“Swiss 10 Non-Bank Rule” means the rule that the aggregate number of creditors (including the Lenders) under any Loan, which are Swiss Non-Qualifying Banks, must not exceed 10 (ten), all in accordance with the meaning of the applicable Swiss Guidelines and/or any legislation or explanatory notes addressing each such issue which is in force at the relevant time.

“Swiss 20 Non-Bank Rule” means the rule that the aggregate number of creditors (including the Lenders), other than Swiss Qualifying Banks, of a Swiss Borrower under all outstanding debts relevant for classification as debentures (*Kassenobligation*) (within the meaning of the applicable Swiss

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Guidelines and Swiss tax laws), such as (intragroup) loans (if and to the extent intragroup loans are not exempt in accordance with article 14(a) of the Swiss Federal Ordinance on Swiss withholding tax), facilities and/or private placements (including under the Loan Documents) must not at any time exceed 20 (twenty), all in accordance with the meaning of the applicable Swiss Guidelines and/or any legislation or explanatory notes addressing each such issue which is in force at the relevant time.

“Swiss Borrower” means a Foreign Borrower which is organized under the laws of Switzerland or, if different, is considered to be tax resident in Switzerland for Swiss Withholding Tax purposes.

“Swiss Capped Amount” means the amount of the applicable Swiss Loan Party’s freely disposable equity available for distribution by way of dividend to the shareholders of the Swiss Loan Party in accordance with Swiss law and presently being the Swiss Loan Party’s total shareholder equity less the total of (i) its aggregate share capital and (ii) statutory reserves (to the extent such reserves cannot be transferred into unrestricted, distributable reserves and taking into account (by way of deducting) any upstream or cross-stream loans not granted on arm’s length terms), which amount shall be determined on the basis of an up-to-date audited interim balance sheet of the Swiss Loan Party prepared for such determination and approved by the auditors of the Swiss Loan Party as a distributable amount.

“Swiss Federal Tax Administration” means the tax authorities referred to in article 34 of the Swiss Federal Act on Withholding Tax of 13 October 1965 (Bundesgesetz über die Verrechnungssteuer, SR 642.21).

“Swiss Franc” means the lawful currency of Switzerland.

“Swiss Loan Party” means a Loan Party that is domiciled in Switzerland.

“Swiss Guidelines” means, together, guideline S-02.123 in relation to interbank loans of 22 September 1986 (*Merkblatt "Verrechnungssteuer auf Zinsen von Bankguthaben, deren Gläubiger Banken sind (Interbankguthaben)" vom 22. September 1986*), guideline S-02.122.1 in relation to bonds of April 1999 (*Merkblatt "Obligationen" vom April 1999*), guideline S-02.130.1 in relation to money market instruments and book claims of April 1999 (*Merkblatt vom April 1999 betreffend Geldmarktpapiere und Buchforderungen inländischer Schuldner*), guideline S-02.128 in relation to syndicated credit facilities of January 2000 (*Merkblatt "Steuerliche Behandlung von Konsortialdarlehen, Schuldscheindarlehen, Wechseln und Unterbeteiligungen" vom Januar 2000*), circular letter no. 34 of 26 July 2011 (1-034-V- 2011) in relation to deposits (*Kreisschreiben Nr. 34 "Kundenguthaben" vom 26. Juli 2011*), and the circular letter no. 15 of 3 October 2017 (1-015-DVS-2017) in relation to bonds and derivative financial instruments as subject matter of taxation of Swiss federal income tax, Swiss withholding tax, and Swiss stamp taxes (*Kreisschreiben Nr. 15 "Obligationen und derivative Finanzinstrumente als Gegenstand der direkten Bundessteuer, der Verrechnungssteuer und der Stempelabgaben" vom 3. Oktober 2017*), in each case as issued, amended or replaced from time to time, by the Swiss Federal Tax Administration or as substituted or superseded and overruled by any law, statute, ordinance, court decision, regulation or the like as in force from time to time.

“Swiss Non-Bank Rules” means the Swiss 10 Non-Bank Rule and the Swiss 20 Non-Bank Rule.

“Swiss Non-Qualifying Bank” means a person or entity which is not a Swiss Qualifying Bank.

“Swiss Qualifying Bank” means a person or entity (including any commercial bank or financial institution (irrespective of its jurisdiction of organization)) which effectively conducts banking activities with its own infrastructure and staff as its principal business purpose and which has a banking license in full force and effect issued in accordance with the banking laws in force in its jurisdiction of

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incorporation, or if acting through a branch, issued in accordance with the banking laws in the jurisdiction of such branch, all in accordance with the Swiss Guidelines.

“Swiss Restricted Obligations” has the meaning given to it in Section 11.25.

“Swiss Withholding Tax” means the tax levied pursuant to the Swiss Federal Act on Withholding Tax (*Bundesgesetz über die Verrechnungssteuer vom 13. Oktober 1965, SR 642.21*), together with the related ordinances, regulations and the Swiss Guidelines, all as amended and applicable from time to time.

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of “Indebtedness” or as a liability on the Consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including Sale and Leaseback Transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Target” has the meaning set forth in the definition of “Permitted Acquisition.”

“TARGET2” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

“TARGET Day” means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

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

“Third Amendment” means that certain Amendment No. 3 to Credit Agreement by and among the Loan Parties, the Administrative Agent and the Lenders party thereto dated and effective as of the Third Amendment Effective Date.

“Third Amendment Effective Date” means October 28, 2021.

“Third Party Funds” shall mean (a) any accounts or funds, or any portion thereof, received by any Loan Party as agent on behalf of third parties in accordance with a written agreement that imposes a duty upon a Loan Party to collect and remit those funds to such third parties, (b) any accounts established for employee benefits, withholding tax, customs or other fiduciary purposes and (c) any deposits permitted under Section 7.01.

“Threshold Amount” means \$10,000,000.

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“Total Credit Exposure” means, as to any Lender at any time, the unused Revolving Commitments and the Revolving Exposure of such Lender at such time.

“Total Revolving Outstandings” means the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans and L/C Obligations.

“Type” means, with respect to a Loan, its character as a Base Rate Loan ~~or~~, a Eurocurrency Rate Loan, [an Alternative Currency Daily Rate Loan or an Alternative Currency Term Rate Loan](#).

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UCP” means, ~~with respect to any Letter of Credit~~, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (~~“ICC”~~) Publication No. 600 (or such later version thereof as may be in effect at the [applicable](#) time ~~of issuance~~).

“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 subject to 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.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“U.S. Loan Party” means any Loan Party that is organized under the laws of one of the states of the United States and that is not a CFC.

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

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(3).

“Voting Stock” means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, whether or not the right to so vote has been suspended by the happening of such contingency.

“Watch Tariff Matter” means the pending audit by U.S. Customs and Border Protection (“U.S. Customs”) of the Parent’s methodology for allocating the cost of certain watch styles imported in the U.S. among the component partys of those watches for tariff purposes, pursuant to which U.S. Customs issued an audit report in December 2016 proposing an alternative methodology that would imply approximately

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\$5,100,000 in underpaid duties of the five year period within the applicable statute of limitations, plus possible penalties and interest.

“Wholly-owned” means, with respect to a Subsidiary of a Person, 100% of the outstanding Equity Interests of such Subsidiary (other than directors’ or nominee shares required under Law) are owned by such Person or one or more Wholly-owned Subsidiaries of such Person.

“Withholding Agent” means any Loan Party and the Administrative Agent.

“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.

#### **1.01 Other Interpretive Provisions.**

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, [amended and restated](#), modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law, [rule](#) or regulation shall, unless otherwise specified, refer to such law, [rule](#) or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) 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. Any and all references to “Borrower” regardless of whether preceded by the term a, any, each of, all, and/or, the, or any other similar term shall be deemed to refer, as the context requires, to each and every (and/or any one or all) parties constituting a Borrower, individually and/or in the aggregate.

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(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) In this Agreement, where it relates to a Foreign Guarantor established in the Netherlands or any other Subsidiary established in the Netherlands or to any Dutch law governed security, a reference to (i) necessary organizational actions, where applicable, include any action required to comply with the Works Councils Act of the Netherlands (*Wet op de ondernemingsraden*) and obtaining of an unconditional positive advice (*advies*) from the competent works council(s), (ii) a Lien or security interest includes any mortgage (*hypotheek*), pledge (*pandrecht*), financial collateral agreement (*financiële zekerheidsvereenkomst*), privilege (*voorrecht*), retention of title arrangement (*eigendomsvoorbehoud*), right of retention (*recht van retentie*), right to reclaim goods (*recht van reclame*) and, in general, any right in rem (*beperkt recht*), created for the purpose of granting security (*goederenrechtelijk zekerheidsrecht*), (iii) a winding up, liquidation, bankruptcy, insolvency and administration (and any of those terms) includes a Dutch entity being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*), (iv) a moratorium includes *surseance van betaling*, (v) bankruptcy or insolvency proceedings include (A) bankruptcy (*faillissement*), suspension of payments (*surseance van betaling*) or any other procedure having the effect that the entity to which it applies loses the free management or ability to dispose of its property (irrespective of whether the procedure is provisional or final) and (B) dissolution (*ontbinding*) or any other procedure having the effect that the entity to which it applies ceases to exist, (vi) any step, action or procedure taken in connection with, or acquiescence in, bankruptcy or insolvency proceedings includes filing or having filed a notice under Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*) or Section 60 of the Social Insurance Financing Act of the Netherlands (*Wet Financiering Sociale Verzekeringen*) in conjunction with Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*), (vii) a receiver or trustee includes a curator, (viii) an administrator (in the context of a moratorium, suspension of payments or other insolvency or bankruptcy proceedings) includes a *bewindvoerder*, (ix) an attachment includes a *beslag*, (x) a merger includes a *juridische fusie* and (xi) a Subsidiary includes a *dochtermaatschappij* as defined in Article 2:24a of the Dutch Civil Code (*Burgerlijk Wetboek*). In this Agreement, a reference to any person incorporated or established in the Netherlands includes a general partnership (*vennootschap onder firma*), a limited partnership (*commanditaire vennootschap*) or other partnership (*maatschap*) or other entity and any other temporary or permanent joint venture as well as similar entities incorporated under the laws of any jurisdiction other than the Netherlands. In this Agreement, a reference to the Netherlands means the European part of the Kingdom of the Netherlands and “Dutch” means in or of the Netherlands.

(e) Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

## **1.02 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial

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calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrowers and their Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP (including the adoption of IFRS) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Parent or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Parent shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP as in effect prior to such change therein and (ii) the Parent shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment (pursuant to Section 11.01) addressing such changes, as provided for above.

(c) Pro Forma Treatment. Each Disposition of all or substantially all of a line of business, and each Acquisition, by any Borrower and its Subsidiaries that is consummated during any Measurement Period shall, for purposes of determining compliance with the financial covenants set forth in Section 7.11 and for purposes of determining the Applicable Rate, be given Pro Forma Effect as of the first day of such Measurement Period.

### **1.03 Rounding.**

Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

### **1.04 Times of Day.**

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

### **1.05 Letter of Credit Amounts.**

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

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## **1.06 UCC Terms.**

Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “UCC” refers, as of any date of determination, to the UCC then in effect.

## **1.07 Currency Equivalents; Exchange Rates.**

(a) The Administrative Agent or the L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with a Revolving Borrowing, the conversion, continuation or prepayment of ~~a Eurocurrency Rate~~ an Alternative Currency Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Revolving Borrowing, ~~Eurocurrency Rate~~ Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the L/C Issuer, as the case may be.

(c) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of ~~“Eurodollar Eurocurrency Rate”~~, ~~“Alternative Currency Daily Rate”~~, ~~“Alternative Currency Term Rate”~~ or with respect to any rate ~~(including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment)~~ that is an alternative or replacement for or successor to any ~~of~~ such rate (including, without limitation, any ~~LIBOR-Successor Rate~~) or the effect of any of the foregoing, or of any ~~LIBOR-Successor Rate~~ Conforming Changes.

## **1.08 Additional Alternative Currencies.**

(a) A Borrower may from time to time request that ~~Eurocurrency Rate~~ Alternative Currency Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of “Alternative Currency”; provided that (i) such requested currency is an Eligible Currency ~~and (ii) such requested currency shall only be treated as a “LIBOR-Quoted Currency” to the extent that there is a published LIBOR rate for such currency.~~ In the case of any such request with respect to the making of ~~Eurocurrency Rate~~ Alternative Currency Loans, such request shall be subject to the approval of the Administrative Agent and each Lender with a Commitment under which such currency is requested to be made available; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the L/C Issuer in their sole discretion.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., twenty (20) Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to

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~~Eurocurrency Rate~~Alternative Currency Loans, the Administrative Agent shall promptly notify each Appropriate Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the L/C Issuer thereof. Each Appropriate Lender (in the case of any such request pertaining to ~~Eurocurrency Rate~~Alternative Currency Loans) or the L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., ten (10) Business Days after receipt of such request whether it consents, in its sole discretion, to the making of ~~Eurocurrency Rate~~Alternative Currency Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Lender or the L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or the L/C Issuer, as the case may be, to permit ~~Eurocurrency Rate~~Alternative Currency Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Appropriate Lenders consent to making ~~Eurocurrency Rate~~Alternative Currency Loans in such requested currency and the Administrative Agent and such Lenders reasonably determine that an appropriate interest rate is available to be used for such requested currency, the Administrative Agent shall so notify the Borrowers and (i) the Administrative Agent, the Borrowers and such Lenders may amend the definition of ~~Eurocurrency Rate for any Non-LIBOR Quoted Currency~~Alternative Currency Daily Rate or Alternative Currency Term Rate to the extent necessary to add the applicable ~~Eurocurrency Rate~~rate for such currency and any applicable adjustment for such rate and (ii) to the extent the definition of ~~Eurocurrency Rate reflects the appropriate interest rate for such currency~~Alternative Currency Daily Rate or Alternative Currency Term Rate, as applicable, has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be an Alternative Currency for purposes of any Borrowings of ~~Eurocurrency Rate~~Alternative Currency Loans. If the Administrative Agent and the L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrowers and (A) the Administrative Agent, the Borrowers and the L/C Issuer may amend the definition of ~~Eurocurrency Rate for any Non-LIBOR Quoted Currency~~Alternative Currency Daily Rate or Alternative Currency Term Rate, as applicable, to the extent necessary to add the applicable ~~Eurocurrency Rate~~rate for such currency and any applicable adjustment for such rate and (B) to the extent the definition of ~~Eurocurrency Rate reflects the appropriate interest rate for such currency~~Alternative Currency Daily Rate or Alternative Currency Term Rate, as applicable, has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be an Alternative Currency, for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.09, the Administrative Agent shall promptly so notify the Borrowers.

#### **1.10 Change of Currency.**

Each obligation of a Borrower to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption. If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the ~~London~~ interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any Revolving Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Revolving Borrowing, at the end of the then current Interest Period.

Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the

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Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

## ARTICLE II COMMITMENTS AND CREDIT

### EXTENSIONS

#### **2.01 Revolving Loans.**

Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make loans (each such loan, a “Revolving Loan”) to each of the Borrowers in Dollars or in one or more Alternative Currencies, from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Revolving Commitment; provided, however, that after giving effect to any Revolving Borrowing, (i) the Total Revolving Outstandings shall not exceed the Revolving Facility, (ii) the Revolving Exposure of any Lender shall not exceed such Revolving Lender’s Revolving Commitment, and (iii) the aggregate Outstanding Amount of all Revolving Loans made to Foreign Borrowers shall not exceed the Foreign Borrower Sublimit. Within the limits of each Revolving Lender’s Revolving Commitment, and subject to the other terms and conditions hereof, the Borrowers may each borrow Revolving Loans, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving Loans may be Base Rate Loans ~~or~~, Eurocurrency Rate Loans, Alternative Currency Daily Rate Loans or Alternative Currency Term Rate Loans, as further provided herein; provided, however, that any Revolving Borrowings made on the Closing Date or any of the three (3) Business Days following the Closing Date shall be made as Base Rate Loans unless the Borrowers deliver a Funding Indemnity Letter not less than three (3) Business Days prior to the date of such Revolving Borrowing.

#### **2.02 Borrowings, Conversions and Continuations of Loans.**

(a) Notice of Borrowing. Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of ~~a~~ Eurocurrency Rate ~~Loans~~Loan or an Alternative Currency Term Rate Loan shall be made upon the applicable Borrower’s irrevocable notice to the Administrative Agent, which may be given by: (A) telephone or (B) a Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Administrative Agent of a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than 11:00 a.m., (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans ~~denominated in Dollars~~ or of any conversion of Eurocurrency Rate Loans ~~denominated in Dollars~~ to Base Rate Loans, (i) four (4) Business Days (or five (5) Business Days in the case of a Special Notice Currency) prior to the requested date of any Borrowing or continuation of ~~Eurocurrency Rate Loans denominated in~~ Alternative Currency Loans, and (iii) on the requested date of any Borrowing of Base Rate Loans; provided, however, that if the applicable Borrower wishes to request Eurocurrency Rate Loans or Alternative Currency Term Rate Loans having an Interest Period other than one (1), ~~two (2)~~, three (3) or six (6) months in duration as provided in the definition of “Interest Period”, the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. (i) four (4) Business Days prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans ~~denominated in Dollars~~, or (ii) five (5) Business Days (or six (6) Business Days in the case of a Special Notice Currency) prior to the requested date of such Borrower, conversion or continuation of ~~Eurocurrency Rate Loans denominated in~~ Alternative

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~~Currencies~~Currency Term Rate Loans, whereupon the Administrative Agent shall give prompt notice to the Appropriate Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., (i) three (3) Business Days before the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans ~~denominated in Dollars~~, or (ii) four (4) Business Days (or five (5) Business Days in the case of a Special Notice Currency) prior to the requested date of such Borrower, conversion or continuation of ~~Eurocurrency Rate Loans denominated in~~ Alternative ~~Currencies~~Currency Term Rate Loan, the Administrative Agent shall notify the applicable Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or Alternative Currency Loans shall be in a principal amount of the Dollar Equivalent of \$1,000,000 or a whole multiple of the Dollar Equivalent of \$1,000,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of the Dollar Equivalent of \$500,000 or a whole multiple of the Dollar Equivalent of \$100,000 in excess thereof. Each Loan Notice and each telephonic notice shall specify (A) whether the applicable Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Loans, as the case may be, (B) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (C) the principal amount of Loans to be borrowed, converted or continued, (D) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (E) if applicable, the duration of the Interest Period with respect thereto, (F) the currency of the Revolving Loans to be borrowed, and (G) if applicable, the Designated Borrower. If the Parent fails to specify a currency in a Loan Notice requesting a Revolving Borrowing, then the Revolving Loans so requested shall be made in Dollars. If any Borrower fails to specify a Type of Loan in a Loan Notice or if such Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans; provided, however, that in the case of a failure to timely request a continuation of ~~Loans denominated in an~~ Alternative Currency Term Rate Loans, such Revolving Loans shall be continued as ~~Eurocurrency~~Alternative Currency Term Rate Loans in their original currency with an Interest Period of one (1) month. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable ~~Eurocurrency Rate Loans~~Loan. If any Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans or Alternative Currency Term Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. Notwithstanding anything to the contrary herein, a Swingline Loan may not be converted to a Eurocurrency Rate Loan or Alternative Currency Loan. Except as provided pursuant to Section 2.02(c), no Loan may be converted into or continued as a Loan denominated in a different currency, but instead must be repaid in the original currency of such Loan and reborrowed in the other currency.

(b) Advances. Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Appropriate Lender of the amount (and currency) of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the applicable Borrower, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion to Base Rate Loans or continuation of Revolving Loans denominated in a currency other than Dollars, in each case as described in Section 2.02(a). In the case of a Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the applicable currency not later than 1:00 p.m., in the case of any Revolving Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Revolving Loan in an Alternative Currency, in each case on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the applicable Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to

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(and reasonably acceptable to) the Administrative Agent by the applicable Borrower; provided, however, that if, on the date a Loan Notice with respect to a Revolving Borrowing denominated in Dollars is given by any Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the applicable Borrower as provided above.

(c) Eurocurrency Rate Loans. Except as otherwise provided herein, a Eurocurrency Rate Loan or Alternative Currency Term Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan or Alternative Currency Term Rate Loan. During the existence of an Event of Default, the Administrative Agent may (and shall at the direction of the Required Lenders) declare that no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans or Alternative Currency Term Rate Loan, that any or all of the then outstanding Eurocurrency Rate Loans ~~denominated in Dollars~~ be converted immediately to Base Rate Loans and any or all of the then outstanding ~~Eurocurrency Rate Loans denominated in an~~ Alternative Currency Loans be prepaid, or redenominated into Dollars in the amount of the Dollar Equivalent thereof, either immediately (in the case of Alternative Currency Daily Rate Loans) or on the last day of the then current Interest Period with respect thereto (in the case of Alternative Currency Term Rate Loans).

(d) Notice of Interest Rates. The Administrative Agent shall promptly notify the Borrowers and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrowers and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) Interest Periods. After giving effect to all Revolving Borrowings, all conversions of Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect in respect of the Revolving Facility.

(f) Cashless Settlement Mechanism. Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrowers, the Administrative Agent and such Lender.

(g) With respect to any Alternative Currency Daily Rate or SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

## **2.03 Letters of Credit.**

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Lenders set forth in this Section, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in one or more Alternative Currencies for the account of any of the Borrowers or any of their Domestic Subsidiaries or, in the

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L/C Issuer's sole and absolute discretion, any of their Foreign Subsidiaries, and to amend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Lenders severally agree to participate in Letters of Credit issued for the account of any Borrower or its Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (ix) the Total Revolving Outstandings shall not exceed the Revolving Facility, (y) the Revolving Exposure of any Revolving Lender shall not exceed such Lender's Revolving Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by any Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrowers that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto and deemed L/C Obligations, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(i) The L/C Issuer shall not issue any Letter of Credit if:

(A) subject to Section 2.03(b)(iv), the expiry date of the requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date; provided, that if each of the L/C Issuer and the Administrative Agent consents thereto in its sole discretion, the expiration date of a Letter of Credit may extend beyond the Letter of Credit Expiration Date so long as (x) the applicable Borrower Cash Collateralizes such Letter of Credit on or prior to the Letter of Credit Expiration Date on terms satisfactory to the L/C Issuer and the Administrative Agent and (y) each Lender's participation in any undrawn Letter of Credit that is outstanding on the Maturity Date shall terminate on the Maturity Date.

(ii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing the Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

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(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, the Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(D) any Revolving Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the applicable Borrowers or such Revolving Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.15(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(E) the L/C Issuer does not as of the issuance date of the requested Letter of Credit issue Letters of Credit in the requested currency.

(iii) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(iv) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(v) The L/C Issuer shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of any Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the applicable Borrower. Such Letter of Credit Application may be sent by fax transmission, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least five (5) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof and in the absence of specification of currency such application shall be deemed a request for a Letter of Credit denominated in Dollars; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any

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drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the L/C Issuer may require. Additionally, the applicable Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the applicable Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Lender, the Administrative Agent or any Loan Party, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the applicable Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(iv) If any Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a standby Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto- Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve (12) month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve (12) month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the

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applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the applicable Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the applicable Borrower shall reimburse the L/C Issuer in such Alternative Currency, unless (A) the L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the Borrowers shall have notified the L/C Issuer promptly following receipt of the notice of drawing that such Borrower will reimburse the L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify the Borrowers of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in Dollars, or the Applicable Time on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in an Alternative Currency (each such date, an "Honor Date"), the applicable Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency, if the Borrowers shall have received notice of such payment prior to 10:00 a.m. on the Honor Date or, if such notice has not been received by the Borrowers prior to such time on the Honor Date, then not later than 11:00 a.m. (x) on the Business Day that the Borrowers receive such notice, if such notice is received prior to 10:00 a.m. on the day of receipt or (y) the Business Day immediately following the day that the Borrowers receive such notice, if such notice is not received prior to such time on the day of receipt; provided that if a Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section

2.02 or 2.04 that such payment be financed with a Borrowing of Revolving Loans or a Swingline Loan in an equal amount and, to the extent so financed, the applicable Borrower's obligation to make such payment shall be discharged. In the event that (A) a drawing denominated in an Alternative Currency is to be reimbursed in Dollars pursuant to the second sentence of this Section 2.03(c)(i) and (B) the Dollar amount paid by the applicable Borrower, whether on or after the Honor Date, shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Alternative Currency equal to the drawing, the applicable Borrower agrees, as a separate and independent obligation, to indemnify the L/C Issuer for the loss resulting from its inability on that date to purchase the Alternative Currency in the full amount of the drawing. If the applicable Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the "Unreimbursed Amount"), and the amount of such Revolving Lender's Applicable Percentage thereof. In such event, the applicable Borrower shall be deemed to have requested a Revolving Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

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(i) Each Revolving Lender shall upon receipt of any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose by the applicable Borrowers) for the account of the L/C Issuer, in Dollars, at the Administrative Agent's Office for Dollar-denominated payments in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the applicable Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars.

(ii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the applicable Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section.

(iii) Until each Revolving Lender funds its Revolving Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(iv) Each Revolving Lender's obligation to make Revolving Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the Borrowers, any Subsidiary or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the applicable Borrower of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the applicable Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(v) If any Revolving Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Lender

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(through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from any Borrower or otherwise, including proceeds of Cash Collateral provided by the applicable Borrowers applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof in Dollars and in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of each Borrower (and those Borrowers that are jointly and severally liable with such Borrower) to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing for which it is liable hereunder shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;
  - (ii) the existence of any claim, counterclaim, setoff, defense or other right that any Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement or by such Letter of Credit, the transactions contemplated hereby or any agreement or instrument relating thereto, or any unrelated transaction;
  - (iii) any draft, demand, endorsement, certificate or other document presented under or in connection with such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
  - (iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrowers or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrowers;
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(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Borrower or any of its Subsidiaries; or

(ix) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to any Borrower or any of its Subsidiaries or in the relevant currency markets generally.

Each Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with such Borrower's instructions or other irregularity, such Borrower will immediately notify the L/C Issuer. Each Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and the Borrowers agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight or time draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Each Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude each Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, each Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to each Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower which such Borrower proves, as determined by a final nonappealable judgment of a court of competent jurisdiction, were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight or time draft and certificate(s) strictly complying with the

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terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring, endorsing or assigning or purporting to transfer, endorse or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication (“SWIFT”) message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer and the applicable Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrowers for, and the L/C Issuer’s rights and remedies against the applicable Borrowers shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(h) Letter of Credit Fees. The applicable Borrowers shall pay to the Administrative Agent for the account of each Revolving Lender in accordance, subject to Section 2.15, with its Applicable Percentage a Letter of Credit fee (the “Letter of Credit Fee”) for each Letter of Credit issued to it or any of its Subsidiaries equal to the Applicable Rate times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit. Letter of Credit Fees shall be (1) due and payable on the first Business Day following each fiscal quarter end, commencing with the first such date to occur after the issuance of such Letter of Credit on the Letter of Credit Expiration Date and thereafter on demand and (2) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The applicable Borrowers shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit issued to it or any of its Subsidiaries, at the rate per annum specified in the Fee Letter, computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on or prior to the date that is ten (10) Business Days following each fiscal quarter end, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the applicable Borrowers shall pay directly to the L/C Issuer for its own account, in Dollars, with respect to each Letter of Credit issued to it or any of its Subsidiaries, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

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(k) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary of a Borrower, such Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under any such Letter of Credit issued to its Subsidiary. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of its Subsidiaries inures to the benefit of such Borrower, and that such Borrower's business derives substantial benefits from the businesses of all of its Subsidiaries.

#### **2.04 Swingline Loans.**

(a) The Swingline. Subject to the terms and conditions set forth herein, the Swingline Lender, in reliance upon the agreements of the other Lenders set forth in this Section, may in its sole discretion make loans to the Domestic Borrowers (each such loan, a "Swingline Loan"). Each such Swingline Loan may be made, subject to the terms and conditions set forth herein, to each of the Domestic Borrowers, in Dollars, from time to time on any Business Day. During the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swingline Sublimit, notwithstanding the fact that such Swingline Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Loans and L/C Obligations of the Lender acting as Swingline Lender, may exceed the amount of such Lender's Revolving Commitment; provided, however, that (i) after giving effect to any Swingline Loan, (A) the Total Revolving Outstandings shall not exceed the Revolving Facility at such time, and (B) the Revolving Exposure of any Revolving Lender at such time shall not exceed such Lender's Revolving Commitment, (ii) the Domestic Borrowers shall not use the proceeds of any Swingline Loan to refinance any outstanding Swingline Loan, and (iii) the Swingline Lender shall not be under any obligation to make any Swingline Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Domestic Borrowers may borrow under this Section, prepay under Section 2.05, and reborrow under this Section. Each Swingline Loan shall bear interest only at a rate based on the Base Rate plus the Applicable Rate. Immediately upon the making of a Swingline Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swingline Lender a risk participation in such Swingline Loan in an amount equal to the product of such Revolving Lender's Applicable Percentage times the amount of such Swingline Loan.

(b) Borrowing Procedures.

Each Swingline Borrowing shall be made upon the applicable Domestic Borrower's irrevocable notice to the Swingline Lender and the Administrative Agent, which may be given by: (A) telephone or (B) a Swingline Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Swingline Lender and the Administrative Agent of a Swingline Loan Notice. Each such Swingline Loan Notice must be received by the Swingline Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested date of the Borrowing (which shall be a Business Day). Promptly after receipt by the Swingline Lender of any Swingline Loan Notice, the Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swingline Loan Notice and, if not, the Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swingline Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Lender) prior to 2:00 p.m. on the date of the proposed Swingline Borrowing (A) directing the Swingline Lender not to make such Swingline Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swingline Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swingline Loan Notice, make

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the amount of its Swingline Loan available to the applicable Domestic Borrower at its office by crediting the account of such Domestic Borrower on the books of the Swingline Lender in immediately available funds.

(c) Refinancing of Swingline Loans.

(i) The Swingline Lender at any time in its sole discretion may request, on behalf of the Domestic Borrowers (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Revolving Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Facility and the conditions set forth in Section 4.02. The Swingline Lender shall furnish the Domestic Borrowers with a copy of the applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral provided by the Domestic Borrowers available with respect to the applicable Swingline Loan) for the account of the Swingline Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Domestic Borrowers in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender.

(ii) If for any reason any Swingline Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Revolving Lenders fund its risk participation in the relevant Swingline Loan and each Revolving Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swingline Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swingline Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or funded participation in the relevant Swingline Loan, as the case may be. A certificate of the Swingline Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff,

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counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, the Domestic Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the applicable Domestic Borrower of a Loan Notice). No such funding of risk participations shall relieve or otherwise impair the obligation of the Domestic Borrowers to repay Swingline Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Revolving Lender its Applicable Percentage thereof in the same funds as those received by the Swingline Lender.

(ii) If any payment received by the Swingline Lender in respect of principal or interest on any Swingline Loan is required to be returned by the Swingline Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swingline Lender in its discretion), each Revolving Lender shall pay to the Swingline Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swingline Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swingline Lender. The Swingline Lender shall be responsible for invoicing the Domestic Borrowers for interest on the Swingline Loans. Until each Revolving Lender funds its Base Rate Loan or risk participation pursuant to this Section to refinance such Revolving Lender's Applicable Percentage of any Swingline Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swingline Lender.

(f) Payments Directly to Swingline Lender. The Borrowers shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender.

## **2.05 Prepayments.**

(a) Optional.

(i) Any Borrower may, upon notice to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Revolving Loans in whole or in part without premium or penalty subject to Section 3.05; provided that, unless otherwise agreed by the Administrative Agent, (A) such notice must be received by the Administrative Agent not later than 11:00 a.m., (1) three (3) Business Days prior to any date of prepayment of Eurocurrency Rate Loans ~~denominated in Dollars~~, (2) four (4) Business Days (or five (5), in the case of prepayment of Loans denominated in Special Notice Currencies) prior to any date of prepayment of ~~Eurocurrency Rate Loans denominated in~~ Alternative ~~Currencies~~Currency Loans, and (3) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurocurrency Rate Loans ~~denominated in Dollars~~ shall be in a principal amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof; (C) any prepayment of ~~Eurocurrency Rate Loans denominated in~~ Alternative ~~Currencies~~Currency Loans shall be in a

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minimum principal amount of the Dollar Equivalent of \$1,000,000 or a whole multiple of the Dollar Equivalent of \$1,000,000 in excess thereof; and (D) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date, the currency and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurocurrency Rate Loans [or Alternative Currency Term Rate Loans](#) are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage). If such notice is given by a Borrower, the applicable Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Commitments as contemplated by Section 2.06, then such notice of prepayment may be revoked by written notice if such notice of termination is revoked in accordance with Section 2.06. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.15, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages.

(ii) The Domestic Borrowers may, upon notice to the Swingline Lender pursuant to delivery to the Swingline Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swingline Loans in whole or in part without premium or penalty; provided that, unless otherwise agreed by the Swingline Lender, (A) such notice must be received by the Swingline Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of \$100,000 or a whole multiple of \$100,000 in excess hereof (or, if less, the entire principal thereof then outstanding). Each such notice shall specify the date and amount of such prepayment. If such notice is given by a Domestic Borrower, the Domestic Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05.

(b) Mandatory; Revolving Outstandings. If for any reason the Total Revolving Outstandings at any time exceed the Revolving Facility at such time, the applicable Borrowers shall immediately prepay Revolving Loans, Swingline Loans and L/C Borrowings (together with all accrued but unpaid interest thereon) and/or Cash Collateralize the L/C Obligations, in each case, for which they are jointly and several liable, in an aggregate amount equal to such excess; provided, however, that the applicable Borrowers shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b) unless, after the prepayment of the Revolving Loans and Swingline Loans, the Total Revolving Outstandings exceed the Revolving Facility at such time.

Within the parameters of the applications set forth above, prepayments pursuant to this Section 2.05(b) shall be applied first to Base Rate Loans and [Alternative Currency Daily Rate Loans on a pro rata basis and](#) then to Eurocurrency [Rate Loans and Alternative Currency Term](#) Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.05(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

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## **2.06 Termination or Reduction of Commitments.**

(a) Optional. The Borrowers may, upon notice to the Administrative Agent, terminate the Revolving Facility, the Letter of Credit Sublimit or the Swingline Sublimit, or from time to time permanently reduce the Revolving Facility, the Letter of Credit Sublimit or the Swingline Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. three (3) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Borrowers shall not terminate or reduce (A) the Revolving Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Revolving Facility,

(B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swingline Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swingline Loans would exceed the Swingline Sublimit; provided, further, that a notice of termination of the Revolving Commitments delivered pursuant to this Section 2.06(a) may state that such notice is conditioned upon the effectiveness of other debt facilities or the consummation of other transactions, in which case such notice may be revoked by the Borrowers by written notice to the Administrative Agent at least one Business Day prior to the specified effective date if such condition is not satisfied.

(b) Mandatory. If after giving effect to any reduction or termination of Revolving Commitments under this Section 2.06, the Letter of Credit Sublimit, the Foreign Borrower Sublimit or the Swingline Sublimit exceeds the Revolving Facility at such time, the Letter of Credit Sublimit, Foreign Borrower Sublimit or the Swingline Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Foreign Borrower Sublimit, Swingline Sublimit or the Revolving Commitment under this Section 2.06. Upon any reduction of the Revolving Commitments, the Revolving Commitment of each Revolving Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. All fees in respect of the Revolving Facility accrued until the effective date of any termination of the Revolving Facility shall be paid on the effective date of such termination.

## **2.07 Repayment of Loans.**

(a) Revolving Loans. Each Borrower shall repay to the Revolving Lenders on the Maturity Date the aggregate principal amount of all Revolving Loans outstanding on such date for which it is jointly and severally liable.

(b) Swingline Loans. The Domestic Borrowers shall repay each Swingline Loan on the earlier to occur of (i) the date ten (10) Business Days after such Loan is made and (ii) the Maturity Date.

## **2.08 Interest and Default Rate.**

(a) Interest. Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period from the applicable borrowing date at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate for the Revolving Facility; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for the Revolving Facility; (iii) [each Alternative Currency Daily Rate Loan shall](#)

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bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Alternative Currency Daily Rate plus the Applicable Rate; (iv) each Alternative Currency Term Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Alternative Currency Term Rate for such Interest Period plus the Applicable Rate; and ~~(iii)~~ each Swingline Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for the Revolving Facility. To the extent that any calculation of interest or any fee required to be paid under this Agreement shall be based on (or result in) a calculation that is less than zero, such calculation shall be deemed zero for purposes of this Agreement.

(b) Default Rate.

(i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by any Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists (including a payment Event of Default), all outstanding Obligations (including Letter of Credit Fees) may accrue at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest Payments. Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

**2.09 Fees.**

In addition to certain fees described in subsections (h) and (i) of Section 2.03:

(a) Commitment Fee. The Domestic Borrowers shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Percentage, a commitment fee in Dollars equal to the Applicable Rate times the actual daily amount by which the Revolving Facility exceeds the sum of (i) the Outstanding Amount of Revolving Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.15. For the avoidance of doubt, the Outstanding Amount of Swingline Loans shall not be counted towards or considered usage of the Aggregate Commitments. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate

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during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees.

(i) The Domestic Borrowers shall pay to the Administrative Agent and the Arranger for its own account, in Dollars, fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The applicable Borrowers shall pay to the Lenders, in Dollars, such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified.

**2.9 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.**

(a) Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate) and for Loans denominated in Alternative Currencies (other than Alternative Currency Loans with respect to SARON) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest, including those with respect to Eurocurrency Rate Loans and Alternative Currency Loans determined by reference to SARON, shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365 day year), or, in the case of interest in respect of Loans denominated in Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) Financial Statement Adjustments or Restatements. If, as a result of any restatement of or other adjustment to the financial statements of the Parent and its Subsidiaries or for any other reason, the Borrowers or the Lenders determine that (i) the Consolidated Net Leverage Ratio as calculated by the Parent as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Net Leverage Ratio would have resulted in higher pricing for such period, the applicable Borrowers shall be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to any of the Borrowers under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under any provision of this Agreement to payment of any Obligations hereunder at the Default Rate or under Article VIII. Each Borrower's obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

**2.10 Evidence of Debt.**

(a) Maintenance of Accounts. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the

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Lenders to the applicable Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the applicable Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, each of the Borrowers shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount, currency and maturity of its Loans and payments with respect thereto.

(b) Maintenance of Records. In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

## **2.11 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by any Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Loans denominated in an Alternative Currency, all payments by any Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by any Borrower hereunder with respect to principal and interest on Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, any Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, such Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after 2:00 p.m., in the case of payments in Dollars, or (ii) after the Applicable Time specified by the Administrative Agent, in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Subject to Section 2.07(a) and as otherwise specifically provided for in this Agreement, if any payment to be made by any Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurocurrency Rate Loans or Alternative Currency Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of

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a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the 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 Borrowers that are jointly and severally liable with respect to such Borrowing severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds 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 (A) in the case of a payment to be made by such Lender, the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by any Borrower, the interest rate applicable to Base Rate Loans or, in the case of Alternative Currencies, in accordance with such market practice, in each case, as applicable. If any Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the applicable Borrower the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by a Borrower shall be without prejudice to any claim the applicable Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent.

Unless the Administrative Agent shall have received notice from the Borrowers prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the ~~applicable~~ Borrowers will not make such payment, the Administrative Agent may assume that the ~~applicable~~ Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the ~~Appropriate~~ Lenders or the L/C Issuer, as the case may be, the amount due. ~~In such event, if the applicable~~

With respect to any payment that the Administrative Agent makes for the account of the Lenders or the L/C Issuer hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrowers (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the ~~Appropriate~~ Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the ~~amount~~ Rescindable Amount so distributed to such Lender or the L/C Issuer, in ~~Same Day Funds~~ immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the ~~Overnight Rate~~ greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrowers with respect to any amount owing under this ~~subsection~~ paragraph (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the applicable Borrower by the Administrative

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Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Revolving Loans, to fund participations in Letters of Credit and Swingline Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each Borrowing (other than Swingline Borrowings) shall be made from the Appropriate Lenders, each payment of fees under Sections 2.09 and 2.03(h) and (i) shall be made for account of the Appropriate Lenders, and each termination or reduction of the amount of the Revolving Commitments shall be applied to the respective Revolving Commitments of the Lenders, pro rata according to the amounts of their respective Revolving Commitments; (ii) each Borrowing shall be allocated pro rata among the Lenders according to the amounts of their respective Revolving Commitments (in the case of the making of Revolving Loans) or their respective Loans that are to be included in such Borrowing (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of principal of Loans by any applicable Borrower shall be made for the account of the Appropriate Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them; and (iv) each payment of interest on Loans by any applicable Borrower shall be made for account of the Appropriate Lenders pro rata in accordance with the amounts of interest on the Loans then due and payable to the respective Appropriate Lenders.

## **2.12 Sharing of Payments by Lenders.**

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swingline Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

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(1) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(2) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrowers 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), (y) the application of Cash Collateral provided for in Section 2.14, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in L/C Obligations or Swingline Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section shall apply);

provided, that no payment received from or in respect of any Foreign Subsidiary or CFC Holding Company shall be applied to the Obligations of any Domestic Loan Party.

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

### **2.13 Cash Collateral.**

(a) Certain Credit Support Events. If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) any Borrower shall be required to provide Cash Collateral pursuant to Section 2.05 or 8.02(c), or (iv) there shall exist a Defaulting Lender, the applicable Borrowers shall promptly (in the case of clause (iii) above) or within one (1) Business Day (in all other cases) following any request by the Administrative Agent or the L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to Section 2.15(a)(iv) and any Cash Collateral provided by the Defaulting Lender). Additionally, if the Administrative Agent notifies the Parent at any time that the Outstanding Amount of all L/C Obligations at such time exceeds 105% of the Letter of Credit Sublimit then in effect, then within two (2) Business Days after receipt of such notice, the applicable Borrowers shall provide Cash Collateral for the Outstanding Amount of the L/C Obligations in an amount not less than the amount by which the Outstanding Amount of all L/C Obligations exceeds the Letter of Credit Sublimit.

(b) Grant of Security Interest. Each Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided by such Borrower as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.14(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, each applicable Borrower will,

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promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more blocked, non-interest bearing deposit accounts at Bank of America. The applicable Borrowers shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.14 or Sections 2.03, 2.05, 2.15 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Revolving Lender that is a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein; provided, that no Cash Collateral provided by any Foreign Loan Party shall be applied to the Obligations of any Domestic Loan Party.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi))) or (ii) the determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral (which determination shall be made upon the reasonable written request of the Borrowers); provided, however, (A) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (B) the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

## **2.14 Defaulting Lenders.**

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or Swingline Lender hereunder; third, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.14; fourth, as the Borrowers may request (so long as no Default or Event of 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; fifth, if so determined by the Administrative Agent and the Borrowers, to be held in a deposit account and released pro rata in

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order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (B) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to any Borrower as a result of any judgment of a court of competent jurisdiction obtained by such Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise as may be required under the Loan Documents in connection with any Lien conferred thereunder or directed by a court of competent jurisdiction; provided that (A) if (1) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Revolving Commitments hereunder without giving effect to Section 2.15(a)(v) and (B) no payment received from or in respect of any Foreign Loan Party shall be applied to the Obligations of any Domestic Borrower. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Fees. No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the applicable Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Letter of Credit Fees. Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.

(C) Defaulting Lender Fees. With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (B) above, the applicable Borrowers shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in ~~H/L/C~~ L/C Obligations and ~~Swing Line~~ Swingline

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Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving ~~Credit~~ Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 11.26, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the applicable Borrowers shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (A) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and  
(B) second, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.14.

(b) Defaulting Lender Cure. If the Borrowers, the Administrative Agent, Swingline Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of any Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

## **2.15 Increase in Revolving Facility.**

(a) Request for Increase. Provided there exists no Default ~~and the Suspension Period is not in effect at such time~~, upon notice to the Administrative Agent (which shall promptly notify the Revolving Lenders), the Borrowers may from time to time, request an increase in the Revolving Facility by an amount (for all such requests) not exceeding \$50,000,000 (an "Incremental Facility"); provided that (i) any such request for an Incremental Facility shall be in a minimum amount of \$10,000,000 and in increments of \$10,000,000, or, if less, the amount of the entire remaining unused Incremental Facility, and (ii) the Borrowers may make a maximum of three (3) such requests. At the time of sending such notice, the Borrowers (in consultation with the Administrative Agent) shall specify the time period within which each Revolving Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Revolving Lenders).

(b) Lender Elections to Increase. Each Revolving Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Revolving Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Revolving Lender not responding within such time period shall be deemed to have declined to increase its Revolving Commitment.

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(c) Notification by Administrative Agent; Additional Revolving Lenders. The Administrative Agent shall notify the Borrowers and each Revolving Lender of the Revolving Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase, and subject to the approval of the Administrative Agent, the L/C Issuer and the Swingline Lender, the Borrowers may also invite additional Eligible Assignees to become Revolving Lenders pursuant to a joinder agreement ("New Revolving Lenders") in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations. If the Revolving Facility is increased in accordance with this Section, the Administrative Agent and the Borrowers shall determine the effective date (the "Revolving Increase Effective Date") and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrowers, the Revolving Lenders and the New Revolving Lenders of the final allocation of such increase and the Revolving Increase Effective Date. On the Revolving Increase Effective Date, all outstanding Revolving Loans shall be reallocated among the Lenders (including any New Revolving Lenders) in accordance with the Lenders' respective revised Applicable Percentages.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Borrowers shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Revolving Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Borrowers, certifying that, before and after giving effect to such increase, (A) with respect to representations and warranties that contain a materiality qualification, be true and correct on and as of the on and as of the Revolving Increase Effective Date and, with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects, on and as of the Revolving Increase Effective Date, and except (x) that for purposes of this Section, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (y) except that such representations and warranties that relate solely to an earlier date shall be true and correct in all material respects as of such earlier date, and (B) both before and after giving effect to the Incremental Facility, no Default exists. The Borrowers shall deliver or cause to be delivered any other customary documents (including, without limitation, legal opinions and such deliverables set forth in Section 4.01(j)) as reasonably requested by the Administrative Agent in connection with any Incremental Facility. The applicable Borrowers shall prepay any Revolving Loans outstanding on the Revolving Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Revolving Commitments under this Section.

(f) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

(g) Incremental Facility. Except as otherwise specifically set forth herein, all of the other terms and conditions applicable to such Incremental Facility shall be identical to the terms and conditions applicable to the Revolving Facility (other than with respect to any upfront fees payable in respect thereof, if applicable); it being understood that the Applicable Margin applicable to the then existing Lenders in respect of their Revolving Commitments may be increased without the consent of any Lender in connection with the incurrence of any such additional Revolving Commitments or increases in Revolving Commitments under the Incremental Facility.

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## **2.16 Joint and Several Liability of the Borrowers.**

(a) Each of the Domestic Borrowers is accepting joint and several liability for the Obligations of all of the Borrowers hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Administrative Agent and the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of each other Domestic Borrower to accept joint and several liability for the Obligations. Each of the Foreign Borrowers is accepting joint and several liability (unless such joint and several liability (i) shall result in adverse tax consequences to any such Foreign Borrower or (ii) is not permitted by any Law applicable to such Foreign Borrower, in which either such case, the liability of such Foreign Borrower shall be several in nature) for the Obligations of all of the Foreign Borrowers hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Administrative Agent and the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each of the Foreign Borrowers and in consideration of the undertakings of each other Foreign Borrower to accept joint and several liability for the Obligations of the other Foreign Borrowers. Notwithstanding anything contained to the contrary in this Section 2.17 or in any Loan Document, no Foreign Borrower shall be obligated or have any liability with respect to any Obligations or Secured Obligations of the Domestic Borrowers or of any Domestic Subsidiary, (B) no Foreign Borrower shall be obligated as a Guarantor under Article X with respect to the Obligations or Secured Obligations of the Domestic Borrowers or any Domestic Subsidiary and (C) no payment received from or in respect of any Foreign Borrower shall be applied to the Obligations of any Domestic Borrower or Domestic Subsidiary.

(b) Each of the Borrowers, jointly and severally to the extent and subject to the limitations provided in Section 2.17(a), hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers with respect to the payment and performance of all of the Obligations of the Borrowers (including, without limitation, any Obligations arising under this Section 2.17) to the extent and subject to the limitations provided in Section 2.17(a), it being the intention of the parties hereto that all of the Obligations shall be the joint and several obligations of each of the applicable Borrowers without preferences or distinction among them. Where reference is made to the “applicable Borrower” or the “applicable Borrowers” with respect to any Obligations, it shall refer to the Borrowers that have joint and several liability for such Obligations in accordance with this Section 2.17 with (and including) the Borrower that borrowed the underlying Loan or requested the underlying Letter of Credit giving rise to such Obligations.

(c) Subject to the limitations set forth in Section 2.17(a), if and to the extent that any of the Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers having joint and several liability therefor will make such payment with respect to, or perform, such Obligation.

(d) The Obligations of each of the Borrowers under the provisions of this Section 2.17 constitute full recourse obligations of such Borrower enforceable against such Borrower to the full extent of its properties and assets.

(e) Except as otherwise expressly provided in this Agreement, each of the Borrowers, to the fullest extent permitted by applicable law, hereby waives notice of acceptance of its joint and several liability, notice of any Loans or other extensions of credit made under this Agreement, notice of any action at any time taken or omitted by the Administrative Agent or the Lenders under or in respect of any of the Obligations, and, generally, to the extent permitted by applicable law, all demands, notices (other than those required pursuant to the terms of this Agreement or the Loan Documents) and other formalities of every kind in connection with this Agreement. Each Borrower, to the fullest extent permitted by applicable law,

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hereby waives all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar law now or hereafter in effect, any right to require the marshaling of assets of the Borrowers and any other entity or Person primarily or secondarily liable with respect to any of the Obligations and all suretyship defenses generally. Each of the Borrowers, to the fullest extent permitted by applicable law, hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Lenders at any time or times in respect of any default by any of the Borrowers in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by the Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any of the Borrowers. Without limiting the generality of the foregoing, each of the Borrowers assents to any other action or delay in acting or failure to act on the part of the Lenders with respect to the failure by any of the Borrowers to comply with any of its respective Obligations including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.17, afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.17, it being the intention of each of the Borrowers that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of such the Borrowers under this Section 2.17 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each of the Borrowers under this Section 2.17 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, re-construction or similar proceeding with respect to any of the Borrowers, the Administrative Agent or the Lenders. The joint and several liability of the Borrowers hereunder as set forth in this Section 2.17 shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, membership, constitution or place of formation of any of the Borrowers, the Administrative Agent or the Lenders.

(f) Each of the Borrowers hereby agrees that the payment of any amounts due with respect to the indebtedness owing by any Borrower to any other Borrower is hereby subordinated to the prior payment in full in cash of the Obligations. Each Borrower hereby agrees that after the occurrence and during the continuance of any Event of Default, upon the written request of the Administrative Agent, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness of any other Borrower owing to such Borrower until the Facility Termination Date shall have occurred. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness before the Facility Termination Date occurs, such amounts shall be collected, enforced, received by such Borrower as trustee for the Administrative Agent and be paid over to the Administrative Agent for the *pro rata* accounts of the Lenders (in accordance with each such Lender's Applicable Percentage) to be applied to repay (or be held as security for the repayment of) the Obligations.

(g) The provisions of this Section 2.17 are made for the benefit of the Administrative Agent and the Lenders and their successors and assigns, and may be enforced in good faith by them from time to time against any or all of the applicable Borrowers as often as the occasion therefor may arise and without requirement on the part of the Administrative Agent or the Lenders first to marshal any of their claims or to exercise any of their rights against any other Borrower or to exhaust any remedies available to them against any other Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.17 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Administrative Agent or the Lenders upon the insolvency, bankruptcy or reorganization of any of the Borrowers or is repaid in good faith settlement of a pending or threatened

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avoidance claim, or otherwise, the provisions of this Section 2.17 will forthwith be reinstated in effect, as though such payment had not been made. The Borrowers hereby agree among themselves that, in connection with any payments made hereunder, each Borrower shall have contribution rights against the other Borrowers as permitted under applicable Law.

(h) Subject to Section 2.17(a), it is the intention and agreement of each Borrower and the Lenders that the obligations of any Borrower under this Agreement shall be valid and enforceable against such Borrower to the maximum extent permitted by applicable law. Accordingly, if any provision of this Agreement creating any obligation of any Borrower in favor of the Administrative Agent and the Lenders shall be declared to be invalid or unenforceable in any respect or to any extent, it is the stated intention and agreement of each Borrower, the Administrative Agent and the Lenders that any balance of the obligation created by such provision and all other obligations of such Borrower and any other Borrower to the Administrative Agent and the Lenders created by other provisions of this Agreement shall remain valid and enforceable. Likewise, if by final order a court of competent jurisdiction shall declare any sums which the Administrative Agent and the Lenders may be otherwise entitled to collect from any Borrower under this Agreement to be in excess of those permitted under any law (including any federal or state fraudulent conveyance or like statute or rule of law) applicable to such Borrower's obligations under this Agreement, it is the stated intention and agreement of each Borrower and the Administrative Agent and the Lenders that all sums not in excess of those permitted under such applicable law shall remain fully collectible by the Administrative Agent and the Lenders from the applicable Borrowers.

(i) Notwithstanding anything contained herein, the obligations of each Borrower under this Section 2.17 at any time shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code or any other Debtor Relief Laws.

## **2.17 Designated Borrowers.**

(a) Designated Borrowers. The Borrowers may at any time, upon not less than fifteen (15) Business Days' notice from the Borrowers to the Administrative Agent (or such shorter period as may be agreed by the Administrative Agent in its sole discretion), request to designate any additional Subsidiary of the Parent (an "Applicant Borrower") as a Designated Borrower to receive Loans hereunder by delivering to the Administrative Agent (which shall promptly deliver counterparts thereof to each Lender) a duly executed notice and agreement in substantially the form of Exhibit Q (a "Designated Borrower Request and Assumption Agreement"). The parties hereto acknowledge and agree that prior to any Applicant Borrower becoming entitled to utilize the credit facilities provided for herein (i) the Administrative Agent and the Lenders that are to provide Revolving Commitments and/or Loans in favor of an Applicant Borrower must each agree to such Applicant Borrower becoming a Designated Borrower and (ii) the Administrative Agent and such Lenders shall have received such supporting resolutions, incumbency certificates, opinions of counsel and other documents or information, in form, content and scope reasonably satisfactory to the Administrative Agent, as may be required by the Administrative Agent or the Lenders in their sole discretion, and Notes signed by such new Borrowers to the extent any Lender so requires (the requirements in clauses (i) and (ii) hereof, the "Designated Borrower Requirements"). If the Administrative Agent and all Lenders agree that an Applicant Borrower shall be entitled to receive Loans hereunder, then promptly following satisfaction of the Designated Borrower Requirements, the Administrative Agent shall send a notice (to be countersigned by the Lenders) in substantially the form of Exhibit R (a "Designated Borrower Notice") to the Parent and the Lenders specifying the effective date upon which the Applicant Borrower shall constitute a Designated Borrower for purposes hereof, whereupon each of the Lenders agrees to permit such Designated Borrower to receive Loans hereunder, on the terms and conditions set forth herein, and each of the parties agrees that such Designated Borrower otherwise shall be a Borrower for all purposes of

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this Agreement; provided that no Loan Notice or Letter of Credit Application may be submitted by or on behalf of such Designated Borrower until the date five (5) Business Days after such effective date.

(b) [Reserved].

(c) Appointment. Each Subsidiary of the Parent that is or becomes a “Designated Borrower” pursuant to this Section 2.18 hereby irrevocably appoints the Parent to act as its agent for all purposes of this Agreement and the other Loan Documents and agrees that (i) the Parent may execute such documents on behalf of such Designated Borrower as the Parent deems appropriate in its sole discretion and each Designated Borrower shall be obligated by all of the terms of any such document executed on its behalf, (ii) any notice or communication delivered by the Administrative Agent or the Lender to the Parent shall be deemed delivered to each Designated Borrower and (iii) the Administrative Agent or the Lenders may accept, and be permitted to rely on, any document, instrument or agreement executed by the Parent on behalf of each of the Loan Parties.

## **2.18 Designated Lenders.**

Each of the Administrative Agent, the L/C Issuer, the Swingline Lender and each Lender at its option may make any Credit Extension or otherwise perform its obligations hereunder through any Lending Office (each, a “Designated Lender”); provided that any exercise of such option shall not affect the obligation of any Borrower to repay any Credit Extension in accordance with the terms of this Agreement. Any Designated Lender shall be considered a Lender; provided that in the case of an Affiliate or branch of a Lender, all provisions applicable to a Lender shall apply to such Affiliate or branch of such Lender to the same extent as such Lender; provided that for the purposes only of voting in connection with any Loan Document, any participation by any Designated Lender in any outstanding Credit Extension shall be deemed a participation of such Lender.

## **2.19 Minimum Interest.**

(a) When entering into this Agreement, the Parties have made the bona fide assumption that interest payable under this Agreement is not and will not become subject to Swiss Withholding Tax.

(b) Notwithstanding paragraph (a) above, if any deduction or withholding is required by Swiss law, and should it be unlawful for the relevant Loan Party to comply with paragraph (a) of Section 3.01 for any reason where this would otherwise be required by the terms of Section 3.01 then:

(i) the applicable interest rate in relation to that interest payment shall be:

(A) the interest rate which would have applied to that interest payment as provided for by Article II in the absence of this Section 2.20 divided by;

(B) 1 (one) minus the rate at which the relevant deduction or withholding of Swiss Withholding Tax is required to be made (where the rate at which the relevant tax deduction is required to be made is for this purpose expressed as a fraction of 1 rather than as a percentage); and

(ii) that Loan Party shall:

(A) pay the relevant interest at the adjusted rate in accordance with paragraph

(b) above; and

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(B) make the deduction or withholding of Swiss Withholding Tax on the interest so recalculated,

and all references to a rate of interest under the Loan Documents shall be construed accordingly and apply to the deduction for Swiss Withholding Tax purposes on the recalculated interest payment.

(c) To the extent that interest payable by a Loan Party under a Loan Document becomes subject to Swiss Withholding Tax, each relevant Lender and each relevant Loan Party shall promptly cooperate in completing any procedural formalities (including submitting forms and documents required by the appropriate tax authority) to the extent possible and necessary (i) for the relevant Loan Party to obtain authorisation to make interest payments without them being subject to Swiss Withholding Tax and (ii) to ensure that any person which is entitled to a full or partial refund under any applicable double taxation treaty is so refunded.

(d) The relevant Loan Party shall provide the Lenders with such documents and information required for applying for a refund of such Swiss Withholding Tax. In the event Swiss Withholding Tax is refunded to a Lender by the Swiss Federal Tax Administration, the relevant Lender shall forward, after deduction of costs, such amount to the relevant Loan Party, unless an Event of Default has occurred and is continuing, in which case such amount shall be withheld until such Event of Default is cured or the Secured Obligations have been irrevocably paid in full.

### ARTICLE III

#### TAXES, YIELD PROTECTION AND ILLEGALITY

##### **3.01 Taxes.**

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account 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 Laws. If any applicable Laws (as determined in the good faith discretion of an applicable Withholding Agent) require 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 Laws and, to the extent that the withholding or deduction is made on account of Indemnified Taxes, 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 3.01) 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. Without limiting the provisions of subsection (a) above, 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.

(a) Tax Indemnifications.

(i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or

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asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. Each of the Loan Parties shall also, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify and shall make payment in respect thereof within ten (10) days after demand therefor, (A) the Administrative Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (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), (B) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (C) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(b) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority, as provided in this Section 3.01, the Borrowers 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 any return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(c) Status of Lenders; Tax Documentation.

(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 Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers 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 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or

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

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the applicable Borrower 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 such Borrower or the Administrative Agent), whichever of the following is applicable:

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

(2) executed originals of IRS Form W-8ECI;

(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 K-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 such 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-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit K-2 or Exhibit K-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are

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claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit K-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 applicable Borrower 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 such Borrower or the Administrative Agent), executed copies (or originals, as required) 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 applicable Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the applicable Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by such Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by such Borrower or the Administrative Agent as may be necessary for such Borrower 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.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the applicable Borrower and the Administrative Agent in writing of its legal inability to do so.

(d) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient 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 by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to such Loan Party pursuant to this subsection the payment of which would

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

(e) Defined Terms. For the purposes of this Section 3.01, the term “applicable Law” includes FATCA.

(f) Survival. Each party’s obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Revolving Commitments and the repayment, satisfaction or discharge of all other Obligations.

### **3.02 Illegality and Designated Lenders.**

(a) If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder or to make, maintain or fund or charge interest with respect to any Loan or Letter of Credit or to determine or charge interest rates based upon ~~the Eurocurrency~~ Relevant Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to determine or charge interest rates based upon a Relevant Rate or to purchase or sell, or to take deposits of, Dollars or any Alternative Currency in the applicable interbank market, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, (a) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Credit Extension or continue Eurocurrency Rate Loans or maintain Alternative Currency Loans in the affected currency or currencies or, in the case of ~~Eurocurrency Rate~~ Loans in Dollars, to make or maintain Eurocurrency Rate Loans or convert Base Rate Loans to Eurocurrency Rate Loans, shall be, in each case, suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist (which notice such Lender agrees to provide promptly). Upon receipt of such notice, (i) the applicable Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay all Eurocurrency Rate Loans or Alternative Currency Loans, as applicable, in the affected currency or currencies or, if applicable, ~~and such Loans are denominated in Dollars~~ convert all Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), ~~either in each case, immediately, or, in the case of Alternative Currency Term Rate Loans,~~ on the last day of the Interest Period therefor, ~~if such Lender may lawfully continue to maintain such Eurocurrency Alternative Currency Term Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans~~ and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate (which notice such Lender agrees to provide promptly). Upon any such prepayment or conversion, the applicable Borrowers shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

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(b) If, in any applicable jurisdiction, the Administrative Agent, the L/C Issuer or any Lender or any Designated Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Administrative Agent, the L/C Issuer or any Lender or its applicable Designated Lender to (i) perform any of its obligations hereunder or under any other Loan Document, (ii) to fund or maintain its participation in any Loan or Letter of Credit or (iii) issue, make, maintain, fund or charge interest or fees with respect to any Credit Extension to any Designated Borrower who is organized under the laws of a jurisdiction other than the United States, a State thereof or the District of Columbia such Person shall promptly notify the Administrative Agent, then, upon the Administrative Agent notifying the Borrowers, and until such notice by such Person is revoked, any obligation of such Person to issue, make, maintain, fund or charge interest or fees with respect to any such Credit Extension shall be suspended, and to the extent required by applicable Law, cancelled. Upon receipt of such notice, the Loan Parties shall, (A) repay that Person's participation in the Loans or other applicable Obligations on the last day of the Interest Period for each Loan or other Obligation occurring after the Administrative Agent has notified the Borrowers or, if earlier, the date specified by such Person in the notice delivered to the Administrative Agent (being no earlier than the last day of any applicable grace period permitted by applicable Law), (B) to the extent applicable to the L/C Issuer, Cash Collateralize that portion of applicable L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized and (C) take all reasonable actions requested by such Person to mitigate or avoid such illegality.

### **3.03 Inability to Determine Rates.**

(a) If in connection with any request for a Eurocurrency Rate Loan or an Alternative Currency Loan or a conversion of Base Rate Loans to Eurocurrency Rate Loans or a continuation ~~thereof of any such Loans, as applicable~~, (i) the Administrative Agent determines ~~that (A) deposits (whether in Dollars or an Alternative Currency) are not being offered to banks in (which determination shall be conclusive absent manifest error) that (A) no Successor Rate for the Relevant Rate for the applicable offshore interbank market for such currency for the applicable amount and Interest Period of~~ has been determined in accordance with Section 3.03(d) and the circumstances under clause (i) of Section 3.03(d) or the Scheduled Unavailability Date has occurred with respect to such Eurocurrency Relevant Rate Loan, as applicable, or (B) ~~(\*)~~ adequate and reasonable means do not otherwise exist for determining the Eurocurrency Relevant Rate for any applicable currency for any determination date(s) or requested Interest Period, as applicable, with respect to a proposed Eurocurrency Rate Loan ~~(whether denominated in Dollars or an Alternative Currency) Loan or for determining the LIBOR Daily Floating Rate~~ in connection with an existing or proposed Base Rate Loan ~~and (y) the circumstances described in Section 3.03(c)(i) do not apply~~ (in each case with respect to ~~this~~ clause (i), "Impacted Loans"), or (ii) the Administrative Agent or the Required Lenders determine that for any reason that the Eurocurrency Relevant Rate with respect to a proposed Loan for any requested Interest Period ~~with respect to a proposed Eurocurrency Rate Loan or~~ determination date(s) does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly ~~so~~ notify the ~~Borrowers~~ Borrower and ~~each Lender~~ all Lenders. Thereafter, ~~(\*)~~ the obligation of the Lenders to make or maintain ~~Eurocurrency Rate Loans~~ in the affected currency or currencies, as applicable, or to convert Base Rate Loans to Eurocurrency Rate Loans, shall be suspended (in each case to the extent of the affected Eurocurrency Rate Alternative Currency Loans or Interest Periods) Period or determination date(s), as applicable, and ~~(y)~~ (i) in the event of a determination described in the preceding sentence with respect to the ~~LIBOR Daily Floating~~ Eurocurrency Rate component of the Base Rate, the utilization of the ~~LIBOR Daily Floating~~ Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 3.03(a), until the Administrative Agent upon the instruction of the Required Lenders ~~in the case of clause (ii) above~~) revokes such notice. Upon receipt of such notice, (i) the applicable Borrower may revoke any pending request for a Borrowing of, or conversion to Eurocurrency Rate Loans, or Borrowing of, or continuation of

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~~Eurocurrency Rate Loans in the affected currency or currencies~~ (Alternative Currency Loans to the extent of the affected Eurocurrency Rate Alternative Currency Loans or Interest Periods) Period or determination date(s), as applicable or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans denominated in Dollars in the Dollar Equivalent of the amount specified therein, and (ii)(A) any outstanding Eurocurrency Rate Loans shall be deemed to have been converted to Base Rate Loans on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day) and (B) any outstanding affected Alternative Currency Loans, at the applicable Borrower's election, shall either (1) be converted into a Borrowing of Base Rate Loans denominated in Dollars in the Dollar Equivalent of the amount of such outstanding Alternative Currency Loan immediately, in the case of an Alternative Currency Daily Rate Loan or at the end of the applicable Interest Period (or the next succeeding Business Day if such day is not a Business Day), in the case of an Alternative Currency Term Rate Loan or (2) be prepaid in full prior to the applicable conversion; provided that if no election is made by the applicable Borrower (x) in the case of an Alternative Currency Daily Rate Loan, by the date that is three Business Days after receipt by the applicable Borrower of such notice or (y) in the case of an Alternative Currency Term Rate Loan, by the last day of the current Interest Period for the applicable Alternative Currency Term Rate Loan, the applicable Borrower shall be deemed to have elected clause (1) above.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a)(i) of this Section, the Administrative Agent, in consultation with the Borrowers and the Required Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a)(i) of this Section, (2) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrowers that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrowers written notice thereof.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document:

(i) On March 5, 2021 the Financial Conduct Authority ("FCA"), the regulatory supervisor of LIBOR's administrator ("IBA"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12-month U.S. dollar LIBOR tenor settings. On the earliest of (A) the date that all Available Tenors of U.S dollar LIBOR have permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023 and (C) the Early Opt-in Effective Date in respect of a SOFR Early Opt-in, if the then-current Benchmark is LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(ii) Upon (A) the occurrence of a Benchmark Transition Event or (B) a determination by the Administrative Agent that neither of the alternatives under clause (1) of the definition of Benchmark Replacement are available, the Benchmark Replacement will replace the then-current

Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders (and any such objection shall be conclusive and binding absent manifest error); provided that solely in the event that the then-current Benchmark at the time of such Benchmark Transition Event is not a SOFR-based rate, the Benchmark Replacement therefor shall be determined in accordance with clause (1) of the definition of Benchmark Replacement unless the Administrative Agent determines that neither of such alternative rates is available.

(y) On the Early Opt-in Effective Date in respect of an Other Rate Early Opt-in, the Benchmark Replacement will replace LIBOR for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document.

(iii) At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrowers may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrowers' receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrowers will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.

(iv) In connection with the implementation and administration of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(v) The Administrative Agent will promptly notify the Borrowers and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section 3.03(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.03(c).

(vi) At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or LIBOR), then the Administrative Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B) the

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Administrative Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

(vii) The following definitions are applicable for the purposes of this Section 3.03(c):

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

“Benchmark” means, initially, LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to Section 3.03(c) then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“Benchmark Replacement” means:

For purposes of Section 3.03(c)(i), the first alternative set forth below that can be determined by the Administrative Agent:

the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months’ duration, 0.42826% (42.826 basis points) for an Available Tenor of six-months’ duration, and 0.71513% (71.513 basis points) for an Available Tenor of twelve-months’ duration, or

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

provided that, if initially LIBOR is replaced with the rate contained in clause (b) above (Daily Simple SOFR plus the applicable spread adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its sole discretion, and the Administrative Agent notifies the Borrowers and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Benchmark Replacement shall be as set forth in clause (a) above; and

(2) For purposes of Section 3.03(c)(ii), the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrowers as the replacement Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by a Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

provided that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

Any Benchmark Replacement shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative

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Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

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

“Benchmark Transition Event” means, with respect to any then-current Benchmark other than LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark or a Governmental Authority with jurisdiction over such administrator announcing or stating that all Available Tenors are or will no longer be representative, or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, provided that, at the time of such statement or publication, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide any representative tenors of such Benchmark after such specific date.

“Daily Simple SOFR” with respect to any applicable determination date means the secured overnight financing rate (“SOFR”) published on such date by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source).

“Early Opt-in Effective Date” means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

“Early Opt-in Election” means the occurrence of:

a determination by the Administrative Agent, or a notification by the Borrowers to the Administrative Agent that the Borrowers have made a determination, that U.S. dollar-denominated syndicated credit facilities currently being executed, or that include language similar to that contained in Section 3.03(c), are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, and

the joint election by the Administrative Agent and the Borrowers to replace LIBOR with a Benchmark Replacement and the provision by the Administrative Agent of written notice of such election to the Lenders.

“Other Rate Early Opt-in” means the Administrative Agent and the Borrowers have elected to replace LIBOR with a Benchmark Replacement other than a SOFR-based rate pursuant to (1) an Early Opt- in Election and (2) Section 3.03(c)(ii) and paragraph (2) of the definition of “Benchmark Replacement”.

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“SOFR Early Opt-in” means the Administrative Agent and the Borrowers have elected to replace LIBOR pursuant to (1) an Early Opt-in Election and (2) Section 3.03(c)(i) and paragraph (1) of the definition of “Benchmark Replacement”.

“Term SOFR” means, for the applicable corresponding tenor (or if any Available Tenor of a Benchmark does not correspond to an Available Tenor for the applicable Benchmark Replacement, the closest corresponding Available Tenor and if such Available Tenor corresponds equally to two Available Tenors of the applicable Benchmark Replacement, the corresponding tenor of the shorter duration shall be applied), the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

~~(d)~~ ~~(e)~~ Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the ~~Borrower~~Borrowers or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the ~~Borrower~~Borrowers) that the ~~Borrower~~Borrowers or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining ~~LIBOR~~the Relevant Rate for ~~any requested Interest Period, including, without limitation, an Alternative Currency~~ because ~~none of the LIBOR Screen Rate~~tenors of such Relevant Rate (including any forward- looking term rate thereof) is ~~not~~available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the ~~administrator of the LIBOR Screen Rate or a Governmental~~Applicable Authority ~~having jurisdiction over the Administrative Agent~~ has made a public statement identifying a specific date after which ~~LIBOR or all tenors of the LIBOR Screen~~Relevant Rate for an Alternative Currency (including any forward-looking term rate thereof) shall or will no longer be ~~representative or~~ made available, or used for determining the interest rate of loans ~~denominated in such Alternative Currency, or shall or will otherwise cease~~, provided that, ~~in each case,~~ at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide ~~LIBOR after such specific date (such specific date~~representative tenor(s) of the Relevant Rate for such Alternative Currency (the latest date on which all tenors of the Relevant Rate for such Alternative Currency (including any forward-looking term rate thereof) are no longer ~~representative or available permanently or indefinitely,~~ the “Scheduled Unavailability Date”); or

(iii) syndicated loans currently being executed, ~~or that include language similar to that contained in this Section 3.03 and agented in the U.S.,~~ are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace ~~LIBOR,~~the Relevant Rate for an Alternative Currency;

or if the events or circumstances of the type described in Section 3.03(d)(i), (ii) or (iii) have occurred with respect to the Successor Rate then in effect, then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the BorrowerBorrowers may amend this Agreement ~~to replace LIBOR with (x) one or more SOFR-Based Rates or (y) another alternate~~solely for the purpose of replacing the Relevant Rate for an Alternative Currency or any then current Successor Rate for an Alternative Currency in accordance with this Section 3.03 with an alternative benchmark rate, giving due consideration to any evolving or then existing convention for similar ~~U.S. dollar denominated syndicated credit facilities syndicated and agented in the U.S. and denominated in such Alternative Currency~~ for such alternative benchmarks, and, in each case, including any mathematical or other adjustments to such benchmark giving

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due consideration to any evolving or then existing convention for similar ~~U.S. dollar denominated syndicated~~ credit facilities syndicated and agented in the U.S. and denominated in such Alternative Currency for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically (updated ~~(the “Adjustment;”~~ and any such proposed rate, including for the avoidance of doubt, any adjustment thereto, a ~~“LIBOR-Successor Rate”~~), and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the ~~Borrower~~Borrowers unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders ~~(A) in the case of an amendment to replace LIBOR with a rate described in clause (x), object to the Adjustment; or (B) in the case of an amendment to replace LIBOR with a rate described in clause (y), object to such amendment.~~

The Administrative Agent will promptly (in one or more notices) notify the Borrowers and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that ~~for to the avoidance of doubt, in the case of clause (A), the Required Lenders shall not be entitled to object to any SOFR Based Rate contained in any such amendment. Such LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such LIBOR~~extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

~~If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) the Eurodollar Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein. Notwithstanding anything else herein, if at any definition of LIBOR time any Successor Rate shall provide that in no event shall such LIBOR as so determined would otherwise be less than zero, the Successor Rate be less than one percent (1%) will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.~~

In connection with the implementation of a ~~LIBOR-Successor Rate~~, the Administrative Agent will have the right to make ~~LIBOR-Successor-Rate~~ Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such ~~LIBOR-Successor-Rate~~ Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

~~For purposes hereof:~~

~~“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters as~~

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~~may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such LIBOR Successor Rate 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 LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement).~~

~~“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York for the purpose of recommending a benchmark rate to replace LIBOR in loan agreements similar to this Agreement.~~

~~“SOFR” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source) and, in each case, that has been selected or recommended by the Relevant Governmental Body.~~

~~“SOFR Based Rate” means SOFR or Term SOFR.~~

~~“Term SOFR” means the forward-looking term rate for any period that is approximately (as determined by the Administrative Agent”) as long as any of the Interest Period options set forth in the definition of “Interest Period” and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.~~

### **3.04 Increased Costs; Reserves on Eurocurrency Rate Loans.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04~~(de)~~) or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement ~~or~~, Eurocurrency Rate Loans or Alternative Currency Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or

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maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the applicable Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the applicable Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Mandatory Costs. If any Lender or the L/C Issuer incurs any Mandatory Costs attributable to the Obligations, then from time to time the applicable Borrowers will pay (or cause the applicable Designated Borrower to pay) to such Lender or the L/C Issuer, as the case may be, such Mandatory Costs. Such amount shall be expressed as a percentage rate per annum and shall be payable on the full amount of the applicable Obligations.

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

(e) Reserves on Eurocurrency Rate Loans. The applicable Borrowers shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which shall be due and payable on each date on which interest is payable on such Loan, provided the applicable Borrowers shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

(f) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the applicable Borrowers shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrowers of the Change in Law giving

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rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

### **3.05 Compensation for Losses.**

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the applicable Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by any Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by such Borrower;

(c) any assignment of a Eurocurrency Rate Loan [or Alternative Currency Term Rate Loan](#) on a day other than the last day of the Interest Period therefor as a result of a request by any Borrower pursuant to Section 11.13; or

(d) any failure by any Borrower to make payment of any Loan or drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency;

excluding any loss of anticipated profits, any foreign exchange losses and Applicable Margin, but including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract. The applicable Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

A certificate of any Lender setting forth any amount which such Lender is entitled to receive pursuant to this Section 3.05 and the calculation of such amount in reasonable detail shall be delivered to the Borrowers and shall be conclusive absent manifest error. The applicable Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or requires the applicable Borrowers to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment

(i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The

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Borrowers hereby agree to pay all reasonable out of pocket costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, 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 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrowers may replace such Lender in accordance with Section 11.13.

### **3.07 Survival.**

All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and the Facility Termination Date.

## **ARTICLE IV**

### **CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

#### **4.01 Conditions of Initial Credit Extension.**

The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) Execution of Credit Agreement; Loan Documents. The Administrative Agent shall have received (i) counterparts of this Agreement, executed by a Responsible Officer of each Loan Party and a duly authorized officer of each Lender, (ii) for the account of each Lender requesting a Note, a Note executed by a Responsible Officer of each Borrower, (iii) counterparts of the Ratification Agreement, and each other Collateral Document, as applicable, executed by a Responsible Officer of the applicable Loan Parties and a duly authorized officer of each other Person party thereto, as applicable and (iv) counterparts of any other Loan Document, executed by a Responsible Officer of the applicable Loan Party and a duly authorized officer of each other Person party thereto.

(b) Officer's Certificate. The Administrative Agent shall have received an Officer's Certificate dated the Closing Date, certifying as to the Organization Documents of each Loan Party (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority), the resolutions of the governing body of each Loan Party (including, with respect to a Swiss Loan Party, (i) a copy of minutes of a meeting (or of a circular resolution) of the board of directors of such Swiss Loan Party approving the Loan Documents to which it is a party and (ii) a copy of minutes of a meeting of the general meeting of shareholders of such Swiss Loan Party approving the Loan Documents to which it is a party), the good standing, existence or its equivalent of each Loan Party and of the incumbency (including specimen signatures) of the Responsible Officers of each Loan Party.

(c) Legal Opinions of Counsel. The Administrative Agent shall have received an opinion or opinions (including, if reasonably requested by the Administrative Agent, local counsel opinions) of counsel for the Loan Parties, dated the Closing Date and addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent.

(d) Financial Statements. The Administrative Agent and the Lenders shall have received copies of (A) the financial statements referred to in Section 5.05, (B) audited financial statements of the Parent and its Subsidiaries for the years ended January 31, 2016 and January 31, 2017, and (C) a set of

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projections including the projected financial performance of the Parent and its Subsidiaries through the Maturity Date prepared in good faith based upon assumptions believed to be reasonable at the time prepared and at the time provided, each in form and substance reasonably satisfactory to each of them.

(e) Personal Property Collateral. The Administrative Agent shall have received, in form and substance reasonably satisfactory to the Administrative Agent:

(i) (A) a completed Perfection Certificate for each Domestic Loan Party and a completed Information Certificate for each Foreign Loan Party, searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Domestic Loan Party and each other jurisdiction deemed reasonably appropriate by the Administrative Agent, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens and (B) tax lien, judgment and bankruptcy searches in such jurisdictions as are deemed reasonably appropriate by the Administrative Agent;

(ii) patent/trademark/copyright filings in suitable form for filing with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, as reasonably requested by the Administrative Agent in order to perfect the Administrative Agent's security interest in the Intellectual Property registered or pending in the United States;

(iii) completed UCC financing statements for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral;

(iv) stock or membership certificates, if any, evidencing the Pledged Equity and undated stock or transfer powers duly executed in blank; in each case to the extent such Pledged Equity is certificated (it being understood that any Loan Party and any Subsidiary or other issuer thereof will be obligated to cause any such Pledged Equity not already certificated to become certificated);

(v) in the case of any personal property Collateral located at premises leased by a Loan Party and set forth on Schedule 5.21(d)(ii) with respect to which a Landlord Waiver or similar letter, consent or ~~waiver~~waiver is required by Administrative Agent, evidence reasonably satisfactory to the Administrative Agent that the Borrowers shall have used commercially reasonable efforts to obtain consents and waivers from the landlords of such real property to the extent required to be delivered in connection with Section 6.14 (such letters, consents and waivers shall be in form and substance reasonably satisfactory to the Administrative Agent, it being acknowledged and agreed that any Landlord Waiver is satisfactory to the Administrative Agent); and

(vi) to the extent required to be delivered pursuant to the terms and conditions of the Collateral Documents, all instruments, documents and chattel paper in the possession of any of the Loan Parties, together with allonges or assignments as may be necessary or appropriate to create and perfect the Administrative Agent's and the Lenders' security interest in such Collateral.

(f) Liability, Casualty, Property and Business Interruption Insurance. The Administrative Agent shall have received copies of insurance policies and summaries, certificates of insurance, declaration pages and endorsements of insurance requested by the Administrative Agent evidencing liability, casualty, property, terrorism and business interruption insurance meeting the requirements set forth herein or in the Collateral Documents or as required by the Administrative Agent. The Loan Parties shall have delivered to the Administrative Agent an Authorization to Share Insurance Information.

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(g) Financial Condition Certificate. The Administrative Agent shall have received a certificate or certificates executed by a Responsible Officer of the Parent as of the Closing Date, as to certain financial matters, substantially in the form of Exhibit N.

(h) Loan Notice. The Administrative Agent shall have received a Loan Notice with respect to the Loans to be made on the Closing Date.

(i) Existing Indebtedness of the Loan Parties. The Administrative Agent and the Lenders shall be satisfied that there is no outstanding Indebtedness for borrowed money of each Borrower and its Subsidiaries (other than Indebtedness permitted to exist pursuant to Section 7.02).

(j) KYC Information.

(i) Upon the reasonable request of any Lender made at least ten (10) days prior to the Closing Date, the Borrowers shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, in each case at least three (3) days prior to the Closing Date.

(ii) At least five (5) days prior to the Closing Date, any Borrower that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall deliver, to any requesting Lender, a Beneficial Ownership Certification in relation to such Borrower.

(k) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate signed by a Responsible Officer of Parent as to the financial condition, solvency and related matters of the Parent and its Subsidiaries, after giving effect to the initial borrowings under the Loan Documents and the other transactions contemplated hereby.

(l) Consents. The Administrative Agent shall have received evidence that all members, boards of directors, governmental, shareholder and material third party consents and approvals necessary in connection with the entering into of this Agreement and the other Loan Documents have been obtained.

(m) Fees and Expenses. The Administrative Agent and the Lenders shall have received all fees and expenses (including the fees and expenses of counsel (including any local counsel) for the Administrative Agent invoiced at least one Business Day prior to the Closing Date), if any, owing pursuant to the Loan Documents.

(n) Licensing Requirements. The Administrative Agent, Swingline Lender and L/C Issuer and each Lender shall have obtained all applicable licenses, consents, permits and approvals as deemed necessary by such Lender in order to execute and perform the transactions contemplated by the Loan Documents.

(o) Material Adverse Effect. There shall not have occurred since January 31, 2018 any event or condition that has had or could be reasonably expected, either individually or in the aggregate, to have a Material Adverse Effect.

(p) No Litigation. The absence of 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 that could reasonably be expected to have a Material Adverse Effect, except for the Watch Tariff Matter.

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(q) Due Diligence. The Lenders shall have completed a due diligence investigation of the Borrowers and its Subsidiaries in scope, and with results, satisfactory to the Lenders, including, without limitation, U.S. Department of Treasury Office of Foreign Assets Control, Foreign Corrupt Practices Act (“FCPA”) and “know your customer” due diligence.

(r) Other Documents. All other documents provided for herein or which the Administrative Agent or any other Lender may reasonably request or require.

(s) Additional Information. Such additional information and materials which the Administrative Agent and/or any Lender shall reasonably request or require.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

#### **4.02 Conditions to all Credit Extensions**

The obligation of each Lender and the L/C Issuer to honor any Request for Credit Extension is subject to the following conditions precedent:

(a) Representations and Warranties. The representations and warranties of the Borrowers and each other Loan Party contained in Article II, Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct on and as of the date of such Credit Extension and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects on and as of the date of such Credit Extension, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively, except that such representations and warranties that relate solely to an earlier date shall be true and correct as of such earlier date (or with respect to such representations and warranties that do not contain a materiality qualification, be true and correct in all material respects as of such earlier date).

(b) Default. No Default shall have occurred and be continuing, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) Request for Credit Extension. The Administrative Agent and, if applicable, the L/C Issuer or the Swingline Lender, shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) Designated Borrower. If the applicable Borrower is a Designated Borrower, then the conditions of Section 2.18 to the designation of such Borrower as a Designated Borrower shall have been met to the satisfaction of the Administrative Agent.

(e) Credit Extension of Alternative Currency. In the case of a Credit Extension to be denominated in an Alternative Currency, such currency remains an Eligible Currency.

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(f) Legal Impediment. There shall be no impediment, restriction, limitation or prohibition imposed under Law or by any Governmental Authority, as to the proposed financing under the Loan Documents or the repayment thereof or as to rights created under any Loan Document or as to application of the proceeds of the realization of any such rights.

Each Request for Credit Extension submitted by any Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE V REPRESENTATIONS AND

### WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent and the Lenders, as of the date made or deemed made, that:

#### **5.01 Existence, Qualification and Power.**

Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (a) (with respect to Subsidiaries that are not Loan Parties) (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. The copy of the Organization Documents of each Loan Party provided to the Administrative Agent pursuant to the terms of Section 4.01(b) is a true and correct copy of each such document as of the Closing Date, each of which is valid and in full force and effect as of the Closing Date.

#### **5.02 Authorization; No Contravention.**

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, except for any conflict, breach or contravention that, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law in any material respect.

#### **5.03 Governmental Authorization; Other Consents.**

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the

Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, other than (i) authorizations, approvals, actions, notices and filings which have been duly obtained and (ii) filings to perfect the Liens created by the Collateral Documents.

#### **5.04 Binding Effect.**

This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principals of equity.

#### **5.05 Financial Statements; No Material Adverse Effect.**

(a) **Audited Financial Statements.** The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Parent and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholder's equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Parent and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) **Quarterly Financial Statements.** The unaudited Consolidated balance sheets of the Parent and its Subsidiaries dated July 31, 2018, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Parent and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) **Material Adverse Effect.** Since the date of the balance sheet included in the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) **Forecasted Financials.** The Consolidated forecasted balance sheets, statements of income and cash flows of the Parent and its Subsidiaries delivered pursuant to Section 4.01 or Section 6.01 were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Parent's good faith estimate of its future financial condition and performance.

#### **5.06 Litigation.**

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after reasonably diligent investigation, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any Subsidiary or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document or any of the transactions contemplated hereby, or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect except for the Watch Tariff Matter.

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#### **5.07 No Default.**

Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

#### **5.08 Ownership of Property.**

Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### **5.09 Environmental Compliance.**

(a) The Loan Parties and their respective Subsidiaries review in the ordinary course of business the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Loan Parties have reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Neither any Loan Party nor any of its Subsidiaries is undertaking, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner not reasonably expected to result in liability to any Loan Party or any of its Subsidiaries that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### **5.9 Insurance.**

The properties of the Borrowers and their Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrowers, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates. Such insurance coverage of the Loan Parties as in effect on the Closing Date is outlined as to carrier, policy number, expiration date, type, and amount on Schedule 5.10 and such insurance coverage complies with the requirements set forth in this Agreement and the other Loan Documents.

#### **5.10 Taxes.**

Each Loan Party has filed all federal, material state and other material tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Loan Party that would, if made, have a Material Adverse Effect, nor

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is there any tax sharing agreement applicable to any Loan Party. The filing and recording of any and all documents required to perfect the security interests granted to the Administrative Agent (for the ratable benefit of the Secured Parties) will not result in any documentary, stamp or other taxes.

#### **5.11 ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state laws, except for such non-compliance as could not reasonably be expected to result in any liability in excess of the Threshold Amount. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or is subject to a favorable opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS, and, to the best knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status, except where the lack or absence of such qualification could not reasonably be expected to result in any liability in excess of the Threshold Amount.

(b) There are no pending or, to the best knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to result in any liability in excess of the Threshold Amount. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in any liability in excess of the Threshold Amount.

(c) Except as could not reasonably be expected to result in any liability in excess of the Threshold Amount, no ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan.

(d) Neither the Borrowers nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (i) on the Closing Date, those listed on Schedule 5.12 hereto and (ii) thereafter, Pension Plans that do not result in any representation contained in this Section 5.12 being untrue.

(e) With respect to each scheme or arrangement mandated by a government other than the United States (a “Foreign Government Scheme or Arrangement”) and with respect to each employee benefit plan maintained or contributed to by any Loan Party or any Subsidiary of any Loan Party that is not subject to United States law (a “Foreign Plan”), except, in each case, as could not reasonably be expected to result in any liability in excess of the Threshold Amount:

(i) any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices;

(ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and

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(iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

(f) Each Borrower represents and warrants as of the Closing Date that the Borrowers are not and will not be using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Revolving Loans, the Letters of Credit or the Revolving Commitments.

#### **5.12 Margin Regulations; Investment Company Act.**

(a) Margin Regulations. The Borrowers are not engaged and will not engage, principally or as one of their important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than twenty-five percent (25%) of the value of the assets (either of the Borrowers only or of the Borrowers and their Subsidiaries on a Consolidated basis) subject to the provisions of Section 7.01 or Section 7.05 or subject to any restriction contained in any agreement or instrument between the Borrowers and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 8.01(e) will be margin stock.

(b) Investment Company Act. None of the Borrowers, any Person Controlling the Borrowers, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

#### **5.13 Disclosure.**

Each Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries or any other Loan Party is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No written report, financial statement, certificate or other written information (other than financial models, other forward-looking information and information of a general economic or industry-specific nature) furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished), contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (after giving effect to all supplements thereto) in any material respect; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

#### **5.14 Compliance with Laws.**

Each Loan Party and each Subsidiary thereof is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### **5.15 Solvency.**

The Parent and its Subsidiaries on a Consolidated basis are Solvent.

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## **5.16 Casualty, Etc.**

Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

## **5.17 Sanctions Concerns and Anti-Corruption Laws.**

(a) **Sanctions Concerns.** No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties and their Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction. [The Borrowers and their respective Subsidiaries \(i\) conduct their businesses in compliance in all material respects with all applicable Sanctions, \(ii\) during the period not barred by applicable statutes of limitation, have conducted their businesses in compliance in all material respects with all applicable Sanctions and \(iii\) have instituted and maintained policies and procedures reasonably designed to promote and achieve compliance with all applicable Sanctions.](#)

(b) **Anti-Corruption Laws.** The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other ~~similar~~[applicable](#) anti-corruption legislation or anti-money laundering legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

## **5.18 Responsible Officers.**

Set forth on [Schedule 1.01\(c\)](#) are Responsible Officers, holding the offices indicated next to their respective names, as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02 and such Responsible Officers are the duly elected and qualified officers or duly appointed authorized signatories of such Loan Party and are duly authorized to execute and deliver, on behalf of the respective Loan Party, this Agreement, the Notes and the other Loan Documents.

## **5.19 Subsidiaries; Equity Interests; Loan Parties.**

(a) **Subsidiaries, Joint Ventures, Partnerships and Equity Investments.** Set forth on Schedule 5.20(a), is the following information which is true and complete in all respects as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02: (i) a complete and accurate list of all Subsidiaries, joint ventures and partnerships and other equity investments of the Loan Parties as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02, (ii) the number of shares of each class of Equity Interests in each Loan Party outstanding, (iii) the percentage of outstanding shares of each class of Equity Interests owned by the Loan Parties and their Subsidiaries and (iv) the class or nature of such Equity Interests in each Loan Party (i.e. voting, non-voting, preferred, etc.). The outstanding Equity Interests in all Subsidiaries are validly issued, fully paid and non-assessable (to the extent such concepts are applicable) and are owned free and clear of all Liens other than Permitted Liens. There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors', buy/sell and put/call provisions in joint venture agreements and nominees' shares required under

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applicable Law) of any nature relating to the Equity Interests of any Loan Party or any Subsidiary thereof, except as permitted under the Loan Documents.

(b) Loan Parties. Set forth on Schedule 5.20(b) is a complete and accurate list of all Loan Parties, showing as of the Closing Date, or as of the last date such Schedule was required to be updated in accordance with Section 6.02 (as to each Loan Party), (i) the exact legal name, (ii) any former legal names of such Loan Party in the four (4) months prior to the Closing Date, (iii) the jurisdiction of its incorporation or organization, as applicable, (iv) the type of organization, (v) the jurisdictions in which such Loan Party is qualified to do business, (vi) the address of its chief executive office, (vii) the address of its principal place of business, (viii) its U.S. federal taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation or organization, (ix) the organization identification number, (x) ownership information (e.g. publicly held or if private or partnership, the owners and partners of each of the Loan Parties) and (xi) the industry or nature of business of such Loan Party.

## **5.20 Collateral Representations.**

(a) Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Permitted Liens) on all right, title and interest of the respective Loan Parties in the Collateral described therein to the extent required by such Collateral Documents. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

(b) Intellectual Property. Set forth on Schedule 5.21(b), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02, is a list of all material registered or issued Intellectual Property in the United States (including all applications for registration and issuance and all domain names) owned by each of the Loan Parties.

(c) Pledged Equity Interests. Set forth on Schedule 5.21(c) is a list as of the Closing Date of (i) all Pledged Equity and (ii) all other Equity Interests required to be pledged to the Administrative Agent pursuant to the Collateral Documents (in each case, detailing the Grantor (as defined in the Security Agreement)), the Person whose Equity Interests are pledged, the number of shares being pledged of each class of Equity Interests, the certificate number and percentage ownership of outstanding shares of each class of Equity Interests represented by the Equity Interests being pledged and the class or nature of the Equity Interests being pledged (i.e. voting, non-voting, preferred, etc.).

(d) Properties. Set forth on Schedule 5.21(d)(i), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02, is a list of all Real Properties (including (i) the name of the Loan Party owning such Real Property, (ii) the number of buildings located on such Real Property, (iii) the property address, (iv) the city, county, state and zip code which such Real Property is located). Set forth on Schedule 5.21(d)(ii), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 6.02, is a list of (A) each headquarter location of the Loan Parties, (B) each other location where any significant administrative or governmental functions are performed, (C) each other location where the Loan Parties maintain any material books or records (electronic or otherwise) and (D) each location where any personal property Collateral is located at any premises owned or leased by a Loan Party with a Collateral value in excess of \$2,000,000 (in each case, including (1) an indication if such location is leased or owned, (2), if leased, the name of the lessor, and if owned, the name of the Loan Party owning such property, (3) the address of such property (including, the city, state and zip code) and (4) to the extent owned, the approximate fair market value of such property).

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(e) Material Contracts. Set forth on Schedule 5.21(e) is a complete and accurate list of all Material Contracts of the Borrowers and their Subsidiaries as of the Closing Date.

#### **5.21 Intellectual Property; Licenses, Etc.**

Each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the material trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of the Borrowers, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any of its Subsidiaries infringes upon any rights held by any other Person. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrowers, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

#### **5.22 Labor Matters.**

There are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrowers or any of their Subsidiaries as of the ClosingThird Amendment Effective Date and neither the Borrowers nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five (5) years preceding the ClosingThird Amendment Effective Date.

#### **5.23 Beneficial Ownership Certification.**

As of the ClosingThird Amendment Effective Date, the information included in any Beneficial Ownership Certification, if applicable, delivered to any Lender on or prior to the ClosingThird Amendment Effective Date, is true and correct in all respects.

#### **5.24 EEA Affected Financial Institutions; Covered Entities.**

No Loan Party is an EEA Affected Financial Institution. No Loan Party is a Covered Entity.

#### **5.25 Representations as to Foreign Obligors.**

Each of the Parent and each Foreign Obligor represents and warrants to the Administrative Agent and the Lenders that:

(a) Such Foreign Obligor is subject to civil and commercial Laws with respect to its obligations under this Agreement and the other Loan Documents to which it is a party (collectively as to such Foreign Obligor, the "Applicable Foreign Obligor Documents"), and the execution, delivery and performance by such Foreign Obligor of the Applicable Foreign Obligor Documents constitute and will constitute private and commercial acts and not public or governmental acts. Neither such Foreign Obligor nor any of its property has any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under the laws of the jurisdiction in which such Foreign Obligor is organized and existing in respect of its obligations under the Applicable Foreign Obligor Documents.

(b) The Applicable Foreign Obligor Documents are in proper legal form under the Laws of the jurisdiction in which such Foreign Obligor is organized and existing for the enforcement thereof against such Foreign Obligor under the Laws of such jurisdiction, and to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Foreign Obligor Documents. It is not necessary to

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ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Foreign Obligor Documents that the Applicable Foreign Obligor Documents be filed, registered or recorded with, or executed or notarized before, any court or other authority in the jurisdiction in which such Foreign Obligor is organized and existing or that any registration charge or stamp or similar tax be paid on or in respect of the Applicable Foreign Obligor Documents or any other document, except for (i) any such filing, registration, recording, execution or notarization as has been made or is not required to be made until the Applicable Foreign Obligor Document or any other document is sought to be enforced and (ii) any charge or tax as has been timely paid.

(c) There is no tax, levy, impost, duty, fee, assessment or other governmental charge, or any deduction or withholding, imposed by any Governmental Authority in or of the jurisdiction in which such Foreign Obligor is organized and existing either (i) on or by virtue of the execution or delivery of the Applicable Foreign Obligor Documents or (ii) on any payment to be made by such Foreign Obligor pursuant to the Applicable Foreign Obligor Documents, except as has been disclosed to the Administrative Agent.

(d) Each Swiss Loan Party is in compliance with the Swiss Non-Bank Rules, provided that a Swiss Borrower shall not be in breach of this representation if its number of creditors in respect of the Swiss 10 Non-Bank Rule is exceeded solely by reason of (i) a failure by one or more Lenders to comply with their obligations under paragraph (b)(iii) of Section 11.06 or (ii) an initial Lender ceasing to be a Swiss Qualifying Bank other than as a result of any change after the date it became an initial Lender under this Agreement in (or in the interpretation, administration, or application of) any law or treaty, or any published practice or published concession of any relevant taxing authority. For the purposes of compliance with this representation each Swiss Borrower shall assume that at any time there may be up to 10 (ten) creditors that are Swiss Non-Qualifying Banks under this Agreement (irrespective of whether or not there are, at any time, any creditors which are Swiss Non-Qualifying Banks).

(e) The execution, delivery and performance of the Applicable Foreign Obligor Documents executed by such Foreign Obligor are, under applicable foreign exchange control regulations of the jurisdiction in which such Foreign Obligor is organized and existing, not subject to any notification or authorization except (i) such as have been made or obtained or (ii) such as cannot be made or obtained until a later date (provided that any notification or authorization described in clause (ii) shall be made or obtained as soon as is reasonably practicable).

(f) The choice of the law of the State of New York as the governing law of the Loan Documents will be recognized and enforced in each Foreign Borrower's jurisdiction of incorporation and any judgment obtained in New York in relation to a Loan Document will be recognized and enforced in the Foreign Borrower's jurisdiction of incorporation. Under the Laws of the jurisdiction in which each Foreign Borrower is incorporated it is not necessary that the Loan Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Loan Documents or the transactions contemplated by the Loan Documents.

## ARTICLE VI AFFIRMATIVE

### COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, such Loan Party shall, and shall cause each of its Subsidiaries to:

#### **6.01 Financial Statements.**

Deliver to the Administrative Agent for distribution to each Lender:

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(a) **Audited Financial Statements.** As soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Parent, a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such fiscal year, and the related Consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, prepared in accordance with GAAP, such Consolidated statements to be audited and accompanied by a report and opinion of PricewaterhouseCoopers LLP or another independent certified public accountant of nationally recognized standing selected by the Parent and reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit; provided that such report and opinion may be subject to a "going concern" or like qualification or exception if such qualification or exception is related solely to an upcoming maturity date of any Indebtedness under this Agreement occurring within 12 months from the time such opinion is required to be delivered to the Administrative Agent pursuant to this Section 6.01(a).

(b) **Quarterly Financial Statements.** As soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Parent, a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such fiscal quarter, and the related Consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Parent's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, prepared in accordance with GAAP and including a customary management discussion and analysis section, certified by the chief executive officer, chief financial officer, treasurer or controller who is a Responsible Officer of the Parent as fairly presenting in all material respects the financial position and results of operations of the Parent and its Subsidiaries for such fiscal quarter and period, subject to normal year-end audit adjustments and the absence of footnotes.

(c) **Business Plan and Budget.** Not later than thirty (30) days after the end of each fiscal year of the Parent beginning with the fiscal year ending January 31, 2019, an annual business plan and budget of the Parent and its Subsidiaries on a Consolidated basis, in form and detail reasonably satisfactory to the Administrative Agent, including forecasts prepared by management of the Parent of Consolidated balance sheets and statements of income or operations and cash flows of the Parent and its Subsidiaries on an annual basis for the immediately following fiscal year.

As to any information contained in materials furnished pursuant to Section 6.02(f), the Parent shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Parent to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein.

## **6.02 Certificates; Other Information.**

Deliver to the Administrative Agent for distribution to each Lender:

(a) **Compliance Certificate.** Concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ending October 31, 2018), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller which is a Responsible Officer of the Parent in form and detail reasonably satisfactory to the Administrative Agent, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Parent shall also provide, if necessary for the determination of compliance with Section 7.11, a statement of reconciliation conforming such financial statements to GAAP. Unless the Administrative Agent or a Lender through the

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Administrative Agent requests executed originals, delivery of the Compliance Certificate may be by electronic communication including fax or email and shall be deemed to be an original and authentic counterpart thereof for all purposes.

(b) Updated Schedules. Concurrently with the delivery of the financial statements referred to in Section 6.01(a) (commencing with the delivery of the financial statements for the fiscal year ending January 31, 2019), the following updated Schedules to this Agreement in form and detail reasonably satisfactory to the Administrative Agent (which may be attached to the Compliance Certificate) to the extent required to make the representation related to such Schedule true and correct as of the date of such Compliance Certificate: Schedules 1.01(c), 5.21(b)(i) and 5.21(c).

(c) Calculations. Concurrently with the delivery of the Compliance Certificate referred to in Section 6.02(a) required to be delivered with the financial statements referred to in Section 6.01(a), a certificate (which may be included in such Compliance Certificate) including the amount of all Capital Expenditures that were made during the prior fiscal year in form and detail reasonably satisfactory to the Administrative Agent.

(d) Changes in Entity Structure. Within ten (10) days (or such shorter period as agreed to by the Administrative Agent) prior to any merger, consolidation, dissolution or other change in entity structure of any Loan Party permitted pursuant to the terms hereof, provide notice of such change in entity structure to the Administrative Agent in form and detail reasonably satisfactory to the Administrative Agent, along with such other information as reasonably requested by the Administrative Agent. Provide notice to the Administrative Agent, not less than ten (10) days prior (or such shorter period of time as agreed to by the Administrative Agent) of any change in any Loan Party's legal name, state of organization, or organizational existence.

(e) Audit Reports; Management Letters; Recommendations. Promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them.

(f) Annual Reports; Etc. Promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent generally to the stockholders of the Parent, and copies of all annual, regular, periodic and special reports and registration statements which the Parent may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto.

(g) Debt Securities Statements and Reports. Promptly after the furnishing thereof, copies of any statement or report furnished generally to holders of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section.

(h) SEC Notices. Promptly after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof.

(i) Notices. Not later than five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of all notices, requests and other documents (including amendments, waivers

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and other modifications) so received under or pursuant to any instrument, indenture, loan or credit or similar agreement regarding or related to any breach or default by any party thereto or any other event that could reasonably be expected to materially impair the value of the interests or the rights of any Loan Party or otherwise have a Material Adverse Effect and, from time to time upon request by the Administrative Agent, such information and reports regarding such instruments, indentures and loan and credit and similar agreements as the Administrative Agent may reasonably request.

(j) Environmental Notice. Promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any Real Property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law.

(k) KYC. Promptly following any request therefor, provide information and documentation reasonably requested by Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act and the Beneficial Ownership Regulation.

(l) Additional Information. Promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

(m) Beneficial Ownership. [To the extent any Loan Party qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, an updated Beneficial Ownership Certification promptly following any change in the information provided in the Beneficial Ownership Certification delivered to any Lender in relation to such Loan Party that would result in a change to the list of beneficial owners identified in such certification.](#)

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which the Parent posts such documents, or provides a link thereto on the Parent’s website on the Internet at the website address listed on Schedule 1.01(a); or (b) on which such documents are posted on the Parent’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Parent shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Parent to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Parent shall notify the Administrative Agent and each Lender (by fax transmission or e-mail transmission) of the posting of any such documents and provide to the Administrative Agent by e-mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Parent with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Each Borrower hereby acknowledges that the Administrative Agent and/or an Affiliate thereof may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the “Platform”).

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### **6.03 Notices.**

Promptly after a Responsible Officer's obtaining knowledge thereof, but in any event within five (4) Business Days after a Responsible Officer's obtaining knowledge thereof, notify the Administrative Agent and each Lender:

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) of the occurrence of any ERISA Event; or

(d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof, including any determination by the Borrowers referred to in Section 2.10(b).

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Parent setting forth details of the occurrence referred to therein and to the extent applicable, stating what action the Borrowers have taken and propose to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

### **6.04 Payment of Obligations.**

Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets and all lawful claims which, if unpaid, would by law become a Lien upon its property unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrowers or such Subsidiary and (b) all Indebtedness in aggregate in excess of the Threshold Amount, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness; ~~provided that during the Suspension Period the Borrowers may defer payments in an aggregate amount outstanding not to exceed \$3,000,000 at any time.~~

### **6.05 Preservation of Existence, Etc.**

(a) preserve, renew and maintain in full force and effect its legal existence and, with respect to each Loan Party and each Significant Subsidiary, good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05;

(b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and

(c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

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#### **6.06 Maintenance of Properties.**

(a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted and subject to casualty and condemnation; and

(b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### **6.07 Maintenance of Insurance.**

(a) Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Borrowers, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

(b) Evidence of Insurance. Cause the Administrative Agent to be named as lenders' loss payable, loss payee or mortgagee, as its interest may appear, and/or additional insured with respect of any such insurance providing liability coverage or coverage in respect of any Collateral, and to the extent commercially available on commercially reasonable terms, cause, unless otherwise agreed to by the Administrative Agent, each provider of any such insurance to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent that it will give the Administrative Agent thirty (30) days prior written notice before any such policy or policies shall be cancelled (or ten (10) days prior notice in the case of cancellation due to the nonpayment of premiums). Annually, upon expiration of current insurance coverage, the Loan Parties shall provide, or cause to be provided, to the Administrative Agent, such evidence of insurance as required by the Administrative Agent, including, but not limited to: (i) evidence of such insurance policies (including, without limitation and as applicable, ACORD Form 28 certificates (or similar form of insurance certificate), and ACORD Form 25 certificates (or similar form of insurance certificate)), (ii) declaration pages for each insurance policy and (iii) lender's loss payable and/or additional insured endorsements, as applicable, if the Administrative Agent for the benefit of the Secured Parties is not on the declarations page for such policy. As requested by the Administrative Agent, the Loan Parties agree to deliver to the Administrative Agent an Authorization to Share Insurance Information.

#### **6.08 Compliance with Laws.**

Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

#### **6.09 Books and Records.**

Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be.

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#### **6.10 Inspection Rights.**

Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (provided that the Administrative Agent shall provide the Borrowers the opportunity to participate in any discussions with the independent public accountants), all at the expense of the Applicable Borrowers and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrowers; provided, however, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Applicable Borrowers at any time during normal business hours and without advance notice.

#### **6.11 Use of Proceeds.**

Use the proceeds of the Credit Extensions for general corporate purposes not in contravention of any Law or of any Loan Document, including for share repurchases to the extent permitted by the terms of this Agreement.

#### **6.12 [Reserved.]**

#### **6.13 Covenant to Guarantee Obligations.**

The Loan Parties will cause each of their Material Domestic Subsidiaries (excluding any CFC Holding Company), whether newly formed, after acquired or otherwise existing, to promptly (and in any event within thirty (30) days after such Subsidiary is formed or acquired (or such longer period of time as agreed to by the Administrative Agent in its reasonable discretion)) become a Guarantor hereunder by way of execution of a Joinder Agreement. In connection therewith, the Loan Parties shall give notice to the Administrative Agent not less than ten (10) days prior to creating a Material Domestic Subsidiary (or such shorter period of time as agreed to by the Administrative Agent in its reasonable discretion), or acquiring the Equity Interests of any other Person that, once acquired, would constitute a Material Domestic Subsidiary. In connection with the foregoing, the Loan Parties shall deliver to the Administrative Agent, with respect to each new Guarantor to the extent applicable, substantially the same documentation required pursuant to Sections 4.01(b), (c), (e) and (f) and 6.14 and such other documents or agreements as the Administrative Agent may reasonably request.

#### **6.14 Covenant to Give Security.**

Except with respect to Excluded Property:

(a) Equity Interests and Personal Property. Each Domestic Borrower and Domestic Guarantor will cause the Pledged Equity and all of its tangible and intangible personal property now owned or hereafter acquired by it to be subject at all times to a first priority, perfected Lien (subject to Permitted Liens to the extent permitted by the Loan Documents) in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Secured Obligations pursuant to and to the extent contemplated by the terms and conditions of the Collateral Documents. Each applicable Loan Party shall provide opinions of counsel reasonably requested by the Administrative Agent and any filings and deliveries reasonably necessary in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Administrative Agent.

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(b) Landlord Waivers. In the case of (i) each headquarter location of any Domestic Loan Party, each other location where any significant administrative or governing functions are performed for such Loan Parties and each other location where any Domestic Loan Party maintains any material books or records (electronic or otherwise) and (ii) any personal property Collateral located at any other premises leased by a Domestic Loan Party containing personal property Collateral with a value in excess of \$2,000,000, the applicable Loan Parties will provide the Administrative Agent with such estoppel letters, consents and waivers from the landlords on such real property to the extent (A) requested by the Administrative Agent and (B) the applicable Loan Parties are able to secure such letters, consents and waivers after using commercially reasonable efforts (such letters, consents and waivers shall be in form and substance reasonably satisfactory to the Administrative Agent, it being acknowledged and agreed that any Landlord Waiver is satisfactory to the Administrative Agent).

(c) Further Assurances. At any time upon request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action (including promptly completing any registration or stamping of documents as may be applicable) as the Administrative Agent may deem reasonably necessary or desirable to maintain in favor of the Administrative Agent, for the benefit of the Secured Parties, Liens and insurance rights on the Collateral that are duly perfected in accordance with the requirements of, or the obligations of the Loan Parties under, the Loan Documents and all applicable Laws.

Additionally, (i) MGI BV will continue to pledge its equity interests in Nederland BV to the Administrative Agent in its capacity as administrative agent for the Secured Parties to secure MGI BV's obligations hereunder as a Foreign Guarantor and (ii) Nederland BV will continue to pledge its equity interests in Movado SA to the Administrative Agent in its capacity as administrative agent for the Secured Parties to secure Nederland BV's obligations hereunder as a Foreign Guarantor.

#### **6.15 Further Assurances.**

Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments (including promptly completing any registration or stamping of documents as may be applicable) as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable Law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be created by any of the Collateral Documents to the extent contemplated thereby, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder to the extent contemplated thereby and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

#### **6.16 [Reserved.]**

#### **6.17 Compliance with Environmental Laws.**

Except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, (a) comply, and cause all lessees and other Persons operating or occupying its properties to comply,

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in all material respects, with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all material Environmental Permits necessary for its operations and properties; and (c) conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance in all material respects with the requirements of all Environmental Laws; provided, however, that neither the Borrowers nor any of their Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

**6.18 [Reserved]**

**6.19 Anti-Corruption Laws.**

Conduct its business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other ~~similar~~applicable anti-corruption legislation or anti-money laundering legislation in other jurisdictions and with all applicable Sanctions, and maintain policies and procedures reasonably designed to promote and achieve compliance with such laws and Sanctions.

**6.20 Approvals and Authorizations.**

Maintain all authorizations, consents, approvals and licenses from, exemptions of, and filings and registrations with, each Governmental Authority of the jurisdiction in which each Foreign Obligor is organized and existing, and all approvals and consents of each other Person in such jurisdiction, in each case that are required in connection with the Loan Documents.

**6.21 Pari Passu Ranking.**

Ensure that the payment obligations of the Loan Parties under the Loan Documents rank and continue to rank at least pari passu with the claims of all of the Loan Parties' other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**6.22 Swiss Non-Bank Rules**

Each Swiss Loan Party shall ensure that it is in compliance with the Swiss Non-Bank Rules at any time, provided that a Swiss Borrower shall not be in breach of this covenant if its number of creditors in respect of the Swiss 10 Non-Bank Rule is exceeded solely by reason of (i) a failure by one or more Lenders to comply with their obligations under paragraph (b)(iii) of Section 11.06 or (ii) an initial Lender ceasing to be a Swiss Qualifying Bank other than as a result of any change after the date it became an initial Lender under this Agreement in (or in the interpretation, administration, or application of) any law or treaty, or any published practice or published concession of any relevant taxing authority. For the purposes of compliance with this covenant, a Swiss Borrower shall assume that at any time there may be up to 10 (ten) creditors that are Swiss Non-Qualifying Banks under this Agreement (irrespective of whether or not there are, at any time, any creditors which are Swiss Non-Qualifying Banks).

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## ARTICLE VII NEGATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

### **7.01 Liens.**

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, except for the following (the "Permitted Liens"):

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the Closing Date and listed on Schedule 7.01 and any renewals, extensions or refinancings thereof, provided that (i) the property covered thereby is not increased (plus improvements and accessions to such property and proceeds thereof), (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(b), (iii) the direct and contingent obligors with respect thereto are not more extensive, and (iv) any renewal or extension of the obligations secured or benefited thereby to the extent constituting Indebtedness is permitted by Section 7.02(b);

(c) Liens for Taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, contracts and leases (other than Indebtedness), licenses, statutory obligations, surety, stay and appeal bonds, indemnity, performance and other similar bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under Section 8.01(h);

(i) Liens securing Indebtedness permitted under Section 7.02(c); provided that (i) such Liens do not at any time encumber any property other than the property financed, acquired, developed, constructed, purchased, leased, repaired or improved by such Indebtedness and (ii) the Indebtedness secured thereby at the time incurred does not exceed the lower of the cost of such acquisition, development, construction, purchase, lease, repair or improvement or the fair market value of the applicable property;

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(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash, Cash Equivalents and other items on deposit in one or more accounts maintained by any Borrower or any of its Subsidiaries with any depository institution, securities intermediary or commodities intermediary, in each case in the ordinary course of business in favor of the institutions with which such accounts are maintained including any Liens and rights of setoff created under a bank's standard terms and conditions, including the terms and conditions of the Dutch Banks' Association (*Nederlandse Vereniging voor Banken*) or similar terms and conditions;

(k) Liens arising out of judgments or awards not resulting in an Event of Default; provided the applicable Loan Party or Subsidiary shall in good faith be prosecuting an appeal or proceedings for review or the period for commencing such appeal or proceeding shall not have expired;

(l) Any interest or title of a lessee, licensee or sublessee under any lease, license or sublease entered into by any Loan Party or any Subsidiary thereof in the ordinary course of business or in connection with any Disposition permitted hereunder;

(m) Liens of a collection bank arising under Section 4-210 of the UCC on items in the course of collection;

(n) Liens on property of a Person existing at the time such Person is merged into or consolidated with any Borrower or any Subsidiary of any Borrower or becomes a Subsidiary of any Borrower; provided that such Liens were not created in contemplation of such merger, consolidation or Investment and do not extend to any assets other than those of the Person merged into or consolidated with such Borrower or such Subsidiary or acquired by such Borrower or such Subsidiary, and the applicable obligations secured by such Lien to the extent constituting Indebtedness are permitted under Section 7.02; and

(o) Liens on assets of Foreign Subsidiaries to secure permitted Indebtedness and other obligations of such Foreign Subsidiaries; provided that the aggregate outstanding principal amount of Indebtedness or other obligations secured by such Liens on the assets of Foreign Subsidiaries that are Loan Parties may not exceed \$5,000,000;

(p) other Liens securing Indebtedness or other obligations outstanding in an aggregate principal amount not to exceed \$10,000,000; and

(q) Liens in favor of any Foreign Obligation Provider securing the Foreign Subsidiary Secured Obligations permitted pursuant to Section 7.02(l).

## **7.02 Indebtedness.**

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.02(b) and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension;

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(c) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations incurred to finance or reimburse the cost of the acquisition, development, construction, purchase, lease, repair or improvement of property (real or personal) used or useful in a Permitted Business, whether through the direct purchase of assets or the Equity Interests of any Person that owns no other assets or property than those that would be permitted to be purchased directly under this clause (c) (which Indebtedness may be issued at any time within 180 days of such acquisition, development, construction, purchase, lease, repair or improvement) and any refinancing, refunding, renewal or extension thereof consistent with the proviso to Section 7.01(b); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed ~~(a) \$10,000,000 during the Suspension Period, or (b) \$20,000,000 following the Suspension Period;~~

(d) (i) Unsecured Indebtedness of a Borrower or a Subsidiary of a Borrower owed to a Borrower or a Subsidiary of any Borrower, which Indebtedness shall (A) if owed to a Loan Party, to the extent required by the Administrative Agent, be evidenced by promissory notes which shall be pledged to the Administrative Agent as Collateral for the Secured Obligations in accordance with the terms of the Security Agreement and (B) be otherwise permitted under the provisions of Section 7.03, and (ii) Indebtedness of a Subsidiary that is not a Loan Party owed to another Subsidiary that is not a Loan Party (clause (i) and (ii), collectively, “Intercompany Debt”);

(e) Guarantees of (i) the Loan Parties in respect of Indebtedness otherwise permitted hereunder of the Loan Parties and (ii) Subsidiaries that are not Loan Parties of Indebtedness otherwise permitted hereunder of the Loan Parties or any other Subsidiary;

(f) Indebtedness of any Person that becomes a Subsidiary of any Borrower after the date hereof in a transaction permitted hereunder in an aggregate principal amount not to exceed \$20,000,000 at any time outstanding, provided that such Indebtedness is existing at the time such Person becomes a Subsidiary of any Borrower and was not incurred solely in contemplation of such Person’s becoming a Subsidiary of such Borrower), and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and accrued interest, fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension;

(g) obligations (contingent or otherwise) existing or arising under any Swap Contract in respect of interest rate, currency, foreign exchange or commodities, provided that such obligations are (or were) entered into by such Person in the ordinary course of business and not for speculative purposes;

(h) Indebtedness incurred by a Borrower that (a) is expressly subordinate and junior in right of payment to the payment in full of the Obligations, which subordination terms shall be reasonably satisfactory to the Administrative Agent, and (b) (i) matures, (ii) is not mandatorily redeemable or redeemable at the option of the holder thereof, in whole or in part, until and (iii) does not have any regularly scheduled payments of principal until, in each case, after the date that is six months after the Maturity Date;

(i) Indebtedness of Foreign Subsidiaries that is not guaranteed by any Borrower or Guarantor, as long as the aggregate outstanding principal amount thereof does not exceed ~~(a) \$30,000,000 at any time during the Suspension Period, or (b) \$60,000,000 at any time following the Suspension Period;~~

(j) Contingent Obligations (a) arising from endorsements of checks, drafts or other items of payment for collection or deposit in the ordinary course of business; (b) existing on the Closing Date as set forth on Schedule 7.02(j), and any extension or renewal thereof that does not increase the amount of such

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Contingent Obligation when extended or renewed; (c) incurred in the ordinary course of business with respect to surety, appeal or performance bonds, leases, licenses, or other similar obligations; (d) arising from customary indemnification obligations in favor of purchasers in connection with dispositions of assets permitted hereunder; (e) arising under the Loan Documents; or (f) in an aggregate amount of \$5,000,000 or less at any time;

(k) Indebtedness in respect of Swap Obligations permitted hereunder and Cash Management Agreements;

(l) Indebtedness under the Foreign Obligation Loan Documents in an aggregate principal amount outstanding at any time not to exceed the Dollar Equivalent of \$10,000,000; and

(m) other unsecured Indebtedness in an aggregate principal amount not to exceed \$20,000,000 at any time outstanding.

### **7.03 Investments.**

Make or hold any Investments, except:

(a) Investments held by the Borrowers and their Subsidiaries in the form of cash or Cash Equivalents;

(b) advances to officers, directors and employees of the Borrowers and Subsidiaries for salary, commissions, travel, entertainment, relocation and analogous ordinary business purposes in an aggregate amount outstanding not to exceed ~~(i) \$1,000,000 during the Suspension Period and (ii) \$2,000,000 at any time following the Suspension Period;~~

(c) (i) Investments by any Borrower and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by any Borrower and its Subsidiaries in Loan Parties, (iii) additional Investments by Subsidiaries of any Borrower that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iv) so long as no Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in Wholly-owned Subsidiaries that are not Loan Parties in an aggregate amount invested from the date hereof not to exceed

~~(x) during the Suspension Period, (A) \$10,000,000, plus (B) 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 made pursuant to this clause (c) (provided, that amounts added pursuant to this clause (B) shall not, in any event, exceed the fair market value (as determined in good faith by the Parent) of the applicable Investment at the time such Investment was initially made) and (y) following the Suspension Period, (A) \$15,000,000, plus (B) 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 made pursuant to this clause (c) (provided, that amounts added pursuant to this clause (B) shall not, in any event, exceed the fair market value (as determined in good faith by the Parent) of the applicable Investment at the time such Investment was initially made);~~

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business;

(e) Guarantees permitted by Section 7.02;

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- (f) Investments existing on the date hereof (other than those referred to in Section 7.03(c)(i)) and set forth on Schedule 7.03;
- (g) Permitted Acquisitions;
- (h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, and other disputes with, third parties arising in the ordinary course of business;
- (i) Investments consisting of the licensing or acquisition of Intellectual Property pursuant to joint marketing agreements, licenses or other agreements with other Persons;
- (j) Investments made as a result of the receipt of non-cash consideration from a Disposition that was made pursuant to and in compliance with Section 7.05;
- (k) any acquisition of assets or Equity Interests solely in exchange for the issuance of Equity Interests of the Parent in connection with a transaction otherwise permitted hereunder;
- (l) Investments resulting from the acquisition of a Person that becomes a Subsidiary of any Borrower that is otherwise permitted by this Agreement, which Investments at the time of such acquisition were held by the acquired Persons and were not acquired in contemplation of such acquisition;
- (m) Investments resulting from pledges and deposits permitted under Section 7.01;
- (n) ~~subject to the satisfaction (as determined by the Administrative Agent) of the Movado SA Equity Transfer Conditions, the Movado SA Equity Transfer;~~ and
- (n) ~~(e)~~ other Investments (i) not exceeding \$~~20,000,000~~35,000,000 in the aggregate in any fiscal year of the Parent; ~~provided that during the Suspension Period no Loan Party will, or will permit any Subsidiary to, make any such other Investments (“General Investment Capacity”) and (ii) up to \$20,000,000 of the unutilized amount of the General Investment Capacity (“Unused Amount”) from the immediately prior fiscal year; provided the Loan Parties shall demonstrate to the reasonable satisfaction of the Administrative Agent that on a Pro Forma Basis at the time of and immediately after the making of any such Investment utilizing the Unused Amount, the Consolidated Net Leverage Ratio does not exceed 2.00 to 1.00 and no Event of Default shall have occurred and be continuing or result therefrom.~~

#### **7.04 Fundamental Changes.**

Merge, dissolve, liquidate, consolidate with or into another Person, effectuate any division into two or more Persons or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

- (a) any Subsidiary may merge or consolidate with (i) any Borrower, provided that such Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Loan Party is merging or consolidating with another Subsidiary that is not a Loan Party, such Loan Party shall be the continuing or surviving Person;
- (b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to any Borrower or to another Loan Party, and in connection therewith, dissolve or liquidate;
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(c) any Subsidiary that is not a Loan Party may dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party;

(d) in connection with any Permitted Acquisition, any Subsidiary of any Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that (i) the Person surviving such merger shall be a Wholly-owned Subsidiary of a Borrower and (ii) in the case of any such merger to which any Loan Party (other than a Borrower) is a party, such Loan Party is the surviving Person; and

(e) so long as no Default has occurred and is continuing or would result therefrom, each of the Borrowers and any of its Subsidiaries may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such merger to which any Borrower is a party, such Borrower is the surviving Person and (ii) in the case of any such merger to which any Loan Party (other than such Borrower) is a party, such Loan Party is the surviving Person.

## **7.05 Dispositions.**

Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Permitted Transfers;

(b) Dispositions of obsolete or worn out property and Dispositions of property no longer used or useful in the conduct of the business of the Parent and its Subsidiaries, whether now owned or hereafter acquired, in the ordinary course of business;

(c) Dispositions of Intellectual Property, whether now owned or hereafter acquired, in the ordinary course of business and abandonment of Intellectual Property of any Borrower or any Subsidiary determined in good faith by the Parent to be no longer useful in the operation of the business of the Borrowers and their Subsidiaries;

(d) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(e) Liens permitted by Section 7.01, Investments permitted by Section 7.03, transactions permitted by Section 7.04 and Restricted Payments permitted by Section 7.06;

~~(f) subject to the satisfaction (as determined by the Administrative Agent) of the Movado SA Equity Transfer Conditions, the Movado SA Equity Transfer; and~~

(f) ~~(g)~~ other Dispositions so long as (i) not less than 75% of the consideration paid in connection therewith shall be cash or Cash Equivalents paid contemporaneously with consummation of the transaction and shall be in an amount not less than the fair market value of the property disposed of, (ii) such transaction does not involve a sale or other disposition of receivables of a Loan Party other than receivables owned by or attributable to other property concurrently being disposed of in a transaction otherwise permitted under this Section, and (iii) the aggregate net book value of all of the assets sold or otherwise disposed of by the Loan Parties and their Subsidiaries in all such transactions in any fiscal year of the Parent shall not exceed \$20,000,000.

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## **7.06 Restricted Payments.**

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, so long as no Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) each Subsidiary may make Restricted Payments to any Person that owns Equity Interests in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Borrowers may make Permitted Tax Distributions;

(c) the Borrowers and each Subsidiary may declare and make dividend payments or other distributions payable solely in common Equity Interests of such Person;

(d) the repurchase of Equity Interests deemed to occur upon the exercise of stock options, warrants, convertible notes or similar rights to the extent that such Equity Interests represent a portion of the exercise price of those stock options, warrants or similar rights or the payment of related withholding taxes;

(e) the payment of cash in lieu of fractional Equity Interests upon the exercise of stock options or warrants or upon the conversion or exchange of Equity Interests;

(f) the Borrowers may make other Restricted Payments, provided that ~~the Suspension Period is not in effect and~~ the Loan Parties shall demonstrate to the reasonable satisfaction of the Administrative Agent that, after giving effect to such transaction on a Pro Forma Basis, (i) the Loan Parties are in Pro Forma Compliance and (ii) the Consolidated Net Leverage Ratio shall be at least 0.25 to 1.0 less than the then applicable level set forth in Section 7.11, calculated using the same Measurement Period used to determine Pro Forma Compliance; ~~provided, further, that the Borrowers may make up to \$5,000,000 of other Restricted Payments upon delivery to the Administrative Agent of a Compliance Certificate for the period ending on April 30, 2021 in accordance with Section 6.02(a) demonstrating Consolidated EBITDA of at least \$35,000,000 for and as of the end of the three consecutive fiscal quarter period of the Parent ending on April 30, 2021;~~ and

(g) any non-Wholly-owned Subsidiary may buy or redeem Equity Interests held by minority equity holders, provided that the Loan Parties shall demonstrate to the reasonable satisfaction of the Administrative Agent that, after giving effect to such transaction on a Pro Forma Basis, (i) the Loan Parties are in Pro Forma Compliance and (ii) the Consolidated Net Leverage Ratio shall be at least 0.25 to 1.0 less than the then applicable level set forth in Section 7.11, calculated using the same Measurement Period used to determine Pro Forma Compliance.

## **7.07 Change in Nature of Business.**

Engage in any material line of business substantially different from those lines of business conducted by the Parent, the other Borrowers and their Subsidiaries on the date hereof or any business substantially related or incidental thereto or a reasonable extension thereof.

## **7.08 Transactions with Affiliates.**

Enter into or be party to any transaction with an Affiliate, except (a) transactions contemplated by the Loan Documents; (b) payment of reasonable compensation to officers and employees for services

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actually rendered and provision of benefits thereto in the ordinary course of business; (c) payment of customary directors' fees, expenses and indemnities; (d) transactions solely among Borrowers and Guarantors (or any Person that becomes a Borrower or Guarantor in connection with such transaction); (e) transactions with Affiliates that were entered into prior to the Closing Date, as shown on Schedule 7.08; (f) transactions with Affiliates undertaken in good faith, upon fair and reasonable terms fully disclosed to the Administrative Agent (upon the Administrative Agent's request) and no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate; (g) indemnification, noncompetition and confidentiality arrangements with employees and directors in the ordinary course of business; (h) transactions solely among Subsidiaries that are not Loan Parties; (i) loans and advances to officers and employees permitted under this Agreement; (j) Investments permitted under Section 7.03; and (k) Restricted Payments permitted under Section 7.06.

#### **7.09 Burdensome Agreements.**

Enter into, or permit to exist, any Contractual Obligation (except for this Agreement and the other Loan Documents) that (a) encumbers or restricts the ability of any such Person to (i) to act as a Loan Party; (ii) make Restricted Payments to any Loan Party, (iii) pay any Indebtedness or other obligation owed to any Loan Party, (iv) make loans or advances to any Loan Party, or (v) create any Lien upon any of their properties or assets, whether now owned or hereafter acquired, or (b) requires the grant of any Lien on property for any obligation if a Lien on such property is given as security for the Secured Obligations (each, a "Restrictive Agreement"), except (A) a Restrictive Agreement as in effect on the Closing Date and shown on Schedule 7.09, (B) in the case of clause (a)(v) only, prohibitions on the pledge of assets subject to a Lien permitted by Section 7.01 to the extent such prohibition applies solely to the assets encumbered by such Lien; (C) in the case of clause (a)(v) only, customary provisions in leases and other contracts restricting assignment thereof; (D) any prohibition or restriction in an agreement to the extent required by Applicable Law, (E) any prohibition or restriction in an agreement binding upon a Subsidiary or any of its Subsidiaries at the time such Subsidiary is acquired by a Borrower or a Subsidiary (other than obligations incurred as consideration in or in contemplation of such acquisition), which prohibition or restriction (i) is not applicable to the Borrowers or their other Subsidiaries or the properties or assets of the Borrowers or their other Subsidiaries and (ii) would not prohibit or restrict such Subsidiary from guarantying the Obligations and granting a Lien on its assets, in each case to the extent required by Sections 6.13 and 6.14, (F) any prohibition or restriction applicable solely to a Foreign Subsidiary and contained in any agreement governing Indebtedness incurred by such Foreign Subsidiary that is permitted hereunder, and (G) customary provisions of joint venture agreements governing the assets and Equity Interests of the applicable joint venture or any of its Subsidiaries.

#### **7.10 Use of Proceeds.**

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.11 Financial Covenants.** Compliance with each of the following covenants shall be measured on a Pro Forma Basis:

(a) Consolidated EDITDA.

(i) ~~Permit Consolidated EBITDA, for and as of the end of the Measurement Period ending on April 30, 2020, to be less than \$30,000,000;~~

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- (ii) ~~Permit Consolidated EBITDA, for and as of the end of the Measurement Period ending on July 31, 2020, to be less than negative \$10,000,000;~~
- (iii) ~~Permit Consolidated EBITDA, for and as of the end of the fiscal quarter of Parent ending on October 31, 2020, to be less than \$10,000,000;~~
- (iv) ~~Permit Consolidated EBITDA, for and as of the end of the two consecutive fiscal quarter period of Parent ending on January 31, 2021, to be less than \$20,000,000;~~
- (v) ~~Permit Consolidated EBITDA, for and as of the end of the three consecutive fiscal quarter period of Parent ending on April 30, 2021, to be less than \$25,000,000;~~ or (vi) Permit Consolidated EBITDA, for and as of the end of any Measurement Period ending as of the last day of any fiscal quarter of Parent ~~ending after April 30, 2021~~, to be less than \$35,000,000.

(b) Consolidated Net Leverage Ratio. ~~(i) Permit the Consolidated Leverage Ratio as of April 30, 2020 to be greater than the ratio of 2.75 to 1.00; or~~

~~(ii) Permit the Consolidated Net Leverage Ratio as of the end of any fiscal quarter of Parent ending on or after the earlier of (A) July 31, 2021 or (B) the Suspension Period Termination Date, to be greater than the ratio of 2.50 to 1.00.~~

~~(c) Minimum Liquidity. Permit Total Liquid Assets to be less than \$100,000,000 at any time from the Effective Date through April 30, 2021.~~

~~For purposes of the foregoing, “Total Liquid Assets” means, as of any date of determination, the sum of (a) ~~unrestricted and unencumbered (other than~~ with respect to the Liens of the Administrative Agent or Liens of any depository bank or securities intermediary which is a Lender and where such cash and Cash Equivalents are maintained) cash and Cash Equivalents, plus (b) the positive difference between (I) the aggregate Revolving Commitments at such time and (II) the Total Revolving Outstandings at ~~such time.~~~~

#### **7.12 Maximum Capital Expenditures.**

Make any Capital Expenditure, except for Consolidated Capital Expenditures not exceeding ~~(A) \$15,000,000 in the aggregate during the fiscal year ending January 31, 2021 or (B) \$25,000,000~~ in the aggregate during each ~~subsequent~~ fiscal year; provided, however, that if the amount of Capital Expenditures permitted to be made in any ~~such subsequent~~ fiscal year exceeds the amount actually made in such ~~subsequent~~ fiscal year, such excess may be carried forward only to the next fiscal year, but not to any succeeding fiscal year.

#### **7.13 Amendments of Organization Documents; Fiscal Year; Legal Name, State of Formation; Form of Entity and Accounting Changes.**

(a) amend any of its Organization Documents in any way that could reasonably be expected to materially adversely affect the interests of the Lenders or the Administrative Agent;

(b) change its fiscal year;

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(c) with respect to any Loan Party, without providing ten (10) days prior written notice to the Administrative Agent (or such shorter period of time as agreed to by the Administrative Agent), change its name, state of formation, form of organization or principal place of business; or

(d) make any material change in accounting policies or reporting practices, except as required by GAAP.

#### **7.14 Sale and Leaseback Transactions.**

Enter into any Sale and Leaseback Transaction, except a Sale and Leaseback Transaction with respect to (a) any asset of a Foreign Subsidiary or (b) property of a Loan Party that is acquired after the Closing Date so long as such Sale and Leaseback Transaction is consummated within 180 days after the acquisition of such property, provided that, in each case, the applicable Borrower or Subsidiary shall receive at least fair market value (as determined by the Parent in good faith) for any property disposed of.

#### **7.15 Securitization Transactions.**

Enter into any Securitization Transaction.

#### **7.16 Sanctions.**

Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swingline Lender, or otherwise) of Sanctions.

#### **7.17 Anti-Corruption Laws.**

Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation or anti-money laundering legislation in other jurisdictions.

## **ARTICLE VIII**

### **EVENTS OF DEFAULT AND REMEDIES**

#### **8.01 Events of Default.**

Any of the following shall constitute an [event of default](#) (each, an “*Event of Default*”):

(a) **Non-Payment.** Any Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein and in the currency required hereunder, any amount of principal of any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) within three (3) days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

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(b) Specific Covenants. (i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.03, 6.05(a) (as to any Loan Party), 6.10, 6.11, 6.19 or Article VII or (ii) any Loan Party fails to perform or observe any term, covenant or agreement contained in Section 6.01 or 6.02 and such failure continues for five (5) Business Days; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the earlier to occur of (i) notice thereof from the Administrative Agent to any Loan Party or (ii) a Responsible Officer of any Loan Party becomes aware of such failure; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrowers or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be (i) incorrect or misleading when made or deemed made (with respect to any representation, warranty, certification or statement of fact that contains a materiality qualification) or (ii) incorrect or misleading in any material respect when made or deemed made (with respect to any representation, warranty, certification or statement of fact that does not contain a materiality qualification); or

(e) Cross-Default. (i) Any Loan Party or any Significant Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or (iii) there occurs any default or event of default under any Foreign Obligation Loan Document the result of which is to cause, or to permit the holder or holders of Indebtedness under such Foreign Obligation Loan Document to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due prior to its stated maturity; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Significant Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or

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any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Significant Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Significant Subsidiary (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third- party insurance provided by a financially sound and reputable insurer which has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of fifteen (15) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) any Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations arising under the Loan Documents, ceases to be in full force and effect; or any Loan Party or any Affiliate thereof contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) Collateral Documents. Any Collateral Document after delivery thereof pursuant to the terms of the Loan Documents shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on any material portion of the Collateral purported to be covered thereby, or any Loan Party shall assert the invalidity of such Liens; or

(l) Change of Control. There occurs any Change of Control; or

(m) Foreign entities established in the Netherlands. Any Foreign Guarantor established in the Netherlands or any other Subsidiary established in the Netherlands files a notice under Section 36 of the Dutch Tax Collection Act (*Invorderingswet 1990*) or Section 60 of the Social Insurance Financing Act of the Netherlands (*Wet Financiering Sociale Verzekeringen*) in conjunction with Section 36 of the Tax Collection Act (*Invorderingswet 1990*).

Without limiting the provisions of Article IX, if a Default or Event of Default shall have occurred under the Loan Documents, then such Default will continue to exist until it either is cured (to the extent specifically permitted) in accordance with the Loan Documents or is otherwise expressly waived by

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Administrative Agent (with the approval of requisite Appropriate Lenders (in their sole discretion) as determined in accordance with Section 11.01).

### **8.02 Remedies upon Event of Default.**

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

- (a) declare the Revolving Commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;
- (b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;
- (c) require that the applicable Borrowers Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and
- (d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents or applicable Law or equity;

provided, however, that upon the occurrence of an ~~actual or deemed entry of an order for relief~~ event described in Section 8.01(f) with respect to any Borrower ~~under the Bankruptcy Code of the United States~~, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

### **8.03 Application of Funds.**

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02) or if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all Secured Obligations and Parallel Obligations then due hereunder, any amounts received on account of the Secured Obligations and Parallel Obligations shall, subject to the provisions of Sections 2.14 and 2.15, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders, the Foreign Obligation Providers and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders, the Foreign Obligation Providers and the L/C Issuer arising under the Loan Documents and the Foreign Obligation Loan Documents and amounts

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payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Secured Obligations arising under the Loan Documents and the Foreign Obligation Loan Documents, ratably among the Lenders, the Foreign Obligation Providers and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, L/C Borrowings and Secured Obligations then owing under the Foreign Obligation Loan Documents, the Secured Hedge Agreements and Secured Cash Management Agreements and to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrowers pursuant to Sections 2.03 and 2.14, and to the Foreign Obligation Providers, to cash collateralize undrawn contingent liability obligations owing to such Foreign Obligation Provider under the Foreign Obligation Loan Documents to the extent not otherwise cash collateralized by the applicable Foreign Subsidiary in each case ratably among the Administrative Agent, the Lenders, the Foreign Obligation Providers, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law;

provided, that payments received from or in respect of any Foreign Loan Party or any of its assets shall not be applied to any Secured Obligations of any Domestic Loan Party or any Domestic Subsidiary .

Subject to Sections 2.03(c) and 2.14, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Secured Obligations, if any, in the order (and subject to the limitations) set forth above. Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Secured Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be, and the Parent. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX for itself and its Affiliates as if a "Lender" party hereto.

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## ARTICLE IX ADMINISTRATIVE AGENT

### **9.01 Appointment and Authority.**

(a) Appointment. Each of the Lenders and the L/C Issuer hereby irrevocably appoints, designates and authorizes Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Borrowers nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other 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 contracting parties. In addition, to the extent required under the laws of any jurisdiction other than the United States of America, each of the Lenders and Secured Parties hereby grants to the Administrative Agent any required powers of attorney to execute any Collateral Document or other Loan Document governed by the laws of such jurisdiction on such Lender’s or Secured Party’s behalf.

(b) Collateral Agent. The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank, a potential Foreign Obligation Provider and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations and Parallel Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

### **9.02 Rights as a Lender.**

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

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### **9.03 Exculpatory Provisions.**

The Administrative Agent or the Arranger, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent or the Arranger, as applicable, and ~~its~~their Related Parties:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, ~~except as expressly set forth herein and in the other Loan Documents~~, have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or any L/C Issuer any credit or other information relating to concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan PartyParties or any of ~~its~~their Affiliates that is communicated to, or ~~obtained by~~in the ~~Person serving as~~possession of, the Administrative Agent, Arranger or any of ~~its Affiliates~~their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein.

Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary), or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrowers, a Lender or the L/C Issuer.

Neither the Administrative Agent nor any of its Related Parties have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

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#### **9.04 Reliance by Administrative Agent.**

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), 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. For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objections.

#### **9.05 Delegation of Duties.**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Revolving Facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

#### **9.06 Resignation of Administrative Agent.**

(a) Notice. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

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(b) Defaulting Lender. If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law, by notice in writing to the Borrowers and such Person remove such Person as Administrative Agent and, in consultation with the Borrowers, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) Effect of Resignation or Removal. With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the applicable Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the applicable Borrowers and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring or removed 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 (i) while the retiring or removed Administrative Agent was acting as Administrative Agent (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including, without limitation, (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Secured Parties and (B) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) L/C Issuer and Swingline Lender. Any resignation or removal by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swingline Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment by the Borrowers of a successor L/C Issuer or Swingline Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender,

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as applicable, (ii) the retiring L/C Issuer and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

#### **9.07 Non-Reliance on Administrative Agent and Other Lenders.**

Each Lender and ~~the~~each L/C Issuer expressly acknowledges that none of the Administrative Agent nor the Arranger has made any representation or warranty to it, and that no act by the Administrative Agent or the Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Arranger to any Lender or each L/C Issuer as to any matter, including whether the Administrative Agent or the Arranger have disclosed material information in their (or their Related Parties') possession. Each Lender and each L/C Issuer represents to the Administrative Agent and the Arranger that it has, independently and without reliance upon the Administrative Agent ~~or, the Arranger,~~ any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis ~~and of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own~~ decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and ~~the~~each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent ~~or, the Arranger,~~ any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder., and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and each L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and each L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

#### **9.08 No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, none of the titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, the Arranger, a Lender or the L/C Issuer hereunder.

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**9.09 Administrative Agent May File Proofs of Claim; Credit Bidding.**

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and (i), 2.09, 2.10(b) and 11.04) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09, 2.10(b) and 11.04.

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

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Secured Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Secured Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Secured Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing

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for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (i) of Section 11.01 of this Agreement, (iii) the Administrative Agent shall be authorized to assign the relevant Secured Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Secured Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Secured Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Secured Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Secured Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Secured Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

#### **9.10 Collateral and Guaranty Matters.**

Each of the Lenders (including in its capacities as a potential Cash Management Bank, potential Foreign Obligation Provider and a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent to:

(a) release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the occurrence of the Facility Termination Date, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, (iii) that is owned by a Guarantor that is released from its Guaranty pursuant to Section 9.10(c) or (iv) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 11.01; and in connection with any transaction expressly contemplated under this Section 9.10(a) the Administrative Agent agrees that it shall provide such a release;

(b) subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i); and

(c) release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents; and in connection with such a transaction the Administrative Agent agrees that it shall provide such a release.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section

9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the applicable Borrowers' expense, execute and deliver to the applicable Loan Party such documents and take such other actions as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the

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existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

**9.11 Secured Cash Management Agreements and Secured Hedge Agreements.**

Except as otherwise expressly set forth herein, no Cash Management Bank, Foreign Obligation Provider or Hedge Bank that obtains the benefit of the provisions of Section 8.03, the Guaranty or any Collateral by virtue of the provisions hereof or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements except to the extent expressly provided herein and unless the Administrative Agent has received a Secured Party Designation Notice with respect to such Secured Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank, Foreign Obligation Provider or Hedge Bank, as the case may be, and the Parent. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements in the case of the Facility Termination Date.

**9.12 ERISA Lender Representation.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3- 101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Revolving Loans, the Letters of Credit, the Revolving Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in,

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administer and perform the Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Revolving Loans, the Letters of Credit, the Revolving 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 Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that:

(i) none of the Administrative Agent, or the Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent or the Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Revolving Loans, the Letters of Credit, the Revolving Commitments or this Agreement.

(c) The Administrative Agent and the Arranger hereby inform the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity,

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in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement, (ii) may recognize a gain if it extended the Revolving Loans, the Letters of Credit or the Revolving Commitments for an amount less than the amount being paid for an interest in the Revolving Loans, the Letters of Credit or the Revolving Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

### **9.13 Parallel Obligations.**

(a) For the purpose of ensuring and preserving the validity and enforceability of the Pledge, each Loan Party hereby irrevocably and unconditionally agrees and covenants with the Administrative Agent in its capacity as collateral agent to pay directly to the Administrative Agent in its capacity as collateral agent, as creditor in its own right and not as agent, trustee or representative (vertegenwoordiger) of the Secured Parties, on the Administrative Agent's first demand, amounts equal to, and in the currency of, the Secured Obligations owed by it as and when such amounts fall due in accordance with the terms and conditions of any of the Loan Documents (the obligations of each Loan Party under this clause, the "Parallel Obligations").

(b) Each Loan Party and the Administrative Agent in its capacity as collateral agent agree and acknowledge that (i) the Parallel Obligations of each Loan Party are separate and independent from and without prejudice to the Secured Obligations, and (ii) the Administrative Agent's claim to receive payment from each Loan Party of the Parallel Obligations represents the Administrative Agent's own claim (vordering op naam), separate and independent from the claims of the Secured Parties under the Secured Obligations, provided that the total amount due by such Loan Party under the Parallel Obligations shall never exceed the total amount due under the Secured Obligations.

(c) Any amount unconditionally and irrevocably received or applied by the Administrative Agent in its capacity as collateral agent in payment of the Parallel Obligations of a Loan Party, shall equally reduce the total amount due under the Secured Obligations (the "Parallel Discharge"), and any amount unconditionally and irrevocably received or applied by any of the Secured Parties in payment of the Secured Obligations, shall equally reduce the Parallel Obligations of that Loan Party.

(d) The Administrative Agent in its capacity as collateral agent unconditionally and irrevocably represents and agrees to procure that the Parallel Discharge shall be effected as indicated.

(e) If, after enforcement of the right of pledge created or purported to be created under this Pledge, the proceeds are not sufficient to satisfy and discharge the Parallel Obligations in full, the unpaid balance of such Parallel Obligations shall then cease to exist.

(f) Notwithstanding clause 11.14 (Governing Law; Jurisdiction; Etc.) of the Credit Agreement, this clause 9.13 (Parallel Obligations) and any non-contractual obligations arising out of it or in connection with it, shall be governed by and construed in accordance with Dutch law.

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## **9.14 Recovery of Erroneous Payments.**

Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender or the L/C Issuer (as used in this Section 9.14, the “Credit Party”), whether or not in respect of an Obligation due and owing by the Borrowers at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Credit Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount.

## **ARTICLE X CONTINUING**

### **GUARANTY**

#### **10.01 Guaranty.**

(a) Guaranty of Domestic Guarantors.

Each Domestic Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Secured Obligations (for each Domestic Guarantor, subject to the proviso in this sentence, its “Guaranteed Obligations”); provided that (a) the Guaranteed Obligations of a Domestic Guarantor shall exclude any Excluded Swap Obligations with respect to such Domestic Guarantor and (b) the liability of each Domestic Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law or other applicable law. The Administrative Agent’s books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Domestic Guarantor, and conclusive for the purpose of establishing the amount of the Secured Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Secured Obligations or any instrument or agreement evidencing any Secured Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Secured Obligations which might otherwise constitute a defense to the obligations of the Domestic Guarantor, or any of them, under this Guaranty, and each Domestic Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

(b) Guaranty of Foreign Guarantors.

Each Foreign Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Secured Obligations of the

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Foreign Borrowers and Foreign Subsidiaries (for each Foreign Guarantor subject to the proviso in this sentence, its “Guaranteed Obligations”); provided that (i) the Guaranteed Obligations of a Foreign Guarantor shall exclude any Excluded Swap Obligations with respect to such Foreign Guarantor, (ii) the liability of each Foreign Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law or other applicable law and (iii) the Guaranteed Obligations of a Foreign Guarantor shall exclude any Obligations or Secured Obligations of any Domestic Borrower, any Domestic Guarantor or any other Domestic Subsidiary. The Administrative Agent’s books and records showing the amount of the Obligations of the Foreign Borrowers and Foreign Subsidiaries shall be admissible in evidence in any action or proceeding, and shall be binding upon each Foreign Guarantor, and conclusive for the purpose of establishing the amount of the Secured Obligations of the Foreign Borrowers and Foreign Subsidiaries. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Secured Obligations of the Foreign Borrowers and the Foreign Subsidiaries or any instrument or agreement evidencing any Secured Obligations of the Foreign Borrowers or the Foreign Subsidiaries, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Secured Obligations of the Foreign Borrowers or the Foreign Subsidiaries which might otherwise constitute a defense to the obligations of the Foreign Guarantors, or any of them, under this Guaranty, and each Foreign Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

Notwithstanding anything contained to the contrary in this Article X or in any Loan Document, (A) no Foreign Borrower shall be obligated with respect to any Secured Obligations of the Domestic Borrowers or of any Domestic Subsidiary, and (B) no Foreign Borrower shall be obligated as a Guarantor under Article X with respect to the Secured Obligations of the Domestic Borrowers or any Domestic Subsidiary.

#### **10.02 Rights of Lenders.**

Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof:

(a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Secured Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Secured Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the L/C Issuer and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Secured Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

#### **10.03 Certain Waivers.**

Each Guarantor waives (a) any defense arising by reason of any disability or other defense of any Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of any Borrower or any other Loan Party; (b) any defense based on any claim that such Guarantor’s obligations exceed or are more burdensome than those of any Borrower or any other Loan Party; (c) the benefit of any statute of limitations affecting any Guarantor’s liability hereunder; (d) any right to proceed against any Borrower or any other Loan Party, proceed against or exhaust any security for the applicable Secured Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or

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benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the applicable Secured Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Secured Obligations.

**10.04 Obligations Independent.**

The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Secured Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not any Borrower or any other person or entity is joined as a party.

**10.05 Subrogation.**

No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until the Facility Termination Date has occurred. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Secured Obligations, whether matured or unmatured.

**10.06 Termination; Reinstatement.**

This Guaranty is a continuing and irrevocable guaranty of all Secured Obligations, as applicable, now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of any Borrower or a Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Secured Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this paragraph shall survive termination of this Guaranty.

**10.07 Stay of Acceleration.**

If acceleration of the time for payment of any of the Secured Obligations is stayed, in connection with any case commenced by or against a Guarantor or any Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor, jointly and severally, immediately upon demand by the Secured Parties.

**10.08 Condition of Borrower.**

Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from each Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrowers and any such other guarantor as such Guarantor requires, and that none of the Secured Parties has any duty, and such Guarantor is not relying on the Secured Parties at any time, to disclose to it any information relating to the business, operations or financial

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condition of the Borrowers or any other guarantor (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

**10.09 Appointment of the Parent as Agent for All Loan Parties.**

Each Borrower and each other Loan Party hereby appoints the Parent to act as its agent and representative for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Parent may execute such documents and provide such authorizations on behalf of such Loan Parties as the Parent deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent, L/C Issuer or a Lender to the Parent shall be deemed delivered to each Loan Party and (c) the Administrative Agent, L/C Issuer or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Parent on behalf of each of the Loan Parties.

**10.10 Right of Contribution.**

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable Law.

**10.11 Keepwell.**

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article X voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Secured Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

**ARTICLE XI MISCELLANEOUS**

**11.01 Amendments, Etc.**

~~No~~[Subject to Section 3.03\(c\) and the last paragraph of this Section 11.01, no](#) amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrowers or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and the Borrowers or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

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(a) waive any condition set forth in Section 4.01 (other than Section 4.01(l) and (m)), without the written consent of each Lender except that, in the sole discretion of the Administrative Agent, only a waiver by the Administrative Agent shall be required with respect to immaterial matters or items specified in Section 4.01(e)(iv) or (f) and other items noted in the post-closing letter made available to the Lenders with respect to which the Loan Parties have given assurances satisfactory to the Administrative Agent that such items shall be delivered promptly following the Closing Date;

(b) extend or increase the Revolving Commitment of any Lender (or reinstate any Revolving Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section 4.02 or of any Default or a mandatory reduction in the Revolving Commitments is not considered an extension or increase in the Revolving Commitment of any Lender);

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of any Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(e) change (i) Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby or (ii) Section 2.12(f) in a manner that would alter the pro rata application required thereby without the written consent of each Lender directly and adversely affected thereby;

(f) change any provision of this Section 11.01 or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or thereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(g) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(h) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(i) release any Borrower or permit any Borrower to assign or transfer any of its rights or obligations under this Agreement or the other Loan Documents without the consent of each Lender; or

(j) amend Section 1.09 or the definition of "Alternative Currency" without the written consent of each Lender directly affected thereby.

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and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, (A) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender, may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (1) the Revolving Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (2) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender, that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders, shall require the consent of such Defaulting Lender; (B) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and

(C) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

~~Notwithstanding anything to the contrary herein the Administrative Agent may, with the prior written consent of the Borrowers only, (a) amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency and (b) amend, modify or supplement this Agreement or any of the other Loan Documents to reflect the Movado SA Equity Transfer and the joinders and pledges required by the Movado SA Equity Transfer Conditions.~~

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Administrative Agent, the L/C Issuer, the Borrowers and the Lenders affected thereby to amend the definition of “Alternative Currency” or “Eurocurrency Rate” solely to add additional currency options and the applicable interest rate with respect thereto, in each case solely to the extent permitted pursuant to Section 1.09.

Notwithstanding anything to the contrary herein, this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrower and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

Notwithstanding any provision herein to the contrary, if the Administrative Agent and the Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document (including the schedules and exhibits thereto), then the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

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## **11.02 Notices; Effectiveness; Electronic Communications.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrowers or any other Loan Party, the Administrative Agent, the L/C Issuer or the Swingline Lender, to the address, fax number, e-mail address or telephone number specified for such Person on Schedule 1.01(a); provided that, except as may be expressly set forth herein: (A) any requirement under this Agreement to provide notice to the Borrowers shall be deemed satisfied by providing notice to the Parent at the address set forth on Schedule 1.01(a) and (B) any requirement that the Borrowers provide notice to any other party shall be deemed satisfied if the Parent provides such notice; and

(ii) if to any other Lender, to the address, fax number, e-mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

[This Agreement was prepared by: Goulston & Storrs, P.C.](#)

[885 Third Avenue, 18th Floor New York, NY](#)

[10022](#)

[Attention: Philip A. Herman, Esq.](#)

(b) Electronic Communications. Notices and other communications to the Administrative Agent, the Lenders, the Swingline Lender and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging and Internet or intranet websites) pursuant to an electronic communications agreement (or such other procedures approved by the Administrative Agent in its sole discretion); provided that the foregoing shall not apply to notices to any Lender, the Swingline Lender or the L/C Issuer pursuant to Article II if such Lender, Swingline Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swingline Lender, the L/C Issuer or the Borrowers may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices and other communications posted to an Internet or intranet

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website shall be deemed received by the intended recipient upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail address or other written acknowledgement) indicating that such notice or communication is available and identifying the website address therefor; provided that for both clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrowers, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrowers', any Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Part; provided, however, that in no event shall any Agent Party have any liability to the Borrowers, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrowers, the Administrative Agent, the L/C Issuer and the Swingline Lender may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the Borrowers, the Administrative Agent, the L/C Issuer and the Swingline Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and e-mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one (1) individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non- public information with respect to the Borrowers or their securities for purposes of United States federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices, Loan Notices, Letter of Credit Applications, Notice of Loan Prepayment and Swingline Loan Notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from

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any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**11.03 No Waiver; Cumulative Remedies; Enforcement.**

No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**11.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and the Arranger (including the reasonable fees, charges and disbursements counsel, which shall be limited to one firm of primary counsel for all such parties and no more than one local counsel in each jurisdiction where Collateral is located and in the jurisdiction in which any Foreign Borrower or any other Foreign Guarantor is organized), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out-of-pocket costs and expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the reasonable fees, charges and disbursements of one firm of primary counsel for all such parties and, if reasonably necessary, no more than one local counsel in any relevant jurisdiction and, in the event of any conflict of interest, one additional primary counsel and one additional counsel in

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each relevant jurisdiction to each group of affected Lenders similarly situated, taken as a whole), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, 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 settlement costs and reasonable fees, charges and disbursements of one firm of external counsel and one firm of local counsel in each appropriate jurisdiction for all Indemnitees taken as a whole, and solely in the case of a conflict of interest, one additional primary counsel and one additional counsel in each relevant jurisdiction to each group of affected Indemnitees similarly situated, taken as a whole), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including any Borrower or any other Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby (including, without limitation, the Indemnitee’s reliance on any Communication executed using an Electronic Signature, or in the form of an Electronic Record), the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual presence or release of Hazardous Materials on or from any property owned or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Loan Party or any of its Subsidiaries, or (iv) any actual claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by a Borrower or any other Loan Party or any of such Borrower’s or such Loan Party’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE;** provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or arose out of any claim or (y) arise from any proceeding that does not involve an action or omission by any Loan Party or any of their Affiliates that is brought by an Indemnitee against another Indemnitee (other than any claims against any Indemnitee in its capacity or in fulfilling its role as an administrative agent, collateral agent, arranger or any similar role under the Revolving Facility); and provided, further, that the Foreign Loan Parties shall not be liable for any such indemnification to the extent such losses, claims, damages, liabilities and related expenses arise out of, are in connection with, or result from, acts or omissions of, Loans or Letters of Credit issued to, or the obligations under the Loan Documents of, any Domestic Loan Party or any Domestic Subsidiary. Without limiting the provisions of Section 3.01(c), this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-

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agent), the L/C Issuer, the Swingline Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further 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 (or any such sub-agent), the L/C Issuer or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no Loan Party shall assert, and each Loan Party hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

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

(f) Survival. The agreements in this Section and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swingline Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

#### **11.05 Payments Set Aside.**

To the extent that any payment by or on behalf of any Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

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## **11.06 Successors and Assigns.**

(a) **Successors and Assigns Generally.** The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except neither the Borrowers nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection

(d) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(a) **Assignments by Lenders.** Any Lender may at any time assign (or assign and transfer by assumption of contract (*Vertragsübernahme*)) to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Revolving Commitment(s) and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swingline Loans) at the time owing to it); provided that any such assignment, other than an assignment by the Agent pursuant to Section 9.09(iii), shall be subject to the following conditions:

(i) **Minimum Amounts.**

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such Assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate, or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Revolving Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Revolving Commitments are not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed).

(ii) **Proportionate Amounts.** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement and the other Loan Documents with respect to the Loans and/or the Revolving Commitment assigned, except that this clause (ii) shall not apply to the Swingline Lender's rights and obligations in respect of Swingline Loans.

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(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrowers (such consent not to be unreasonably withheld or delayed ~~and such consent shall be deemed to have been given ten Business Days after the Lender has requested it unless expressly refused within that time~~) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund (if such entity is a Swiss Qualifying Bank); provided, that the Borrowers shall be deemed to have consented to any such assignment unless they shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received the request for such consent (unless the assignment or assignment and transfer by assumption of contract would result in a violation of the Swiss 10 Non-Bank Rule, in which case the Borrowers shall be required to provide their affirmative consent); *provided, further*, that (x) it shall not be deemed unreasonable for the Borrowers to withhold their consent if the assignment or assignment and transfer by assumption of contract would result in a violation of the Swiss 10 Non-Bank Rule and (y) the Borrowers may not withhold their consent solely by reason of the Swiss 10 Non-Bank Rule if after giving effect to the proposed assignment or and assignment and transfer by assumption of contract (*Vertragsübernahme*) there will be 10 or less Swiss Non-Qualifying Banks in aggregate under this Agreement;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Revolving Commitment if such assignment is to a Person that is not a Lender with a Revolving Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the L/C Issuer and the Swingline Lender shall be required for any assignment in respect of the Revolving Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to any Borrower or any of the Borrowers' Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the

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consent of the Borrowers and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment); 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 party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(b) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations 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. The Register shall be available for inspection by the Borrowers and any Lender (with respect to such Lender's interest only), at any reasonable time and from time to time upon reasonable prior notice.

(c) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender or any Borrower or any of the Borrowers' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swingline Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; (iii) the Borrowers, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such

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Lender's rights and obligations under this Agreement; (iv) the relationship between the Lender and that other person is that of a debtor and creditor (including in the bankruptcy or similar event of the Lender or a Loan Party; (v) the Participant will have no proprietary interest in the benefit of this Agreement or in any monies received by the Lender under or in relation to this Agreement; and (vi) the Participant will under no circumstances (other than permitted transfers and assignments under paragraph (b)(iii) of this Section 11.06) be subrogated to, or substituted in respect of, the Lender's claims under this Agreement or otherwise have any contractual relationship with, or rights against, the Borrowers under or in relation to this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participations. Without prejudice to any other provisions of this this Section 11.06, the restrictions set out in paragraphs (iv), (v) and (vi) above shall cease to apply if the Borrowers (acting reasonably) are satisfied that exposure transfers (which do not meet the conditions set out in paragraphs (iv), (v) and (vi) above) do not result in any negative Swiss Withholding Tax consequences (in each case as a result of (1) receipt a tax ruling of the Swiss Federal Tax Administration and/or (2) a material change of the Swiss Non-Bank-Rules).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(e) (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation)) 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 3.06 and 11.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation 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 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 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 (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note or Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve

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Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Resignation as L/C Issuer or Swingline Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Commitment and Revolving Loans pursuant to subsection (b) above, Bank of America may, (i) upon thirty (30) days' notice to the Borrowers and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days' notice to the Borrowers, resign as Swingline Lender. In the event of any such resignation as L/C Issuer or Swingline Lender, the Borrowers shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swingline Lender hereunder; provided, however, that no failure by the Borrowers to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swingline Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swingline Lender, (A) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as the case may be, and (B) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

#### **11.07 Treatment of Certain Information; Confidentiality.**

(a) Treatment of Certain Information. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates and to its Related Parties (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), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.16(c) or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrowers and their obligations, this Agreement or payments hereunder, (vii) on a confidential basis to (A) any rating agency in connection with rating the Borrowers or their Subsidiaries or the Revolving Facility, (B) the provider of any Platform or other electronic delivery service used by the Administrative Agent, the L/C Issuer and/or the Swingline Lender to deliver Borrower Materials or notices to the Lenders or (C) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the Revolving Facility, ~~or~~ (viii) with the consent of the Borrowers or to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent, any Lender, the L/C Issuer

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or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrowers or (ix) is independently discovered or developed by a party hereto without utilizing any Information received from the Borrowers or violating the terms of this Section 11.07. For purposes of this Section, "Information" means all information received from the Borrowers or any Subsidiary relating to any Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Borrowers or any Subsidiary, provided that, in the case of information received from the Borrowers or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 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. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Revolving Commitments.

(b) Non-Public Information. Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (i) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities Laws.

(c) Press Releases. The Loan Parties agree that they and their Affiliates will not in the future issue any press releases or other public disclosure using the name of the Administrative Agent or any Lender or their respective Affiliates or referring to this Agreement or any of the Loan Documents without the prior written consent of the Administrative Agent, unless (and only to the extent that) the Loan Parties or such Affiliate is required to do so under law and then, in any event the Loan Parties or such Affiliate will consult with such Person before issuing such press release or other public disclosure.

(d) Customary Advertising Material. The Loan Parties consent to the publication by the Administrative Agent or any Lender of customary advertising material relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Loan Parties.

#### **11.08 Right of Setoff**

If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent (such consent not to be unreasonably delayed or withheld), to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of any Borrower or any other Loan Party against any and all of the Obligations of each Borrower or such Loan Party now or hereafter owing to such Lender or the L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, the L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations of each Borrower or such Loan Party may be contingent or unmatured, secured or unsecured, or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed

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held in trust for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff; and, provided, further, that no deposits or other assets of any Foreign Loan Party shall be set off against or applied to any Obligations of any Domestic Loan Party or any Domestic Subsidiary. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Parent and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

#### **11.09 Interest Rate Limitation.**

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the applicable Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### **11.9 Counterparts; Integration; Effectiveness.**

This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent or the L/C Issuer, 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 that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page of this Agreement or any other Loan Document, or any certificate delivered thereunder, by fax transmission or e-mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

#### **11.10 Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the

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Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

#### **11.11 Severability.**

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swingline Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

#### **11.12 Replacement of Lenders.**

(a) If the Borrowers are entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender or if any other circumstance exists hereunder that gives the Borrowers the right to replace a Lender as a party hereto, 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, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) ~~(a)~~ the Domestic Borrowers shall have paid (or caused a Designated Borrower to pay) to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);

(ii) ~~(b)~~ such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the applicable Borrowers or applicable Designated Borrower (in the case of all other amounts);

(iii) ~~(c)~~ in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) ~~(d)~~ such assignment does not conflict with applicable Laws; and

(v) ~~(e)~~ in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

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(b) A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

(c) Each party hereto agrees that (i) an assignment required pursuant to this Section 11.13 may be effected pursuant to an Assignment and Assumption executed by the Borrowers, the Administrative Agent and the assignee and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to an be bound by the terms thereof; provided, that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided further that any such documents shall be without recourse to or warranty by the parties thereto.

(d) Notwithstanding anything in this Section 11.13 to the contrary, (A) any Lender that acts as an L/C Issuer may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such L/C Issuer or the depositing of Cash Collateral into a Cash Collateral account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to such outstanding Letter of Credit and (B) the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.06.

### **11.13 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN

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DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWERS OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) IF A PERSON IS REPRESENTED BY AN ATTORNEY IN CONNECTION WITH THE SIGNING AND/OR EXECUTION OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, AND THE RELEVANT POWER OF ATTORNEY IS EXPRESSED TO BE GOVERNED BY DUTCH OR ANY OTHER LAW, THAT CHOICE OF LAW IS HEREBY ACCEPTED BY EACH OTHER PERSON, IN ACCORDANCE WITH ARTICLE 14 OF THE HAGUE CONVENTION ON THE LAW APPLICABLE TO AGENCY OF 14 MARCH 1978.

**11.14 Waiver of Jury Trial.**

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**11.15 Subordination.**

Each Loan Party (a "Subordinating Loan Party") hereby subordinates the payment of all obligations and indebtedness of any other Loan Party owing to it, whether now existing or hereafter arising, including but not limited to any obligation of any such other Loan Party to the Subordinating Loan Party as subrogee of the Secured Parties or resulting from such Subordinating Loan Party's performance under this Guaranty, to the prior payment in full in cash of all Obligations. If the Administrative Agent so requests while an Event of Default shall have occurred and is continuing, any such obligation or indebtedness of any such

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other Loan Party to the Subordinating Loan Party shall be enforced and performance received by the Subordinating Loan Party as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Secured Obligations, but without reducing or affecting in any manner the liability of the Subordinating Loan Party under this Agreement. Without limitation of the foregoing, so long as no Event of Default has occurred and is continuing, the Loan Parties and the Secured Parties may make and receive payments with respect to Intercompany Debt; provided, that in the event that any Loan Party receives any payment of any Intercompany Debt at a time when such payment is prohibited by this Section, such payment shall be held by such Loan Party, in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request, to the Administrative Agent.

#### **11.16 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 Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that:

(a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Affiliate thereof, the Arranger and the Lenders are arm's-length commercial transactions between the Borrowers, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent and, as applicable, its Affiliates including the Arranger and the Lenders and their Affiliates (collectively, solely for purposes of this Section, the "Lenders"), on the other hand, (ii) each of the Borrowers and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) each Borrower and each other 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; (b) (i) the Administrative Agent and its Affiliates including the Arranger and each Lender each 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 Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (ii) neither the Administrative Agent, any of its Affiliates including the Arranger nor any Lender has any obligation to the Borrowers, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent and its Affiliates including the Arranger and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, any of its Affiliates including the Arranger nor any Lender has any obligation to disclose any of such interests to the Borrowers, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrowers and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, any of its Affiliates including the Arranger or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

#### **11.17 Electronic Execution; Electronic Records; Counterparts.**

~~The words "delivery," "execute," "execution," "signed," "signature,"~~

(a) This Agreement, any Loan Document and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties and each of the Administrative Agent, the L/C Issuer, the Swingline Lender, and each Lender (as used in this Section 11.18, collectively, each a "Credit Party") agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed

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original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and ~~words each of like import in any Loan Document~~ the Credit Parties may, at its option, create one or more copies of any ~~other document executed in connection herewith~~ Communication in the form of an imaged Electronic Record (“Electronic Copy”), which shall be deemed ~~to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records~~ created in the ordinary course of such Person’s business, and destroy the original paper document. All Communications in ~~electronic~~ the form, ~~each of which shall be of~~ an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity ~~or~~ and 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; provided that notwithstanding~~ paper record. Notwithstanding anything contained herein to the contrary, neither the Administrative Agent, L/C Issuer nor Swingline Lender is under ~~no~~ any obligation ~~to agree~~ to accept ~~electronic signatures~~ an Electronic Signature in any form or in any format unless expressly agreed to by ~~the Administrative Agent~~ such Person pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent, L/C Issuer and/or Swingline Lender has agreed to accept such Electronic Signature, the Administrative Agent and each of the Credit Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and/or any Credit Party without further verification and regardless of the appearance or form of such Electronic Signature, and (b) upon the request of the Administrative Agent or any Credit Party, any ~~electronic signature~~ Communication executed using an Electronic Signature shall be promptly followed by ~~such~~ a manually executed counterpart.

(b) Neither the Administrative Agent, L/C Issuer nor Swingline Lender shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent’s, L/C Issuer’s or Swingline Lender’s reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Administrative Agent, Issuing Bank and Swingline Lender shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

(c) Each of the Loan Parties and each Credit Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document based solely on the lack of paper original copies of this Agreement, such other Loan Document, and (ii) any claim against the Administrative Agent, each Credit Party and each Related Party for any liabilities arising solely from the Administrative Agent’s and/or any Credit Party’s reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature

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### **11.18 USA PATRIOT Act Notice.**

Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers and the other Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. The Borrowers and the Loan Parties agree to, promptly following a request by the Administrative Agent or any Lender, provide all such other documentation and information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

### **11.19 Time of the Essence.**

Time is of the essence of the Loan Documents.

### **11.20 Entire Agreement.**

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

### **11.21 Judgment Currency.**

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Loan Party in the Agreement Currency, such Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Loan Party (or to any other Person who may be entitled thereto under applicable law).

### **11.22 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 Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such

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liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and
- (b) the effects of any Bail-in Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

### **11.23 Existing Credit Agreement Amended and Restated.**

On the Closing Date, this Agreement shall amend and restate the Existing Credit Agreement and the existing guarantee under the Existing Credit Agreement (the "Existing Guaranties") in their entirety but, for the avoidance of doubt, shall not constitute a novation of the parties' rights and obligations thereunder. On the Closing Date, the rights and obligations of the parties hereto evidenced by the Existing Credit Agreement and the Existing Guaranties shall be evidenced by this Agreement and the other Loan Documents, the "Loans" as defined in the Existing Credit Agreement shall remain outstanding and be continued as, and converted to, Loans as defined herein and the Existing Letters of Credit issued by the L/C Issuer (as defined in the Existing Credit Agreement) for the account of certain Borrowers prior to the Closing Date shall remain issued and outstanding and shall be deemed to be Letters of Credit under this Agreement, and shall bear interest and be subject to such other fees as set forth in this Agreement.

### **11.24 Swiss Limitations.**

(a) If and to the extent that a Swiss Loan Party becomes liable under this Agreement or any other Loan Document for obligations of a Non-Swiss-Controlled Group Member and if complying with such obligations would constitute a repayment of capital (*Einlagerückgewähr*), a violation of the legally protected reserves (*gesetzlich geschützte Reserven*) or the payment of a (constructive) dividend (*verdeckte Gewinnausschüttung*) by such Swiss Loan Party or would otherwise be restricted under then applicable Swiss law (the "**Swiss Restricted Obligations**"), the aggregate liability of the Swiss Loan Party for Swiss Restricted Obligations shall be limited at such time to the Swiss Capped Amount provided that (1) this limitation shall only apply to the extent it is a requirement under applicable Swiss law at the time the Swiss Loan Party is required to perform under the Swiss Restricted Obligations, and (2) such limitation shall not free the Swiss Loan Party from its obligations in excess of the Swiss Capped Amount, but merely postpone the performance date therefore until such times as performance is again permitted.

(b) In relation to payments made under the Swiss Restricted Obligations, the Swiss Loan Party shall:

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(i) procure that such payments can be made without deduction of Swiss Withholding Tax, or with deduction of Swiss Withholding Tax at a reduced rate, by discharging the liability to such tax by notification pursuant to applicable law (including double tax treaties) rather than payment of the tax (and the Swiss Loan Party shall promptly deliver to the Administrative Agent a copy of each such notification made);

(ii) if such notification procedure pursuant to subparagraph (i) above does not apply:

- deduct Swiss Withholding Tax at the rate of 35 per cent (or such other rate as is in force at that time) from any such payment or if the notification procedure pursuant to subparagraph (i) above applies for a part of the Swiss Withholding Tax only, deduct Swiss Withholding Tax at the reduced rate resulting after the discharge of part of such tax by notification under applicable law;
- pay any such deduction to the Swiss Federal Tax Administration;
- notify and provide evidence to the Administrative Agent that the Swiss Withholding Tax has been paid to the Swiss Federal Tax Administration; and
- (A) use its best efforts to ensure that any person other than a Loan Party, which is entitled to a full or partial refund of the Swiss Withholding Tax deducted from such payment in respect of Swiss Restricted Obligations, will, as soon as possible after such deduction, request a refund of Swiss Withholding Tax under applicable law (including treaties) and pay to the Administrative Agent upon receipt any amounts so refunded; or (B) if a Loan Party is entitled to a full or partial refund of the Swiss Withholding Tax deducted from such payment, and if requested by the Administrative Agent, provide the Administrative Agent those documents that are required by law and applicable treaties to be provided by the payer of such tax, for each relevant Loan Party, to prepare a claim for refund of Swiss Withholding Tax.

(c) Where a deduction for Swiss Withholding Tax is required to be made in respect of any payment under this clause pursuant to paragraph (b) above, the Administrative Agent shall be entitled to further enforce the Guarantee granted by the Swiss Loan Party under this Agreement and apply proceeds therefrom against the Swiss Restricted Obligations (and the Swiss Loan Party shall withhold Swiss Withholding Tax on the additional amount in accordance with paragraph (b) above) so that after making any required deduction of Swiss Withholding Tax, the aggregate amount paid net of Swiss Withholding Tax is equal to the amount which would have resulted if no deduction of Swiss Withholding Tax had been required, subject always to the limitations set out in paragraph (a) above. This paragraph (c) is without prejudice to the indemnification obligations of any Loan Party other than the Swiss Loan Party in respect of any amounts deducted on account of Swiss Withholding Tax.

(d) If and to the extent requested by the Administrative Agent, the Swiss Loan Party shall, and any parent company of the Swiss Loan Party being a party to this Agreement shall procure that the Swiss Loan Party will, promptly implement all such measures and/or promptly procure the fulfilment of all prerequisites allowing it to promptly make the requested payment(s) from time to time, including the following:

(i) preparation of an up-to-date audited interim balance sheet of the Swiss Loan Party on the basis of which the Swiss Capped Amount will be determined;

(ii) confirmation of the auditors of the Swiss Loan Party that the Swiss Capped Amount has been correctly calculated;

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(iii) approval by a shareholders' meeting of the Swiss Loan Party of the distribution of the relevant requested amount (within the limits of the Swiss Capped Amount);

(iv) if the enforcement of obligations of the Swiss Loan Party were limited due to the effects referred to in this clause and to the extent permitted by applicable Swiss law, write up and/or, to the extent permitted under the Loan Documents, realize any of its assets that are shown in its balance sheet with a book value that is lower than the market value of the assets (in case of realization, however, only if such assets are not necessary for the Swiss Loan Party's business (*nicht betriebsnotwendige Aktiven*)), and/or convert share capital and statutory reserves into freely available reserves unless prohibited by mandatory law; and

(v) all such measures necessary or useful, and permitted under applicable Swiss law, to allow the Swiss Loan Party to make prompt payments or perform promptly the Swiss Restricted Obligations with a minimum of limitations.

#### **11.25 Acknowledgement Regarding Any Supported QFCs.**

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 11.26, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and

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interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

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## CERTIFICATIONS

I, Efraim Grinberg, certify that:

- (1) I have reviewed this quarterly report on Form 10-Q of Movado Group, 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(s) 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 23, 2021

/s/ Efraim Grinberg

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Efraim Grinberg

Chairman of the Board of Directors and Chief  
Executive Officer

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## CERTIFICATIONS

I, Sallie A. DeMarsilis, certify that:

- (1) I have reviewed this quarterly report on Form 10-Q of Movado Group, 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(s) 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 23, 2021

/s/ Sallie A. DeMarsilis

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Sallie A. DeMarsilis  
Executive Vice President,  
Chief Operating Officer,  
Chief Financial Officer and  
Principal Accounting Officer



CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report on Form 10-Q of Movado Group, Inc. (the "Company") for the quarter ended October 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report") the undersigned hereby certifies, in the capacity indicated below and pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (i) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (ii) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 23, 2021

/s/ Efraim Grinberg

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Efraim Grinberg  
Chairman of the Board of Directors and Chief  
Executive Officer

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CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report on Form 10-Q of Movado Group, Inc. (the “Company”) for the quarter ended October 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the “Report”) the undersigned hereby certifies, in the capacity indicated below and pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (i) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (ii) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 23, 2021

/s/ Sallie A. DeMarsilis

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Sallie A. DeMarsilis  
Executive Vice President,  
Chief Operating Officer,  
Chief Financial Officer and  
Principal Accounting Officer

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