

**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 September 30, 2022

OR

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period _____ to _____

Commission file number 001-10962

**TOPGOLF
CALLAWAY**
BRANDS

Topgolf Callaway Brands Corp.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

95-3797580
(I.R.S. Employer
Identification No.)

2180 Rutherford Road, Carlsbad, CA 92008
(760) 931-1771

(Address, including zip code, and telephone number, including area code, of principal executive offices)

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on which Registered
Common Stock, \$0.01 par value per share	MODG	The New York Stock Exchange

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

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

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

As of October 31, 2022, the number of shares outstanding of the Registrant's common stock was 184,847,749.

Important Notice to Investors Regarding Forward-Looking Statements: This report contains “forward-looking statements” as defined under the Private Securities Litigation Reform Act of 1995. Forward-looking statements can be identified by words such as: “may,” “should,” “will,” “could,” “would,” “anticipate,” “plan,” “believe,” “project,” “estimate,” “expect,” “strategy,” “future,” “likely,” and similar references to future periods. Forward-looking statements include, among others, statements that relate to future plans, events, liquidity, financial results, performance, prospects or growth and scale opportunities including, but not limited to, statements relating to future industry and market conditions, the impact of the COVID-19 pandemic on the Company’s business, results of operations and financial condition and the impact of any measures taken to mitigate the effect thereof, strength and demand of the Company’s products and services, continued brand momentum, demand for golf and outdoor activities and apparel, continued investments in the business, increases in shareholder value, consumer trends and behavior, future industry and market conditions, the benefits of the merger with Topgolf International, Inc. (“Topgolf”), including the anticipated operations, venue/bay expansion plans, financial position, liquidity, performance, prospects or growth and scale opportunities of the Company following the merger, the strength of the Company’s brands, product lines and e-commerce business, geographic diversity, market recovery, availability of capital under the Company’s credit facilities, the capital markets or other sources, the Company’s conservation and cost reduction efforts, cash flows and liquidity, compliance with debt covenants, estimated unrecognized stock compensation expense, projected capital expenditures and depreciation and amortization expense, future contractual obligations, the realization of deferred tax assets, including loss and credit carryforwards, future income tax expense, the future impact of new accounting standards, the Topgolf merger and the related financial impact of the future business and prospects of the Company, including TravisMathew, LLC (“TravisMathew”), OGIO International, Inc. (“OGIO”), JW Stargazer Holding GmbH (“Jack Wolfskin”) and Topgolf. These statements are based upon current information and the Company’s current beliefs, expectations and assumptions regarding the future of the Company’s business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions. Because forward-looking statements relate to the future, they are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict and many of which are outside of the Company’s control. As a result of these uncertainties and because the information on which these forward-looking statements is based may ultimately prove to be incorrect, actual results may differ materially from those anticipated. Important factors that could cause actual results to differ include, among others, the following:

- certain risks and uncertainties, including changes in capital markets or economic conditions, particularly the uncertainty related to inflation, decreases in consumer demand and spending and any severe or prolonged economic downturn;
- the impact of the COVID-19 pandemic and its related variants and other potential future outbreaks of infectious diseases or other health concerns, and measures taken to limit their impact, which could adversely affect the Company’s business, employees, suppliers, consumer demand and supply chain, and the global economy;
- costs, expenses or difficulties related to the merger with Topgolf, including the integration of the Topgolf business, or the failure to realize the expected benefits and synergies of the transaction in the expected timeframes or at all;
- the potential impact of the Topgolf merger on relationships with the Company’s and/or Topgolf’s employees, customers, suppliers and other business partners;
- consumer acceptance of and demand for the Company’s products and services;
- future retailer purchasing activity, which can be significantly affected by adverse industry conditions and overall retail inventory levels;
- any unfavorable changes in U.S. trade or other policies, including restrictions on imports or an increase in import tariffs;
- the level of promotional activity in the marketplace;
- future consumer discretionary purchasing activity, which can be significantly adversely affected by unfavorable economic or market conditions;
- future changes in foreign currency exchange rates and the degree of effectiveness of the Company’s hedging programs;
- the ability of the Company to manage international business risks;
- the Company’s ability to recognize operational synergies and scale opportunities across its supply chain and global business platform;
- adverse changes in the credit markets or continued compliance with the terms of the Company’s credit facilities;
- the Company’s ability to monetize its investments;

- the Company's ability to successfully integrate, operate and expand the retail stores of the acquired TravisMathew and Jack Wolfskin businesses, the Korea apparel business and venue locations of the Topgolf business;
- delays, difficulties or increased costs in the supply of components needed to manufacture the Company's products or in manufacturing the Company's products, including the Company's dependence on a limited number of suppliers for some of its products;
- adverse weather conditions and seasonality;
- any rule changes or other actions taken by the United States Golf Association or other golf association that could have an adverse impact upon demand or supply of the Company's products;
- the ability of the Company to protect its intellectual property rights;
- a decrease in participation levels in golf;
- the effect of terrorist activity, armed conflict, or natural disasters on the economy generally, on the level of demand for the Company's products or on the Company's ability to manage its supply and delivery logistics in such an environment; and
- the general risks and uncertainties applicable to the Company and its business.

Investors should not place undue reliance on these forward-looking statements, which are based on current information and speak only as of the date hereof. The Company undertakes no obligation to update any forward-looking statements to reflect new information or events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. Investors should also be aware that while the Company from time to time does communicate with securities analysts, it is against the Company's policy to disclose to them any material non-public information or other confidential commercial information. Furthermore, the Company has a policy against distributing or confirming financial forecasts or projections issued by analysts and any reports issued by such analysts are not the responsibility of the Company. Investors should not assume that the Company agrees with any report issued by any analyst or with any statements, projections, forecasts or opinions contained in any such report. For details concerning these and other risks and uncertainties, see the Company's most recent Annual Report on Form 10-K, as well as the Company's quarterly reports on Form 10-Q and current reports on Form 8-K subsequently filed with the Securities and Exchange Commission from time to time.

Company Trademarks: *The following marks and phrases, among others, are trademarks of the Company: Alpha Convoy, Apex, Apex DCB, Apex TCB, Apex Tour, Apex UW, APW, Arm Lock, Backstryke, Batwing Technology, Big Bertha, Big Bertha B21, Big Bertha REVA, Big T, Bird of Prey, Black Series, Bounty Hunter, C Grind, Callaway, Callaway Capital, Callaway Golf, Callaway Media Productions, Callaway Super Hybrid, Callaway X, Capital, Chev, Chev 18, Chevron Device, Chrome Soft, Chrome Soft X, Cirrus, Comfort Tech, CUATER, Cuater C logo, Cup 360, CXR, 360 Face Cup, Dawn Patrol, Demonstrably Superior And Pleasingly Different, DSPD, Divine, Double Wide, Eagle, Engage, Epic, Epic Flash, Epic Max, Epic Max LS, Epic Speed, ERC, ERC Soft, Everyone's Game, Exo, Cage, Fast Tech Mantle, Flash Face Technology, Flash Face SS21, FT Optiforce, FT Performance, FT Tour, Fusion, Fusion Zero, GBB, GBB Epic, Gems, Golf Fusion, Gravity Core, Great Big Bertha, Great Big Bertha Epic, Grom, Groove- In- Groove Technology, Heavenwood, Hersatility, Hex Aerodynamics, Hex Chrome, HX, Hyper Dry, Hyper-Lite, Hyper Speed Face, I.D. Ball, Jack Wolfskin, Jailbird, Jailbreak, Jailbreak AI Speed Frame, Jailbreak AI Velocity Blades, JAWS MD5, Jaws Raw, Jewel Jam, Kings of Distance, Legacy, Life On Tour, Longer From Everywhere, Lowrider, Luxe, Mack Daddy, Magna, Majestic, MarXman, Mavrik, MD3 Milled, MD4 Tactical, MD5, MD 5 Jaws, Metal-X, Microhinge Face Insert, Microhinge Star, Mission:Ambition, Nanuk, NipIt, Number One Putter in Golf, O OGIO, O Works, Odyssey, Odyssey Works, Offset Groove in Groove, Ogio, OGIO AERO, OGIO ALPHA, OGIO ARORA, OGIO CLUB, OGIO FORGE, OGIO ME, OGIO RENEGADE, OGIO SAVAGE, OGIO SHADOW, OGIO XIX, Opti Flex, Opti Grip, Opti Shield, OptiFit, Opti Vent, ORG 7, ORG 14, ORG 15, Paw Print, PRESTIGE 7, ProType, ·R, Rainspann, Red Ball, R-Moto, Renegade, Rig 9800, Rossie, RSX, S2H2, Sabertooth, Shankstar, Shredder, Silencer, SLED, Slice Stopper, SoftFast, Solaire, Speed Cartridge, Speed Regime, Speed Step, Steelhead XR, Steelhead, Strata, Stroke Lab, Stronomic, Sub Zero, Superfast, Superhot, Supersoft, SureOut, Swing Suite, Tee Time Adventures, TM, Tank, Tank Cruiser, Tech Series, Teron, Texapore, TMCA, Toe Up, TopChallenge, TopChip, TopContender, TopDrive, TopGolf, TopGolf Crush, Topgolf Entertainment Group, TopGolf Media, Topgolf Shield Logo, TopLife, TopPressure, TopScore, TopScramble, TopShot, TopTracer, TopTracer Range, Toulon, Toulon Garage, Tour Authentic, Tour Tested, Trade In! Trade Up!, TRAVISMATHEW, TravisMathew TM logo, Trionomer Cover, Truvis, Truvis Pattern, Tyro, udesign, Uptown, Versa, VFT, W Grind, Warbird, Weather Series, Wedgeducation, WGT, White Hot, White Hot OG, White Hot Tour, White Ice, World's Friendliest, X-12, X-14, X-16, X-18, X-20, X-22, X-24, XACT, X Face VFT, X Hot, X Hot Pro, X² Hot, X Series, X Tech, XR, XR 16, XSPANN, Xtra Traction Technology, Xtra Width Technology, XTT, 2-Ball.*

TOPGOLF CALLAWAY BRANDS CORP.
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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements (Unaudited)

**TOPGOLF CALLAWAY BRANDS CORP.
CONSOLIDATED CONDENSED BALANCE SHEETS
(In millions, except share data)
(Unaudited)**

	September 30, 2022	December 31, 2021
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 200.3	\$ 352.2
Restricted cash	0.5	1.2
Accounts receivable, less allowances of \$10.0 million and \$6.2 million, respectively	275.0	105.3
Inventories	722.3	533.5
Prepaid expenses	47.4	54.2
Other current assets	115.3	119.3
Total current assets	1,360.8	1,165.7
Property, plant and equipment, net	1,676.5	1,451.4
Operating lease right-of-use assets, net	1,411.5	1,384.5
Intangible assets, net	1,486.7	1,528.6
Goodwill	1,981.4	1,960.1
Other assets	304.8	257.5
Total assets	<u>\$ 8,221.7</u>	<u>\$ 7,747.8</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	\$ 526.0	\$ 491.2
Accrued employee compensation and benefits	129.9	128.9
Asset-based credit facilities	99.6	9.1
Operating lease liabilities, short-term	72.7	72.3
Construction advances	71.1	22.9
Deferred revenue	94.4	93.9
Other current liabilities	45.3	47.7
Total current liabilities	1,039.0	866.0
Long-term liabilities:		
Long-term debt, net	1,065.9	1,025.3
Operating lease liabilities, long-term	1,428.9	1,385.4
Deemed landlord financing obligations, long-term	577.0	460.6
Deferred taxes, net	107.0	163.6
Other long-term liabilities	197.4	164.0
Commitments and contingencies (Note 12)		
Shareholders' equity:		
Preferred stock, \$0.01 par value, 3.0 million shares authorized, none issued and outstanding at September 30, 2022 and December 31, 2021	—	—
Common stock, \$0.01 par value, 360.0 million shares authorized, and 186.2 million shares issued at September 30, 2022 and December 31, 2021	1.9	1.9
Additional paid-in capital	3,004.2	3,051.6
Retained earnings	925.2	682.2
Accumulated other comprehensive loss	(92.6)	(27.3)
Less: Common stock held in treasury, at cost, 1.3 million shares and 1.0 million shares at September 30, 2022 and December 31, 2021, respectively	(32.2)	(25.5)
Total shareholders' equity	3,806.5	3,682.9
Total liabilities and shareholders' equity	<u>\$ 8,221.7</u>	<u>\$ 7,747.8</u>

The accompanying notes are an integral part of these financial statements.

TOPGOLF CALLAWAY BRANDS CORP.
CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS
(In millions, except per share data)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net revenues:				
Products	\$ 579.3	\$ 527.1	\$ 2,018.2	\$ 1,678.4
Services	409.2	329.4	1,126.2	743.3
Total net revenues	988.5	856.5	3,144.4	2,421.7
Costs and expenses:				
Cost of products	330.7	288.4	1,142.5	914.0
Cost of services, excluding depreciation and amortization	48.2	40.0	136.3	93.8
Other venue expense	287.6	215.9	780.2	483.6
Selling, general and administrative expense	224.7	217.7	720.4	612.7
Research and development expense	19.2	15.8	55.4	48.8
Venue pre-opening costs	9.9	2.7	18.1	9.4
Total costs and expenses	920.3	780.5	2,852.9	2,162.3
Income from operations	68.2	76.0	291.5	259.4
Interest expense, net	(36.4)	(28.7)	(100.3)	(75.1)
Gain on Topgolf investment	—	—	—	252.5
Other income, net	7.0	2.9	26.9	9.5
Income before income taxes	38.8	50.2	218.1	446.3
Income tax provision (benefit)	0.3	66.2	(12.5)	98.1
Net income (loss)	<u>\$ 38.5</u>	<u>\$ (16.0)</u>	<u>\$ 230.6</u>	<u>\$ 348.2</u>
Earnings (loss) per common share:				
Basic	\$0.21	(\$0.09)	\$1.25	\$2.13
Diluted	\$0.20	(\$0.09)	\$1.17	\$2.03
Weighted-average common shares outstanding:				
Basic	184.8	186.0	184.9	163.1
Diluted	201.8	186.0	201.0	171.2

The accompanying notes are an integral part of these financial statements.

TOPGOLF CALLAWAY BRANDS CORP.
CONSOLIDATED CONDENSED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(In millions)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net income (loss)	\$ 38.5	\$ (16.0)	\$ 230.6	\$ 348.2
Other comprehensive income (loss):				
Change in derivative instruments	4.4	0.5	17.4	7.2
Foreign currency translation adjustments	(38.0)	(12.9)	(84.6)	(23.2)
Comprehensive income (loss), before income tax on other comprehensive income items	4.9	(28.4)	163.4	332.2
Income tax (benefit) provision on derivative instruments	(1.0)	1.3	(1.9)	2.9
Comprehensive income (loss)	<u>\$ 5.9</u>	<u>\$ (29.7)</u>	<u>\$ 165.3</u>	<u>\$ 329.3</u>

The accompanying notes are an integral part of these financial statements.

TOPGOLF CALLAWAY BRANDS CORP.
CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS
(In millions)
(Unaudited)

	Nine months ended September 30,	
	2022	2021
Cash flows from operating activities:		
Net income	\$ 230.6	\$ 348.2
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	139.8	107.9
Lease amortization expense	67.6	46.0
Amortization of debt discount and issuance costs	7.4	14.3
Deferred taxes, net	(12.5)	87.0
Share-based compensation	37.4	27.1
Gain on Topgolf investment	—	(252.5)
Acquisition costs	—	(16.2)
Other	11.2	(2.5)
Change in assets and liabilities, net of effect from acquisitions:		
Accounts receivable, net	(193.9)	(111.0)
Inventories	(235.9)	(27.3)
Leasing receivables	(14.8)	(16.4)
Other assets	12.3	(57.9)
Accounts payable and accrued expenses	69.2	71.2
Deferred revenue	0.4	19.0
Accrued employee compensation and benefits	4.2	46.9
Payments on operating leases	(65.5)	(37.7)
Income taxes receivable/payable, net	(24.9)	2.7
Other liabilities	2.0	(2.0)
Net cash provided by operating activities	34.6	246.8
Cash flows from investing activities:		
Capital expenditures	(353.4)	(198.9)
Cash acquired in merger	—	171.3
Acquisition of intangible assets	(0.6)	—
Proceeds from sale of investment in golf-related ventures	0.4	18.6
Net cash used in investing activities	(353.6)	(9.0)
Cash flows from financing activities:		
Repayments of long-term debt	(87.0)	(160.9)
Proceeds from borrowings on long-term debt	60.0	20.0
Proceeds from asset-based credit facilities, net	100.0	8.0
Debt issuance cost	—	(5.4)
Payment on contingent earn-out obligation	(5.6)	(3.6)
Repayments of financing leases	(0.3)	(0.5)
Proceeds from lease financing	133.1	49.5
Exercise of stock options	0.6	19.5
Acquisition of treasury stock	(35.5)	(12.9)
Net cash provided by (used in) financing activities	165.3	(86.3)
Effect of exchange rate changes on cash, cash equivalents and restricted cash	0.6	(3.7)
Net (decrease) increase in cash, cash equivalents and restricted cash	(153.1)	147.8
Cash, cash equivalents and restricted cash at beginning of period	357.7	366.1
Cash, cash equivalents and restricted cash at end of period	204.6	513.9
Less: restricted cash ⁽¹⁾	(4.3)	(5.7)
Cash and cash equivalents at end of period	\$ 200.3	\$ 508.2
Supplemental disclosures:		
Cash paid for income taxes, net	\$ 21.9	\$ 8.0
Cash paid for interest and fees	\$ 86.0	\$ 68.1
Non-cash investing and financing activities:		
Issuance of treasury stock and common stock for compensatory stock awards released from restriction	\$ 28.0	\$ 18.3
Accrued capital expenditures	\$ 47.2	\$ 36.8
Financed additions of capital expenditures	\$ 85.0	\$ 53.9
Issuance of common stock related to convertible notes	\$ 0.5	\$ —
Issuance of common stock in Topgolf merger	\$ —	\$ 2,650.2

⁽¹⁾ Includes \$0.5 million and \$1.8 million of short-term restricted cash and \$3.8 million and \$3.9 million of long-term restricted cash included in other assets for the periods ended September 30, 2022 and 2021, respectively.

The accompanying notes are an integral part of these financial statements.

TOPGOLF CALLAWAY BRANDS CORP.
CONSOLIDATED CONDENSED STATEMENTS OF SHAREHOLDERS' EQUITY
(In millions)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Treasury Stock		Total Shareholders' Equity
	Shares	Amount				Shares	Amount	
Balance at December 31, 2021	186.2	\$ 1.9	\$ 3,051.6	\$ 682.2	\$ (27.3)	(1.0)	\$ (25.5)	\$ 3,682.9
Cumulative Impact of Accounting Standards Update 2020-06 adoption	—	—	(57.1)	12.4	—	—	—	(44.7)
Acquisition of treasury stock	—	—	—	—	—	(1.5)	(34.2)	(34.2)
Compensatory awards released from restriction	—	—	(24.0)	—	—	1.0	24.0	—
Share-based compensation	—	—	13.8	—	—	—	—	13.8
Equity adjustment from foreign currency translation	—	—	—	—	(13.4)	—	—	(13.4)
Change in fair value of derivative instruments, net of tax	—	—	—	—	9.4	—	—	9.4
Net income	—	—	—	86.7	—	—	—	86.7
Balance at March 31, 2022	186.2	\$ 1.9	\$ 2,984.3	\$ 781.3	\$ (31.3)	(1.5)	\$ (35.7)	\$ 3,700.5
Acquisition of treasury stock	—	—	0.2	—	—	—	(0.5)	(0.3)
Exercise of stock options	—	—	(0.2)	—	—	—	0.3	0.1
Compensatory awards released from restriction	—	—	(1.8)	—	—	0.1	1.8	—
Share-based compensation	—	—	13.2	—	—	—	—	13.2
Equity adjustment from foreign currency translation	—	—	—	—	(33.2)	—	—	(33.2)
Change in fair value of derivative instruments, net of tax	—	—	—	—	4.5	—	—	4.5
Net income	—	—	—	105.4	—	—	—	105.4
Balance at June 30, 2022	186.2	\$ 1.9	\$ 2,995.7	\$ 886.7	\$ (60.0)	(1.4)	\$ (34.1)	\$ 3,790.2
Acquisition of treasury stock	—	—	—	—	—	—	(1.0)	(1.0)
Exercise of stock options	—	—	(0.3)	—	—	—	0.8	0.5
Compensatory awards released from restriction	—	—	(2.2)	—	—	0.1	2.2	—
Share-based compensation	—	—	10.4	—	—	—	—	10.4
Equity adjustment from foreign currency translation	—	—	—	—	(38.0)	—	—	(38.0)
Change in fair value of derivative instruments, net of tax	—	—	—	—	5.4	—	—	5.4
Issuance of common stock related to convertible notes	—	—	0.5	—	—	—	—	0.5
Capped call transaction related to convertible note conversion	—	—	0.1	—	—	—	(0.1)	—
Net income	—	—	—	38.5	—	—	—	38.5
Balance, September 30, 2022	186.2	\$ 1.9	\$ 3,004.2	\$ 925.2	\$ (92.6)	(1.3)	\$ (32.2)	\$ 3,806.5

The accompanying notes are an integral part of these financial statements.

TOPGOLF CALLAWAY BRANDS CORP.
CONSOLIDATED CONDENSED STATEMENTS OF SHAREHOLDERS' EQUITY
(In millions)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Treasury Stock		Total Shareholders' Equity
	Shares	Amount				Shares	Amount	
Balance at December 31, 2020	95.6	\$ 1.0	\$ 346.9	\$ 360.2	\$ (6.5)	(1.4)	\$ (25.9)	\$ 675.7
Common stock issued in Topgolf merger	89.8	0.9	2,649.3	—	—	—	—	2,650.2
Fair value of replacement awards converted in Topgolf merger (Note 5)	—	—	33.1	—	—	—	—	33.1
Common stock issued for replacement restricted stock awards	0.2	—	—	—	—	—	—	—
Acquisition of treasury stock	—	—	—	—	—	(0.4)	(12.5)	(12.5)
Exercise of stock options	—	—	(0.5)	—	—	—	0.7	0.2
Compensatory awards released from restriction	—	—	(16.5)	—	—	0.9	16.5	—
Share-based compensation	—	—	4.6	—	—	—	—	4.6
Equity adjustment from foreign currency translation	—	—	—	—	(16.3)	—	—	(16.3)
Change in fair value of derivative instruments, net of tax	—	—	—	—	5.3	—	—	5.3
Net income	—	—	—	272.5	—	—	—	272.5
Balance at March 31, 2021	185.6	1.9	3,016.9	632.7	(17.5)	(0.9)	(21.2)	3,612.8
Acquisition of treasury stock	—	—	0.3	—	—	—	(0.3)	—
Exercise of stock options	0.3	—	(1.4)	—	—	0.8	19.6	18.2
Compensatory awards released from restriction	—	—	(1.8)	—	—	0.1	1.8	—
Share-based compensation	—	—	11.0	—	—	—	—	11.0
Equity adjustment from foreign currency translation	—	—	—	—	6.0	—	—	6.0
Change in fair value of derivative instruments, net of tax	—	—	—	—	(0.2)	—	—	(0.2)
Net income	—	—	—	91.7	—	—	—	91.7
Balance at June 30, 2021	185.9	\$ 1.9	\$ 3,025.0	\$ 724.4	\$ (11.7)	—	\$ (0.1)	\$ 3,739.5
Acquisition of treasury stock	—	—	0.1	—	—	—	(0.5)	(0.4)
Exercise of stock options	0.1	—	1.0	—	—	—	0.1	1.1
Share-based compensation	—	—	11.5	—	—	—	—	11.5
Equity adjustment from foreign currency translation	—	—	—	—	(12.9)	—	—	(12.9)
Change in fair value of derivative instruments, net of tax	—	—	—	—	(0.8)	—	—	(0.8)
Net loss	—	—	—	(16.0)	—	—	—	(16.0)
Balance at September 30, 2021	186.0	\$ 1.9	\$ 3,037.6	\$ 708.4	\$ (25.4)	—	\$ (0.5)	\$ 3,722.0

The accompanying notes are an integral part of these financial statements.

TOPGOLF CALLAWAY BRANDS CORP.
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
(Unaudited)

Note 1. The Company and Basis of Presentation

The Company

Topgolf Callaway Brands Corp. (formerly Callaway Golf Company), a Delaware corporation, together with its wholly-owned subsidiaries (collectively, the “Company” or “Topgolf Callaway Brands”), is a modern golf and active lifestyle leader that provides world-class golf entertainment experiences, designs and manufactures premium golf equipment, and sells golf and active lifestyle apparel and other accessories through its family of brand names which include Topgolf, Callaway Golf, Odyssey, OGIO, TravisMathew and Jack Wolfskin.

On September 6, 2022, the Company changed its corporate name from Callaway Golf Company to Topgolf Callaway Brands Corp. and on September 7, 2022, changed its New York Stock Exchange ticker symbol from “ELY” to “MODG.” The changes to the corporate name and ticker symbol did not have any impact on the Company’s legal entity structure or financial statements.

The Company’s products and brands are reported under three operating segments: Topgolf, which includes the operations of the Company’s Topgolf business; Golf Equipment, which includes the operations of the Company’s golf club and golf ball business; and Active Lifestyle, which includes the operations of the Company’s soft goods business marketed under the Callaway, TravisMathew, Jack Wolfskin and OGIO brand names.

During the second quarter of 2022, the Company changed the name of its “Apparel, Gear, and Other” operating segment to “Active Lifestyle”. The segment name change had no impact on the composition of the Company’s segments or on previously reported financial position, results of operations, cash flow or segment operating results.

Basis of Presentation

The accompanying unaudited consolidated condensed financial statements have been prepared by the Company pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”). Pursuant to these rules and regulations, the Company has condensed or omitted certain information and disclosures that are normally included in its annual consolidated financial statements prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”). In the opinion of management, these consolidated condensed financial statements include all of the normal and recurring adjustments necessary for the fair presentation of the financial position, results of operations and cash flows for the periods and dates presented. These unaudited consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2021, which was filed with the SEC on March 1, 2022. Interim operating results are not necessarily indicative of operating results that may be expected for the year ending December 31, 2022, or any other future periods.

The Company translates the financial statements of its foreign subsidiaries using end-of-period exchange rates for assets and liabilities and average exchange rates during each reporting period for results of operations. All intercompany balances and transactions have been eliminated during consolidation.

The Company’s Topgolf subsidiary previously operated on a 52- or 53-week retail calendar year, which ended on the Sunday closest to December 31. As of April 4, 2022 and going forward, Topgolf began operating on a fiscal year calendar, which will end on December 31. Topgolf financial information included in the Company’s consolidated condensed financial statements for the three and nine months ended September 30, 2022 is for the period beginning July 1, 2022 and ending September 30, 2022, and the period beginning January 3, 2022 and ending September 30, 2022, respectively. Topgolf financial information included in the Company’s consolidated condensed financial statements for the three and nine months ended September 30, 2021 is for the period beginning July 5, 2021 and ending October 3, 2021, and the period beginning March 8, 2021 (the date on which the Company completed its merger with Topgolf) and ending October 3, 2021, respectively.

Beginning January 1, 2022, the Company changed the presentation of its financial statements and accompanying footnote disclosures from thousands to millions, therefore, certain prior year reported amounts may differ by an insignificant amount due to the nature of the rounding relative to the change in presentation. Other than these changes, the change in presentation had no material impact on previously reported financial information.

Note 2. Summary of Significant Accounting Policies

The Company's significant accounting policies are described in Note 2 to its audited consolidated financial statements for the year ended December 31, 2021, which are included in the Company's Annual Report on Form 10-K which was filed with the SEC on March 1, 2022.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The Company bases its estimates on historical information and various other assumptions that are believed to be reasonable under the circumstances. Examples of such estimates include, among other things, determining the nature and timing of the satisfaction of performance obligations as it relates to revenue recognition, the valuation of share-based awards, the recoverability of long-lived assets, the assessment of intangible assets and goodwill for impairment, the determination of the incremental borrowing rate for operating and financing leases, provisions for warranty and expected credit losses, inventory obsolescence, sales returns, future price concessions, tax contingencies and valuation allowances, the estimated useful lives of property, plant and equipment, and acquired intangible assets. Actual results may materially differ from these estimates. On an ongoing basis, the Company reviews its estimates to ensure that these estimates appropriately reflect changes in its business or new information as it becomes available.

Adoption of New Accounting Standards

In August 2020, the Financial Accounting Standards Board (the "FASB") issued Accounting Standards Update ("ASU") No. 2020-06, "Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity" ("ASU 2020-06"). This ASU simplifies the accounting for convertible instruments by removing the separation models for (1) convertible debt with a cash conversion feature and (2) convertible instruments with a beneficial conversion feature. As a result, a convertible debt instrument is accounted for as a single liability measured at its amortized cost. These changes reduce reported interest expense and increase reported net income for entities that have issued a convertible instrument that was bifurcated according to previously existing rules. Also, this ASU requires the application of the if-converted method for calculating diluted earnings per share and the treasury stock method will be no longer available. The amendments in this update are effective for public entities for fiscal years beginning after December 15, 2021, and interim periods within those fiscal years, and may be adopted through either a fully retrospective or modified retrospective method of transition only at the beginning of an entity's fiscal year. The Company has Convertible Senior Notes (the "Convertible Notes") with a cash conversion feature that was recognized in equity at the time of issuance (see Note 6) and has adopted this standard as of January 1, 2022 under the modified retrospective method of transition. As such, prior period amounts have not been retrospectively adjusted. Adoption of the standard resulted in a reduction in additional paid-in capital of \$57.1 million, an increase to long-term debt, net of \$57.9 million, a decrease in the deferred taxes, net of \$13.2 million and an increase in retained earnings of \$12.4 million. Additionally, in periods when net income is reported, the Company will use the if-converted method for calculating diluted earnings per common share. Under the if-converted method, the 14.7 million common shares underlying the Convertible Notes are assumed to have been outstanding as of the beginning of the current reporting period and any interest expense related to the Convertible Notes for the period is excluded from the calculation of diluted earnings per common share, resulting in an increase to net income. As a result, during the three and nine months ended September 30, 2022, after-tax interest expense in the amount of \$1.6 million and \$4.8 million, respectively, was excluded from net income in the calculation of earnings per common share—diluted (see Note 7). Prior to the adoption of ASU 2020-06, the Company used the treasury stock method to compute dilutive shares of common stock related to the Convertible Notes for periods when the Company reported net income. The treasury stock method assumes that proceeds received upon exercises are used to purchase common shares at the average market price during the period. Additionally, under the treasury stock method, interest expense related to the Convertible Notes for the period was included in net income for the calculation of earnings per common share—diluted.

Recently Issued Accounting Standards

In June 2022, the FASB issued ASU No. 2022-03, “Fair Value Measurement (Topic 820): Fair Value Measurement of Equity Securities Subject to Contractual Sale Restrictions” (“ASU 2022-03”). ASU 2022-03 clarifies the guidance in Topic 820 when measuring the fair value of an equity security that is subject to a contractual sale restriction, and also introduces new disclosure requirements for equity securities subject to contractual sale restrictions that are measured at fair value. ASU 2022-03 is effective for fiscal years beginning after December 15, 2023, and interim periods within those fiscal years. Early adoption is permitted. The Company is in the process of evaluating the impact that this ASU will have on its consolidated financial statements and related disclosures.

Note 3. Leases

Sales-Type Leases

The Company enters into non-cancellable license agreements that provide software and hardware to driving ranges, hospitality venues, and entertainment venues. These license agreements are classified as sales-type leases.

Leasing revenue from sales-type leases is included in services revenues within the consolidated condensed statements of operations, and consists of the selling price and interest income as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Sales-type lease selling price ⁽¹⁾	\$ 6.1	\$ 7.5	\$ 24.6	\$ 21.0
Cost of underlying assets	(3.2)	(3.0)	(11.9)	(8.0)
Operating profit	\$ 2.9	\$ 4.5	\$ 12.7	\$ 13.0
Interest income	\$ 1.1	\$ 1.4	\$ 2.9	\$ 3.0
Leasing revenue attributable to sales-type leases	\$ 7.2	\$ 8.9	\$ 27.5	\$ 24.0

⁽¹⁾ Selling price is equal to the present value of lease payments over the non-cancellable term of the licensing agreement.

Leasing receivables related to the Company’s net investment in sales-type leases are as follows (in millions):

	Balance Sheet Location	September 30, 2022	December 31, 2021
Leasing receivables, net—short-term	Other current assets	\$ 14.9	\$ 12.8
Leasing receivables, net—long-term	Other assets	49.7	44.1
Total Leasing receivables		\$ 64.6	\$ 56.9

Operating and Finance Leases

As a lessee, the Company leases office space, manufacturing plants, warehouses, distribution centers, Company-operated Topgolf venues, vehicles and equipment, as well as retail and/or outlet locations.

Supplemental balance sheet information related to leases is as follows (in millions):

	Balance Sheet Location	September 30, 2022	December 31, 2021
Operating Leases			
Right-of-use (“ROU”) assets, net	Operating lease ROU assets, net	\$ 1,411.5	\$ 1,384.5
Lease liabilities, short-term	Operating lease liabilities, short-term	\$ 72.7	\$ 72.3
Lease liabilities, long-term	Operating lease liabilities, long-term	\$ 1,428.9	\$ 1,385.4
Finance Leases			
ROU assets, net	Other assets	\$ 166.1	\$ 129.5
Lease liabilities, short-term	Accounts payable and accrued expenses	\$ 1.7	\$ 1.8
Lease liabilities, long-term	Other long-term liabilities	\$ 174.0	\$ 132.5

The components of lease expense are as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Operating lease costs	\$ 42.3	\$ 41.6	\$ 128.1	\$ 103.0
Financing lease costs:				
Amortization of right-of-use assets	1.0	0.8	4.6	2.0
Interest on lease liabilities	2.3	0.2	6.5	0.2
Total financing lease costs	3.3	1.0	11.1	2.2
Variable lease costs	2.3	1.3	7.1	3.9
Total lease costs	\$ 47.9	\$ 43.9	\$ 146.3	\$ 109.1

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

Supplemental Cash Flows Information	Nine Months Ended September 30,	
	2022	2021
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 119.8	\$ 95.8
Operating cash flows from finance leases	\$ 5.4	\$ 0.4
Financing cash flows from finance leases	\$ 0.3	\$ 0.5
Lease liabilities arising from new ROU assets:		
Operating leases	\$ 37.2	\$ 87.5
Finance leases	\$ 40.7	\$ 11.0
	September 30, 2022	December 31, 2021
Weighted average remaining lease term (years):		
Operating leases	16.8	14.1
Finance leases	35.3	36.2
Weighted average discount rate:		
Operating leases	5.5 %	5.3 %
Finance leases	5.5 %	5.3 %

Future minimum lease obligations as of September 30, 2022 were as follows (in millions):

	Operating Leases	Finance Leases
Remainder of 2022	\$ 37.2	\$ 2.2
2023	148.3	10.1
2024	147.7	10.1
2025	144.4	9.8
2026	141.7	9.8
Thereafter	1,821.8	404.8
Total future lease payments	2,441.1	446.8
Less: imputed interest	939.5	271.1
Total	\$ 1,501.6	\$ 175.7

Financing Obligations (Deemed Landlord Financing Obligations)

As of September 30, 2022, the Company had 34 Deemed Landlord Financing (“DLF”) obligations that did not meet the sale-leaseback criteria upon the completion of construction in accordance with Accounting Standard Codification (“ASC”) Topic 842, “Leases.” Assets the Company is deemed the accounting owner of under these DLF obligations consist primarily of land properties and buildings. While Topgolf typically seeks to finance construction of its venues through third-party developers or real estate financing partners, in certain instances, the Company may fund a portion of certain of the assets associated with the DLF obligations. As of September 30, 2022 and December 31, 2021, the total net book value of assets associated with these DLF obligations, including assets that were not financed through third-party developers or real estate financing partners under a DLF arrangement, was \$679.5 million and \$620.3 million, respectively. Land properties and the net book value of the buildings and equipment under these DLF obligations are included in property, plant and equipment on the Company’s consolidated condensed balance sheets. Buildings capitalized in conjunction with these DLF obligations are depreciated, less their residual value, over the shorter period of 40 years or the lease term.

Supplemental balance sheet information related to DLF obligations is as follows (in millions):

		September 30,		December 31,	
		2022		2021	
Balance Sheet Location					
DLF obligations, short-term	Accounts payable and accrued expenses	\$	1.0	\$	0.9
DLF obligations, long-term	Deemed landlord financing obligations, long-term	\$	577.0	\$	460.6

The components of DLF obligation expenses are as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Amortization of DLF obligations	\$ 3.7	\$ 1.8	\$ 10.1	\$ 3.5
Interest on DLF obligations	11.7	6.5	32.5	13.7
Total DLF contract expenses	\$ 15.4	\$ 8.3	\$ 42.6	\$ 17.2

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

Supplemental Cash Flows Information (in millions)	Nine Months Ended September 30,	
	2022	2021
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from DLF obligations	\$ 29.3	\$ —
Financing cash flows from DLF obligations	\$ —	\$ 14.0
Lease liabilities arising from new ROU assets:		
Operating DLF obligations	\$ 113.2	\$ 133.2
	September 30, 2022	December 31, 2021
Weighted average remaining lease term (years)	38.7	39.0
Weighted average discount rate	8.8 %	9.2 %

Future minimum financing obligations related to DLF obligations as of September 30, 2022 were as follows (in millions):

Remainder of 2022	\$	10.9
2023		45.2
2024		48.1
2025		48.4
2026		49.3
Thereafter		2,347.5
Total future lease payments		<u>2,549.4</u>
Less: imputed interest		<u>1,971.4</u>
Total	\$	<u>578.0</u>

Leases Under Construction

The Company's minimum capital commitment for leases under construction, net of amounts reimbursed by third-party real estate financing partners, was approximately \$54.3 million as of September 30, 2022. As the Company is actively involved in the construction of these properties, the Company recorded \$176.5 million in construction costs within property, plant and equipment as of September 30, 2022. Additionally, as of September 30, 2022, the Company recorded \$71.1 million in construction advances from the landlords in connection with these properties. The Company will determine the lease classification for properties currently under construction at the end of the construction period. The initial base term upon the commencement of these leases is generally 20 years. In addition, as of September 30, 2022, the Company had \$966.8 million of future lease obligations related to 10 venues subject to non-cancellable leases that have been signed but have not yet commenced.

Note 4. Revenue Recognition

The Company primarily recognizes revenue from the sale of its products and the operation of its venues. Revenue from product sales includes golf clubs, golf balls, lifestyle and outdoor apparel, gear and accessories, and golf apparel and accessories. The Company sells its products to customers, which include on- and off-course golf shops and national retail stores, as well as to consumers through its e-commerce business and at its apparel retail and venue locations. The Company's product revenue also includes royalty income from third parties from the licensing of certain soft goods products. Revenue from services primarily includes venue sales of food and beverage, fees charged for gameplay, the sale of game credits to guests, franchise fees, the sale of gift cards, sponsorship contracts, leasing revenue and non-refundable deposits received for venue reservations at Topgolf. In addition, the Company recognizes service revenue through its online multiplayer World Golf Tour ("WGT") digital golf game.

The Company's contracts with customers for its products are generally in the form of a purchase order. In certain cases, the Company enters into sales agreements containing specific terms, discounts and allowances. The Company enters into licensing agreements with certain distributors and, with respect to the Company's Toptracer operations, driving ranges and hospitality and entertainment venues.

The following tables present the Company's revenue disaggregated by major product and service category and operating and reportable segment (in millions):

	Operating and Reportable Segments							
	Three Months Ended September 30, 2022				Three Months Ended September 30, 2021			
	Topgolf ⁽¹⁾	Golf Equipment	Active Lifestyle	Total	Topgolf ⁽¹⁾	Golf Equipment	Active Lifestyle	Total
Venues	\$ 399.5	\$ —	\$ —	\$ 399.5	\$ 317.6	\$ —	\$ —	\$ 317.6
Other business lines	14.3	—	—	14.3	16.2	—	—	16.2
Golf club	—	221.4	—	221.4	—	229.3	—	229.3
Golf ball	—	75.3	—	75.3	—	60.3	—	60.3
Apparel	—	—	181.4	181.4	—	—	150.2	150.2
Gear, accessories & other	—	—	96.6	96.6	—	—	82.9	82.9
	<u>\$ 413.8</u>	<u>\$ 296.7</u>	<u>\$ 278.0</u>	<u>\$ 988.5</u>	<u>\$ 333.8</u>	<u>\$ 289.6</u>	<u>\$ 233.1</u>	<u>\$ 856.5</u>

⁽¹⁾ As of January 1, 2022, in order to align with the Company's current management reporting structure, the Company began reporting revenues associated with corporate advertising sponsorship contracts in the venues business line within the Topgolf operating segment. These revenues were previously included in other business lines. In order to conform to the current year presentation, revenue associated with corporate advertising sponsorship contracts of \$4.0 million for the three months ended September 30, 2021 was reclassified from other business lines to venues for comparative purposes.

	Operating and Reportable Segments							
	Nine Months Ended September 30, 2022				Nine Months Ended September 30, 2021			
	Topgolf ⁽¹⁾	Golf Equipment	Active Lifestyle	Total	Topgolf ⁽¹⁾	Golf Equipment	Active Lifestyle	Total
Venues	\$ 1,089.4	\$ —	\$ —	\$ 1,089.4	\$ 710.8	\$ —	\$ —	\$ 710.8
Other business lines	50.1	—	—	50.1	41.0	—	—	41.0
Golf club	—	959.6	—	959.6	—	865.7	—	865.7
Golf ball	—	257.0	—	257.0	—	202.1	—	202.1
Apparel	—	—	456.7	456.7	—	—	336.9	336.9
Gear, accessories & other	—	—	331.6	331.6	—	—	265.2	265.2
	<u>\$ 1,139.5</u>	<u>\$ 1,216.6</u>	<u>\$ 788.3</u>	<u>\$ 3,144.4</u>	<u>\$ 751.8</u>	<u>\$ 1,067.8</u>	<u>\$ 602.1</u>	<u>\$ 2,421.7</u>

⁽¹⁾ As of January 1, 2022, in order to align with the Company's current management reporting structure, the Company began reporting revenues associated with corporate advertising sponsorship contracts in the venues business line within the Topgolf operating segment. These revenues were previously included in other business lines. In order to conform to the current year presentation, revenue associated with corporate advertising sponsorship contracts of \$8.7 million recognized from the merger date through September 30, 2021 was reclassified from other business lines to venues for comparative purposes.

Product Sales

The Company recognizes revenue from the sale of its products when it satisfies the terms of a performance obligation from a customer, and transfers control of the products ordered to the customer. Control transfers when products are shipped, and in certain cases, when products are received by customers. In addition, the Company recognizes revenue at the point of sale on transactions with consumers at its retail locations. Sales taxes, value added taxes and other taxes that are collected in connection with revenue transactions are withheld and remitted to the respective tax authorities. These taxes are therefore excluded from revenue. The Company elected to account for shipping and handling as activities to fulfill the promise to transfer the good. Therefore, shipping and handling fees that are billed to customers are recognized in revenue and the associated shipping and handling costs are recognized in cost of goods sold as soon as control of the goods transfers to the customer.

Venue product sales at the Company's Topgolf operating segment include the sale of golf clubs, golf balls, apparel, gear and accessories. During the three and nine months ended September 30, 2022, product sales totaled \$4.5 million and \$13.3 million, respectively. During the three and nine months ended September 30, 2021 product sales totaled \$4.4 million and \$8.6 million respectively.

The Company sells its Golf Equipment products and Active Lifestyle products in the United States and internationally, with its principal international regions being Europe and Asia. Golf Equipment product sales are generally higher than Active Lifestyle sales in most regions other than in Europe, which has a higher concentration of Active Lifestyle sales due to the Jack Wolfskin business. Revenue from venues is higher in the United States due to Topgolf having significantly more domestic venues than international venues. Revenue related to other business lines at Topgolf is predominantly in the United States and regions within Europe.

The following table summarizes revenue by geographical regions in which the Company operates (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenue by Major Geographic Region⁽¹⁾:				
United States	\$ 684.8	\$ 552.9	\$ 2,194.7	\$ 1,583.9
Europe	141.9	157.2	417.7	386.5
Asia	138.7	125.2	432.6	364.5
Rest of world	23.1	21.2	99.4	86.8
	<u>\$ 988.5</u>	<u>\$ 856.5</u>	<u>\$ 3,144.4</u>	<u>\$ 2,421.7</u>

⁽¹⁾ As of January 1, 2022, the Company modified the composition of its regions and combined Japan, Korea, China, South-East Asia and India into a single Asia region. These regions, except for Japan, were previously reported within rest of world. As a result of this change, net revenues by region for the period presented in the prior year were recast to conform to the current year presentation.

Royalty Income

Royalty income is recognized in net revenues as underlying product sales occur, subject to certain minimum royalties, in accordance with the related licensing agreements. Royalty income is included in the Company's Topgolf and Active Lifestyle operating segments and is primarily related to leasing agreements for Toptracer installations and licensing agreements, respectively. The following table summarizes royalty income by operating segment (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Royalty Income:				
Topgolf	\$ 9.0	\$ 9.7	\$ 33.2	\$ 25.9
Active Lifestyle	6.2	7.3	20.2	24.2
Total	<u>\$ 15.2</u>	<u>\$ 17.0</u>	<u>\$ 53.4</u>	<u>\$ 50.1</u>

Deferred Revenue

The Company's deferred revenue balance includes short-term and long-term deferred revenue which consists primarily of revenue from the sale of gift cards, event deposits, loyalty points, memberships and prepaid sponsorships at Topgolf, virtual currency and game credits related to the WGT digital golf game, as well as upfront territory fees and upfront franchise fees received from international franchise partners.

Revenue from gift cards is deferred and recognized when the cards are redeemed, which generally occurs within a twelve month period from the date of purchase. Revenue from the event deposits, loyalty points, memberships, prepaid sponsorships, game credits, and virtual currency related to the WGT digital golf game are recognized when redeemed or once the event or sponsorship occurs, over the estimated life of a customer's membership, or based on historical currency or credit usage trends, as applicable, which generally occur within a one to thirty-six month period from the date of purchase. Revenue related to territory and franchise fees for each arrangement are allocated to each individual venue and recognized up to a 40-year term, including renewal options, per the respective franchise agreement.

The following table provides a reconciliation of activity related to the Company's short-term deferred revenue balance for the periods presented (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Beginning Balance	\$ 91.8	\$ 83.6	\$ 93.9	\$ 2.5
Deferral of revenue	167.9	108.2	438.4	292.5
Revenue recognized	(160.1)	(108.2)	(427.9)	(209.1)
Breakage	(4.7)	(0.1)	(13.4)	(2.5)
Foreign currency translation and other	(0.5)	0.9	3.4	1.0
Ending Balance	\$ 94.4	\$ 84.4	\$ 94.4	\$ 84.4

As of September 30, 2022 and December 31, 2021, the Company's long-term deferred revenue balance was \$3.0 million and \$3.4 million, respectively.

Variable Consideration

The amount of revenue the Company recognizes is based on the amount of consideration it expects to receive from customers. The amount of consideration is the sales price adjusted for estimates of variable consideration, including sales returns, discounts and allowances as well as sales programs, sales promotions and price concessions that are offered by the Company as described below. These estimates are based on the amounts earned or expected to be claimed by customers on the related sales, and are therefore recorded as reductions to sales and trade accounts receivable.

The Company's primary sales program, the "Preferred Retailer Program," offers potential rebates and discounts for participating retailers in exchange for providing certain benefits to the Company, including the maintenance of agreed upon inventory levels, prime product placement and retailer staff training. Under this program, qualifying retailers can earn either discounts or rebates based upon the amount of product purchased. Discounts are applied and recorded at the time of sale. For rebates, the Company estimates the amount of variable consideration related to the rebate at the time of sale based on the customer's estimated qualifying current year product purchases. The estimate is based on the historical level of purchases, adjusted for any factors expected to affect the current year purchase levels. The estimated year-end rebate is adjusted quarterly based on actual purchase levels, as necessary. The Preferred Retailer Program is generally short-term in nature and the actual amount of rebate to be paid under this program is known as of the end of the year and paid to customers shortly after year-end. Historically, the Company's actual amount of variable consideration related to its Preferred Retailer Program has not been materially different from its estimates.

The Company also offers short-term sales program incentives, which include sell-through promotions and price concessions or price reductions. Sell-through promotions are generally offered throughout the product's life cycle, which varies from two to three years, and price concessions or price reductions are generally offered at the end of the product's life cycle. The estimated variable consideration related to these programs is based on a rate that includes historical and forecasted data. The Company records a reduction to revenues using this rate at the time of the sale. The Company monitors this rate against actual results and forecasted estimates, and adjusts the rate as necessary in order to reflect the amount of consideration it expects to receive from its customers. There were no material changes to the rate related to the short-term sales program incentives during the three or nine months ended September 30, 2022. Historically, the Company's actual amount of variable consideration related to these sales programs has not been materially different from its estimates.

The following table provides a reconciliation of the activity related to the Company's short-term sales program incentives for the periods presented (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Beginning Balance	\$ 35.2	\$ 25.8	\$ 23.3	\$ 26.2
Additions	6.1	7.8	33.6	26.7
Credits issued	(6.6)	(6.4)	(19.8)	(24.7)
Foreign currency translation and other	(1.3)	(0.3)	(3.7)	(1.3)
Ending Balance	\$ 33.4	\$ 26.9	\$ 33.4	\$ 26.9

The Company records an estimate for anticipated returns as a reduction of product revenues and cost of products, and accounts receivable, in the period that the related sales are recorded. Sales returns are estimated based upon historical returns, current economic trends, changes in customer demands and sell-through of products. The Company also offers certain customers sales programs that allow for specific returns. The Company records a sales return liability as an offset to accounts receivable for anticipated returns related to these sales programs at the time of sale based on the terms of the sales program. The Company's provision for the sales return liability fluctuates with the seasonality of the business, while actual sales returns are generally more heavily weighted toward the second half of the year as golf season comes to an end. Historically, the Company's actual sales returns have not been materially different from management's original estimates. The cost recovery of inventory associated with the sales return liability is accounted for in other current assets on the Company's consolidated condensed balance sheet. As of September 30, 2022 and December 31, 2021, the Company's balance for cost recovery was \$35.0 million and \$25.9 million, respectively.

The following table provides a reconciliation of the activity related to the Company's sales return liability for the periods presented (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Beginning Balance	\$ 77.6	\$ 71.6	\$ 47.4	\$ 44.0
Provision	17.3	14.4	103.6	79.3
Sales returns	(23.5)	(14.6)	(79.6)	(51.9)
Ending Balance	\$ 71.4	\$ 71.4	\$ 71.4	\$ 71.4

Note 5. Business Combinations

Merger with Topgolf International, Inc.

On March 8, 2021, the Company completed its merger with Topgolf, pursuant to the terms of an Agreement and Plan of Merger, dated as of October 27, 2020 (the "Merger Agreement"). Topgolf is a leading technology-enabled golf entertainment business, with an innovative platform that comprises its state-of-the-art open-air golf and entertainment venues, Toptracer ball-tracking technology and digital media platform. As a result of the merger, the Company expanded its business platform and family of brands, as well as its reach across multiple channels, which now include Topgolf venues, in addition to retail, e-commerce and digital communities.

Pursuant to the terms of the Merger Agreement, at the closing of the merger, the Company issued 89.8 million unrestricted and fully vested shares of its common stock to the stockholders of Topgolf (excluding 12.3 million shares of the Company's common stock that would have been allocated to the Company in the merger based on the shares of Topgolf held by the Company) for 100% of the outstanding equity of Topgolf, at an exchange ratio based on an equity value of Topgolf of \$1,987.0 million (or \$1,748.0 million excluding Topgolf shares that were held by the Company) and a price per share of the Company's common stock fixed at \$19.40 per share. The actual purchase consideration upon the closing of the merger of \$3,014.2 million (or \$2,650.2 million excluding Topgolf shares that were held by the Company) was based on the number of shares of the Company's common stock issued, multiplied by the closing price of \$29.52 of the Company's common stock on March 8, 2021. Additionally, the Company converted certain stock options previously held by former equity holders of Topgolf into options to purchase a number of shares of the Company's common stock, and certain outstanding restricted stock awards of Topgolf, into 0.2 million shares of the Company's common stock. As part of the consideration transferred in the merger, the Company included an incremental \$33.1 million to the total purchase consideration, which represents the fair value of the vested portion the replacement awards. The unvested portion will be recognized as compensation expense over the remaining vesting period for services rendered in the post-combination period. In addition, the Company converted issued and outstanding warrants to purchase certain preferred shares of Topgolf into a warrant to purchase a number of shares of the Company's common stock. The fair value of the consideration transferred in the merger related to these warrants totaled \$1.6 million. The purchase consideration, together with the fair value of the consideration transferred for outstanding stock awards and warrants totaled \$3,048.9 million.

The Company previously held approximately 14.3% of Topgolf's outstanding shares prior to the closing of the merger. Immediately following the closing of the merger, the Company's stockholders (as of immediately prior to the merger) owned approximately 51.3% of the outstanding shares of the combined company, and former Topgolf stockholders, other than the Company, owned approximately 48.7% of the outstanding shares of the combined company. As a result of the merger, in the first quarter of 2021 the Company recognized a gain of \$252.5 million related to a fair-value step-up of the Company's former investment in Topgolf.

The Company allocated the purchase price to the net identifiable tangible and intangible assets acquired and liabilities assumed based on their fair values as of the date of acquisition. Identifiable intangible assets include the Topgolf trade name, developed technology, Topgolf's investment in Full Swing Golf Holdings, Inc. (which investment has subsequently been contributed into an interest in Full Swing Golf Holdings, LLC, or "Full Swing"), customer relationships and liquor licenses. The excess of the purchase price over the fair value of the net assets and liabilities was allocated to goodwill. The Company determined the fair values after review and consideration of relevant information as of the acquisition date, including discounted cash flows, quoted market prices and certain estimates made by management.

The allocation of the purchase price presented below was based on management's estimate of the fair values of the acquired assets and assumed liabilities using valuation techniques including income, cost and market approaches. These valuation techniques incorporate the use of expected future revenues, cash flows and growth rates as well as estimated discount rates. Current and noncurrent assets and liabilities were valued at historical carrying values, which approximated fair value, except as described below. The trade name was valued under the royalty savings income approach method, which is equal to the present value of the after-tax royalty savings attributable to owning the trade name as opposed to paying a third party for its use. For this valuation the Company used a royalty rate of 2.5%, which is reflective of royalty rates paid in market transactions, and a discount rate of 7.0% to 8.5% on the future cash flows generated by the net after-tax savings. The fair value of the Topgolf hitting bays, Toptracer ball-tracking technology and the WGT digital game was based on a combination of valuation methodologies, including the residual net income approach, royalty savings income approach and the cost approach. The Company utilized the options pricing model and revenue multiples of comparable companies to determine the fair value of the investment in Full Swing. Customer relationships and liquor licenses were valued using the replacement cost method. The Company amortizes the fair value of the finite-lived intangibles, which include technology and customer relationships, over a period ranging between one and ten years. The fair value of operating leases was determined based on current market terms, which resulted in a net unfavorable adjustment to the right-of-use asset. Property, plant and equipment was valued based on its replacement cost, which resulted in an estimated step-up in value. The fair value of the debt assumed was based on a market credit rating, interest rates and repayment terms, which resulted in an overall decrease in value.

During the first quarter of 2022, the Company finalized its fair value determination on the acquired assets and assumed liabilities, specifically related to certain leases and certain deferred tax items, and completed its assessment of the purchase price allocation. After assessing the fair value of the net assets acquired and liabilities assumed, the Company recorded goodwill of \$1,918.4 million, of which the Company attributed \$1,355.0 million to the future revenues and growth potential of the Topgolf business and \$563.4 million to the synergies the Company anticipates from leveraging the Topgolf business to expand its golf equipment and apparel businesses. For the operating segment allocation of goodwill see Note 8. As a non-taxable stock acquisition, the value attributable to the acquired intangibles and goodwill are not tax deductible, and accordingly, the Company recognized a net deferred tax liability of \$143.7 million.

During the nine months ended September 30, 2021, the Company recognized transaction costs of approximately \$16.2 million, consisting primarily of advisor, legal, valuation and accounting fees. There were no transaction costs recognized in the three months ended September 30, 2021. During the three and nine months ended September 30, 2022, the Company did not recognize any transaction costs associated with the merger.

The following table summarizes the fair values of the assets acquired and liabilities assumed as of the acquisition date based on the purchase price allocation (in millions):

	At March 8, 2021
Assets Acquired	
Cash	\$ 171.3
Accounts receivable	10.7
Inventories	13.9
Other current assets	52.1
Property and equipment	1,079.6
Operating lease right-of-use assets	1,328.0
Investments	28.8
Other assets	33.7
Intangibles—trade name	994.2
Intangibles—technology, customer relationships and liquor licenses	81.9
Goodwill	1,355.0
Total assets acquired	<u>5,149.2</u>
Liabilities Assumed	
Accounts payable and accrued liabilities	95.8
Accrued employee costs	37.1
Construction advances	40.5
Deferred revenue	66.2
Other current liabilities	7.8
Long-term debt	535.1
Deemed landlord financing	303.0
Operating lease liabilities	1,402.3
Other long-term liabilities	32.2
Deferred tax liabilities	143.7
Net assets acquired	<u>\$ 2,485.5</u>
Goodwill allocated to other business units	563.4
Total purchase price and consideration transferred in the merger	<u><u>\$ 3,048.9</u></u>

Supplemental Pro-Forma Information (Unaudited)

The following table presents supplemental pro-forma information for the three and nine months ended September 30, 2021 as if the merger with Topgolf had occurred on January 1, 2020. These amounts have been calculated after applying the Company's accounting policies and are based upon currently available information. For this analysis, the Company assumed that certain gains and costs associated with the merger were recognized as of January 1, 2020, including a gain of \$252.5 million recognized on the Company's pre-acquisition investment in Topgolf, acquisition costs of \$16.2 million, the amortization of estimated intangible assets and other fair value adjustments, as well as the tax effect on those costs, and a valuation allowance on certain acquired net operating losses and tax credit carryforwards (see Note 11). Pre-acquisition net revenue and net income/(loss) amounts for Topgolf were derived from the books and records of Topgolf prepared prior to the acquisition and are presented for informational purposes only and do not purport to be indicative of the results of future operations or of the results that would have occurred had the acquisition taken place as of the dates noted below. The pro-forma amounts presented below consider the effects of the fair value adjustments recorded on the assets acquired and liabilities assumed throughout the measurement period. Accordingly, the amounts below reflect the impact of those adjustments.

	Three Months Ended September 30, 2021	Nine Months Ended September 30, 2021
	<i>(in millions)</i>	
Net revenues	\$ 856.5	\$ 2,564.7
Net (loss) income	\$ (16.0)	\$ 101.2

Supplemental Information of Operating Results

The following table presents net revenues and net income attributable to Topgolf included in the Company's consolidated condensed statements of operations for the three and nine months ended September 30, 2022 and 2021 (in millions).

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net revenues	\$ 413.8	\$ 333.8	\$ 1,139.5	\$ 751.8
Net (loss) income	\$ (9.7)	\$ 2.8	\$ (10.9)	\$ 0.4

Note 6. Financing Arrangements

The Company's debt obligations are summarized as follows (in millions):

	Maturity Date	Interest Rate	September 30, 2022	December 31, 2021
Short-Term Credit Facilities				
U.S. Asset-Based Revolving Credit Facility ⁽¹⁾	May 17, 2024	3.71%	\$ 65.0	\$ 9.1
2022 Japan ABL Facility ⁽²⁾	January 25, 2025	0.85%	34.6	—
Total Principal Amount			\$ 99.6	\$ 9.1
Unamortized Debt Issuance Costs			\$ 0.8	\$ 0.9
Balance Sheet Location				
Asset-based credit facilities			\$ 99.6	\$ 9.1
Prepaid expenses			\$ 0.4	\$ 0.9
Other long-term assets			\$ 0.4	\$ —
Long-Term Debt and Credit Facilities				
	Maturity Date	Interest Rate	September 30, 2022	December 31, 2021
Japan Term Loan	July 31, 2025	0.85%	\$ —	\$ 13.0
Term Loan B ⁽³⁾	January 4, 2026	7.62%	433.2	436.8
Topgolf Term Loan	February 8, 2026	9.33%	337.8	340.4
Convertible Notes	May 1, 2026	2.75%	258.3	258.8
Equipment Notes	December 27, 2022 - March 19, 2027	2.36% - 3.79%	23.5	31.1
Mortgage Loans	July 1, 2033 - July 29, 2036	9.75% - 11.31%	46.0	46.4
Financed Tenant Improvements	February 1, 2035	8.00%	3.5	3.7
Total Principal Amount			\$ 1,102.3	\$ 1,130.2
Less: Unamortized Debt Issuance Costs			22.8	85.8
Total Debt, net of Unamortized Debt Issuance Costs			\$ 1,079.5	\$ 1,044.4
Balance Sheet Location				
Other current liabilities			\$ 13.6	\$ 19.1
Long-term debt			1,065.9	1,025.3
			\$ 1,079.5	\$ 1,044.4

⁽¹⁾ Interest rate fluctuates depending on the Company's availability ratio.

⁽²⁾ Subject to an effective interest rate equal to the Tokyo Interbank Offered Rate plus 0.80%.

⁽³⁾ Subject to an interest rate per annum equal to either, at the Company's option, the London Interbank Offered Rate ("LIBOR") or the base rate, plus 4.50% or 3.50%, respectively.

Revolving Credit Facilities and Available Liquidity

In addition to cash on hand and cash generated from operations, the Company relies on its U.S. Asset-Based Revolving Credit Facility, 2022 Japan ABL Credit Facility, and Topgolf Revolving Credit Facility to manage seasonal fluctuations in liquidity. The principal terms of these credit facilities are described further below and in Note 7 of the Notes to the Consolidated Financial Statements in the Company's Annual Report on Form 10-K which was filed with SEC on March 1, 2022. As of September 30, 2022, the Company's available liquidity, which is comprised of cash on hand and amounts available under its U.S. and Japan facilities, after letters of credit and outstanding borrowings, was \$659.4 million.

U.S. Asset-Based Revolving Credit Facility

The Company has an Asset-Based Revolving Credit facility with Bank of America, N.A. and other lenders, that provides a senior secured asset-based revolving credit facility of up to \$400.0 million (the "ABL Facility") which expires on May 17, 2024. Amounts outstanding under the ABL Facility are secured by certain assets, including cash (to the extent pledged by the Company), certain intellectual property, eligible real estate, and inventory and accounts receivable of the Company and certain of the Company's subsidiaries in the United States, Germany, Canada, the Netherlands, and the United Kingdom. Additionally, the ABL Facility includes specific restrictions with which the Company must remain in compliance in order to satisfy certain fixed charge coverage ratio requirements under the terms of the facility.

The interest rate applicable to outstanding borrowings under the ABL Facility may fluctuate depending on the Company's "Availability Ratio," as defined in the loan and security agreement, as amended, that governs the ABL Facility, which is expressed as a percentage of (i) the average daily availability under the ABL Facility to (ii) the sum of the Canadian, the German, U.K./Dutch and the U.S. borrowing bases, as adjusted. Any unused portions of the ABL Facility are subject to a 0.25% fee per annum. For the nine months ended September 30, 2022, average outstanding borrowings under the ABL Facility were \$95.2 million. As of September 30, 2022, the Company's trailing 12-month average availability under the ABL Facility was \$252.1 million, and the Company's trailing 12-month average interest rate applicable to its outstanding borrowings under the ABL Facility was 3.53%.

2022 Japan ABL Facility

The 2022 Japan ABL Credit Facility (the "2022 Japan ABL Facility") provides a line of credit to the Company's Japan subsidiary of up to 6.0 billion Yen (or \$41.5 million), is subject to borrowing base availability under the facility, and is secured by certain assets, including eligible inventory and accounts receivable. As of September 30, 2022, outstanding borrowings under the 2022 Japan ABL Facility were 5.0 billion Yen (or \$34.6 million), and the Company's remaining borrowing base availability under the 2022 Japan ABL Facility was 1.0 billion Yen (or \$6.9 million).

Long-Term Debt

Japan Term Loan

The Company had a five-year term loan (the "Japan Term Loan") between its Japan subsidiary and Sumitomo Mitsui Banking Corporation for 2.0 billion Yen. The Company repaid the total remaining principal balance of the Japan Term Loan in the amount of 1.5 billion Yen (or \$13.0 million as of the repayment date) during the first quarter of 2022.

The Company recognized a nominal amount of total interest expense related to the Japan Term Loan during the three months and nine months ended September 30, 2022, and a nominal amount and 11.2 million Yen (or \$0.1 million) in total interest expense during the three months and nine months ended September 30, 2021, respectively.

Term Loan B

The Company has a Credit Agreement (the “Credit Agreement”) with Bank of America, N.A and other lenders which provides for a Term Loan B (the “Term Loan”) in an aggregate principal amount of \$480.0 million, which was issued less \$9.6 million in issuance discounts and other transaction fees. In March 2021, and in connection with the merger with Topgolf, the Company amended the Term Loan to, among other things, permit the consummation of the merger as well as designate Topgolf and its subsidiaries as unrestricted subsidiaries under the Term Loan and amend certain covenants and other provisions to allow the Company to make certain investments in, and enter into certain transactions with Topgolf. Additionally, the Credit Agreement contains certain default provisions, covenants and restrictions by which the Company must remain in compliance. Loans outstanding under the Term Loan are guaranteed by the Company’s domestic subsidiaries, and the loans and guaranties are secured by substantially all the assets of the Company and its guarantors. As of September 30, 2022, outstanding borrowings under the Term Loan were \$433.2 million.

The Company recognized \$8.4 million and \$21.2 million in total interest and amortization expense related to the Term Loan during the three and nine months ended September 30, 2022, respectively, and \$6.1 million and \$18.0 million in total interest and amortization expense during the three and nine months ended September 30, 2021, respectively.

Topgolf Credit Facilities

The Company has a \$350.0 million term loan (the “Topgolf Term Loan”), with JPMorgan Chase Bank, N.A. and other lenders, and a \$175.0 million revolving credit facility with JPMorgan Chase Bank, N.A., as Administrative Agent, Swingline Lender and Issuing Bank, RBC Capital Markets, as Syndication Agent, and the other agents, arrangers and lenders party thereto (the “Topgolf Revolving Credit Facility” and together with the Topgolf Term Loan, the “Topgolf Credit Facilities”).

Borrowings under the Topgolf Credit Facilities accrue interest at a rate per annum equal to, at the Company’s option, either (i) an alternate base rate determined by reference to the highest of (a) the prime rate of JPMorgan Chase Bank, N.A., (b) the federal funds effective rate plus 0.50%, (c) the adjusted one-month LIBOR rate plus 1.00%, and (d) 1.75%, or (ii) an adjusted LIBOR rate (for a period equal to the relevant interest period) (which shall not be less than 0.75%), in each case plus an applicable margin. Applicable margins may vary relative to each facility and are subject to specific terms and conditions as outlined under each individual agreement. Additionally, the terms of the Topgolf Credit Facilities require the Company to maintain certain leverage ratios on a quarterly basis in addition to the maintenance of certain customary representations, reporting covenants, and reporting obligations.

The Topgolf Credit Facilities are guaranteed by all direct and indirect domestic wholly owned restricted subsidiaries of Topgolf International, Inc. (for the purpose of this description, the “Borrower”), other than certain excluded subsidiaries (such subsidiary guarantors, together with the Borrower, the “Loan Parties”). All obligations under the Topgolf Credit Facilities are, and any future guarantees of those obligations will be, secured by, among other things, and in each case subject to certain exceptions: (1) a first-lien pledge of all of the capital stock or other equity interests held by each Loan Party; and (2) a first-lien pledge of substantially all of the other tangible and intangible assets of each Loan Party. Certain of the Company’s Topgolf locations are required to be subject to leasehold mortgages for the benefit of the lenders under the Topgolf Credit Facilities. As of September 30, 2022, outstanding borrowings under the Topgolf Term Loan totaled \$337.8 million and there were no outstanding borrowings under the Topgolf Revolving Credit Facility.

The Company recognized \$8.0 million and \$20.7 million in total interest and amortization expense related to the Topgolf Term Loan during the three and nine months ended September 30, 2022, respectively, and \$6.6 million and \$15.0 million in total interest and amortization expense during the three and nine months ended September 30, 2021, respectively.

The Company recognized \$0.9 million and \$2.6 million in total interest and amortization expense related to the Topgolf Revolving Credit Facility during the three and nine months ended September 30, 2022, respectively, and \$1.3 million and \$4.8 million in total interest and amortization expense during the three and nine months ended September 30, 2021, respectively.

Convertible Notes

In May 2020, the Company issued \$258.8 million of 2.75% Convertible Notes. The Convertible Notes have a stated interest rate of 2.75% per annum on the principal amount payable semi-annually in arrears on May 1 and November 1 of each year, beginning on November 1, 2020. The Convertible Notes mature on May 1, 2026, unless earlier redeemed or repurchased by the Company or converted. The Company may settle the Convertible Notes through cash settlement, physical settlement, or combination settlement at its election, and may redeem all or part of the Convertible Notes on or after May 6, 2023, subject to certain stipulations. The Convertible Notes are convertible into shares of the Company’s common stock at an initial conversion rate of 56.8 shares per \$1,000 principal amount of Convertible Notes, which is equal to an initial conversion price of \$17.62 per share. Additionally, all or any portion of the Convertible Notes may be converted at the conversion rate and at the holders’ option on or after February 1, 2026 until the close of business on the second trading day immediately prior to the maturity date, and upon the occurrence of certain contingent conversion events. The Convertible Notes are structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent the Company is not a holder thereof) preferred equity, if any, of the Company’s subsidiaries. The Company used the net proceeds from the Convertible Notes offering for general corporate purposes.

In connection with the issuance of the Convertible Notes and prior to the Company’s adoption of ASU 2020-06 on January 1, 2022, which is described further in the Note 2 herein, the Company separated certain amounts attributable to the Convertible Notes into liability and equity components in a manner which reflected the interest cost of a similar nonconvertible debt instrument. As a result of the adoption of ASU 2020-06, bifurcation of these amounts is no longer required, and as such, all associated amounts which were previously separated are now reported as a single liability measured at its amortized cost.

The Company recognized \$1.7 million and \$5.3 million in total interest expense related to the Convertible Notes during the three and nine months ended September 30, 2022, respectively, and \$1.8 million and \$5.4 million in total interest expense during the three and nine months ended September 30, 2021, respectively.

In July 2022, in accordance with the terms of the indenture under which the Convertible Notes were issued, holders of the Company’s Convertible Notes elected to convert \$0.5 million of Convertible Notes into 25,602 shares of the Company’s common stock. The Convertible Notes were converted at a conversion rate of 56.8 shares of the Company’s common stock per \$1,000 principal amount of Convertible Notes.

Capped Call

In connection with the pricing of the Convertible Notes, on April 29, 2020 the Company entered into privately negotiated capped call transactions with certain counterparties (“Capped Calls”). The Capped Calls cover the aggregate number of shares of the Company’s common stock that initially underlie the Convertible Notes, and are generally expected to reduce potential dilution and/or offset any cash payments the Company is required to make related to any conversion of the Convertible Notes. The Capped Calls each have an exercise price of \$17.62 per share, subject to certain adjustments, which correspond to the initial conversion prices of the Convertible Notes, and a cap price of \$27.10 per share. Capped Calls are excluded from the calculation of diluted earnings per share, as they would be anti-dilutive under the if-converted method. The initial cost of the Capped Calls was recognized as a reduction to additional paid-in-capital on the Company’s Consolidated Balance Sheet.

In connection with the conversion of \$0.5 million of Convertible Notes in July 2022, the Company and the counterparties entered into a partial termination of the Capped Calls with respect to the Convertible Notes converted, which resulted in the Company receiving 3,499 shares of the Company’s common stock

from the counterparties.

Equipment Notes

The Company has long-term financing agreements (the “Equipment Notes”) with various lenders which it uses in order to invest in certain of its facilities and information technology equipment. The loans are secured by the relative underlying equipment.

The Company recognized \$0.2 million and \$0.6 million in total interest expense related to the Equipment Notes during the three and nine months ended September 30, 2022, respectively, and \$0.2 million and \$0.7 million in total interest expense during the three and nine months ended September 30, 2021, respectively.

Mortgage Loans

The Company has three mortgage loans related to its Topgolf venues. The mortgage loans are secured by the assets of each respective venue and require either monthly (i) principal and interest payments or (ii) interest-only payments until their maturity dates. For loans requiring monthly interest-only payments, the entire unpaid principal balance and any unpaid accrued interest is due on the maturity date.

The Company recognized \$1.2 million and \$3.6 million in total interest expense related to the mortgage loans during the three and nine months ended September 30, 2022, respectively, and \$1.2 million and \$2.8 million in total interest expense during the three and nine months ended September 30, 2021, respectively.

Aggregate Amount of Long-Term Debt Maturities

The following table presents the Company’s combined aggregate amount of maturities for the Company’s long-term debt over the next five years and thereafter as of September 30, 2022. Amounts payable under the Term Loan included below represent the minimum principal repayment obligations as of September 30, 2022.

	<i>(in millions)</i>
Remainder of 2022	\$ 4.8
2023	16.4
2024	15.3
2025	13.0
2026	1,006.4
Thereafter	46.4
	<u>\$ 1,102.3</u>
Less: Unamortized Debt Issuance Costs	22.8
Total	<u>\$ 1,079.5</u>

As of September 30, 2022, the Company was in compliance with all fixed charge coverage ratios and all other financial covenant and reporting requirements under the terms of its credit facilities mentioned above, as applicable.

Note 7. Earnings (Loss) Per Common Share

Basic earnings per common share is computed by dividing net income by the weighted-average number of common shares outstanding for the period.

Diluted earnings (loss) per common share (“Diluted EPS”) takes into account the potential dilution that could occur if outstanding securities were exercised or settled in shares. Dilutive securities that may impact Diluted EPS include shares underlying outstanding stock options, restricted stock units and performance share units granted to employees and non-employee directors (see Note 13), as well as common shares underlying the Convertible Notes (see Note 6). Dilutive securities related to common shares underlying outstanding stock options, restricted stock units, and performance share units granted to employees and non-employee directors are included in the calculation of diluted earnings (loss) per common share using the treasury stock method in accordance with ASC Topic 260, “Earnings per Share.” Dilutive securities related to common shares underlying the Convertible Notes are included in the calculation of diluted earnings per common share using the if-converted method in accordance with ASU 2020-06, which was adopted by the Company on January 1, 2022 (see Note 2).

Basic and diluted weighted-average common shares outstanding are the same in periods when a net loss is reported or in periods when anti-dilution occurs.

The following table summarizes the computation of basic and diluted earnings per common share (in millions, except per share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Earnings (loss) per common share—basic				
Net income (loss)	\$ 38.5	\$ (16.0)	\$ 230.6	\$ 348.2
Weighted-average common shares outstanding—basic ⁽¹⁾	184.8	186.0	184.9	163.1
Earnings (loss) per common share—basic	<u>\$ 0.21</u>	<u>\$ (0.09)</u>	<u>\$ 1.25</u>	<u>\$ 2.13</u>
Earnings (loss) per common share—diluted				
Net income (loss)	\$ 38.5	\$ (16.0)	\$ 230.6	\$ 348.2
Interest expense ⁽²⁾	1.6	—	4.8	—
Net income (loss) attributable to earnings per common share—diluted	<u>\$ 40.1</u>	<u>\$ (16.0)</u>	<u>\$ 235.4</u>	<u>\$ 348.2</u>
Weighted-average common shares outstanding—basic ⁽¹⁾	184.8	186.0	184.9	163.1
Convertible Notes weighted-average shares outstanding ⁽²⁾	14.7	—	14.7	6.1
Outstanding options, restricted stock units and performance share units	2.3	—	1.4	2.0
Weighted-average common shares outstanding—diluted	<u>201.8</u>	<u>186.0</u>	<u>201.0</u>	<u>171.2</u>
Earnings (loss) per common share—diluted	<u>\$ 0.20</u>	<u>\$ (0.09)</u>	<u>\$ 1.17</u>	<u>\$ 2.03</u>

⁽¹⁾ In connection with the Topgolf merger, the Company issued 89.8 million shares of its common stock to shareholders of Topgolf, and 0.2 million shares of its common stock for restricted stock awards converted in the merger (see Note 13), of which 90.0 million and 67.9 million weighted-average shares were included in the basic and diluted share calculations for the three and nine months ended September 30, 2021, respectively, based on the number of days the shares were outstanding during each period.

⁽²⁾ As of January 1, 2022, in connection with the adoption of ASU 2020-06 (see Note 2), the Company uses the if-converted method for calculating the dilutive weighted-average shares outstanding related to the Convertible Notes when calculating earnings (loss) per common share-diluted. Under this method, interest expense related to the Convertible Notes for the respective period is excluded from net income. Prior to the adoption of ASU 2020-06, the Company used the treasury stock method for calculating the dilutive impact from the Convertible Notes.

Anti-Dilutive Options and Restricted Stock Units

For both the three and nine months ended September 30, 2022, approximately 1.3 million securities outstanding comprised of stock options and restricted stock units, were excluded from the calculation of earnings (loss) per common share—diluted as they would be anti-dilutive. For the three and nine months ended September 30, 2021, approximately 1.8 million and 1.2 million securities outstanding comprised of stock options and restricted stock units were excluded from the calculation of earnings per common share—diluted, as they were anti-dilutive.

Note 8. Goodwill and Intangible Assets

Changes in the carrying amount of goodwill by operating and reportable segment are as follows (in millions):

	Topgolf	Golf Equipment	Active Lifestyle	Total
Balance at December 31, 2021	\$ 1,340.7	\$ 531.1	\$ 88.3	\$ 1,960.1
Additions	14.3	0.2	—	14.5
Foreign currency translation and other	8.6	(1.8)	—	6.8
Balance at September 30, 2022	\$ 1,363.6	\$ 529.5	\$ 88.3	\$ 1,981.4

Additions to goodwill during the nine months ended September 30, 2022 are related to adjustments made during the first quarter of 2022 to finalize the fair value on certain leases assumed in connection with the merger with Topgolf, as well as the deferred taxes associated with the transaction (see Note 5). Goodwill is net of accumulated impairment losses of \$148.4 million, which were recorded prior to December 31, 2021 in the Active Lifestyle segment.

The Company's intangible assets by major asset class are as follows (in millions, except useful life amounts):

	Useful Life (Years)	September 30, 2022			
		Gross	Accumulated Amortization	Translation Adjustment	Net Book Value
Indefinite-lived:					
Trade name, trademark, trade dress and other	—	\$ 1,441.0	\$ —	\$ (45.1)	\$ 1,395.9
Liquor licenses	—	8.4	—	—	8.4
Amortizing:					
Patents	2-16	32.1	(31.8)	—	0.3
Customer and distributor relationships and other	1-10	67.4	(33.6)	(6.4)	27.4
Developed technology	10	69.7	(10.5)	(4.5)	54.7
Total intangible assets		\$ 1,618.6	\$ (75.9)	\$ (56.0)	\$ 1,486.7

	Useful Life (Years)	December 31, 2021			
		Gross	Accumulated Amortization	Translation Adjustment	Net Book Value
Indefinite-lived:					
Trade name, trademark, trade dress and other	—	\$ 1,441.0	\$ —	\$ (15.8)	\$ 1,425.2
Liquor licenses	—	7.7	—	—	7.7
Amortizing:					
Patents	2-16	32.0	(31.7)	—	0.3
Customer and distributor relationships and other	1-10	61.7	(27.4)	(2.3)	32.0
Developed technology	10	69.7	(5.5)	(0.8)	63.4
Total intangible assets		\$ 1,612.1	\$ (64.6)	\$ (18.9)	\$ 1,528.6

The Company recognized amortization expense related to acquired intangible assets of \$4.3 million and \$3.4 million for the three months ended September 30, 2022 and 2021, respectively, and \$11.3 million and \$9.4 million for the nine months ended September 30, 2022 and 2021, respectively. Amortization expense is included in selling, general and administrative expenses in the consolidated condensed statements of operations.

Amortization expense related to intangible assets at September 30, 2022 in each of the next five fiscal years and beyond is expected to be incurred as follows (in millions):

Remainder of 2022	\$ 4.0
2023	13.6
2024	11.0
2025	11.0
2026	10.9
Thereafter	31.9
	<u>\$ 82.4</u>

Note 9. Investments

Investment in Full Swing

In connection with the merger with Topgolf, the Company acquired an ownership interest of less than 20.0% in Full Swing, which is accounted at cost less impairments, and adjusted for observable changes in fair value. As of September 30, 2022 and December 31, 2021, the Company's investment in Full Swing was \$9.3 million. This investment is included in other assets on the Company's consolidated condensed balance sheets.

Investment in Five Iron Golf

The Company has an ownership interest of less than 20.0% in Five Iron Golf, which is accounted at cost less impairments, and adjusted for observable changes in fair value. As of each of September 30, 2022 and December 31, 2021, the Company's investment in Five Iron Golf was \$30.0 million. This investment is included in other assets on the Company's consolidated condensed balance sheets.

Note 10. Selected Financial Data

Selected financial data as of the dates presented below is as follows (in millions, except useful life data):

		September 30, 2022	December 31, 2021
Inventories:			
Finished goods		\$ 576.9	\$ 415.4
Work in process		1.9	1.3
Raw materials		137.3	111.7
Food and beverage		6.2	5.1
		<u>\$ 722.3</u>	<u>\$ 533.5</u>
Other Current Assets:			
Credit card receivables		\$ 17.1	\$ 31.2
Sales return reserve cost recovery asset		35.0	25.9
VAT/Sales tax receivable		4.7	19.5
Other current assets		58.5	42.7
		<u>\$ 115.3</u>	<u>\$ 119.3</u>
Property, plant and equipment, net:			
	Estimated Useful Life	September 30, 2022	December 31, 2021
Land		\$ 133.9	\$ 134.2
Buildings and leasehold improvements	10 - 40 years	1,057.9	858.6
Machinery and equipment	5 - 10 years	228.5	204.3
Furniture, computer hardware and equipment	3 - 5 years	258.6	211.2
Internal-use software	3 - 5 years	92.0	81.6
Production molds	2 - 5 years	8.6	8.0
Construction-in-process		328.9	286.7
		<u>2,108.4</u>	<u>1,784.6</u>
Less: Accumulated depreciation		431.9	333.2
		<u>\$ 1,676.5</u>	<u>\$ 1,451.4</u>

Property, plant and equipment is stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful life of the asset. The Company recorded depreciation expense of \$44.1 million and \$40.9 million during the three months ended September 30, 2022 and 2021, respectively, and \$128.5 million and \$98.4 million during the nine months ended September 30, 2022 and 2021, respectively, on the accompanying consolidated condensed statements of operations.

	September 30, 2022	December 31, 2021
Accounts payable and accrued expenses:		
Accounts payable	\$ 155.4	\$ 138.7
Accrued expenses	191.7	226.8
Accrued inventory	178.9	125.7
	<u>\$ 526.0</u>	<u>\$ 491.2</u>

Note 11. Income Taxes

The Company calculates its interim income tax provision in accordance with ASC Topic 270, "Interim Reporting," and ASC Topic 740, "Accounting for Income Taxes." At the end of each interim period, the Company estimates its annual effective tax rate and applies that rate to its ordinary quarterly earnings to calculate the tax related to ordinary income. The tax effects for other items that are excluded from ordinary income are discretely calculated and recognized in the period in which they occur.

In March 2021, the Company acquired Topgolf through a non-taxable stock acquisition in a share exchange. The purchase price of Topgolf at acquisition was approximately \$3,014.2 million. As noted in Note 5, during the three months ended March 31, 2022, the Company finalized its fair value determination of the acquired assets and assumed liabilities and completed its assessment of the purchase price allocation. Based on new information about facts and circumstances that existed at the acquisition date, the Company recorded an additional goodwill adjustment of \$12.2 million, a decrease in valuation allowances accrued of \$2.8 million, and a discrete income tax benefit of \$15.0 million during the three months ended March 31, 2022.

The realization of deferred tax assets, including loss and credit carryforwards, is subject to the Company generating sufficient taxable income during the periods in which the deferred tax assets become realizable. As a result of the Topgolf merger and the fact that Topgolf's losses exceed the Company's income in recent years, the Company has determined that it is not more likely than not that a portion of its U.S. deferred tax assets will be realized. The valuation allowance on the Company's U.S. deferred tax assets as of September 30, 2022 primarily relate to federal and state deferred tax assets related to tax attributes that the Company estimates are not more likely than not to be utilized prior to expiration. However, if the Company's more recent earnings history were to continue, management believes that it is possible that within the next 12 months sufficient positive evidence may become available to allow management to reach a conclusion that a significant portion of the valuation allowance will no longer be needed. Release of the valuation allowance would result in the recognition of certain deferred tax assets with a potential corresponding decrease to income tax expense for the period the release is recorded, which would represent a non-cash benefit. The exact timing and amount of the valuation allowance release would be predicated on continued profitability of the Company combined with the continued profitability it believes it can maintain. With respect to non-U.S. entities, there continues to be sufficient positive evidence to conclude that realization of the Company's deferred tax assets is more likely than not under applicable accounting rules, and therefore no significant valuation allowances have been established.

The Company recorded an income tax provision of \$0.3 million and \$66.2 million for the three months ended September 30, 2022 and 2021, respectively. As a percentage of pre-tax income, the Company's effective tax rate was 0.8% and 131.8% for the three months ended September 30, 2022 and 2021, respectively. In the three months ended September 30, 2022, the primary difference between the statutory rate and the effective rate relates to the partial release of valuation allowances on the Company's deferred tax assets. In the three months ended September 30, 2021, the primary difference between the statutory rate and the effective rate relates to utilizing the annual effective tax rate method for the three months ended September 30, 2021 instead of utilizing the discrete effective tax rate method, which was used for the three months ended June 30, 2021.

The Company recorded an income tax benefit of \$12.5 million and an income tax provision of \$98.1 million for the nine months ended September 30, 2022 and 2021, respectively. As a percentage of pre-tax income, the Company's effective tax rate was a benefit of 5.7% for the nine months ended September 30, 2022, compared to a provision of 22.0% for the nine months ended September 30, 2021. In the nine months ended September 30, 2022, the primary difference between the statutory rate and the effective rate relates to the release of valuation allowances on the Company's deferred tax assets. In the nine months ended September 30, 2021, the primary difference between the statutory rate and the effective rate relates to excluding the book gain on pre-merger Topgolf shares for tax purposes offset by valuation allowances on the Company's deferred tax assets.

At September 30, 2022, the gross liability for income taxes associated with uncertain tax positions was \$26.1 million. Of this amount, \$10.5 million would benefit the Company's consolidated condensed financial statements and effective income tax rate if favorably settled. The Company recognizes interest and penalties related to income tax matters in income tax expense.

Note 12. Commitments & Contingencies

Legal Matters

The Company is subject to routine legal claims, proceedings, and investigations associated with the normal conduct of its business activities, including commercial disputes and employment matters. The Company also receives from time to time information claiming that products sold by the Company infringe or may infringe patent, trademark, or other intellectual property rights of third parties. One or more such claims of potential infringement could lead to litigation, the need to obtain licenses, the need to alter a product to avoid infringement, a settlement or judgment, or some other action or material loss by the Company, which could adversely affect the Company's overall ability to protect its product designs and ultimately limit its future success in the marketplace. Additionally, the Company is occasionally subject to non-routine claims, proceedings, or investigations.

The Company regularly assesses such matters to determine the degree of probability that the Company will incur a material loss as a result of such matters, as well as the range of possible loss. An estimated loss contingency is accrued in the Company's financial statements if it is probable the Company will incur a loss and the amount of the loss can be reasonably estimated. Historically, the claims, proceedings, and investigations brought against the Company, individually and in the aggregate, have not had a material adverse effect on the consolidated results of operations, cash flows or financial position of the Company. However, it is not possible to predict the outcome of the pending actions, and, as with any litigation, it is possible that some of these actions could be decided unfavorably. Consequently, management is unable to estimate the ultimate aggregate amount of monetary loss, amounts covered by insurance, or the financial impact that will result from such matters. In addition, the Company cannot assure that it will be able to successfully defend itself in those matters, or that any amounts accrued in relation to a potential loss are sufficient.

Unconditional Purchase Obligations

During the normal course of its business, the Company enters into agreements to purchase goods and services, including commitments for endorsement agreements with professional athletes and other endorsers, consulting and service agreements, and intellectual property licensing agreements pursuant to which the Company is required to pay royalty fees. The amounts listed below approximate the minimum purchase obligations the Company is obligated to pay under these agreements. The actual amounts paid under some of the agreements may be higher or lower than these amounts.

As of September 30, 2022, the minimum obligation that the Company is required to pay under these agreements over the next five years and thereafter as follows (in millions):

Remainder of 2022	\$	25.4
2023		42.5
2024		17.3
2025		8.9
2026		8.4
Thereafter		1.8
	\$	<u>104.3</u>

Other Contingent Contractual Obligations

During its normal course of business, the Company has made certain indemnities, commitments and guarantees under which it may be required to make payments in relation to certain transactions. The duration of these indemnities, commitments and guarantees varies, and in certain cases, may be indefinite and the majority of these indemnities, commitments and guarantees do not provide for any limitation on the maximum amount of future payments the Company could be obligated to make. Historically, costs incurred to settle claims related to indemnities have not been material to the Company's financial position, results of operations or cash flows. In addition, the Company believes the likelihood is remote that payments under the commitments and guarantees described above will have a material effect on the Company's consolidated financial statements. The fair value of indemnities, commitments and guarantees that the Company issued during the nine months ending, and as of September 30, 2022, were not material to the Company's financial position, results of operations, or cash flows.

Note 13. Share-Based Compensation

Topgolf Replacement Awards

In connection with the merger with Topgolf (see Note 5), which was completed on March 8, 2021, the Company converted stock options previously held by former equity holders of Topgolf into 3.2 million options to purchase shares of the Company's common stock, and certain outstanding restricted stock awards of Topgolf into 0.2 million shares of the Company's common stock. During the three months ended September 30, 2022 and 2021, the Company recognized compensation expense, net of estimated forfeitures, of \$0.7 million and \$1.5 million, respectively, related to these awards. During the nine months ended September 30, 2022 and 2021, the Company recognized compensation expense, net of estimated forfeitures, of \$2.2 million and \$3.5 million, respectively, related to these awards.

Restricted Stock Units

During the three months ended September 30, 2022 and 2021, the Company granted a nominal amount of shares underlying restricted stock units at a weighted average grant-date fair value of \$22.80 per share and \$29.67 per share, respectively. During the nine months ended September 30, 2022 and 2021, the Company granted 0.7 million shares and 1.1 million shares, respectively, underlying restricted stock units at a weighted average grant-date fair value of \$22.82 per share and \$29.62 per share, respectively.

Compensation expense, net of estimated forfeitures, for restricted stock units was \$4.5 million and \$3.8 million for the three months ended September 30, 2022 and 2021, respectively, and \$13.2 million and \$9.8 million for the nine months ended September 30, 2022 and 2021, respectively.

Performance-Based Awards

During the three months ended September 30, 2022, the Company granted a nominal amount of shares underlying total shareholder return performance-based restricted stock units at a weighted average grant-date fair value of \$23.28 per share. There were no performance-based restricted stock units granted during the three months ended September 30, 2021. During the nine months ended September 30, 2022 and 2021, the Company granted 0.5 million shares and 1.4 million shares, respectively, underlying various performance metrics, including adjusted pre-tax income, earnings before interest, tax, depreciation and amortization and stock compensation, and total shareholder returns, at a weighted average grant-date fair value of \$23.37 per share and \$29.42 per share, respectively.

Performance-based restricted stock units granted by the Company cliff-vest after three years, except for certain one-time grants to the Company's Chief Executive Officer and Chief Financial Officer in connection with the Topgolf merger, of which 50% will vest after three years and the remaining 50% will vest after four years. The number of shares that may ultimately be issued upon vesting is based on the achievement of the respective metrics for each award, which may range from 0% to 200%. As of September 30, 2022, all performance-based restricted stock units were within the probable range of achievement.

Compensation expense, net of estimated forfeitures, for performance-based awards was \$5.2 million and \$6.1 million for the three months ended September 30, 2022 and 2021, respectively, and \$22.0 million and \$13.8 million for the nine months ended September 30, 2022 and 2021, respectively.

Share-Based Compensation Expense

The table below summarizes the amounts recognized in the financial statements related to share-based compensation for the three and nine months ended September 30, 2022 and 2021, including expense for stock options, restricted stock awards, restricted stock units and performance-based restricted stock units (in millions).

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Cost of products	\$ 0.2	\$ 0.3	\$ 1.2	\$ 0.9
Selling, general and administrative expenses	10.0	10.8	35.0	25.5
Research and development expenses	0.1	0.3	0.9	0.7
Other venue expenses	0.1	—	0.3	—
Total cost of share-based compensation included in income, before income tax	10.4	11.4	37.4	27.1
Income tax benefit	(2.5)	(2.7)	(9.0)	(6.5)
Total cost of share-based compensation, after tax	\$ 7.9	\$ 8.7	\$ 28.4	\$ 20.6

Note 14. Fair Value of Financial Instruments

Fair Value Measurements

The Company measures its financial assets and liabilities at fair value on a recurring basis using a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Authoritative guidance establishes three levels of the fair value hierarchy as follows:

Level 1: Quoted market prices in active markets for identical assets or liabilities;

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

Level 3: Fair value measurements derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

The carrying amounts of cash and cash equivalents, accounts receivables, accounts payable and accrued expenses and other current liabilities approximate fair value due to their short-term nature, and are therefore categorized within Level 1 of the fair value hierarchy.

Hedging instruments are re-measured on a recurring basis using broker quotes, daily market foreign currency rates, and interest rate curves as applicable (see Note 15) and are therefore categorized within Level 2 of the fair value hierarchy.

The following table summarizes the valuation of the Company's foreign currency forward contracts and interest rate hedge agreements (see Note 15) that are measured at fair value on a recurring basis, and are classified within Level 2 of the fair value hierarchy as of September 30, 2022 and December 31, 2021 (in millions):

	Fair Value	Level 2
September 30, 2022		
Foreign currency forward contracts—asset position	\$ 12.3	\$ 12.3
Foreign currency forward contracts—liability position	(1.1)	(1.1)
Interest rate hedge agreements—asset position	7.1	7.1
	<u>\$ 18.3</u>	<u>\$ 18.3</u>
December 31, 2021		
Foreign currency forward contracts—asset position	\$ 0.3	\$ 0.3
Foreign currency forward contracts—liability position	(0.2)	(0.2)
Interest rate hedge agreements—liability position	(8.7)	(8.7)
	<u>\$ (8.6)</u>	<u>\$ (8.6)</u>

There were no transfers of financial instruments between the levels of the fair value hierarchy during the three and nine months ended September 30, 2022 and 2021.

Disclosures about the Fair Value of Financial Instruments

The table below presents information about the fair value of the Company's financial liabilities, and is provided for comparative purposes only relative to the carrying values of the Company's financial instruments recognized in the consolidated condensed balance sheets as of September 30, 2022 and consolidated balance sheets as of December 31, 2021. Fair value of information was derived using Level 2 inputs of the fair value hierarchy and included quoted prices for similar instruments in active markets, quantitative pricing models, observable market borrowing rates, as well as other observable inputs and applicable valuation techniques.

	September 30, 2022		December 31, 2021	
	(in millions)			
	Carrying Value	Fair Value	Carrying Value	Fair Value
U.S. Asset-Based Revolving Credit Facility	\$ 65.0	\$ 65.0	\$ 9.1	\$ 9.1
2022 Japan ABL Facility	\$ 34.6	\$ 34.6	\$ —	\$ —
Japan Term Loan	\$ —	\$ —	\$ 13.0	\$ 12.2
Term Loan	\$ 433.2	\$ 431.7	\$ 436.8	\$ 437.5
Topgolf Term Loan	\$ 337.8	\$ 336.1	\$ 340.4	\$ 346.1
Convertible Notes	\$ 258.3	\$ 338.7	\$ 258.8	\$ 444.4
Equipment Notes	\$ 23.5	\$ 19.7	\$ 31.1	\$ 30.2
Mortgage Loans	\$ 46.0	\$ 54.1	\$ 46.4	\$ 52.3

Non-recurring Fair Value Measurements

The Company measures certain assets at fair value on a non-recurring basis at least annually or more frequently if impairment indicators are present. These assets include long-lived assets, goodwill, non-amortizing intangible assets and investments that are written down to fair value when they are held for sale or determined to be impaired. In the third quarter of 2022, the Company recognized an impairment loss of \$4.8 million related to the impairment of property, plant and equipment at an underperforming premerger Topgolf concept location. The fair value was determined using the cost approach for similar assets, considering the highest and best use of these assets. The impairment was included in other venue expenses in the Company's consolidated condensed statements of operations for the three and nine months ended September 30, 2022, and was categorized within Level 3 of the fair value hierarchy. There were no impairments recognized in the three and nine months ended September 30, 2021.

Note 15. Derivatives and Hedging

In the normal course of business, the Company and its subsidiaries are exposed to gains and losses resulting from fluctuations in foreign currency exchange rates. The Company uses designated cash flow hedges and non-designated hedges in the form of foreign currency forward contracts as part of its strategy to manage the exposure to fluctuations in foreign currency exchange rates and to mitigate the impact of foreign currency translation on transactions that are denominated primarily in Japanese Yen, British Pounds, Euros, Canadian Dollars, Australian Dollars and Korean Won. The Company also uses interest rate swap contracts to mitigate the impact of variable rates on its long-term debt.

The Company accounts for its foreign currency forward contracts and interest rate swap contracts in accordance with ASC Topic 815, "Derivatives and Hedging," ("ASC Topic 815"). ASC Topic 815 requires the recognition of all derivative instruments as either assets or liabilities on the balance sheet, the measurement of those instruments at fair value and the recognition of changes in the fair value of derivatives in earnings in the period of change, unless the derivative qualifies as a designated cash flow hedge that offsets certain exposures. Certain criteria must be satisfied in order for derivative financial instruments to be classified and accounted for as a cash flow hedge. Gains and losses from the remeasurement of qualifying cash flow hedges are recorded as a component of accumulated other comprehensive income and released into earnings as a component of cost of products, other income and interest expense during the period in which the hedged transaction takes place. Remeasurement gains or losses of derivatives that are not elected for hedge accounting treatment are recorded in earnings immediately as a component of other income.

Foreign currency forward contracts and interest rate swap contracts are used only to meet the Company's objectives of minimizing variability in the Company's operating results arising from foreign exchange rate movements and changes in interest rates. The Company does not enter into foreign currency forward contracts and interest rate swap contracts for speculative purposes. The Company utilizes counterparties for its derivative instruments that it believes are creditworthy at the time the transactions are entered into and the Company closely monitors the credit ratings of these counterparties.

The following table summarizes the fair value of the Company's derivative instruments as well as the location of the asset and/or liability on the consolidated condensed balance sheets as of September 30, 2022 and December 31, 2021 (in millions):

	Balance Sheet Location	Fair Value of Asset Derivatives	
		September 30, 2022	December 31, 2021
Derivatives designated as cash flow hedging instruments:			
Foreign currency forward contracts	Other current assets	\$ 1.7	\$ 0.1
Interest rate swap contracts	Other current assets	3.4	—
Interest rate swap contracts	Other assets	3.7	—
Total		<u>\$ 8.8</u>	<u>\$ 0.1</u>
Derivatives not designated as hedging instruments:			
Foreign currency forward contracts	Other current assets	10.6	0.2
Total asset position		<u>\$ 19.4</u>	<u>\$ 0.3</u>
	Balance Sheet Location	Fair Value of Liability Derivatives	
		September 30, 2022	December 31, 2021
Derivatives designated as cash flow hedging instruments:			
Interest rate swap contracts	Accounts payable and accrued expenses	\$ —	\$ 4.1
Interest rate swap contracts	Other long-term liabilities	—	4.6
		—	8.7
Derivatives not designated as hedging instruments:			
Foreign currency forward contracts	Accounts payable and accrued expenses	1.1	0.2
Total liability position		<u>\$ 1.1</u>	<u>\$ 8.9</u>

The Company's derivative instruments are subject to a master netting agreement with each respective counterparty bank and are therefore net settled at their maturity date. Although the Company has the legal right of offset under the master netting agreements, the Company has elected not to present these contracts on a net settlement amount basis, and therefore presents these contracts on a gross basis on the accompanying consolidated condensed balance sheets as of September 30, 2022 and consolidated balance sheets as of December 31, 2021.

Cash Flow Hedging Instruments

Foreign Currency Forward Contracts

The Company uses foreign currency derivatives designated as qualifying cash flow hedging instruments, including foreign currency forward contracts to help mitigate the Company's foreign currency exposure from intercompany sales of inventory and intercompany expense reimbursement to its foreign subsidiaries. These contracts generally mature within 12 months to 15 months from their inception. As of September 30, 2022 and December 31, 2021, the notional amounts of the Company's foreign currency forward contracts designated as cash flow hedge instruments were approximately \$9.0 million and \$3.3 million, respectively.

As of September 30, 2022, the Company recorded a net gain of \$4.4 million in accumulated other comprehensive income related to foreign currency forward contracts. Of this amount, net gains of \$1.3 million for the three months ended September 30, 2022 and \$2.8 million for the nine months ended September 30, 2022, were removed from accumulated other comprehensive income and recognized in cost of products for the underlying sales that were recognized. Additionally, for the three and nine months ended September 30, 2022, net gains related to the amortization of forward points were nominal and \$0.1 million, respectively, and were removed from accumulated other comprehensive income and recognized in cost of products. Based on the current valuation, the Company expects to reclassify net gains of \$2.0 million related to foreign currency forward contracts from accumulated other comprehensive income into net earnings during the next 12 months.

The Company recognized net gains of \$0.6 million in cost of products related to its forward contracts during the three and nine months ended September 30, 2021.

Interest Rate Swap Contract

In order to mitigate the risk of changes in interest rates associated with the Company's variable-rate Term Loan, the Company used an interest rate swap designated as a cash flow hedge (see Note 6). Over the life of the Term Loan, the Company will receive variable interest payments from the counterparty lenders in exchange for the Company making fixed interest rate payments at 2.54%, without exchange of the underlying notional amount. The notional amounts outstanding under the interest rate swap contract were \$192.8 million and \$194.3 million as of September 30, 2022 and December 31, 2021, respectively.

During the three and nine months ended September 30, 2022, the Company recorded a net gain of \$4.8 million and \$13.6 million, respectively, related to the remeasurement of the interest rate swap contract in accumulated other comprehensive income. Of these amounts, net losses of \$0.2 million and \$2.2 million were realized from accumulated other comprehensive loss and recognized in interest expense during the three and nine months ended September 30, 2022, respectively. Based on the current valuation, the Company expects to reclassify a net gain of \$3.4 million related to the interest rate hedge contract from accumulated other comprehensive income into earnings during the next 12 months.

The Company recognized net losses of \$1.2 million and \$3.6 million in interest expense related to the interest rate swap contract during the three and nine months ended September 30, 2021, respectively.

The following tables summarize the net effect of all cash flow hedges on the consolidated condensed financial statements for the three and nine months ended September 30, 2022 and 2021 (in millions):

Derivatives designated as cash flow hedging instruments	Gain (Loss) Recognized in Other Comprehensive Income			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Foreign currency forward contracts	\$ 0.7	\$ 0.1	\$ 4.4	\$ 2.2
Interest rate swap agreements	4.8	(0.1)	13.6	2.1
	<u>\$ 5.5</u>	<u>\$ —</u>	<u>\$ 18.0</u>	<u>\$ 4.3</u>

Derivatives designated as cash flow hedging instruments	Gain (Loss) Reclassified from Other Comprehensive Income into Earnings			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Foreign currency forward contracts	\$ 1.3	\$ 0.6	\$ 2.8	\$ 0.6
Interest rate swap agreements	(0.2)	(1.2)	(2.2)	(3.6)
	<u>\$ 1.1</u>	<u>\$ (0.6)</u>	<u>\$ 0.6</u>	<u>\$ (3.0)</u>

Foreign Currency Forward Contracts Not Designated as Hedging Instruments

The Company uses foreign currency forward contracts that are not designated as qualifying cash flow hedging instruments to mitigate the exposure to fluctuations in foreign currency exchange rates due to the remeasurement of certain balance sheet payables and receivables denominated in foreign currencies, as well as gains and losses resulting from the translation of the operating results of the Company's international subsidiaries into U.S. dollars for financial reporting purposes. These contracts generally mature within 12 months from inception. As of September 30, 2022 and December 31, 2021, the notional amounts of the Company's foreign currency forward contracts used to mitigate the exposures discussed above were approximately \$169.3 million and \$67.8 million, respectively. The Company estimates the fair values of foreign currency forward contracts based on pricing models using current market rates, and records all derivatives on the balance sheet at fair value with changes in fair value recorded in the consolidated condensed statements of operations. Foreign currency forward contracts are classified under Level 2 of the fair value hierarchy (see Note 14).

The following table summarizes the location of net gains and losses in the consolidated condensed statements of operations that were recognized during the three and nine months ended September 30, 2022 and 2021, respectively, in addition to the derivative contract type (in millions):

Derivatives not designated as hedging instruments	Location of Net Gain (Loss) Recognized in Income on Derivative Instruments	Amount of Net Gain (Loss) Recognized in Income on Derivative Instruments			
		Three Months Ended September 30,		Nine Months Ended September 30,	
		2022	2021	2022	2021
Foreign currency forward contracts	Other income, net	\$ 19.7	\$ 2.8	\$ 58.3	\$ 11.8

In addition, during the three months ended September 30, 2022 and 2021, the Company recognized net foreign currency transaction losses of \$12.9 million and \$1.2 million, respectively, and net foreign currency transaction losses of \$32.9 million and \$4.2 million, for the nine months ended September 30, 2022 and 2021, respectively, in its consolidated condensed statements of operations.

Note 16. Accumulated Other Comprehensive Income (Loss)

The following table details amounts reclassified from accumulated other comprehensive income (loss) and foreign currency translation adjustments for the three and nine months ended September 30, 2022 (in millions):

	Derivative Instruments	Foreign Currency Translation	Total
Accumulated other comprehensive income (loss), June 30, 2022, after tax	\$ 8.3	\$ (68.3)	\$ (60.0)
Change in derivative instruments	5.5	—	5.5
Net gains reclassified to cost of products	(1.3)	—	(1.3)
Net losses reclassified to interest expense	0.2	—	0.2
Income tax provision on derivative instruments	1.0	—	1.0
Foreign currency translation adjustments	—	(38.0)	(38.0)
Accumulated other comprehensive income (loss), September 30, 2022, after tax	<u>\$ 13.7</u>	<u>\$ (106.3)</u>	<u>\$ (92.6)</u>
	Derivative Instruments	Foreign Currency Translation	Total
Accumulated other comprehensive income (loss), December 31, 2021, after tax	\$ (5.6)	\$ (21.7)	\$ (27.3)
Change in derivative instruments	18.0	—	18.0
Net gains reclassified to cost of products	(2.8)	—	(2.8)
Net losses reclassified to interest expense	2.2	—	2.2
Income tax provision on derivative instruments	1.9	—	1.9
Foreign currency translation adjustments	—	(84.6)	(84.6)
Accumulated other comprehensive income (loss), September 30, 2022, after tax	<u>\$ 13.7</u>	<u>\$ (106.3)</u>	<u>\$ (92.6)</u>

Note 17. Segment Information

The Company has three operating and reportable segments:

- Topgolf, which is primarily comprised of service revenues and expenses from its Company-operated Topgolf venues, Toptracer ball-flight tracking technology, and WGT digital golf game;
- Golf Equipment, which is comprised of product revenues and expenses that encompass golf club and golf ball products, including Callaway Golf-branded woods, hybrids, irons, wedges, Odyssey putters, including Toulon Design putters by Odyssey, packaged sets, Callaway Golf and Strata-branded golf balls and sales of pre-owned golf clubs; and
- Active Lifestyle, which is comprised of product revenues and expenses for the Jack Wolfskin outdoor apparel, gear and accessories business, the TravisMathew golf and lifestyle apparel and accessories business, the Callaway soft goods business and the OGIO business, which consists of golf apparel and accessories (including golf bags and gloves), and storage gear for sport and personal use. This segment also includes royalties from licensing of the Company's trademarks and service marks for various soft goods products. During the second quarter of 2022, the Company changed the name of its Apparel, Gear, and Other operating segment to Active Lifestyle. The segment name change had no impact on the composition of the Company's segments or on previously reported financial position, results of operations, cash flow or segment operating results.

There were no significant intersegment transactions during the three and nine months ended September 30, 2022 or 2021.

The following table contains information utilized by management to evaluate its operating segments for the interim periods presented (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net revenues:				
Topgolf ⁽¹⁾	\$ 413.8	\$ 333.8	\$ 1,139.5	\$ 751.8
Golf Equipment	296.7	289.6	1,216.6	1,067.8
Active Lifestyle	278.0	233.1	788.3	602.1
Total net revenues	\$ 988.5	\$ 856.5	\$ 3,144.4	\$ 2,421.7
Segment operating income:				
Topgolf ⁽¹⁾	\$ 23.6	\$ 23.9	\$ 74.3	\$ 52.1
Golf Equipment	49.6	45.8	250.7	228.8
Active Lifestyle	28.1	34.6	77.3	70.8
Total segment operating income	101.3	104.3	402.3	351.7
Reconciling items ⁽²⁾	(33.1)	(28.3)	(110.8)	(92.3)
Total operating income	68.2	76.0	291.5	259.4
Gain on Topgolf investment ⁽³⁾	—	—	—	252.5
Interest expense, net	(36.4)	(28.7)	(100.3)	(75.1)
Other income, net	7.0	2.9	26.9	9.5
Total income before income taxes	\$ 38.8	\$ 50.2	\$ 218.1	\$ 446.3
Additions to long-lived assets:				
Topgolf ⁽¹⁾	\$ 113.9	\$ 85.4	\$ 336.4	\$ 225.5
Golf Equipment	1.9	9.0	10.7	24.8
Active Lifestyle	6.9	7.0	17.7	18.2
Total additions to long-lived assets	\$ 122.7	\$ 101.4	\$ 364.8	\$ 268.5

⁽¹⁾ On March 8, 2021, the Company completed the merger with Topgolf and has included the results of operations of Topgolf in its consolidated condensed statements of operations from that date forward.

⁽²⁾ Reconciling items include corporate general and administrative expenses not utilized by management in determining segment profitability as well as the amortization and depreciation of acquired intangible assets and purchase accounting adjustments. The amount for 2022 also includes costs associated with the implementation of new ERP systems stemming from acquisitions, legal and credit agency fees related to a postponed debt refinancing, and impairment losses related to an underperforming premerger Topgolf concept location in addition to the suspension of business operations in Russia. The amount for 2021 also includes transaction, transition and other non-recurring costs associated with the merger with Topgolf and costs associated with the implementation of new IT systems for Jack Wolfskin.

⁽³⁾ The gain on Topgolf investment is related to the fair value step-up on the Company's investment in Topgolf (see Note 5).

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

The following discussion should be read in conjunction with the Consolidated Condensed Financial Statements and the related notes that appear elsewhere in this report, and the consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2021, which was filed with the SEC on March 1, 2022. Interim operating results are not necessarily indicative of operating results that may be expected for the year ending December 31, 2022, or any other future periods. See "Important Notice to Investors Regarding Forward-Looking Statements" on page 2 of this report. References to the "Company," "Topgolf Callaway Brands," "we," "our," or "us" in this report refer to Topgolf Callaway Brands Corp., together with its wholly-owned subsidiaries.

Corporate Name Change

On September 6, 2022, the Company changed its corporate name from Callaway Golf Company to Topgolf Callaway Brands Corp. and on September 7, 2022, changed its New York Stock Exchange ticker symbol from "ELY" to "MODG." The changes to the corporate name and ticker symbol did not have any impact on the Company's legal entity structure or financial statements.

Discussion of Non-GAAP Measures

In addition to the financial results contained in this report, which have been prepared and presented in accordance with accounting principles generally accepted in the United States of America ("GAAP"), the Company has also included supplemental information concerning the Company's financial results on a non-GAAP basis. This non-GAAP information includes the following:

- A constant currency measure on net revenues in order to demonstrate the impact of fluctuations from foreign currencies on these results. This information represents an estimate for comparative purposes and is calculated by taking current period local currency results and translating them into U.S. dollars based on the foreign currency exchange rates for the applicable comparable prior period.
- Net income(loss) and diluted earnings (loss) per share excluding certain non-cash and non-recurring charges, as further detailed below.

The Company has included in this report information to reconcile this non-GAAP information to the most directly comparable GAAP information. The non-GAAP information presented in this report should not be considered in isolation or as a substitute for any measure derived in accordance with GAAP and may also be inconsistent with the manner in which similar measures are derived or used by other companies. Management uses such non-GAAP information for financial and operational decision-making purposes and as a means to evaluate period over period comparisons of the underlying performance of its business and in forecasting the Company's business going forward. Management believes that the presentation of such non-GAAP information, when considered in conjunction with the most directly comparable GAAP information, provides additional useful comparative information for investors in their assessment of the underlying performance of the Company's business.

Operating Segments and Seasonality

The Company is a technology-enabled modern golf company delivering leading golf equipment, apparel and entertainment, with a portfolio of global brands including Callaway Golf, Topgolf, Odyssey, OGIO, TravisMathew and Jack Wolfskin. The Company has three operating segments, namely Topgolf, Golf Equipment, and Active Lifestyle.

Topgolf

The Company's Topgolf subsidiary previously operated on a 52- or 53-week retail calendar year which ended on the Sunday closest to December 31. As of April 4, 2022 and going forward, Topgolf operates on a fiscal year calendar which will end on December 31. Topgolf financial information included in the Company's consolidated condensed financial statements for the three and nine months ended September 30, 2022 is for the period beginning July 1, 2022 and ending September 30, 2022 and the period beginning January 3, 2022 and ending September 30, 2022, respectively. Topgolf financial information included in the Company's consolidated condensed financial statements for the three and nine months ended September 30, 2021 is for the period beginning July 5, 2021 and ending October 3, 2021 and the period beginning March 8, 2021 (the date on which the Company completed its merger with Topgolf) and ending October 3, 2021, respectively.

The Topgolf operating segment is comprised of Company-operated Topgolf domestic and international venues, which are equipped with technology-enabled hitting bays, multiple bars, dining areas and event spaces, and also offers advertising partnerships to corporate sponsors to feature their names and logos at Topgolf venues and on other media platforms. Revenue from Company-operated venues is primarily derived from food and beverage, gameplay, and events. As of September 30, 2022, Topgolf had 72 Company-operated venues and one Company-operated lounge in the United States, with an additional 12 venues under construction in the United States, and three Company-operated venues in the United Kingdom, with an additional one venue under construction in the United Kingdom. Topgolf receives a royalty from its franchised locations. As of September 30, 2022, Topgolf had five franchised venues (in Australia, Mexico, the United Arab Emirates, Thailand, and Germany) and one licensed lounge (in China), with an additional one franchised venue under construction (in China).

Topgolf's other business lines include Toptracer ball-flight tracking technology as well as the World Golf Tour ("WGT") digital golf game. Toptracer ball-flight tracking technology is used by independent driving ranges, franchised venues outside of the United States, as well as in Company-operated Topgolf venues to enhance the Topgolf gaming experience. As of September 30, 2022, Topgolf had over 19,500 Toptracer bays installed. The WGT digital golf game is an online multiplayer virtual golf game that enables players to gather online as a community and participate in simulated photorealistic gameplay on world-famous golf courses.

Operating results fluctuate from quarter to quarter due to seasonal factors. Historically, venues experience higher second and third quarter revenues associated with the spring and summer. Topgolf's first and fourth quarters have historically had lower revenues at its venues as compared to the other quarters due to cooler temperatures. Seasonality is expected to be a factor in Topgolf's results of operations. As a result, factors affecting peak seasons at venues, such as adverse weather, could have a disproportionate effect on its operating results.

Revenue growth and profitability related to Topgolf venues are impacted by same venue sales. Same venue sales is defined as sales for the comparable venue base. New venues are included in the comparable venue base following 24 full fiscal months of operations. Same venue sales is a key performance indicator used within the Topgolf industry and is indicative of acceptance of Topgolf initiatives as well as local economic and consumer trends.

For further information about the merger with Topgolf see Note 5 "Business Combinations" in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q.

Golf Equipment

The Golf Equipment operating segment is comprised of Callaway Golf-branded golf clubs and balls, including Callaway Golf-branded woods, hybrids, irons, wedges, Odyssey putters, including Toulon Design putters by Odyssey, packaged sets, Callaway Golf and Strata-branded golf balls and sales of pre-owned golf clubs. The Company's golf equipment products are designed to be technologically advanced for golfers of all skill levels, both amateur and professional.

In most of the regions where the Company conducts business, the game of golf is played primarily on a seasonal basis. Weather conditions generally restrict golf from being played year-round, except in a few markets, with many of the Company's on-course customers closing for the cold weather months. In general, during the first quarter, the Company launches new product for the new golf season. This initial sell-in generally continues into the second quarter. Third-quarter sales are generally dependent on reorder business but can also include smaller new product launches. Fourth-quarter sales are generally less than the other quarters due to the end of the golf season in many of the Company's key regions. This seasonality, and therefore quarter-to-quarter fluctuations, can be affected by many factors, including the timing of new product introductions as well as weather conditions. In general, because of this seasonality, a majority of the Company's sales from its Golf Equipment operating segment and most, if not all, of its profitability from this segment generally occurs during the first half of the year.

Active Lifestyle

During the second quarter of 2022, the Company changed the name of its Apparel, Gear, and Other operating segment to Active Lifestyle. The segment name change had no impact on the composition of the Company's segments or on previously reported financial position, results of operations, cash flow or segment operating results. The Company's Active Lifestyle operating segment is comprised of Callaway Golf, OGIO, TravisMathew and Jack Wolfskin soft goods products, which are largely designed and developed internally. The Callaway Golf soft goods brand offers a full line of premium golf apparel, footwear, gear and accessories. The OGIO brand offers a full line of premium personal storage gear for sport and personal use and accessories. TravisMathew offers a full line of premium golf and lifestyle apparel as well as footwear and accessories. Under the Jack Wolfskin brand, the Company offers a full line of premium outdoor apparel, gear and accessories. On certain soft goods products, the Company receives royalties from the licensing of its trademarks and service marks.

Sales of the Callaway-branded golf apparel and accessories generally follow the same seasonality as golf equipment, and are therefore generally higher during the first half of the year. TravisMathew-branded products are generally lifestyle focused and not dependent on golf, and therefore sales are more evenly spread throughout the year. Sales of Jack Wolfskin-branded products focuses primarily on outerwear and consequently experiences stronger sales for such products during the cold-weather months and the corresponding prior sell-in periods. Therefore, sales of Jack Wolfskin products are generally greater during the second half of the year.

For further information about the Company's segments, see Note 17 "Segment Information" in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q.

Current Economic Conditions

A significant portion of the Company's business is conducted outside of the United States in currencies other than the U.S. dollar. As a result, changes in foreign currency rates can have a significant effect on the Company's financial results. The Company enters into foreign currency forward contracts to mitigate the effects of changes in foreign currency rates. While these foreign currency forward contracts can mitigate the effects of changes in foreign currency rates in the short-term, they do not eliminate those effects, which can be significant, and they do not mitigate their effects over the long-term. These effects include (i) the translation of results denominated in foreign currency into U.S. dollars for reporting purposes, (ii) the mark-to-market adjustments of certain intercompany balance sheet accounts denominated in foreign currencies and (iii) the mark-to-market adjustments of the Company's foreign currency forward contracts. In general, the Company's overall financial results are affected positively by a weaker U.S. dollar and are affected negatively by a stronger U.S. dollar as compared to the foreign currencies in which the Company conducts its business. Fluctuations in foreign currencies had an unfavorable impact on international net revenues of \$50.4 million and \$110.3 million for the three and nine months ended September 30, 2022, respectively, relative to the same periods in the prior year. The Company anticipates that changes in foreign currencies will continue to have a significant unfavorable impact on net revenues and operating results for the duration of 2022 and 2023.

The recent increase in inflation partially contributed to the increase in the cost of the Company's products as well as operating costs. While the Company was generally able to offset these inflationary pressures by increasing the price of its products, the length and severity of these conditions are unpredictable, and should conditions persist and/or worsen, such inflationary pressures may have an adverse effect on the Company's operating expenses. Further, the Company may not be able to offset these increased costs through price increases. As a result, the Company's cash flows and results of operations could be adversely affected.

During most of 2022, the Company experienced longer lead times on inventory shipments due to significant port delays and container shortages in the U.S. and internationally. As a result, the Company planned inventory purchases around these increased in-transit times in order to meet the heightened demand for its golf equipment and apparel products, and to also manage capacity at its suppliers by pulling-in inventory orders in preparation for the upcoming product launches. However, in-transit times improved during the third quarter and much of these inventory orders were received earlier than anticipated, creating an increase in inventory levels in the third quarter of 2022 compared to inventory levels in the same period in 2021, which were unusually low due to inventory shortages caused by supply chain constraints. A majority of inventory shipments received in the third quarter of 2022 is for 2023 product, therefore the Company anticipates continued higher inventory levels going into 2023. The Company believes the quality of its inventory is good and that it will be well positioned going into the golf season in 2023.

Results of Operations

Three-Month Periods Ended September 30, 2022 and 2021

Net Revenues

Despite significant foreign currency headwinds in the third quarter of 2022, net revenues increased \$132.0 million (or 15.4%) to \$988.5 million compared to \$856.5 million in the third quarter of 2021, driven by increases across the Company's three operating segments. Fluctuations in foreign currencies had an unfavorable impact on net revenues of \$50.4 million in the third quarter of 2022 compared to the same period in 2021. Net revenues by operating segment and major geographic region are presented below (dollars in millions):

	Three Months Ended September 30,		Growth		Non-GAAP Constant Currency Growth vs. 2021
	2022	2021	Dollars	Percent	Percent
Net revenues:					
Topgolf	\$ 413.8	\$ 333.8	\$ 80.0	24.0 %	24.8 %
Golf Equipment	296.7	289.6	7.1	2.5 %	9.3 %
Active Lifestyle	278.0	233.1	44.9	19.3 %	31.2 %
	<u>\$ 988.5</u>	<u>\$ 856.5</u>	<u>\$ 132.0</u>	15.4 %	21.3 %

For further discussion of each operating segment's results, see "Operating Segment Results for the Three Months Ended September 30, 2022 and 2021" below.

	Three Months Ended September 30,		Growth		Non-GAAP Constant Currency Growth vs. 2021
	2022	2021	Dollars	Percent	Percent
Net revenues ⁽¹⁾ :					
United States	\$ 684.8	\$ 552.9	\$ 131.9	23.9 %	23.9%
Europe	141.9	157.2	(15.3)	(9.7 %)	5.9%
Asia	138.7	125.2	13.5	10.8 %	30.7%
Rest of world	23.1	21.2	1.9	9.0 %	13.7%
	<u>\$ 988.5</u>	<u>\$ 856.5</u>	<u>\$ 132.0</u>	15.4 %	21.3%

⁽¹⁾As of January 1, 2022, the Company modified the composition of its regions and combined Japan, Korea, China, South-East Asia and India into a single Asia region. These regions, except for Japan, were previously reported within rest of world. As a result of this change, net revenues by region for the period presented in the prior year were recast to conform to the current year presentation.

The increases in net revenues by major geographic region are as follows:

- The 23.9% increase in net revenues in the United States was primarily driven by growth in the Topgolf business

combined with strong demand for TravisMathew apparel and golf equipment products.

- The 9.7% decrease in Europe was driven by the significant unfavorable impact from changes in foreign currency exchange rates, primarily on revenues denominated in Euros and British Pounds. On a constant currency basis, net revenues increased 5.9% due to strong sales of Jack Wolfskin apparel.
- The 10.8% increase in Asia (30.7% constant currency) was primarily driven by strong demand for golf equipment products combined with the addition of the Callaway-branded apparel business in Korea effective July 1, 2021. This increase was partially offset by the significant unfavorable impact from changes in foreign currency exchange rates, primarily on revenues denominated in Japanese Yen and Korean Won.
- The 9.0% increase in rest of world (13.7% constant currency) was driven by strong demand for golf equipment and apparel products in Canada and Latin America.

Costs and Expenses

Cost of products increased \$42.3 million (or 14.7%) to \$330.7 million in the third quarter of 2022 compared to the same period in 2021. Cost of products is highly variable in nature and this increase is due to the increase in product sales in the third quarter of 2022, combined with an increase in freight and overall commodity costs due to inflationary pressures. These increases were partially offset by the favorable impact of foreign currency exchange rates.

Cost of services increased \$8.2 million (or 20.5%) to \$48.2 million in the third quarter of 2022 compared to the same period in 2021 primarily due to the opening of six new owned and operated Topgolf venues since September 30, 2021. Cost of services includes the cost of food and beverage sold in the Company's Topgolf venues as well as certain costs associated with licensing the Company's Toptracer ball-flight tracking technology.

Other venue expenses, comprised of depreciation and amortization, employee costs, rent, utilities, and other costs associated with Topgolf venues, increased \$71.7 million (or 33.2%) to \$287.6 million in the third quarter of 2022 compared to \$215.9 million in the same period in 2021 primarily due to the opening of 6 new owned and operated Topgolf venues since September 30, 2021, combined with rising occupancy and utility costs due to inflationary pressures.

Selling, general and administrative expenses increased \$7.0 million (or 3.2%) to \$224.7 million (22.7% of net revenues) in the third quarter of 2022 compared to the third quarter of 2021. This increase is primarily due to higher spending in order to support a larger business, including employee costs and IT infrastructure improvements, combined with increases caused by inflation. These increases were partially offset by the favorable impact of foreign currency exchange rates.

Research and development expenses increased \$3.4 million (or 21.5%) to \$19.2 million (1.9% of net revenues) in the third quarter of 2022 compared to the third quarter of 2021 primarily due to increases in employee headcount.

Venue pre-opening costs increased \$7.2 million (or 266.7%) to \$9.9 million (1.0% of net revenues) in the third quarter of 2022 compared to the third quarter of 2021 primarily due to an increase in the number of venues under construction from eight as of September 30, 2021 to twelve as of September 30, 2022.

Other Income and Expense

Net interest expense increased \$7.7 million to \$36.4 million in the third quarter of 2022 compared to the third quarter of 2021 primarily due to additional deemed landlord financing ("DLF") obligations related to new Topgolf venues that have opened since September 30, 2021, and higher variable rates on the Company's term loans and asset-based credit facility. This increase is partially offset by a decrease in discount amortization expense associated with the Convertible Notes as the result of the adoption of ASU 2020-06 as of January 1, 2022, which resulted in the de-recognition of the original issue discount. See Note 6 "Financing Arrangements" in the Notes to Consolidated Condensed Financial Statements included in Part I, Item 1, of this Form 10-Q.

Other income increased \$4.1 million to \$7.0 million in the third quarter of 2022 compared to the third quarter of 2021 primarily due to an increase in net foreign currency gains.

Income Taxes

The Company's provision for income taxes decreased \$65.9 million to \$0.3 million in the third quarter of 2022, compared to the third quarter of 2021. As a percentage of pre-tax income, the Company's effective tax rate was 0.8% in the third quarter of 2022 compared to 131.8% in the third quarter of 2021. The Company's effective tax rate for the third quarter of 2022 was impacted by the release of valuation allowances on the Company's deferred tax assets. The Company's effective tax rate for the third quarter of 2021 was primarily impacted by utilizing the annual effective tax rate method in the third quarter instead of the discrete effective tax rate method, which was used in the second quarter of 2021. Excluding these items, the Company's effective tax rate would have been 12.5% in the third quarter of 2022 compared to 36.8% in the third quarter of 2021. For further discussion see Note 11 "Income Taxes" in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q.

Net Income (Loss)

Net income for the third quarter of 2022 increased \$54.5 million to \$38.5 million compared to a net loss of \$16.0 million in the third quarter of 2021. Diluted earnings per share increased \$0.29 to \$0.20 in the third quarter of 2022 compared to a diluted loss per share of \$0.09 in the third quarter of 2021.

On a non-GAAP basis, excluding the items described in the table below, the Company's net income and diluted earnings per share for the third quarter of 2022 would have been \$44.6 million and \$0.23 per share, respectively, compared to \$26.3 million and \$0.14 per share, respectively, for the comparative period in 2021. Fully diluted shares were 201.8 million shares of common stock in the third quarter of 2022, an increase of 15.8 million shares compared to 186.0 million shares in the third quarter of 2021. The increased share count includes the impact of calculating the Convertible Notes under the if-converted method due to the adoption of ASU 2020-06 as of January 1, 2022. The increase in non-GAAP earnings in 2022 resulted primarily from strong sales across all operating segments combined with the release of income tax valuation allowances. These increases were partially offset by significant foreign currency headwinds combined with inflationary pressures and an increase in interest expense.

The following tables present a reconciliation of the Company's as-reported results for the three months ended September 30, 2022 and 2021 to the Company's non-GAAP results reported above for the same periods (in millions, except per share information):

Three Months Ended September 30, 2022					
	GAAP	Non-Cash Amortization and Depreciation ⁽¹⁾	Non-Recurring Items ⁽²⁾	Tax Valuation Allowance ⁽³⁾	Non-GAAP
Net income (loss)	\$ 38.5	\$ (5.9)	\$ (4.8)	\$ 4.6	\$ 44.6
Diluted earnings (loss) per share	\$ 0.20	\$ (0.03)	\$ (0.02)	\$ 0.02	\$ 0.23
Weighted-average shares outstanding ⁽⁴⁾	201.8	201.8	201.8	201.8	201.8

Three Months Ended September 30, 2021						
	GAAP	Non-Cash Amortization and Depreciation ⁽¹⁾	Non-Cash Amortization of Discount on Convertible Notes ⁽⁵⁾	Acquisition and Non-Recurring Items ⁽⁶⁾	Tax Valuation Allowance ⁽³⁾	Non-GAAP ⁽⁷⁾
Net (loss) income	\$ (16.0)	\$ (5.8)	\$ (2.0)	\$ (1.7)	\$ (32.8)	\$ 26.3
Diluted (loss) earnings per share	\$ (0.09)	\$ (0.03)	\$ (0.01)	\$ (0.01)	\$ (0.18)	\$ 0.14
Weighted-average shares outstanding	186.0	186.0	186.0	186.0	186.0	193.9

⁽¹⁾ Includes the amortization and depreciation of acquired intangible assets and purchase accounting adjustments.

⁽²⁾ Primarily includes a pre-tax impairment loss of \$4.8 million related to an underperforming premerger Topgolf concept location, in addition to \$1.4 million of implementation costs associated with new ERP systems stemming from acquisitions.

⁽³⁾ In 2021, the Company recognized a valuation allowance against certain deferred tax assets in connection with the merger with Topgolf. Based on the Company's ongoing assessment, a portion of the valuation allowance was released in 2022, and additional valuation allowances were recorded in 2021.

⁽⁴⁾ Weighted average shares outstanding for the three months ended September 30, 2022 includes the impact of calculating the Convertible Notes under the if-converted method due to the adoption of ASU 2020-06 as of January 1, 2022. For purposes of calculating diluted earnings per share, after-tax interest expense of \$1.6 million is added back to net income as the Convertible Notes are assumed converted as of January 1, 2022.

⁽⁵⁾ Represents the pre-tax non-cash amortization of the discount associated with the Convertible Notes issued in May 2020. Starting January 1, 2022, as a result of the adoption of ASU 2020-06, amortization expense is no longer recognized due to the de-recognition of the discount.

⁽⁶⁾ Primarily includes \$1.3 million of pre-tax transition costs associated with the merger with Topgolf, in addition to costs associated with IT initiatives primarily at Topgolf and Jack Wolfskin.

⁽⁷⁾ Non-GAAP diluted earnings per share for the three months ended September 30, 2021 was calculated using the diluted weighted average outstanding shares, as earnings on a non-GAAP basis resulted in net income after giving effect to pro forma adjustments.

Operating Segment Results for the Three Months Ended September 30, 2022 and 2021

The Company evaluates the performance of its operating segments based on segment operating income. Management uses total segment operating income as a measure of its operational performance, which excludes corporate overhead and certain non-recurring and non-cash charges.

Profitability by operating segment is summarized as follows (dollars in millions):

	Three Months Ended September 30,		Growth		Non-GAAP Constant Currency Growth vs. 2021 ⁽¹⁾
	2022	2021	Dollars	Percent	Percent
Net revenues:					
Venues ⁽²⁾	\$ 399.5	\$ 317.6	\$ 81.9	25.8 %	26.3 %
Other business lines ⁽²⁾	14.3	16.2	(1.9)	(11.7)%	(4.9)%
Topgolf	413.8	333.8	80.0	24.0 %	24.8 %
Golf clubs	221.4	229.3	(7.9)	(3.4)%	3.8 %
Golf balls	75.3	60.3	15.0	24.9 %	30.2 %
Golf Equipment	296.7	289.6	7.1	2.5 %	9.3 %
Apparel	181.4	150.2	31.2	20.8 %	33.0 %
Gear, accessories, & other	96.6	82.9	13.7	16.5 %	28.0 %
Active Lifestyle	278.0	233.1	44.9	19.3 %	31.2 %
Total net revenues	\$ 988.5	\$ 856.5	\$ 132.0	15.4 %	21.3 %
Segment operating income:					
Topgolf	\$ 23.6	\$ 23.9	\$ (0.3)	(1.3)%	
Golf Equipment	49.6	45.8	3.8	8.3 %	
Active Lifestyle	28.1	34.6	(6.5)	(18.8)%	
Total segment operating income	101.3	104.3	(3.0)	(2.9)%	
Reconciling Items ⁽³⁾	(33.1)	(28.3)	(4.8)	17.0 %	
Total operating income	68.2	76.0	(7.8)	(10.3)%	
Interest expense, net	(36.4)	(28.7)	(7.7)	26.8 %	
Other income, net	7.0	2.9	4.1	141.4 %	
Total income before income taxes	\$ 38.8	\$ 50.2	\$ (11.4)	(22.7)%	

⁽¹⁾ Calculated by applying 2021 exchange rates to 2022 reported sales in regions outside the United States.

⁽²⁾ As of January 1, 2022, in order to align with the Company's current management reporting structure, the Company began reporting revenues associated with corporate advertising sponsorship contracts in the venues business line within the Topgolf operating segment. These revenues were previously included in other business lines. In order to conform to the current year presentation, revenue associated with corporate advertising sponsorship contracts of \$4.0 million for the three months ended September 30, 2021 was reclassified from other business lines to venues for comparative purposes.

⁽³⁾ Reconciling items for the third quarter of 2022 and 2021 include corporate general and administrative expenses not utilized by management in determining segment profitability, as well as non-cash amortization and depreciation expense, and acquisition and non-recurring items discussed above in the reconciliation of the Company's results to non-GAAP results.

Topgolf

In the third quarter of 2022, net revenues for Topgolf increased \$80.0 million (or 24.0%) compared to the third quarter of 2021. This increase resulted from the opening of six new owned and operated Topgolf locations since the third quarter of 2021, combined with an increase in same venue sales, which was driven by increases in walk-in traffic and event bookings. The \$0.3 million (or 1.3%) decrease in segment operating income was primarily due to a planned increase in pre-opening expenses, in addition to increases in marketing and labor costs due to growth and inflationary pressures, partially offset by price increases.

Golf Equipment

In the third quarter of 2022, net revenues for Golf Equipment and segment operating income increased \$7.1 million (or 2.5%) and \$3.8 million (or 8.3%), respectively, compared to the third quarter of 2021. The increase in revenues was driven by revenue growth in golf ball sales due to continued brand momentum and high demand combined with an increase in inventory supply. This was partially offset by a small decline in golf club sales, primarily due to the negative impact of foreign currency headwinds combined with the timing of region-specific products, which were launched in the first quarter in 2022 compared to the third quarter in 2021. On a constant currency basis, sales of golf clubs would have increased 3.8%. The increase in operating income was driven by the increase in net revenues, partially offset by unfavorable foreign currency and increased freight expense and other inflationary pressures, which the Company was able to generally offset through price increases, sales volume and efficiencies.

Active Lifestyle

In the third quarter of 2022, net revenues for Active Lifestyle increased \$44.9 million (or 19.3%) compared to the third quarter of 2021, driven by continued brand momentum of TravisMathew apparel products combined with growth from additional retail locations and corporate sales, and Callaway apparel due to growth from the new apparel business in Korea. Net revenues of Jack Wolfskin apparel were flat compared to the third quarter of 2021 due to significant foreign currency headwinds, which outpaced the growth in the brand in the third quarter of 2022. On a constant currency basis, sales of Jack Wolfskin would have increased 15.6%. The \$6.5 million (or 18.8%) decline in segment operating income was driven by significant foreign currency headwinds and increased freight expense and other inflationary pressures, which were partially offset by price increases.

Nine-Month Periods Ended September 30, 2022 and 2021

Net Revenues

The Company's net revenues for the nine months ended September 30, 2022 increased \$722.7 million (or 29.8%) to \$3,144.4 million compared to \$2,421.7 million in the comparable period of 2021. This increase reflects increases in all three operating segments and all major geographic regions, in addition to significant unfavorable foreign currency headwinds of \$110.3 million. Net revenues by operating segment and major geographic region are presented below (dollars in millions):

	Nine Months Ended September 30,		Growth		Non-GAAP Constant Currency Growth vs. 2021
	2022	2021	Dollars	Percent	Percent
Net revenues:					
Topgolf	\$ 1,139.5	\$ 751.8	\$ 387.7	51.6 %	52.4 %
Golf Equipment	1,216.6	1,067.8	148.8	13.9 %	18.7 %
Active Lifestyle	788.3	602.1	186.2	30.9 %	39.7 %
	<u>\$ 3,144.4</u>	<u>\$ 2,421.7</u>	<u>\$ 722.7</u>	<u>29.8 %</u>	<u>34.4 %</u>

	Nine Months Ended September 30,		Growth		Non-GAAP Constant Currency Growth vs. 2021
	2022	2021	Dollars	Percent	Percent
	Net revenues ⁽¹⁾ :				
United States	\$ 2,194.7	\$ 1,583.9	\$ 610.8	38.6 %	38.6%
Europe	417.7	386.5	31.2	8.1 %	21.3%
Asia	432.6	364.5	68.1	18.7 %	33.9%
Rest of world	99.4	86.8	12.6	14.5 %	18.8%
	<u>\$ 3,144.4</u>	<u>\$ 2,421.7</u>	<u>\$ 722.7</u>	29.8 %	34.4%

⁽¹⁾ As of January 1, 2022, the Company modified the composition of its regions and combined Japan, Korea, China, South-East Asia and India into a single Asia region. These regions, except for Japan, were previously reported within rest of world. As a result of this change, net revenues by region for the period presented in the prior year were recast to conform to the current year presentation.

The increases in net revenues by major geographic region are as follows:

- The 38.6% increase in net revenues in the United States was primarily driven by a full nine months of Topgolf sales compared to seven months in 2021 due to the timing of the merger, combined with growth in the business resulting from the opening of new venues, strong walk-in traffic and an increase in event bookings, as well as strong demand for golf equipment products, TravisMathew apparel and Callaway-branded soft goods.
- The 8.1% increase in Europe (21.3% constant currency) was primarily driven by a full nine months of Topgolf sales compared to seven months in 2021 due to the timing of the merger, strong Jack Wolfskin apparel sales, and increased demand for Callaway, OGIO, and TravisMathew-branded products, partially offset by the unfavorable impact of changes in foreign currency.
- The 18.7% increase in Asia (33.9% constant currency) was primarily driven by strong brand momentum in golf equipment, in addition to incremental revenues from the new apparel business in Korea. These increases were partially offset by a decline in sales of Jack Wolfskin products in China resulting from widespread COVID-19 related restrictions in 2022, combined with the unfavorable impact of changes in foreign currency.
- The 14.5% increase in rest of world (18.8% constant currency) was driven by strong demand for golf equipment and apparel in Canada, Australia, and Latin America, partially offset by the unfavorable impact of changes in foreign currency.

Costs and Expenses

Costs of products increased \$228.5 million to \$1,142.5 million for the nine months ended September 30, 2022 compared to \$914.0 million for the same period in 2021. The Company's cost of products are highly variable in nature and this increase is due to the significant increase in sales volumes in the first nine months of 2022, and an increase in freight and overall commodity costs due to inflationary pressures, in addition to cost of products related to retail merchandise sold at Topgolf venues, which reflect a full nine months of sales in 2022 compared to seven months in 2021 due to the timing of the merger. These increases were partially offset by the favorable impact of changes in foreign currency exchange rates.

Costs of services, which consist of the cost of food and beverage sold in the Company's Topgolf venues as well as certain costs associated with licensing the Company's Toptracer ball-flight tracking technology, increased \$42.5 million (or 45.3%) to \$136.3 million in the nine months ended September 30, 2022 compared to \$93.8 million in the same period in 2021. The increase is primarily due to the addition of six Topgolf venues since September 30, 2021, in addition to incremental two months of expenses from Topgolf due to the timing of the merger in 2021.

Other venue expenses, which consist of depreciation and amortization, employee costs, rent, utilities, and other costs associated with Topgolf venues, increased by \$296.6 million (or 61.3%) to \$780.2 million in the nine months ended September 30, 2022 compared to \$483.6 million in the same period in 2021 primarily due to the addition of six additional owned and operated Topgolf venues since September 30, 2021, and planned increases in marketing and labor costs, in addition to incremental expenses from Topgolf due to the timing of the merger in 2021.

Selling, general and administrative expenses increased by \$107.7 million to \$720.4 million (22.9% of net revenues) in the nine months ended September 30, 2022 compared to \$612.7 million (25.3% of net revenues) in the comparable period of 2021. This increase reflects a full nine months of expenses at Topgolf in 2022 compared to seven months in 2021 due to the timing of the merger. The remaining increase was driven by higher spending to support a larger business, including employee costs resulting primarily from increased headcount, advertising, marketing and tour expenses, and professional fees, including fees associated with the implementation of IT systems for Topgolf and Jack Wolfskin. These increases were partially offset by the favorable impact of changes in foreign currency exchange rates.

Research and development expenses increased \$6.6 million to \$55.4 million (1.8% of net revenues) in the nine months ended September 30, 2022 compared to \$48.8 million (2.0% of net revenues) during the same period in 2021, primarily due to an increase in employee costs resulting from increased headcount.

Venue pre-opening costs increased \$8.7 million to \$18.1 million (0.6% of net revenues) in the nine months ended September 30, 2022 compared to \$9.4 million (0.4% of net revenues) during the same period in 2021 primarily due to incremental expense from Topgolf due to the timing of the merger in 2021, in addition to an increase in the number of venues under construction from eight as of September 30, 2021 to twelve as of September 30, 2022, as well as five new owned and operated venue openings in the first nine months of 2022.

Other Income and Expense

Net interest expense increased \$25.2 million to \$100.3 million in the nine months ended September 30, 2022 compared to \$75.1 million in the comparable period of 2021, primarily due to Topgolf contributing a full nine months of interest expense in 2022 compared to seven months in 2021 due to the timing of the merger, as well as additional DLF obligations related to new Topgolf venues that have opened since September 30, 2021 and higher variable rates on the Company's term loans and asset-based credit facility. This increase is partially offset by a decrease in discount amortization expense associated with the Convertible Notes as the result of the adoption of ASU 2020-06 as of January 1, 2022, which resulted in the de-recognition of the original issue discount. See Note 6 "Financing Arrangements" in the Notes to Consolidated Condensed Financial Statements included in Part I, Item 1, of this Form 10-Q.

In the nine months ended September 30, 2021, as a result of the merger with Topgolf, the Company wrote-up the value of its pre-merger shares of Topgolf to their fair value and recorded a gain of \$252.5 million.

Other income increased to \$26.9 million in the nine months ended September 30, 2022 compared to \$9.5 million in the comparable period of 2021 primarily due to an increase in net foreign currency gains.

Income Taxes

The Company's provision for income taxes decreased \$110.6 million to an income tax benefit of \$12.5 million for the nine months ended September 30, 2022, compared to an income tax provision of \$98.1 million in the comparable period of 2021. As a percentage of pre-tax income, the Company's effective tax rate for the first nine months of 2022 decreased to a benefit of 5.7% compared to a provision of 22.0% in the comparable period of 2021. The Company's effective tax rate for the nine months ended September 30, 2022 was impacted by the release of valuation allowances on the Company's deferred tax assets. The Company's effective tax rate for the nine months ended September 30, 2021 was impacted by excluding the nontaxable book gain on the Company's pre-merger Topgolf shares for tax purposes, partially offset by the establishment of valuation allowances on the Company's deferred tax assets. Excluding these items, the Company's effective tax rate would have been 16.3% for the nine months ended September 30, 2022, compared to 30.5% for the same period in 2021. For further discussion see Note 11 "Income Taxes" in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q.

Net Income (Loss)

Net income for the nine months ended September 30, 2022 decreased to \$230.6 million compared to \$348.2 million in the comparable period of 2021. Diluted earnings per share decreased by \$0.86 to \$1.17 per share in the first nine months of 2022 compared to \$2.03 in the same period in 2021.

On a non-GAAP basis, excluding the items described in the table below, the Company's net income and diluted earnings per share for the nine months ended September 30, 2022 would have been \$209.0 million and \$1.06 per share, respectively, compared to \$173.4 million and \$1.01 per share, respectively, for the comparative period in 2021. Fully diluted shares in the nine months ended September 30, 2022 were 201.0 million shares of common stock compared to 171.2 million shares for the comparative period in 2021. The increased share count includes the full dilution from the shares issued at the closing of the merger with Topgolf on March 8, 2021, combined with the impact of calculating the Convertible Notes under the if-converted method due to the adoption of ASU 2020-06 as of January 1, 2022. The increase in non-GAAP earnings in 2022 resulted primarily from a \$23.1 million increase in operating income, which reflects incremental results from Topgolf and strong sales across all operating segments, major product categories and major geographic regions, despite increases in operating expenses to support a larger organization, significant foreign currency headwinds and increased freight expense and other inflationary pressures. In addition, other income increased \$17.4 million due to increased foreign currency hedging gains. These increases were partially offset by a \$32.7 million increase in interest expense resulting from deemed landlord financing interest on additional Topgolf venues combined with the impact of higher variable rates on the Company's long-term debt and asset based-credit facility.

The following tables present a reconciliation of the Company's results for the nine months ended September 30, 2022 and 2021 to the Company's non-GAAP results reported above for the same periods (in millions, except per share information):

	Nine Months Ended September 30, 2022				
	GAAP	Non-Cash Amortization and Depreciation ⁽¹⁾	Non-Recurring Items ⁽²⁾	Tax Valuation Allowance ⁽³⁾	Non-GAAP
Net income (loss)	\$ 230.6	\$ (16.0)	\$ (10.4)	\$ 48.0	\$ 209.0
Diluted earnings (loss) per share	\$ 1.17	\$ (0.08)	\$ (0.05)	\$ 0.24	\$ 1.06
Weighted-average shares outstanding ⁽⁴⁾	201.0	201.0	201.0	201.0	201.0

	Nine Months Ended September 30, 2021					
	GAAP	Non-Cash Acquisition Amortization and Depreciation ⁽¹⁾	Non-Cash Amortization of Discount on Convertible Notes ⁽⁵⁾	Acquisition and Other Non-Recurring Items ⁽⁶⁾	Tax Valuation Allowance ⁽³⁾	Non-GAAP
Net income (loss)	\$ 348.2	\$ (15.4)	\$ (5.9)	\$ 235.1	\$ (39.0)	\$ 173.4
Diluted earnings (loss) per share	\$ 2.03	\$ (0.09)	\$ (0.03)	\$ 1.37	\$ (0.23)	\$ 1.01
Weighted-average shares outstanding	171.2	171.2	171.2	171.2	171.2	171.2

⁽¹⁾ Includes the amortization and depreciation of acquired intangible assets and purchase accounting adjustments.

⁽²⁾ Includes pre-tax impairment losses of \$5.9 million related to an underperforming premerger Topgolf concept location and the suspension of business operations in Russia, \$3.6 million of implementation costs associated with new ERP systems stemming from acquisitions, and \$3.5 million for legal and credit agency fees related to a postponed debt refinancing.

⁽³⁾ In 2021, the Company recognized a valuation allowance against certain deferred tax assets in connection with the merger with Topgolf. Based on the Company's ongoing assessment, a portion of the valuation allowance was released in 2022, and additional valuation allowances were recorded in 2021.

⁽⁴⁾ The weighted average shares outstanding for the nine months ended September 30, 2022 includes the impact of calculating the Convertible Notes under the if-converted method due to the adoption of ASU 2020-06 as of January 1, 2022. For purposes of calculating diluted earnings per share, interest expense of \$4.8 million is added back to net income as the Convertible Notes are assumed converted as of January 1, 2022.

⁽⁵⁾ Represents the non-cash amortization of the discount associated with the Convertible Notes issued in May 2020. Starting January 1, 2022, as a result of the adoption of ASU 2020-06, amortization expense is no longer recognized due to the de-recognition of the discount.

⁽⁶⁾ Includes pre-tax charges of \$19.6 million for transaction and transition costs related to the merger with Topgolf, \$2.4 million for IT implementation initiatives at Jack Wolfskin and Topgolf, and a \$252.5 million gain related to the fair value step-up of the Company's pre-acquisition investment in Topgolf.

Operating Segment Results for the Nine Months Ended September 30, 2022 and 2021 (in millions)

	Nine Months Ended September 30,		Growth		Non-GAAP Const: Currency Growth 2021 ⁽¹⁾
	2022	2021	Dollars	Percent	Percent
Net revenues:					
Venues ⁽²⁾	\$ 1,089.4	\$ 710.8	\$ 378.6	53.3 %	53.7%
Other business lines ⁽²⁾	50.1	41.0	\$ 9.1	22.2 %	29.5%
Topgolf	1,139.5	751.8	\$ 387.7	51.6 %	52.4%
Golf clubs	959.6	865.7	\$ 93.9	10.8 %	16.0%
Golf balls	257.0	202.1	\$ 54.9	27.2 %	30.6%
Golf Equipment	1,216.6	1,067.8	\$ 148.8	13.9 %	18.7%
Apparel	456.7	336.9	\$ 119.8	35.6 %	45.0%
Gear, accessories, & other	331.6	265.2	\$ 66.4	25.0 %	32.9%
Active Lifestyle	788.3	602.1	\$ 186.2	30.9 %	39.7%
Total net revenues	\$ 3,144.4	\$ 2,421.7	\$ 722.7	29.8 %	34.4%
Segment operating income:					
Topgolf	\$ 74.3	\$ 52.1	\$ 22.2	42.6 %	
Golf Equipment	250.7	228.8	21.9	9.6 %	
Active Lifestyle	77.3	70.8	6.5	9.2 %	
Total segment operating income	402.3	351.7	50.6	14.4 %	
Reconciling Items ⁽³⁾	(110.8)	(92.3)	(18.5)	20.0 %	
Total operating income	291.5	259.4	32.1	12.4 %	
Gain on Topgolf investment ⁽⁴⁾	—	252.5	(252.5)	(100.0)%	
Interest expense, net	(100.3)	(75.1)	(25.2)	33.6 %	
Other income, net	26.9	9.5	17.4	183.2 %	
Total income before income taxes	\$ 218.1	\$ 446.3	\$ (228.2)	(51.1)%	

⁽¹⁾ Calculated by applying 2021 exchange rates to 2022 reported sales in regions outside the United States.

⁽²⁾ As of January 1, 2022, in order to align with the Company's current management reporting structure, the Company began reporting revenues associated with corporate advertising sponsor contracts in the venues business line within the Topgolf operating segment. In 2021, these revenues were included in other business lines. In order to conform to the current year presentation, revenue of \$8.7 million associated with corporate advertising sponsorship contracts recognized from the merger date through September 30, 2021, was reclassified from other business line to venues for comparative purposes.

⁽³⁾ Reconciling items for the nine months ended September 30, 2022 and 2021 include corporate general and administrative expenses not utilized by management in determining segment profit as well as non-cash amortization and depreciation expense, and acquisition and non-recurring items discussed above in the reconciliation of the Company's results to non-GAAP results.

⁽⁴⁾ Represents the gain to step-up the Company's former investment in Topgolf to its fair value in connection with the merger. See Note 10. "Selected Financial Data" in the Notes to Consolidated Financial Statements included in Part I, Item 1, of this Form 10-Q.

Topgolf

During the nine months ended September 30, 2022, Topgolf net revenues and segment operating income increased \$387.7 million (or 51.6%) and \$22.2 million (or 42.6%), respectively, compared to the same period in 2021, which reflect Topgolf results for nine months in 2022 compared to seven months in 2021 due to the timing of the merger. In addition, the increase in net revenues was due to the opening of six new owned and operated venues since September 2021, combined with an increase in same venue sales, which was driven by increases in walk-in traffic and event bookings. The increase in segment operating income reflects the impact of price increases, which partially offset inflationary pressures in labor and other operating overhead costs.

Golf Equipment

During the nine months ended September 30, 2022, net revenue and operating income for Golf Equipment increased \$148.8 million (or 13.9%) and \$21.9 million (or 9.6%), respectively, compared to the same period in 2021. On a constant currency basis, net revenues of golf equipment increased 18.7%. The increase in net revenues was primarily attributable to continued overall brand momentum and high demand for the current year Rogue line of golf clubs and Chrome Soft and Supersoft golf ball product lines, coupled with improved inventory supply at retail. The increase in operating income was due to increases in sales volume and average selling prices, partially offset by an increase in operating expenses to support the growth in the business combined with inflationary pressures, in addition to increased freight expense and the unfavorable impact of changes in foreign currency rates.

Active Lifestyle

During the nine months ended September 30, 2022, Active Lifestyle net revenues and segment operating income increased \$186.2 million (or 30.9%), and \$6.5 million (or 9.2%), respectively, compared to the same period in 2021. These increases were primarily due to a \$119.8 million (or 35.6%) increase in apparel sales and a \$66.4 million (or 25.0%) increase in sales of gear, accessories and other. The increase in apparel was driven by continued brand momentum of TravisMathew apparel products combined with growth from additional retail locations and licensing revenues, increased sales of Callaway Golf accessories including golf bags and footwear in addition to the new apparel business in Korea, and increased sales volume of Jack Wolfskin apparel and the re-opening of retail stores in Europe, which were closed for the majority of the first half of 2021 due to COVID-19 restrictions. The increase in segment operating income reflects increases in average selling prices and sales volume, which were partially offset by the impact of inflation resulting in higher input costs and freight, as well as incremental costs associated with the addition of the new Callaway apparel business in Korea in the third quarter of 2021, and the unfavorable impact of foreign currency rates.

Financial Condition

The Company's cash and cash equivalents decreased \$151.9 million to \$200.3 million at September 30, 2022 from \$352.2 million at December 31, 2021. The decrease in cash and cash equivalents during the nine months ended September 30, 2022 was primarily related to cash used in investing activities of \$353.6 million, partially offset by cash provided by operations of \$34.6 million and cash provided by financing activities of \$165.3 million. During the nine months ended September 30, 2022, the Company used its cash and cash equivalents as well as cash provided by its operations and financing activities, which was primarily related to proceeds from borrowings on its long-term debt and credit facilities, and proceeds from lease financings, to fund its operations and for the development of Topgolf venues and other capital expenditures, repay amounts outstanding under its long-term debt facilities, pay contingent earn-out obligations, and repurchase shares of its common stock. The Company believes that its existing funds combined with cash generated from its operating activities, existing sources of and access to capital and any future financings, as necessary, are adequate to fund the Company's future operations. For further information related to the Company's financing arrangements, see Note 6 "Financing Arrangements," in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 and "Liquidity and Capital Resources" in Part I, Item 2 of this Form 10-Q.

The Company's accounts receivable balance fluctuates throughout the year as a result of the general seasonality of the Company's business, and is also affected by the timing of new product launches. With respect to the Company's Golf Equipment business, accounts receivable will generally be highest during the first and second quarters, primarily due to the seasonal peak in the golf industry, and will generally decline significantly during the third and fourth quarters as a result of an increase in cash collections and lower sales. The Company's Active Lifestyle accounts receivable balances are generally higher during the third and fourth quarters, primarily due to the seasonal nature of the Jack Wolfskin business, whose products are significantly geared towards the fall and winter seasons. On March 8, 2021, the Company completed its merger with Topgolf, which primarily records revenue and collects payment at point-of-sale for most of its venue business. Therefore, Topgolf's accounts receivable balance is smaller than the Company's other business segments and primarily consists of media sponsorship receivables. As of September 30, 2022, the Company's net accounts receivable increased to \$275.0 million from \$105.3 million at December 31, 2021. The increase primarily reflects the Company's seasonality relative to its Active Lifestyle sales. The Company's net accounts receivable as of September 30, 2022 increased \$19.8 million compared to September 30, 2021 primarily due to an increase in net revenues of \$132.0 million for the third quarter of 2022 compared to the third quarter of 2021. This increase was primarily due to strong performance across all three of the Company's operating segments.

The Company's inventory balance fluctuates throughout the year as a result of the general seasonality of the Company's business and is also affected by the timing of new product launches. With respect to the Company's Golf Equipment business, the buildup of inventory generally begins during the fourth quarter and continues into the first quarter and beginning of the second quarter in order to meet increased demand during the height of the golf season. Inventory levels are also impacted by the timing of new product launches as well as the success of new products. Active Lifestyle inventory levels start to increase during the second quarter and continue to increase into the third and fourth quarters primarily due to the seasonal nature of the Company's Jack Wolfskin business, whose products are significantly geared towards the fall and winter seasons. Topgolf is primarily a services business with lower inventory balances than the Company's other business segments, with the inventory balances primarily consisting of food and beverage as well as retail merchandise and Toptracer inventory. The Company's inventory increased \$188.8 million to \$722.3 million as of September 30, 2022 compared to December 31, 2021, and \$337.0 million compared to September 30, 2021. These increases were primarily driven by the earlier timing of inventory receipts due to shortened lead times on inventory shipments. In addition, inventory levels were unusually low in 2021 due to supply chain constraints, which contributed to inventory shortages. Although lead times decreased, the Company planned for higher inventory levels in order to meet the increased demand for apparel and golf equipment products, support growth in the Topgolf business, and prepare for the upcoming golf season in 2023.

Liquidity and Capital Resources

The Company's principal sources of liquidity consist of its existing cash balances, funds expected to be generated from operations and available funds from its credit facilities. Based on the Company's current cash balances, estimates of funds expected to be generated from operations, and the current and projected availability under current or future credit facilities, the Company believes it will be able to finance current and planned operating requirements, capital expenditures, required debt repayments and contractual obligations and commercial commitments for at least the next 12 months from the issuance date of this Form 10-Q.

The Company's ability to generate sufficient positive cash flows from operations is subject to many risks and uncertainties, including future economic trends and conditions, demand for the Company's products, supply chain challenges, foreign currency exchange rates, and other risks and uncertainties applicable to the Company and its business (see "Risk Factors" contained in Part I, Item 1A of its Annual Report on Form 10-K for the year ended December 31, 2021). As of September 30, 2022, the Company had \$659.4 million in cash and availability under its credit facilities, which is a decrease of \$258.6 million compared to September 30, 2021. Information about the Company's credit facilities and long-term debt is presented in Note 6 "Financing Arrangements" in the Notes to Consolidated Condensed Financial Statements included in Part I, Item 1 of this Form 10-Q, which is incorporated herein by this reference.

As of September 30, 2022, approximately 68.7% of the Company's cash was held in regions outside of the United States. The Company continues to maintain its indefinite reinvestment assertion with respect to most jurisdictions in which it operates because of local cash requirements to operate its business. If the Company were to repatriate cash to the United States outside of settling intercompany balances, it may need to pay incremental foreign withholding taxes which, subject to certain limitations, generate foreign tax credits for use against the Company's U.S. tax liability, if any. Additionally, the Company may need to pay certain state income taxes.

Significant Cash Obligations

The table below summarizes certain significant cash obligations as of September 30, 2022 that will affect the Company's future liquidity. The Company plans to utilize its liquidity (as described above) and its cash flows from business operations to fund its material cash requirements.

	Payments Due By Period				
	Total	Remainder of 2022	2023 - 2024	2025 - 2026	Thereafter
	(in millions)				
Long-term debt ⁽¹⁾	\$ 1,102.3	4.8	31.7	1,019.4	46.4
Interest payments relating to long-term debt ⁽²⁾	310.9	19.7	163.2	87.5	40.5
Finance leases, including imputed interest ⁽³⁾	446.8	2.2	20.2	19.6	404.8
Operating leases, including imputed interest ⁽⁴⁾	2,441.1	37.2	296.0	286.1	1,821.8
DLF obligations ⁽⁵⁾	2,549.4	10.9	93.3	97.7	2,347.5
Minimum lease payments for leases signed but not yet commenced ⁽⁶⁾	966.8	0.6	36.4	36.4	893.4
Capital commitments ⁽⁷⁾	54.3	29.3	25.0	—	—
Unconditional purchase obligations ⁽⁸⁾	104.3	25.4	59.8	17.3	1.8
Uncertain tax contingencies ⁽⁹⁾	12.4	0.8	7.7	2.6	1.3
Total	\$ 7,988.3	\$ 130.9	\$ 733.3	\$ 1,566.6	\$ 5,557.5

⁽¹⁾ Excludes unamortized debt discounts, unamortized debt issuance costs, and fair value adjustments. For further details, see Note 6 "Financing Arrangements," in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q.

⁽²⁾ Long-term debt may have fixed or variable interest rates. For further details, see Note 6 "Financing Arrangements," in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q.

⁽³⁾ Represents future minimum payments under financing leases. For further details, see Note 3 "Leases" in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q.

⁽⁴⁾ Represents commitments for minimum lease payments under non-cancellable operating leases. For further details, see Note 3 "Leases" in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q.

⁽⁵⁾ Represents DLF obligations in connection with the construction of Topgolf venues. For further details, see Note 3 "Leases" in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q.

⁽⁶⁾ Represents future minimum lease payments under lease agreements that have not yet commenced as of September 30, 2022 in relation to future Topgolf facilities. For further discussion, see Note 3 "Leases" in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q.

⁽⁷⁾ Represents capital expenditure commitments under lease agreements for Topgolf venues under construction that have been signed as of September 30, 2022.

⁽⁸⁾ During the normal course of its business, the Company enters into agreements to purchase goods and services, including commitments for endorsement agreements with professional athletes and other endorsers, consulting and service agreements, and intellectual property licensing agreements pursuant to which the Company is required to pay royalty fees. The amounts listed above approximate the minimum purchase obligations the Company is obligated to pay under these agreements over the next five years and thereafter as of September 30, 2022. The actual amounts paid under some of the agreements may be higher or lower than these amounts. In addition, the Company also enters into unconditional purchase obligations with various vendors and suppliers of goods and services during the normal course of business through purchase orders or other documentation or that are undocumented except for an invoice. For further details, see Note 12 "Commitments & Contingencies" in the Notes to the Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q.

⁽⁹⁾ Amounts represent current and non-current portions of uncertain income tax positions as recorded on the Company's Consolidated Condensed Balance Sheets as of September 30, 2022. Amounts exclude uncertain income tax positions that the Company would be able to offset against deferred taxes. For further discussion, see Note 11. "Income Taxes" in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q.

During its normal course of business, the Company has made certain indemnities, commitments and guarantees under which it may be required to make payments in relation to certain transactions. These include (i) intellectual property indemnities to the Company's customers and licensees in connection with the use, sale and/or license of Company products or trademarks, (ii) indemnities to various lessors in connection with facility leases for certain claims arising from such facilities or leases, (iii) indemnities to vendors and service providers pertaining to the goods or services provided to the Company or based on the negligence or willful misconduct of the Company, and (iv) indemnities involving the accuracy of representations and warranties in certain contracts. In addition, the Company has made contractual commitments to each of its officers and certain other employees providing for severance payments upon the termination of employment. The Company has also issued guarantees in the form of a standby letter of credit primarily as security for contingent liabilities under certain workers' compensation insurance policies.

The duration of these indemnities, commitments and guarantees varies, and in certain cases may be indefinite. The majority of these indemnities, commitments and guarantees do not provide for any limitation on the maximum amount of future payments the Company could be obligated to make. Historically, costs incurred to settle claims related to indemnities have not been material to the Company's financial position, results of operations or cash flows. In addition, the Company believes the likelihood is remote that payments under the commitments and guarantees described above will have a material effect on the Company's financial condition. The fair value of indemnities, commitments and guarantees that the Company issued during the three and nine months ended September 30, 2022 was not material to the Company's financial position, results of operations or cash flows.

In addition to the contractual obligations listed above, the Company's liquidity could also be adversely affected by an unfavorable outcome with respect to claims and litigation that the Company is subject to from time to time (see Note 12 "Commitments & Contingencies" in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 and "Legal Proceedings" in Part II, Item 1 of this Form 10-Q).

The Company has no material off-balance sheet arrangements.

Capital Expenditures

Total estimated capital expenditures for the year ending December 31, 2022, are expected to be approximately \$325.0 million, comprised of \$75.0 million for the Company's legacy business and \$250.0 million for the Topgolf business.

Critical Accounting Estimates

For the period ended September 30, 2022, there have been no material changes to the Company's critical accounting estimates from the information reported in the Company's Form 10-K for the fiscal year ended December 31, 2021, filed with the SEC on March 1, 2022.

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

The Company uses derivative financial instruments to mitigate its exposure to changes in foreign currency exchange rates and interest rates. Transactions involving these financial instruments are with creditworthy banks, primarily banks that are party to the Company's credit facilities (see Note 6 "Financing Arrangements," in the Notes to Consolidated Condensed Financial Statements in Part 1, Item 1 of this Form 10-Q). The use of these instruments exposes the Company to market and credit risk which may at times be concentrated with certain counterparties, although counterparty nonperformance is not anticipated.

Foreign Currency Fluctuations

Information about the Company's foreign currency hedging activities is set forth in Note 15 "Derivatives and Hedging," in the Notes to Consolidated Condensed Financial Statements included in Part I, Item 1, of this Form 10-Q, which is incorporated herein by this reference.

As part of the Company's risk management procedure, a sensitivity analysis model is used to measure the potential loss in future earnings of market-sensitive instruments resulting from one or more selected hypothetical changes in interest rates or foreign currency values. The sensitivity analysis model quantifies the estimated potential effect of unfavorable movements of 10% in foreign currencies to which the Company was exposed at September 30, 2022 through its foreign currency forward contracts.

At September 30, 2022, the estimated loss from the Company's foreign currency forward contracts, calculated using the sensitivity analysis model described above, was \$28.9 million. The Company believes that such a hypothetical loss from its foreign currency forward contracts would be partially offset by increases in the value of the underlying transactions being hedged.

The sensitivity analysis model is a risk analysis tool and does not purport to represent actual losses in earnings that will be incurred by the Company, nor does it consider the potential effect of favorable changes in market rates. It also does not represent the maximum possible loss that may occur. Actual future gains and losses will differ from those estimated because of changes or differences in market rates and interrelationships, hedging instruments and hedge percentages, timing and other factors.

Interest Rate Fluctuations

The Company is exposed to interest rate risk from its credit facilities and long-term borrowing commitments. Outstanding borrowings under these credit facilities and long-term borrowing commitments accrue interest as described in Note 6 “Financing Arrangements,” in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1, and in “Liquidity and Capital Resources” in Part I, Item 2 of this Form 10-Q. The Company’s long-term borrowing commitments are subject to interest rate fluctuations, which could be material to the Company’s cash flows and results of operations. In order to mitigate this risk, the Company enters into interest rate hedges and swaps as part of its interest rate risk management strategy. Information about the Company’s interest rate hedges and swaps is provided in Note 15 “Derivatives and Hedging” in the Notes to Consolidated Condensed Financial Statements in Part I, Item 1 of this Form 10-Q. In order to determine the impact of unfavorable changes in interest rates on the Company’s cash flows and results of operations, the Company performed a sensitivity analysis as part of its risk management procedures. The sensitivity analysis quantified that the incremental expense incurred by a 10% increase in interest rates would be \$0.5 million over the 12-month period ending on September 30, 2022.

Inflation

The recent increase in inflation partially contributed to the increase in the cost of the Company’s products as well as operating costs. If the cost of the Company’s products, employee costs, or other costs continue to be subject to significant inflationary pressures, such inflationary pressure may have an adverse effect on the Company’s ability to maintain current levels of gross margin and selling, general and administrative expenses. Further, the Company may not be able to offset these increased costs through price increases. As a result, the Company’s inability to quickly respond to inflation could harm its cash flows and results of operations in the future.

Item 4. Controls and Procedures

Disclosure Controls and Procedures. The Company carried out an evaluation, under the supervision and with the participation of the Company’s management, including the Company’s Chief Executive Officer and Chief Financial Officer, of the effectiveness, as of September 30, 2022, of the Company’s disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company’s disclosure controls and procedures were effective as of September 30, 2022.

Changes in Internal Control over Financial Reporting. There were no changes in the Company’s internal controls over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

PART II. OTHER INFORMATION

Item 1. *Legal Proceedings*

The information set forth in Note 12 “Commitments & Contingencies,” in the Notes to Consolidated Condensed Financial Statements included in Part I, Item 1, of this Form 10-Q, is incorporated herein by this reference.

Item 1A. *Risk Factors*

Certain Factors Affecting Topgolf Callaway Brands

The Company has included in Part I, Item 1A of its Annual Report on Form 10-K for the year ended December 31, 2021, a description of certain risks and uncertainties that could affect the Company’s business, future performance or financial condition (the “Risk Factors”). Investors should consider the Risk Factors prior to making an investment decision with respect to the Company’s stock. There are no material changes from the disclosure provided in the Form 10-K for the year ended December 31, 2021 with respect to the Risk Factors.

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

Conversion of Convertible Notes

On July 5, 2022, in accordance with the terms of the indenture under which the Convertible Notes were issued, holders of the Company’s Convertible Notes elected to convert \$0.5 million of Convertible Notes into 25,602 shares of the Company’s common stock. The Convertible Notes were converted at a conversion rate of 56.8 shares per \$1,000 principal amount of Convertible Notes. The shares of common stock issued upon conversion of the Convertible Notes were issued in reliance upon the exemptions from the registration requirements of the Securities Act of 1933, as amended, provided by Sections 3(a)(9) and 4(a)(2) thereof.

Stock Purchases

In May 2022, the Company’s Board of Directors authorized a \$100.0 million share repurchase program (the “2022 Repurchase Program”) under which the Company is authorized to repurchase shares of its common stock in the open market or in private transactions, subject to the Company’s assessment of market conditions and repurchase opportunities. The Company will assess market conditions, buying opportunities and other factors from time to time and will make strategic repurchases as appropriate. The repurchases will be made in compliance with Rule 10b-18 under the Exchange Act, subject to market conditions, applicable legal requirements and other factors, and the repurchases will be made consistent with the terms of the Company’s credit facilities, which define the amount of stock that can be repurchased. The repurchase program does not require the Company to acquire a specific number of shares and it will remain in effect until completed or until terminated by the Board of Directors. As of September 30, 2022, no repurchases have been made under the 2022 Repurchase Program.

The following table summarizes the purchases by the Company during the third quarter of 2022. These repurchases represent the number of shares the Company withheld to satisfy payroll tax withholding obligations in connection with the vesting and settlement of employee restricted stock unit awards and performance share unit awards. The Company’s repurchases of shares of common stock are recorded at cost and result in a reduction of shareholders’ equity.

	Three Months Ended September 30, 2022			
	Total Number of Shares Purchased ⁽¹⁾	Weighted Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Program	Maximum Dollar Value that May Yet Be Purchased Under the Program
July 1, 2022 - July 31, 2022	—	\$ —	—	\$ 100,000,000
August 1, 2022 - August 31, 2022	46,383	23.95	—	100,000,000
September 1, 2022 - September 30, 2022	—	—	—	100,000,000
Total	46,383	\$ 23.95	—	\$ 100,000,000

⁽¹⁾ Total number of shares repurchased represent shares that the Company withheld to satisfy payroll tax withholding obligations in connection with the vesting and settlement of employee equity-based incentive awards.

During the third quarter of 2022, the Company repurchased 46,383 shares of its common stock at an average cost per share of \$23.95, for a total cost of \$1.1 million, and were related to shares withheld to satisfy payroll tax withholding obligations as described above.

Item 3. *Defaults upon Senior Securities*

None.

Item 4. *Mine Safety Disclosures*

None

Item 5. *Other Information*

None.

Item 6. Exhibits

- 3.1 [Third Restated Certificate of Incorporation of the Company, incorporated herein by this reference to Exhibit 3.2 to the Company's Current Report on Form 8-K, as filed with the Commission on September 6, 2022 \(file no. 1-10962\).](#)
- 3.2 [Eighth Amended and Restated Bylaws of the Company, incorporated herein by this reference to Exhibit 3.3 to the Company's Current Report on Form 8-K, as filed with the Commission on September 6, 2022 \(file no. 1-10962\).](#)
- 10.1 [Fifth Amendment to Fourth Amended and Restated Loan and Security Agreement, dated as of December 16, 2021, by and among the Company, certain subsidiaries of the Company, the financial institutions party thereto from time to time as lenders and Bank of America, N.A., as administrative agent and security trustee†](#)
- 10.2 [Sixth Amendment to Fourth Amended and Restated Loan and Security Agreement, dated as of September 23, 2022, by and among the Company, certain subsidiaries of the Company, the financial institutions party thereto from time to time as lenders and Bank of America, N.A., as administrative agent and security trustee, incorporated herein by this reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, as filed with the Commission on September 28, 2022 \(file no. 1-10962\).](#)
- 31.1 [Certification of Oliver G. Brewer III pursuant to Rule 13a-14\(a\) or 15d-14\(a\), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. †](#)
- 31.2 [Certification of Brian P. Lynch pursuant to Rule 13a-14\(a\) or 15d-14\(a\), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. †](#)
- 32.1 [Certification of Oliver G. Brewer III and Brian P. Lynch pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. †](#)
- 101.1 XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
- 101.2 XBRL Taxonomy Extension Schema Document †
- 101.3 XBRL Taxonomy Extension Calculation Linkbase Document †
- 101.4 XBRL Taxonomy Extension Definition Linkbase Document †
- 101.5 XBRL Taxonomy Extension Label Linkbase Document †
- 101.6 XBRL Taxonomy Extension Presentation Linkbase Document †
- 104 Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101) †

(†) Included with this Report.

SIGNATURES

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

TOPGOLF CALLAWAY BRANDS CORP.

By: /s/ Jennifer Thomas
Jennifer Thomas
Senior Vice President and
Chief Accounting Officer

Date: November 4, 2022

**FIFTH AMENDMENT TO FOURTH AMENDED AND RESTATED
LOAN AND SECURITY AGREEMENT**

This **FIFTH AMENDMENT TO FOURTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT** (this "**Amendment**"), dated as of December 16, 2021, is entered into by and among the Lenders (as defined below) signatory hereto, **BANK OF AMERICA, N.A.**, as administrative agent and as security trustee for the Lenders (in such capacity, "**Agent**"), **CALLAWAY GOLF COMPANY**, a Delaware corporation ("**Parent**"), **CALLAWAY GOLF SALES COMPANY**, a California corporation ("**Callaway Sales**"), **CALLAWAY GOLF BALL OPERATIONS, INC.**, a Delaware corporation ("**Callaway Operations**"), **OGIO INTERNATIONAL, INC.**, a Utah corporation ("**Ogio**"), **TRAVISMATHEW, LLC**, a California limited liability company ("**travisMathew**"), **JACK WOLFSKIN NORTH AMERICA, INC.**, a Delaware corporation ("**Wolfskin**" and together with Parent, Callaway Sales, Callaway Operations, Ogio and travisMathew, collectively, "**U.S. Borrowers**"), **CALLAWAY GOLF CANADA LTD.**, a Canada corporation ("**Canadian Borrower**"), **JACK WOLFSKIN AUSRÜSTUNG FÜR DRAUSSEN GMBH & CO. KGAA**, a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) under the laws of the Federal Republic of Germany ("**German Borrower**"), **CALLAWAY GOLF EUROPE LTD.**, a company organized under the laws of England (registered number 02756321) ("**U.K. Borrower**" and together with the U.S. Borrowers, German Borrower, and Canadian Borrower, each individually a "**Borrower**" and individually and collectively, jointly and severally, the "**Borrowers**"), and the other Obligors party hereto.

RECITALS

A. Borrowers, the other Obligors party thereto, Agent, and the financial institutions signatory thereto from time to time (each a "**Lender**" and collectively the "**Lenders**") have previously entered into that certain Fourth Amended and Restated Loan and Security Agreement dated as of May 17, 2019 (as amended, supplemented, restated and modified from time to time, the "**Loan Agreement**"), pursuant to which the Lenders have made certain loans and financial accommodations available to Borrowers. Terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement, as amended hereby.

B. Obligors have requested that Agent and the Lenders amend the Loan Agreement, which Agent and the Lenders are willing to do pursuant to the terms and conditions set forth herein.

C. Obligors are entering into this Amendment with the understanding and agreement that, except as specifically provided herein, none of Agent's or any Lender's rights or remedies as set forth in the Loan Agreement or any of the other Loan Documents are being waived or modified by the terms of this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Amendments to Loan Agreement.

(a) The Loan Agreement is hereby amended (but not including any Exhibits or Schedules thereto) as set forth in Exhibit A attached hereto such that all of the newly inserted bold, double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text) and any formatting changes attached hereto shall be deemed to be inserted in the text of the Loan Agreement and all of the deleted stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) shall be deemed to be deleted from the text of the Loan Agreement. An unmarked draft of the Loan Agreement (but not including any Exhibits or Schedules thereto), as amended by this Amendment, is attached hereto as Exhibit B.

2. Effectiveness of this Amendment. The following shall have occurred before this Amendment is effective:

(b) Amendment. Agent shall have received this Amendment, executed by Agent, each Obligor and the Lenders in a sufficient number of counterparts for distribution to all parties.

(c) Representations and Warranties. The representations and warranties set forth herein must be true and correct in all material respects on and as of the date of effectiveness of this Amendment (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects).

(d) No Default. No event has occurred and is continuing on the date of the effectiveness of this Amendment that constitutes an Event of Default.

3. Representations and Warranties. Each Obligor represents and warrants as follows, as of the effective date of this Amendment:

(e) Authority. Each Obligor has the requisite corporate power and authority to execute and deliver this Amendment, and to perform its obligations hereunder and under the Loan Documents (as amended or modified hereby) to which it is a party. The execution, delivery and performance by each Obligor of this Amendment have been duly approved by all necessary corporate, limited liability company or other equivalent action and no other corporate, limited liability company or other equivalent proceedings are necessary on the part of the Obligors to consummate such transactions.

(f) Due Execution; Enforceability. This Amendment has been duly executed and delivered by each Obligor that is a party hereto. This Amendment and each Loan Document to which any Obligor is a party (as amended or modified hereby) is a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

(g) Representations and Warranties. The representations and warranties contained in each Loan Document to which any Obligor is a party are correct in all material respects on and as of the date hereof as though made on and as of the date hereof (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects).

(h) Governmental Authorization. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by any Obligor of this Amendment except for such approvals, consents, exemptions, authorizations, actions, notices and filings which have been obtained, taken, given or made and are in full force and effect.

(i) No Default. No event has occurred and is continuing that constitutes an Event of Default.

4. Choice of Law. The validity of this Amendment, its construction, interpretation and enforcement, and the rights of the parties hereunder, shall be determined under, governed by, and construed in accordance with the internal law of the State of New York, without giving effect to any conflict of law principles (but giving effect to Section 5-1401 of the New York General Obligation Law and Federal laws relating to national banks). The consent to forum and judicial reference provisions set forth in Section 14.15 of the Loan Agreement are hereby incorporated in this Amendment by reference.

5. Counterparts. This Amendment may 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 Agent and Secured Parties of a manually signed paper Amendment 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 words “execution,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include Electronic Signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Laws, 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. 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; provided that nothing herein shall require the Agent to accept electronic signatures in any form or format without its prior written consent.

6. Reference to and Effect on the Loan Documents.

(j) Upon and after the effectiveness of this Amendment, each reference in the Loan Agreement or any other Loan Document to this “Agreement”, “hereunder”, “herein”, “hereof”, “thereunder”, “therein”, “thereof”, or words of like import referring to the Loan Agreement or any other Loan Document shall mean and refer to such agreement as amended, modified or supplemented by this Amendment.

(k) Except as specifically amended above, the Loan Agreement and all other Loan Documents are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed and shall constitute the legal, valid, binding and enforceable obligations of Obligor to Agent and the Lenders in accordance with their terms.

(l) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of Agent or any Lender under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents.

(m) To the extent that any terms and conditions in any of the Loan Documents shall contradict or be in conflict with any terms or conditions of the Loan Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Loan Agreement as modified or amended hereby.

7. Ratification. Each Obligor hereby restates, ratifies and reaffirms each and every term and condition set forth in the Loan Agreement, as amended hereby, and the Loan Documents effective as of the date hereof. Subject to and without limiting the foregoing, all security interests, pledges, assignments and other Liens and Guarantees previously granted by any Obligor pursuant to the Loan Documents are hereby reaffirmed, ratified, renewed and continued, and all such security interests, pledges, assignments and other Liens and Guarantees shall remain in full force and effect as security for the Obligations on and after the date hereof.

8. Estoppel. To induce Lenders to enter into this Amendment and to continue to make advances to Borrowers under the Loan Agreement, each Obligor hereby acknowledges and agrees that, as of the date hereof, there exists no right of offset, defense, counterclaim or objection in favor of any Obligor as against Agent or any Lender with respect to the Obligations.

9. Effectiveness; Binding Effect. For the avoidance of doubt, upon the effectiveness of this Amendment in accordance with its terms, this Amendment shall be binding upon each Lender and its respective successors and assigns.

10. Integration. This Amendment, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

11. Severability. In case any provision in this Amendment shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Amendment and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first above written.

OBLIGORS:

CALLAWAY GOLF COMPANY,
a Delaware corporation

By: /s/ Brian P. Lynch
Name: Brian P. Lynch
Title: Executive Vice President and Chief Financial
Officer

Address for Borrower Agent:

Callaway Golf Company
2180 Rutherford Road
Carlsbad, CA 92008
Attention: Brian P. Lynch
Telephone: (760) 804-4056
Email: Brian.Lynch@callawaygolf.com

With a copy to:

Latham & Watkins LLP
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071-1560
Attention: Kenneth D. Askin
Facsimile: (213) 891-8507
Email: kenneth.askin@lw.com

CALLAWAY GOLF SALES COMPANY,
a California corporation

By: /s/ Patrick S.
Burke
Name: Patrick S. Burke
Title: Director

CALLAWAY GOLF BALL OPERATIONS, INC.,
a Delaware corporation

By: /s/ Patrick S.
Burke
Name: Patrick S. Burke
Title: Director

OGIO INTERNATIONAL, INC.,
a Utah corporation

By: /s/ Patrick S. Burke
Name: Patrick S. Burke
Title: Vice President and Treasurer

TRAVISMATHEW, LLC,
a California limited liability company

By: /s/ Patrick S. Burke
Name: Patrick S. Burke
Title: Treasurer

JACK WOLFSKIN NORTH AMERICA, INC.,
a Delaware corporation

By: /s/ Brian P. Lynch
Name: Brian P. Lynch
Title: Vice President

CALLAWAY GOLF INTERACTIVE, INC.
a Texas corporation

By: /s/ Patrick S. Burke
Name: Patrick S. Burke
Title: Director

**CALLAWAY GOLF INTERNATIONAL SALES
COMPANY,**
a California corporation

By: /s/ Patrick S. Burke
Name: Patrick S. Burke
Title: President

CALLAWAY GOLF CANADA LTD.,
a Canada corporation

By: /s/ Patrick S.
Burke
Name: Patrick S. Burke
Title: Director

CALLAWAY GOLF EUROPE LTD.,
a company organized under the laws of England and
Wales

By: /s/ Patrick S.
Burke
Name: Patrick S. Burke
Title: Director

By: /s/ Neil
Howie
Name: Neil Howie
Title: Director

**CALLAWAY GOLF EUROPEAN HOLDING
COMPANY LIMITED,**
a company limited by shares incorporated under the
laws of England and Wales

By: /s/ Neil Howie
Name: Neil Howie
Title: Director

By: /s/ Steven Gluyas
Name: Steven Gluyas
Title: Director

CALLAWAY GERMANY HOLDCO GMBH,
a limited liability company (*Gesellschaft mit
beschränkter Haftung*) under the laws of the Federal
Republic of Germany

By: /s/ Richard
Collier
Name: Richard Collier
Title: Managing Director

By: /s/ André Alexander Grube
Name: André Alexander Grube
Title: Managing Director

JW STARGAZER HOLDING GMBH,
a limited liability company (*Gesellschaft mit
beschränkter Haftung*) under the laws of the Federal
Republic of Germany

By: /s/ Richard William Collier
Name: Richard William Collier
Title: Managing Director

By: /s/ André Alexander Grube
Name: André Alexander Grube
Title: Managing Director

SKYRAGER GMBH,
a limited liability company (*Gesellschaft mit
beschränkter Haftung*) under the laws of the Federal
Republic of Germany

By: /s/ Richard William Collier
Name: Richard William Collier
Title: Managing Director

By: /s/ André Alexander Grube
Name: André Alexander Grube
Title: Managing Director

**JACK WOLFSKIN AUSRÜSTUNG FÜR
DRAUSSEN GMBH & CO. KGAA**,
a partnership limited by shares
(*Kommanditgesellschaft auf Aktien*) under the laws
of the Federal Republic of Germany, acting through
its managing partner, **SKYRAGER GMBH**

By: /s/ Richard William Collier
Name: Richard William Collier
Title: Managing Director

By: /s/ André Alexander Grube
Name: André Alexander Grube
Title: Managing Director

JACK WOLFSKIN RETAIL GMBH,
a limited liability company (*Gesellschaft mit
beschränkter Haftung*) under the laws of the Federal
Republic of Germany

By: /s/ Richard William Collier
Name: Richard William Collier
Title: Managing Director

By: /s/ André Alexander Grube
Name: André Alexander Grube
Title: Managing Director

AGENT AND LENDERS

BANK OF AMERICA, N.A., as Agent and as a
U.S. Lender

By: /s/ Jennifer
Tang

Name: Jennifer Tang
Title: Senior Vice President

Address:

Bank of America, N.A.
520 Newport Center Drive, Ste. 900
Newport Beach, CA 92660
Attn: Jennifer Tang
E-Mail: jennifer.tang@bofa.com

With a copy to:

Morgan, Lewis & Bockius LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, California 90071-3132
Attn: Marshall Stoddard, Jr., Esq.
EMail: marshall.stoddard@morganlewis.com
Telecopy: (213) 612-2501

[Signature Page to Fifth Amendment to Fourth Amended and Restated Loan and Security Agreement]

BANK OF AMERICA, N.A.
(acting through its London branch), as a U.K. Lender and
a German Lender

By: /s/ Jennifer Tang
Name: Jennifer Tang
Title: Senior Vice President

Address:

Bank of America, N.A.
520 Newport Center Drive, Ste. 900
Newport Beach, CA 92660
Attn: Jennifer Tang
E-Mail: jennifer.tang@bofa.com

With a copy to:

Morgan, Lewis & Bockius LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, California 90071-3132
Attn: Marshall Stoddard, Jr., Esq.
EMail: marshall.stoddard@morganlewis.com
Telecopy: (213) 612-2501

[Signature Page to Fifth Amendment to Fourth Amended and Restated Loan and Security Agreement]

BANK OF AMERICA, N.A.
(acting through its Canada branch), as a Canadian Lender

By: /s/ Medina Sales De Andrade
Name: Medina Sales De Andrade
Title: Vice President

Address:

Bank of America, N.A.
181 Bay Street, Suite 400
Toronto, ON M5J 2V8
Attn: Sylwia Durkiewicz
E-Mail: sylwia.durkiewicz@bofa.com
Telecopy: (312) 453-4041

With a copy to:

Morgan, Lewis & Bockius LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, California 90071-3132
Attn: Marshall Stoddard, Jr., Esq.
EMail: marshall.stoddard@morganlewis.com
Telecopy: (213) 612-2501

MUFG UNION BANK N.A.,
as a U.S. Lender, a Canadian Lender, a U.K.
Lender and a German Lender

By: /s/ Ryan
Bannan
Name: Ryan Bannan
Title: Vice President

Address: On File with Agent

[Signature Page to Fifth Amendment to Fourth Amended and Restated Loan and Security Agreement]

TRUIST BANK,
as a U.S. Lender, a Canadian Lender, a U.K.
Lender and a German Lender

By: /s/ Jonathan Keegan
Name: Jonathan Keegan
Title: Vice President

Address: On File with Agent

[Signature Page to Fifth Amendment to Fourth Amended and Restated Loan and Security Agreement]

JPMORGAN CHASE BANK, N.A.,
as a U.S. Lender

By: /s/ Anna C.
Araya

Name: Anna C. Araya
Title: Executive Director

Address: On File with Agent

[Signature Page to Fifth Amendment to Fourth Amended and Restated Loan and Security Agreement]

**JPMORGAN CHASE BANK, N.A.,
TORONTO BRANCH,**
as a Canadian Lender

By: /s/ Michael

Tam

Name: Michael Tam

Title: Authorized Officer

Address: On File with Agent

[Signature Page to Fifth Amendment to Fourth Amended and Restated Loan and Security Agreement]

**JPMORGAN CHASE BANK, N.A., LONDON
BRANCH,**
as a U.K. Lender and a German Lender

By: /s/ Matthew C.
Sparkes
Name: Matthew C. Sparkes
Title: Authorized Officer

Address: On File with Agent

[Signature Page to Fifth Amendment to Fourth Amended and Restated Loan and Security Agreement]

**CALLAWAY GOLF COMPANY,
CALLAWAY GOLF SALES COMPANY,
CALLAWAY GOLF BALL OPERATIONS, INC.,
OGIO INTERNATIONAL, INC.,
TRAVISMATHEW, LLC, and
JACK WOLFSKIN NORTH AMERICA, INC.**

as U.S. Borrowers, Canadian Facility Guarantors, U.K. Facility Guarantors and German Facility Guarantors

CALLAWAY GOLF CANADA LTD.,
as the Canadian Borrower, a U.K. Facility Guarantor and a German Facility Guarantor,

CALLAWAY GOLF EUROPE LTD.,
as the U.K. Borrower, a Canadian Facility Guarantor, and a German Facility Guarantor,

JACK WOLFSKIN AUSRÜSTUNG FÜR DRAUSSEN GMBH & CO. KGAA,
as German Borrower, a Canadian Facility Guarantor and a U.K. Facility Guarantor, and

THE OTHER OBLIGORS PARTY HERETO

FOURTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

Dated as of May 17, 2019

\$400,000,000

CERTAIN FINANCIAL INSTITUTIONS,
as Lenders,

BANK OF AMERICA, N.A.,
as Administrative Agent

MUFG UNION BANK N.A.
as Syndication Agent

SUNTRUST BANK,
as Documentation Agent

and

BANK OF AMERICA, N.A.,
as Sole Lead Arranger and Sole Bookrunner

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FOURTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

THIS FOURTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT is dated as of May 17, 2019, among **CALLAWAY GOLF COMPANY**, a Delaware corporation ("Parent"), **CALLAWAY GOLF SALES COMPANY**, a California corporation ("Callaway Sales"), **CALLAWAY GOLF BALL OPERATIONS, INC.**, a Delaware corporation ("Callaway Operations"), **OGIO INTERNATIONAL, INC.**, a Utah corporation, ("Ogio"), **TRAVISMATHEW, LLC**, a California limited liability company ("travisMathew"), **JACK WOLFSKIN NORTH AMERICA, INC.**, a Delaware corporation ("Domestic Jack Wolfskin") and together with Parent, Callaway Sales, Callaway Operations, Ogio, and travisMathew, collectively, "U.S. Borrowers"), **CALLAWAY GOLF CANADA LTD.**, a Canada corporation ("Canadian Borrower"), **JACK WOLFSKIN AUSRÜSTUNG FÜR DRAUSSEN GMBH & CO. KGAA**, a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) under the laws of the Federal Republic of Germany ("German Borrower"), **CALLAWAY GOLF EUROPE LTD.**, a company organized under the laws of England and Wales (registered number 02756321) ("U.K. Borrower") and together with the U.S. Borrowers, the German Borrower and the Canadian Borrower, collectively, "Borrowers", the other Obligors party to this Agreement from time to time, the financial institutions party to this Agreement from time to time as lenders (collectively, "Lenders"), and **BANK OF AMERICA, N.A.**, a national banking association, as administrative agent and as security trustee for the Lenders ("Agent").

RECITALS:

WHEREAS, Agent, the Lenders party thereto, Parent, Callaway Sales, Callaway Operations, the Canadian Borrower, and the other Obligors party thereto entered into that certain Third Amended and Restated Loan and Security Agreement (the "Third Amended and Restated Loan Agreement"), dated as of November 20, 2017 (the "Third Amended Original Closing Date"), which amended and restated that certain Second Amended and Restated Loan and Security Agreement (the "Second Amended and Restated Loan Agreement"), dated as of December 22, 2011 (the "Second Amended Original Closing Date"), which amended and restated that certain Amended and Restated Loan and Security Agreement dated as of July 22, 2011 (the "Original Amended and Restated Loan Agreement"), which amended and restated that certain Loan and Security Agreement dated as of June 30, 2011 (the "Original Loan Agreement");

WHEREAS, the parties hereto have agreed to amend and restate in their entirety the agreements contained in the Third Amended and Restated Loan Agreement as amongst themselves;

WHEREAS, the Obligors have requested that: (i) the U.S. Lenders provide a credit facility to the U.S. Borrowers; (ii) the Canadian Lenders provide a credit facility to the Canadian Borrower; (iii) the German Lenders provide a credit facility to the German Borrower; and (iv) the U.K. Lenders provide a credit facility to the U.K. Borrower, in each case, to finance their mutual and collective business enterprise;

WHEREAS, the applicable Lenders are willing to provide such credit facilities on the terms and conditions set forth herein; and

WHEREAS, each Obligor hereby restates, ratifies and reaffirms each and every term and condition set forth in the Third Amended and Restated Loan Agreement, as amended and restated hereby, and the other Loan Documents effective as of the date hereof;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto amend and restate the Third Amended and Restated Loan Agreement and agree as follows:

Section 1. DEFINITIONS; RULES OF CONSTRUCTION

1.a Definitions. As used herein, the following terms have the meanings set forth below:

Account: as defined in the UCC (and/or, with respect to any Accounts of a Canadian Subsidiary, as defined in the PPSA), including all rights to payment for goods sold or leased, or for services rendered.

Account Debtor: a Person who is obligated under an Account, Chattel Paper or General Intangible.

Acquisition: any transaction, or any series of related transactions, consummated on or after the Original Agreement Closing Date, by which Parent, directly or indirectly, acquires (a) any going business or all or substantially all of the assets of any Person or division thereof, whether through purchase of assets, merger, or otherwise or (b) in one transaction or as the most recent transaction in a series of transactions, a majority (in number of votes) of the Equity Interests of a Person which has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person.

Acquisition Cap: \$25,000,000.

Additional Collateral: as defined in **Section 10.2.1(o)**.

Affected Financial Institution: means (a) any EEA Financial Institution or (b) any U.K. Financial Institution.

Affiliate: with respect to any 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. “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 correlative meanings.

Agent: as defined in the preamble to this Agreement.

Agent Indemnitees: Agent and its officers, directors, employees, Affiliates, agents and attorneys.

Agent Professionals: attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Agent.

Agent’s Office: with respect to any currency, the Agent’s address and, as appropriate, account specified in this Agreement with respect to such currency, or such other address or account with respect to such currency as the Agent may from time to time notify the Borrower and the Lenders.

Agreement: this Fourth Amended and Restated Loan and Security Agreement.

Allocable Amount: as defined in **Section 5.11**.

Alternative Currency: British Pounds, Swiss Francs and Euros.

Alternative Currency Daily Rate: for any day, with respect to any extension of credit under this Agreement:

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

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

provided, that, if any Alternative Currency Daily Rate shall be less than zero, such rate shall be deemed to be 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: 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 Swiss Francs or British Pounds.

Alternative Currency Loan: an Alternative Currency Daily Rate Loan or an Alternative Currency Term Rate Loan, as applicable.

Alternative Currency Term Rate: for any Interest Period, with respect to any extension of credit under this Agreement 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 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;

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

Alternative Currency Term Rate Loan: 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 Euros.

AML Legislation: as defined in **Section 14.17**.

Anti-Corruption Laws: means all laws, rules, and regulations of any jurisdiction applicable to any Obligor, any Subsidiaries or any Excluded Subsidiaries from time to time concerning or relating to bribery or corruption.

Anti-Terrorism Laws: any laws relating to terrorism or money laundering, including the Patriot Act and the Proceeds of Crime Act.

Applicable Authority: 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 Agent or such administrator.

Applicable Law: all laws, rules, regulations and governmental guidelines with the force of law applicable to the Person, conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

Applicable Lenders: with respect to: (a) the U.S. Borrowers, the U.S. Lenders who have a U.S. Revolver Commitments (and if the U.S. Revolver Commitments have terminated, each U.S. Lender that had a U.S. Revolver Commitment immediately prior to such termination), (b) the Canadian Borrower, the Canadian Lenders, (c) the German Borrower, the German Lenders, and (d) the U.K. Borrower, the U.K. Lenders.

Applicable Margin: with respect to any Type of Loan, the respective margin set forth in the grid below (the “Pricing Grid”), as determined by the Availability Ratio for the last calendar month:

Level	Availability Ratio	U.S. Base Rate Revolver Loans	LIBOR Revolver Loans and <u>Alternative Currency Loans</u>	U.S. Base Rate Term Loans	LIBOR Term Loans	Canadian BA Rate Loans	Canadian Prime Rate Loans and Canadian Base Rate Loans	U.K. Base Rate Loans	German Base Rate Loans
I	Greater than or equal to 67%	0.50%	1.50%	3.00%	4.00%	1.50%	0.50%	1.50%	1.50%
II	Less than 67% but greater than or equal to 33%	0.75%	1.75%	3.25%	4.25%	1.75%	0.75%	1.75%	1.75%
III	Less than 33%	1.00%	2.00%	3.50%	4.50%	2.00%	1.00%	2.00%	2.00%

Margins shall be subject to increase or decrease based upon the Availability Ratio for the prior calendar month, as determined by Agent. If, by the first day of a calendar month, any Borrowing Base Certificate due in the preceding calendar month has not been received, then, at the option of Agent or Required Lenders, the margins shall be determined as if Level III were applicable, from such day until the first day of the calendar month following actual receipt.

Notwithstanding the foregoing, the Applicable Margin for any month with respect to (i) U.S. Base Rate Loans, Canadian Prime Rate Loans, Canadian Base Rate Loans, LIBOR Revolver Loans, Alternative Currency Loans, Canadian BA Rate Loans, German Base Rate Loans and U.K. Base Rate Loans shall be increased by .50% if any U.S. Availability is generated under both clause (b)(iii) and clause (b)(iv) of the definition of the U.S. Borrowing Base at any time in such month, and (ii) U.S. Base Rate Loans, Canadian Prime Rate Loans, Canadian Base

Rate Loans, LIBOR Revolver Loans, Alternative Currency Loans, Canadian BA Rate Loans, German Base Rate Loans and U.K. Base Rate Loans, shall be increased by .25% if any U.S. Availability is generated under either clause (b)(iii) or clause (b)(iv) of the definition of the U.S. Borrowing Base (but not both such clauses) at any time in such month.

Applicable Time Zone: for borrowings under, and payments due by Borrowers or Lenders on (a) with respect to U.S. Revolver Loans, Term Loans and Canadian Revolver Loans, Pacific time, and (b) with respect to U.K. Revolver Loans and German Revolver Loans, London time.

Approved Fund: any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, and is administered or managed by a Lender, an entity that administers or manages a Lender, or an Affiliate of either.

Asset Disposition: a sale, lease, license, consignment, transfer or other disposition of Property of an Obligor or a Subsidiary, including a disposition of Property in connection with a sale-leaseback transaction, synthetic lease or statutory division of a limited liability company.

Assignment and Acceptance: an assignment agreement between a Lender and Eligible Assignee, in the form of **Exhibit B**.

Assignment of Claims Act: Assignment of Claims Act of 1940, 31 U.S.C. § 3727, 41 U.S.C. § 15, as amended.

Attorney: as defined in **Section 12.1.1(c)**.

Availability: as of any date of determination, the sum of the U.S. Availability plus the Canadian Availability plus the German Availability plus the U.K. Availability.

Availability Ratio: the ratio (expressed as a percentage), for any calendar month, of (a) the average daily Availability for such calendar month to (b) an amount equal to the sum of (i) the average daily Canadian Borrowing Base (without giving effect to the Canadian LC Reserve for purposes of this calculation) for such calendar month, plus (ii) the average daily U.S. Borrowing Base (without giving effect to the U.S. LC Reserve, the Canadian Overadvance Loan Balance, the German Overadvance Loan Balance, and the U.K. Overadvance Loan Balance for purposes of this calculation) for such calendar month, plus (iii) the average daily German Borrowing Base (without giving effect to the German LC Reserve for purposes of this calculation) for such calendar month, plus (iv) the average daily U.K. Borrowing Base (without giving effect to the U.K. LC Reserve for purposes of this calculation) for such calendar month.

Available Currency: (i) in the case of a U.S. Borrower, Dollars, (ii) in the case of the Canadian Borrower, Dollars or Canadian Dollars, (iii) in the case of the German Borrower, Dollars, British Pounds, Swiss Francs or Euros (but in the case of German Base Rate Loans, Dollars only), and (iv) in the case of the U.K. Borrower, Dollars, British Pounds or Euros (but in the case of U.K. Base Rate Loans, Dollars only).

Available Tenor: 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.

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

Bank of America: Bank of America, N.A., a national banking association, and its successors and assigns.

Bank of America (Canada): Bank of America, N.A. (acting through its Canada branch), and its successors and assigns.

Bank of America Indemnites: Bank of America and its officers, directors, employees, Affiliates, branches, agents and attorneys.

Bank Product: any of the following products, services or facilities extended to any Obligor or Subsidiary by a Lender or any of its Affiliates: (a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card and merchant card services; (d) purchase cards (including so-called “procurement cards” or “P-cards”), and (e) other banking products or services as may be requested by any Obligor or Subsidiary unless otherwise agreed in writing between such Obligor or Subsidiary and the provider of such products or services, other than Letters of Credit.

Bank Product Debt: Debt and other obligations of an Obligor or Subsidiary relating to Bank Products.

Base Rate Loan: a U.S. Base Rate Loan, a Canadian Base Rate Loan, a German Base Rate Loan or a U.K. Base Rate Loan, as applicable.

Base Rate Term Loan: a Term Loan that bears interest based on the U.S. Base Rate.

Benchmark: initially, LIBOR; *provided*, that if a replacement of the Benchmark has occurred pursuant to **Section 3.6(b)** 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:

(1) for purposes of Section 3.6(b)(i), the first alternative set forth below that can be determined by the Agent:

(a) 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, and 0.42826% (42.826 basis points) for an Available Tenor of six-months’ duration, or

(b) 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 Agent determines that Term SOFR has become available and is administratively feasible for the Agent in its sole discretion, and the Agent notifies the Borrower Agent 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 3.6(b)(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 Agent and the Borrower Agent 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 Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Agent.

Benchmark Replacement Conforming Changes: with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "U.S. 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 Agent decides may be appropriate, in consultation with the Borrowers, to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice for such Benchmark Replacement (or, if the 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 Benchmark Replacement exists, in such other manner of administration as the Agent determines in consultation with the Borrowers is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

Benchmark Transition Event: 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 Agent, that will continue to provide any representative tenors of such Benchmark after such specific date.

Beneficial Ownership Certification: a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation, in form and substance satisfactory to Agent.

Beneficial Ownership Regulation: 31 C.F.R. §1010.230.

Board of Governors: the Board of Governors of the Federal Reserve System.

Borrowed Money: with respect to any Obligor or Subsidiary, without duplication, its (a) Debt that (i) arises from the lending of money by any Person to such Obligor or Subsidiary, (ii) is evidenced by notes, drafts, bonds, debentures, credit documents or similar instruments, (iii) accrues interest or is a type upon which interest charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business), or (iv) was issued or assumed as full or partial payment for Property; (b) Capital Leases; (c) reimbursement obligations with respect to letters of credit; and (d) guaranties of any Debt of the foregoing types owing by another Person.

Borrower Agent: as defined in **Section 4.4**.

Borrower Group: a group consisting of (i) the U.S. Borrowers, (ii) the Canadian Borrower, (iii) the German Borrower, or (iv) the U.K. Borrower, as the context requires.

Borrowers: as defined in the preamble to this Agreement.

Borrowing: a group of Loans of one Type that are made on the same day or are converted into Loans of one Type on the same day.

Borrowing Base: the Canadian Borrowing Base and/or the German Borrowing Base and/or the U.S. Borrowing Base and/or the U.K. Borrowing Base, as the context requires.

Borrowing Base Certificate: a U.S. Borrowing Base Certificate, a Canadian Borrowing Base Certificate, a German Borrowing Base Certificate, or a U.K. Borrowing Base Certificate, as applicable. "Borrowing Base Certificates" means a U.S. Borrowing Base Certificate, a Canadian Borrowing Base Certificate, a German Borrowing Base Certificate, and a U.K. Borrowing Base Certificate.

British Pounds or £: the lawful currency of the United Kingdom.

Business Day: 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, ~~North Carolina and New York, and if such day relates to: (a) a LIBOR Loan, any such day on which dealings in deposits in the relevant Available Currency of that LIBOR Loan are conducted between banks in the London interbank eurocurrency market, (b) the state where the Agent's Office is located; provided that~~

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

(b) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in (i) British Pounds, means a day other than a day banks are closed for general business in London because such day is a Saturday, Sunday or a legal holiday under the laws of the United Kingdom; and (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;

(c) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Euro in respect of an Alternative Currency Loan denominated in a currency other than Euro, or any other dealings in any currency other than Euro to be carried out pursuant

to this Agreement in respect of any such 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; and

~~(d) if such day relates to a Canadian Revolver Loan, any such day on which banks in Toronto, Ontario, Canada are open for the transaction of banking business; (e) any U.K. Revolver Loan or U.K. Lender, any day on which commercial banks are open for the transaction of banking business in London; (d) a German Revolver Loan, any day which is also not (i) a legal holiday in Frankfurt (Main), Germany or London, or (ii) a day on which banking institutions located in such cities are authorized or required by law or other governmental action to close, or (e) any Revolver Loan denominated in Euros, any day which is a TARGET Day.~~

CAM: as defined in **Section 14.11(a)(i)**.

CAM Exchange: as defined in **Section 14.11(a)(ii)**.

CAM Exchange Date: as defined in **Section 14.11(a)(iii)**.

CAM Percentage: as defined in **Section 14.11(a)(iv)**.

Calculation Date: as defined in **Section 5.13**.

Canadian Accounts Formula Amount: (a) as of any date of determination within the period beginning on May 1 through and including October 31 of each Fiscal Year, 85% of the Value of Eligible Accounts of the Canadian Borrower; and (b) as of any date of determination within the period beginning on November 1 through and including April 30 of each Fiscal Year, 90% of the Value of Eligible Accounts of the Canadian Borrower.

Canadian Availability: as of any date of determination, the Canadian Borrowing Base as of such date of determination minus the aggregate principal amount of all Canadian Revolver Loans outstanding on such date of determination.

Canadian Availability Reserve: the sum (without duplication) of (a) the Inventory Reserve with respect to the Canadian Borrower's Inventory; (b) the Canadian Rent and Charges Reserve; (c) the Canadian LC Reserve; (d) the Canadian Bank Product Reserve; (e) all accrued Royalties of the Canadian Domiciled Obligors, whether or not then due and payable by a Canadian Domiciled Obligor; (f) the aggregate amount of liabilities secured by Liens upon Canadian Facility Collateral that are senior to the Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (g) the Canadian Priority Payables Reserve; (h) the Wage Earner Protection Act Reserve; (i) the Canadian Dilution Reserve; (j) the Canadian Top Golf Reserve; and (k) such additional reserves, in such amounts and with respect to such matters, as Agent in its Credit Judgment may elect to impose from time to time with respect to the Canadian Borrowing Base.

Canadian BA Rate: with respect to each Interest Period for a Canadian BA Rate Loan, a per annum rate of interest equal to the Canadian Dollar bankers' acceptance rate, or comparable or successor rate approved by Agent, determined by it at or about 10:00 a.m. (Toronto time) on the applicable day (or the preceding Business Day, if the applicable day is not a Business Day) for a term comparable to the Canadian BA Rate Loan, as published on the CDOR Page or other applicable Reuters screen page (or other commercially available source designated by Agent from time to time), provided, that in no event shall the Canadian BA Rate be less than ~~1.0%~~zero.

Canadian BA Rate Loan: a Canadian Revolver Loan, or portion thereof, funded in Canadian Dollars and bearing interest calculated by reference to the Canadian BA Rate.

Canadian Bank Product Reserve: the aggregate amount of reserves established by Agent from time to time in its discretion in respect of Secured Bank Product Obligations owing by the Canadian Domiciled Obligors and their Subsidiaries.

Canadian Base Rate: for any day, the greater of (i) the per annum rate of interest designated by Bank of America (Canada) from time to time as its base rate for commercial loans made by it in Dollars, which rate is based on various factors, including its costs and desired return, general 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 rate; (ii) the Federal Funds Rate for such day, plus 0.50% per annum; or (iii) LIBOR for a 30 day interest period as of such day, plus 1.00%; provided, that in no event shall the Canadian Base Rate be less than zero. Any change in such rate shall take effect at the opening of business on the applicable Business Day.

Canadian Base Rate Loan: a Canadian Revolver Loan, or portion thereof, funded in Dollars and bearing interest calculated by reference to the Canadian Base Rate.

Canadian Borrower: as defined in the preamble to this Agreement.

Canadian Borrowing Base: on any date of determination, an amount equal to the lesser of (a) the result of: (i) the Maximum Canadian Facility Amount, minus (ii) the Canadian LC Reserve, minus (iii) the Canadian Top Golf Reserve; or (b) the result of: (i) the Canadian Accounts Formula Amount, plus (ii) the Canadian Inventory Formula Amount, plus (iii) 100% of the amount of Canadian Pledged Cash, minus (iv) the Canadian Availability Reserve.

Canadian Borrowing Base Certificate: a certificate, in form and substance satisfactory to Agent, by which the Canadian Borrower certifies calculation of the Canadian Borrowing Base.

Canadian Cash Collateral Account: a demand deposit, money market or other account established by Agent at Bank of America (Canada) or such other financial institution as Agent may select in its discretion, which account shall be for the benefit of the Canadian Facility Secured Parties and shall be subject to Agent's Liens securing the Canadian Facility Obligations.

Canadian Dilution Reserve: as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts of the Canadian Borrower by 1% for each whole percentage point (or portion thereof) by which the Dilution Percent is in excess of 5.0%.

Canadian Dollars or Cdn\$: the lawful currency of Canada.

Canadian Domiciled Obligor: each Canadian Subsidiary which is at any time an Obligor, and "Canadian Domiciled Obligors" means all such Persons, collectively.

Canadian Dominion Account: a special account established by the Canadian Borrower at Bank of America (Canada) or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes during any Dominion Trigger Period.

Canadian Employee Benefits Legislation: the *Employment Pensions Plan Act* (Alberta), *Pension Benefits Standards Act* (British Columbia), the *Supplemental Pension Plans Act* (Quebec) and any Canadian federal, provincial or local counterparts or equivalents, in each case, as applicable and as amended from time to time.

Canadian Employee Plan: any payroll practice and other employee benefit plan, policy, program, agreement or arrangement, including retirement, pension, profit sharing, employment, individual consultant or other compensation agreement, collective bargaining agreement, bonus or other incentive compensation, retention, stock purchase, equity or equity-based compensation,

deferred compensation, change in control, severance, sick leave, vacation, loans, salary continuation, hospitalization, health, life insurance, educational assistance or other fringe benefit or perquisite plan, policy, agreement which is or was sponsored, maintained or contributed to by, or required to be contributed to by, a Canadian Domiciled Obligor, or with respect to which a Canadian Domiciled Obligor has or could have any obligation or liability, contingent or otherwise.

Canadian Expeditors Reserve: as of any date of determination, the aggregate amount of accounts payable owed by any Canadian Facility Obligor to Expeditors, as determined by Agent in its Credit Judgment.

Canadian Facility Collateral: all Collateral that now or hereafter secures (or is intended to secure) any of the Canadian Facility Obligations, including Property of each Canadian Domiciled Obligor, each U.S. Domiciled Obligor, each U.K. Domiciled Obligor and each German Domiciled Obligor.

Canadian Facility Guarantee: each guarantee agreement (including this Agreement) at any time executed by a Canadian Facility Guarantor in favor of Agent guaranteeing all or any portion of the Canadian Facility Obligations.

Canadian Facility Guarantor: Parent, each Canadian Subsidiary, each U.S. Subsidiary (other than uPlay unless uPlay becomes a Guarantor in accordance with Section 10.2.15), each U.K. Subsidiary, each German Subsidiary, and each other Person (if any) who guarantees payment and performance of any Canadian Facility Obligations.

Canadian Facility Obligations: all Obligations of the Canadian Facility Obligors (excluding, for the avoidance of doubt, the Obligations of the U.S. Domiciled Obligors as guarantors of any U.S. Facility Obligations).

Canadian Facility Obligor: each of the Canadian Borrower or any Canadian Facility Guarantor, and “Canadian Facility Obligors” means all of such Persons, collectively.

Canadian Facility Secured Parties: Agent, the Canadian Issuing Bank, the Canadian Lenders and the Secured Bank Product Providers who provide Bank Products to the Canadian Facility Obligors and their Subsidiaries.

Canadian Inventory Formula Amount: as of any date of determination, the lesser of (a) the sum of (i) with respect to Eligible Inventory that has been owned by the Canadian Borrower for less than one (1) calendar year as of the applicable date of determination, (A) for the period beginning on March 1 through and including September 30 of each Fiscal Year, 65% of the Value of the Canadian Borrower’s Eligible Inventory, and (B) for the period beginning on October 1 through and including February 28 (or February 29, as applicable) of each Fiscal Year, 75% of the Value of the Canadian Borrower’s Eligible Inventory, plus (ii) with respect to Eligible Inventory that has been owned by the Canadian Borrower for more than one (1) calendar year, as of the applicable date of determination, 50% of the Value of the Canadian Borrower’s Eligible Inventory; or (b) 85% of the NOLV Percentage of the Value of the Canadian Borrower’s Eligible Inventory. Notwithstanding the foregoing, the aggregate amount of the Canadian Inventory Formula Amount which may be attributed to Eligible In-Transit Inventory (the “Canadian In-Transit Availability”) shall not exceed \$5,000,000; provided, that the Canadian In-Transit Availability (after taking into effect the previous proviso) shall be reduced by the Canadian Expeditors Reserve if, as of any date of determination, either (I) Canadian Net Excess Availability is less than 10% of the Maximum Canadian Facility Amount, or (II) there are any accounts payable owed by any Canadian Facility Obligor to Expeditors which are aged in excess of historical levels (except in cases of good faith disputes).

Canadian Issuing Bank: Bank of America (Canada) or an Affiliate of Bank of America (Canada).

Canadian LC Obligations: the sum (without duplication) of (a) all amounts owing by the Canadian Borrower for any drawings under Letters of Credit; (b) the stated amount of all outstanding Letters of Credit issued for the account of the Canadian Borrower, which if such Letter of Credit is denominated in a currency other than Canadian Dollars or Dollars, may be stated by Agent (at its option) in Canadian Dollars or Dollars calculated at the Spot Rate; and (c) all fees and other amounts owing with respect to Letters of Credit issued for the account of the Canadian Borrower.

Canadian LC Reserve: the aggregate of all Canadian LC Obligations, other than those that have been Cash Collateralized.

Canadian Lenders: Bank of America (Canada) and each other Lender that has issued a Canadian Revolver Commitment (provided that such Person or an Affiliate of such Person also has a U.S. Revolver Commitment). Each Canadian Lender shall be a Canadian Qualified Lender.

Canadian Letter of Credit Subline: \$5,000,000.

Canadian Letters of Credit: any standby or documentary letter of credit issued by the Canadian Issuing Bank for the account of the Canadian Borrower, or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by Agent or the Canadian Issuing Bank for the benefit of the Canadian Borrower or any of its Subsidiaries.

Canadian Multi-Employer Plan: each multi-employer plan, within the meaning of the Regulations under the Income Tax Act (Canada).

Canadian Net Excess Availability: as of any date of determination, an amount equal to the Canadian Availability minus the aggregate amount, if any, of all trade payables of Canadian Domiciled Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of Canadian Domiciled Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

Canadian Overadvance: as defined in **Section 2.1.5**.

Canadian Overadvance Loan: a Canadian Revolver Loan made to the Canadian Borrower when a Canadian Overadvance exists or is caused by the funding thereof.

Canadian Overadvance Loan Balance: on any date, the amount by which the aggregate Canadian Revolver Exposure exceeds the amount of the Canadian Borrowing Base on such date.

Canadian Pension Plan: a “registered pension plan,” as defined in the Income Tax Act (Canada) and any other pension plan maintained or contributed to by, or to which there is or may be an obligation to contribute by, any Obligor in respect of its Canadian employees or former employees, excluding, for greater certainty, a Canadian Multi-Employer Plan.

Canadian Pledged Cash: the funds maintained in a blocked Deposit Account or securities account of the Canadian Borrower subject to a Deposit Account Control Agreement or securities account control agreement, as applicable, which give Agent at all times exclusive access and control for withdrawal purposes to the exclusion of the Canadian Borrower and precluding the Canadian Borrower from withdrawing or otherwise giving any instructions in connection

therewith and which may not be withdrawn without the Agent's prior written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such withdrawal, no Default or Event of Default shall have occurred and be continuing and (ii) immediately after such withdrawal (for clarification, including after giving effect to any recalculation of the Canadian Borrowing Base upon giving effect to such withdrawal), Canadian Availability would be a positive number), and which are subject to effective security documents, in form and substance satisfactory to Agent, that provide Agent with an unencumbered perfected first priority/ranking security interest in and Lien on such funds.

Canadian Prime Rate: on any date, the greater of (i) the per annum rate of interest designated by Bank of America (Canada) from time to time as its prime rate for commercial loans made by it in Canada in Canadian Dollars, which rate is based on various factors, including its costs and desired return, general 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 rate; or (ii) the Canadian BA Rate for a one month interest period as of such day, plus 1.00%; provided, that in no event shall the Canadian Prime Rate be less than zero. Any change in such rate shall take effect at the opening of business on the applicable Business Day.

Canadian Prime Rate Loan: a Canadian Revolver Loan, or portion thereof, funded in Canadian Dollars and bearing interest calculated by reference to the Canadian Prime Rate.

Canadian Priority Payables Reserve: on any date of determination, a reserve in such amount as Agent may determine which reflects the unpaid (when due) or un-remitted (when due) payroll tax deductions, unpaid (when due) pension plan contributions, employment insurance premiums, amounts deducted for vacation pay, wages, workers' compensation, unpaid (when due) or un-remitted (when due) sales tax, goods and services tax, value added tax, harmonized tax, excise tax, tax payable pursuant to Part IX of the Excise Tax Act (Canada) or similar applicable provincial legislation and other unpaid (when due) or unremitted (when due) amounts by any Canadian Domiciled Obligor which would give rise to a Lien with priority under Applicable Law over the Lien of Agent.

Canadian Qualified Lender: a financial institution that is not precluded from being a Canadian Lender under the terms of the Bank Act (Canada) or other applicable Canadian federal or provincial legislation.

Canadian Reimbursement Date: as defined in **Section 2.4.2**.

Canadian Rent and Charges Reserve: the aggregate of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any Canadian Facility Collateral or could assert a Lien on any Canadian Facility Collateral; and (b) a reserve at least equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

Canadian Required Lenders: Canadian Lenders (subject to **Section 4.2**) having (a) Canadian Revolver Commitments in excess of 50% of the aggregate Canadian Revolver Commitments; and (b) if the Canadian Revolver Commitments have terminated, Canadian Revolver Loans and Canadian LC Obligations in excess of 50% of all outstanding Canadian Revolver Loans and Canadian LC Obligations; provided, however, that the Canadian Revolver Commitments and Canadian Revolver Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more Canadian Lenders, "Canadian Required Lenders" must include at least 3 Canadian Lenders, and (ii) less than 3 Canadian Lenders, "Canadian Required Lenders" must include all Canadian Lenders.

Canadian Revolver Commitment: for any Canadian Lender, its obligation to make Canadian Revolver Loans and to participate in Canadian LC Obligations in the applicable Available Currencies up to the maximum principal amount shown on **Schedule 1.1**, or as hereafter determined pursuant to each Assignment and Acceptance to which it is a party, as such Canadian Revolver Commitment may be adjusted from time to time in accordance with the provisions of **Sections 2.1.4** or **11.2**. “**Canadian Revolver Commitments**” means the aggregate amount of such commitments of all Canadian Lenders.

Canadian Revolver Commitment Termination Date: the earliest of (a) the U.S. Revolver Commitment Termination Date (without regard to the reason therefor), (b) the date on which the Borrower Agent terminates or reduces to zero all of the Canadian Revolver Commitments pursuant to **Section 2.1.4**, and (c) the date on which the Canadian Revolver Commitments are terminated pursuant to **Section 11.2**.

Canadian Revolver Exposure: on any date, an amount equal to the sum of the Dollar Equivalent of the Canadian Revolver Loans outstanding on such date plus the Canadian LC Obligations on such date.

Canadian Revolver Loan: a Revolver Loan made by Canadian Lenders to Canadian Borrower pursuant to **Section 2.1.1(b)**, which Revolver Loan shall, if denominated in Canadian Dollars, be either a Canadian BA Rate Loan or a Canadian Prime Rate Loan and, if denominated in Dollars, shall be either a Canadian Base Rate Loan or a LIBOR Loan, in each case as selected by the Borrower Agent, and any Canadian Swingline Loan, Canadian Overadvance Loan or Protective Advance made to or owed by the Canadian Borrower.

Canadian Revolver Notes: a promissory note executed by Canadian Borrower in favor of a Canadian Lender in the form of **Exhibit A-1**, in the amount of such Canadian Lender’s Canadian Revolver Commitment.

Canadian Security Agreement: each (a) general security agreement, security agreement, deed of hypothec, pledge agreement, mortgage or similar agreement pursuant to which any Canadian Domiciled Obligor grants to Agent, for the benefit of the Canadian Facility Secured Parties, Liens upon its Property as security for the Canadian Facility Obligations or (b) security agreement, deed of hypothec, pledge agreement, mortgage or similar agreement pursuant to which any U.S. Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor grants to Agent, for the benefit of the Secured Parties, Liens on its Property located in Canada or otherwise subject to Canadian law as security for the Obligations.

Canadian Subsidiary: a Subsidiary of Parent incorporated or organized under the laws of Canada or any province or territory of Canada.

Canadian Swingline Loan: any Borrowing of Canadian Base Rate Loans funded with Agent’s funds, until such Borrowing is settled among the Canadian Lenders or repaid by the Canadian Borrower.

Canadian Top Golf Reserve: a reserve established by Agent at Parent’s request in accordance with the definition of Top Golf Proceeds, in an initial amount as of such establishment equal to \$0. The Canadian Top Golf Reserve (a) shall be reduced on a dollar for dollar basis for the amount expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent’s common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)(ii)(C)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)(ii)(C)**; (b) may be permanently reduced from time to time upon Parent’s written request to Agent; and (c) subject to Agent’s written

consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such adjustment, no Default or Event of Default shall have occurred and be continuing, and (ii) immediately after such adjustment (for clarification, including after giving effect to any recalculation of the U.K. Borrowing Base, German Borrowing Base and U.S. Borrowing Base upon giving effect to such adjustment), U.K. Availability, German Availability and U.S. Availability would be a positive number), may be reallocated on a dollar for dollar basis to the U.K. Top Golf Reserve and/or German Top Golf Reserve and/or the U.S. Top Golf Reserve upon Parent's written request to Agent; provided, however, that once reduced pursuant to clause (b) above, the Canadian Top Golf Reserve may not be increased. The parties agree that the Canadian Top Golf Reserve shall never be less than zero (-0-). For clarification, the aggregate amount of the Canadian Top Golf Reserve, the U.K. Top Golf Reserve, the German Top Golf Reserve and the U.S. Top Golf Reserve may not exceed an amount equal to the aggregate amount of Top Golf Proceeds received by Parent as reflected in all Top Golf Proceeds Notices (less any amounts Parent elects to deposit into the Top Golf Blocked Account) less all amounts expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)** and less all permanent reductions elected by Parent pursuant to clause (b) of each of the definitions of Canadian Top Golf Reserve, U.K. Top Golf Reserve, German Top Golf Reserve and U.S. Top Golf Reserve.

Canadian Unused Line Fee Rate: a per annum rate equal to 0.25%.

Capital Expenditures: all liabilities incurred or expenditures made by an Obligor or Subsidiary for the acquisition of fixed assets, or any improvements, replacements, substitutions or additions thereto with a useful life of more than one year.

Capital Lease: any lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

Cash Collateral: cash, and any interest or other income earned thereon, that is delivered to Agent to Cash Collateralize any Obligations.

Cash Collateral Account: the U.S. Cash Collateral Account and/or the Canadian Cash Collateral Account and/or the German Cash Collateral Account and/or the U.K. Cash Collateral Account, as the context may require.

Cash Collateralize: the delivery of cash to Agent, as security for the payment of Obligations, in an amount equal to (a) with respect to LC Obligations, 105% of the aggregate LC Obligations, and (b) with respect to any inchoate, contingent or other Obligations (including Secured Bank Product Obligations), Agent's good faith estimate of the amount due or to become due, including all fees and other amounts relating to such Obligations. "Cash Collateralization" has a correlative meaning.

Cash Equivalents: (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the United States, Canadian or United Kingdom government, maturing within 12 months of the date of acquisition; (b) certificates of deposit, time deposits and bankers' acceptances maturing within 12 months of the date of acquisition, and overnight bank deposits, in each case which are issued by Bank of America or a commercial bank organized under the laws of the United States (or any state or district of the United States), Canada (or any province or territory of Canada), England, Wales, Scotland or Northern Ireland, rated A-1 (or better) by S&P or P-1 (or better) by Moody's at the time of acquisition, and (unless issued by a Lender) not subject to offset rights; (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 described in clause (b); (d) commercial paper issued by Bank of America or rated A-1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within nine months of the date of acquisition; and (e) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above, has net assets of at least \$500,000,000 and has the highest rating obtainable from either Moody's or S&P.

Cash Management Services: any services provided from time to time by any Lender or any of its Affiliates to any Obligor or Subsidiary in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

CERCLA: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.).

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

Change of Control: (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of Parent, its Subsidiaries or the Excluded Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the Equity Interests of Parent entitled to vote for members of the board of directors or equivalent governing body of Parent on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or (b) Parent ceases to own and control, beneficially and of record, directly or indirectly, all Equity Interests in all other Obligor.

Charged Company: as defined in **Section 6.1(k)**.

Claims: all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable attorneys' fees and Extraordinary Expenses) at any time (including after Full Payment of the Obligations or replacement of Agent or any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Obligor or other Person, in any way relating to (a) any Loans, Letters of Credit, Loan Documents, or the use thereof or transactions relating thereto, (b) any action taken or omitted in connection with any Loan Documents, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or Applicable Law, or (e) failure by any Obligor to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating

to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

Closing Date: as defined in **Section 6.1**.

Code: the Internal Revenue Code of 1986.

Collateral: all Property described in **Section 7.1**, all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

Commitment: for any Lender, the aggregate amount of such Lender's U.S. Revolver Commitment, Term Loan Commitment, German Revolver Commitment, Canadian Revolver Commitment, and U.K. Revolver Commitment. "Commitments" means the aggregate amount of all U.S. Revolver Commitments, Term Loan Commitments, German Revolver Commitments, Canadian Revolver Commitments, and U.K. Revolver Commitments.

Commodity Exchange Act: the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

Common Stock Repurchase: a repurchase, redemption or other retirement for value of Parent's common stock.

Company Trademark: collectively, the trademarks owned by the U.S. Borrowers set forth on **Schedule F-1** (as such Schedule may be updated to include additional trademarks with the written consent of all Lenders).

Compliance Certificate: a certificate, in the form of **Exhibit D**, by which Borrowers certify compliance with **Section 10.3** and for purposes of determination of the Applicable Margin (such certificate to include a calculation of the Fixed Charge Coverage Ratio, whether or not a Covenant Trigger Period is in effect and regardless of the current pricing level as set forth in the Pricing Grid).

Conforming Changes: with respect to the use, administration of or any conventions associated with **SONIA**, **SARON**, **EURIBOR** or any proposed Successor Rate for any currency, any conforming changes to the definitions of "**SONIA**", "**SARON**", "**EURIBOR**", "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", timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Agent in consultation with the Borrowers, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Agent in a manner substantially consistent with market practice for such currency (or, if the 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 currency exists, in such other manner of administration as the Agent determines in consultation with the Borrowers is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

Consolidated Tangible Assets: as of any date of determination, the Consolidated Total Assets of Parent and its Subsidiaries minus consolidated intangible assets of Parent and its Subsidiaries, all determined in accordance with GAAP.

Consolidated Total Assets: as of any date of determination, the consolidated total assets of Parent and its Subsidiaries as of such date, determined in accordance with GAAP.

Contingent Obligation: as to any Person, any (a) obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt 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 Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt 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 Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt 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) Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person. The amount of any Contingent Obligation 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 Contingent Obligation 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.

Contractual Obligation: 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.

Costco: Costco Wholesale Corporation, a Washington corporation.

Covenant Trigger Period: the period (a) commencing on the day that Net Excess Availability is less than, at any time, an amount equal to the Covenant Trigger Period Threshold Percentage of the Maximum Facility Amount; and (b) continuing until, during the preceding 30 consecutive days, Net Excess Availability has been greater than, at all times, an amount equal to the Covenant Trigger Period Threshold Percentage of the Maximum Facility Amount.

Covenant Trigger Period Threshold Percentage: 10%.

Covered Entity: (a) a "covered entity," as defined and interpreted in accordance with 12 C.F.R. §252.82(b); (b) a "covered bank," as defined in and interpreted in accordance with 12 C.F.R. §47.3(b); or (c) a "covered FSI," as defined in and interpreted in accordance with 12 C.F.R. §382.2(b).

Credit Judgment: Agent's judgment exercised in good faith, based upon its consideration of any factor that it believes (a) could reasonably be expected to adversely affect the quantity, quality, mix or value of Collateral (including any Applicable Law that may inhibit collection of an Account), the enforceability or priority of Agent's Liens, or the amount that Agent and Lenders could receive in liquidation of any Collateral; (b) provides a reasonable basis to conclude that any collateral report or financial information delivered by any Obligor is incomplete, inaccurate or misleading in any material respect; (c) materially increases the likelihood of any Insolvency Proceeding involving an Obligor; or (d) creates or could reasonably be expected to result in a Default or Event of Default. In exercising such judgment, Agent may consider any factors that could reasonably be expected to increase the credit risk of lending to Borrowers on the security of the Collateral.

Credit Party: Agent, a Lender or an Issuing Bank; and "Credit Parties" means Agent, Lenders and Issuing Banks.

Creditor Representative: under any Applicable Law, a receiver, interim receiver, receiver and manager, trustee (including any trustee in bankruptcy), custodian, conservator, administrator, examiner, sheriff, monitor, assignee, liquidator, provisional liquidator, sequestrator or similar officer or fiduciary.

CWA: the Clean Water Act (33 U.S.C. §§ 1251 et seq.).

Daily Simple SOFR: with respect to any applicable determination date, 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).

Debt: 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) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments; (c) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable and accrued expenses arising in the Ordinary Course of Business); (d) 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; (e) Capital Leases and Off-Balance Sheet Liabilities; (f) all Contingent Obligations of such Person in respect of the foregoing clauses (a) through (e); and (g) in the case of an Obligor, the Obligations.

Default: an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default.

Default Rate: for any Obligation (including, to the extent permitted by law, interest not paid when due), 2% plus the interest rate otherwise applicable thereto.

Defaulting Lender: any Lender that, as determined by Agent, (a) has failed to perform any funding obligations hereunder, and such failure is not cured within three Business Days; (b) has notified Agent or any Borrower that such Lender does not intend to comply with its funding obligations hereunder or has made a public statement to the effect that it does not intend to comply with its funding obligations hereunder or under any other credit facility; (c) has failed, within three Business Days following request by Agent, to confirm in a manner satisfactory to Agent that such Lender will comply with its funding obligations hereunder; or (d) has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding (including reorganization, liquidation, or appointment of a receiver, custodian, administrator or similar Person by the Federal Deposit Insurance Corporation or any other regulatory authority), or Bail-In Action; provided, however, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority’s ownership of an equity interest in such Lender or parent company unless the ownership provides immunity for such Lender from jurisdiction of courts within the United States or from enforcement of judgments or writs of attachment on its assets, or permits such Lender or Governmental Authority to repudiate or otherwise to reject such Lender’s agreements.

Demand Date: as defined in **Section 5.11.7(h)**.

Deposit Account: as defined in the UCC (and/or with respect to any Deposit Account located in Canada and/or Germany and/or the U.K., any bank account with a deposit function).

Deposit Account Control Agreements: the deposit account control agreements to be executed by each institution maintaining a Deposit Account for an Obligor, in favor of Agent, for the benefit of Secured Parties, and shall include, in the case of any Deposit Accounts domiciled outside the United States or Canada, notice to and acknowledgement from the relevant institution maintaining that Deposit Account.

Designated Jurisdiction: a country or territory that is the target of Sanctions.

Designated Obligations: as defined in **Section 14.11(a)(v)**.

Dilution Percent: the percent, for any period determined by Agent, equal to (a) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos and other dilutive items with respect to Accounts of the U.S. Borrowers (in the case of the U.S. Dilution Reserve), the Canadian Borrower (in the case of the Canadian Dilution Reserve), the German Borrower (in the case of the German Dilution Reserve), or the U.K. Borrower (in the case of the U.K. Dilution Reserve), divided by (b) gross sales of the U.S. Borrowers (in the case of the U.S. Dilution Reserve), of the Canadian Borrower (in the case of the Canadian Dilution Reserve), of the German Borrower (in the case of the German Dilution Reserve), or of the U.K. Borrower (in the case of the U.K. Dilution Reserve).

Direction: as defined in **Section 5.9.2(a)(ii)(A)**.

Distribution: any declaration or payment of a distribution, interest or dividend on any Equity Interest (other than payment-in-kind); any distribution, advance or repayment of Debt to a holder of Equity Interests; or any purchase, redemption, or other acquisition or retirement for value of any Equity Interest, in each case, other than (a) the purchase of a customary capped call transaction in connection with convertible debt securities of Parent otherwise permitted to be incurred under this Agreement and (b) payments of interest with respect to convertible debt securities of Parent otherwise permitted to be incurred under this Agreement.

Document: as defined in the UCC (and/or with respect to any Document of a Canadian Subsidiary, a “document of title” as defined in the PPSA).

Dollars: lawful money of the United States.

Dollar Equivalent: on any date, with respect to any amount denominated in Dollars, such amount in Dollars, and with respect to any stated amount in a currency other than Dollars, the amount of Dollars that Agent determines (which determination shall be conclusive and binding absent manifest error) would be necessary to be sold on such date at the applicable Exchange Rate to obtain the stated amount of the other currency.

Dominion Account: with respect to the U.S. Domiciled Obligors, a U.S. Dominion Account; with respect to the Canadian Domiciled Obligors, a Canadian Dominion Account; with respect to the German Domiciled Obligors, a German Dominion Account; and with respect to the U.K. Domiciled Obligors, a U.K. Dominion Account.

Dominion Trigger Period: the period (a) commencing on the day that an Event of Default occurs, or Net Excess Availability is less than: (i) an amount equal to 10% of the Maximum Facility Amount for five (5) consecutive Business Days, or (ii) 7.5% of the Maximum Facility Amount at any time, and (b) continuing until, during the preceding 30 consecutive days, no Event of Default has existed and Net Excess Availability has been greater than, at all times, an amount equal to 10% of the Maximum Facility Amount. Agent will endeavor to provide copies of each notice of control Agent sends to any Dominion Account bank to Borrower Agent substantially contemporaneously with providing such notice to such Dominion Account bank;

provided, however, that the failure of Agent to provide a copy of any such notice to Borrower Agent shall not give rise to any liability on the part of Agent and shall not affect the validity and effectiveness of such notice.

Early Opt-in Effective Date: 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 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: the occurrence of:

1. a determination by the Agent, or a notification by the Borrower Agent to the Agent that the Borrower Agent has made a determination, that U.S. dollar-denominated syndicated credit facilities currently being executed, or that include language similar to that contained in **Section 3.6(b)**, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, and
2. the joint election by the Agent and the Borrower Agent to replace LIBOR with a Benchmark Replacement and the provision by the Agent of written notice of such election to the Lenders.

EBITDA: (i) determined on a consolidated basis for Parent and Subsidiaries, net income, calculated before (without duplication): interest expense; non-cash stock compensation expense; provision for income taxes; depreciation and amortization expense; other non-cash expenses (except to the extent representing a reserve or accrual for cash expenses in another period) of Borrower Agent and its Subsidiaries (including, without limitation, non-cash amounts related to any downsizing, restructuring or partial close of any operations of Borrower Agent or any of its Subsidiaries); gains or losses arising from the sale of capital assets; gains arising from the write-up of assets; any extraordinary, exceptional, unusual, special or infrequent gain, loss or charge not in the ordinary course of business; any gains on account of a transaction which results in Parent receiving Top Golf Proceeds; and fees and expenses incurred or any amortization thereof in connection with any acquisition, investment, recapitalization, asset disposition, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of any debt instrument (in each case, including any such transaction consummated prior to the Fourth Amendment to Fourth Amended and Restated Effective Date and any such transaction undertaken but not completed) and any charges or nonrecurring merger costs incurred during such period as a result of any such transaction, in each case, to the extent not otherwise prohibited hereunder (in each case of each of the foregoing, to the extent included in determining net income) plus (ii) Parent's equity in the net income of any Excluded Subsidiary up to an amount equal to the aggregate amount of cash actually distributed by such Excluded Subsidiary to Parent or any Subsidiary as a dividend or other distribution during the applicable period.

EEA Financial Institution: (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country that is a parent of an institution described in

clause (a) above; or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in the foregoing clauses and is subject to consolidated supervision with its parent.

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

EEA Resolution Authority: any public administrative authority or any Person entrusted with public administrative authority of an EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

Eligible Account: an Account owing to a Borrower that arises in the Ordinary Course of Business from the sale of goods or rendition of services, is payable in Dollars (or, in the case of: (x) an Account owing to the Canadian Borrower, in Dollars or Canadian Dollars, (y) an Account owing to the U.K. Borrower, in Dollars, Euros, or British Pounds, and (z) an Account owing to the German Borrower, in Dollars, Euros, Swiss Francs, Swedish Kroner, Danish Kroner, Norwegian Kroner, or British Pounds), and is deemed by Agent, in its Credit Judgment, to satisfy the criteria set forth below. No Account shall be an Eligible Account if (a) it is unpaid for more than 60 days after the original due date (or up to an additional 30 days as Agent may approve on an Account Debtor by Account Debtor basis in its sole discretion), or it is unpaid for more than 150 days after the original invoice date (or up to an additional 30 days as Agent may approve on an Account Debtor by Account Debtor basis in its sole discretion); (b) 50% or more of the Accounts owing by the Account Debtor are not Eligible Accounts under the foregoing clause; (c) when aggregated with other Accounts owing by the Account Debtor and such Account Debtor's Affiliates, it exceeds 15% of the aggregate Eligible Accounts (or such higher percentage as Agent may establish for the Account Debtor and its Affiliates from time to time); provided that, with respect to Accounts owing by Dick's Sporting Goods, such percentage shall be 30%; (d) it does not conform with a covenant or representation herein; (e) it is owing by a creditor or supplier, or is otherwise subject to a potential offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance (but ineligibility shall be limited to the amount thereof); (f) an Insolvency Proceeding has been commenced by or against the Account Debtor; or the Account Debtor has failed, has suspended or ceased doing business, is liquidating, dissolving or winding up its affairs, or is not Solvent, or is the target of any Sanction or on any specially designated nationals list maintained by OFAC; or the Borrower that originated such Account is not able to bring suit or enforce remedies against the Account Debtor through judicial process; (g) with respect to Accounts owing to: (i) the U.S. Borrowers or the Canadian Borrower, the Account Debtor is organized or has its principal offices or assets outside the United States or Canada, (ii) the German Borrower, the Account Debtor is organized or has its principal offices or assets outside of the United States, Canada, Switzerland, Norway, or any country which was a Participating Member State of the European Union prior to May 1, 2004, and (iii) the U.K. Borrower, the Account Debtor is organized or has its principal offices or assets outside of England, Wales, Scotland, Canada or Northern Ireland (other than a U.K. Eligible Foreign Account); (h) it is owing by a Government Authority, unless the Account Debtor is the United States or any department, agency or instrumentality thereof and the Account has been assigned to Agent in compliance with the Assignment of Claims Act or the Account Debtor is the federal government of Canada or any Crown corporation, department, agency or instrumentality of Canada and the Canadian Borrower has complied, to the satisfaction of Agent, with the Financial Administration Act or other Applicable Law; (i) it is not subject to a duly perfected, first priority (in the case of U.K. Accounts, expressed as a fixed charge) Lien in favor of Agent, or is subject to any other Lien; (j) the goods giving rise to it have not been delivered to the Account Debtor, the services giving rise to it have not been accepted by the Account Debtor, or it otherwise does not represent a final sale; (k) it is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment; (l) its payment has been extended or the Account Debtor has made a partial payment; (m) it arises from a sale to an Affiliate, from a

sale on a cash-on-delivery, bill-and-hold, sale-or-return, sale-on-approval, consignment, or other repurchase or return basis, or from a sale for personal, family or household purposes; (n) it represents a progress billing or retainage, or relates to services for which a performance, surety or completion bond or similar assurance has been issued; or (o) it includes a billing for interest, fees or late charges, but ineligibility shall be limited to the extent thereof. In calculating delinquent portions of Accounts under clauses (a) and (b), credit balances more than 60 days old (or such later date as Agent may approve in its sole discretion) will be excluded.

The criteria for Eligible Accounts set forth above may only be changed and any new criteria for Eligible Accounts may only be established by Agent in its Credit Judgment, based on: (i) an event, condition or other circumstance arising after the date hereof, (ii) an event, condition or other circumstance existing on the date hereof to the extent that the Agent has no knowledge thereof or its effect on the Account, or (iii) facts, information, or circumstances provided to or learned by Agent in the course of its administration of the facility, including, without limitation, in connection with field exams, audits, reports and other information received, and observance of Collateral and the Obligors' business performance, in any case under clauses (i), (ii) or (iii), which adversely affects or would reasonably be expected to adversely affect the Accounts as determined by Agent in its Credit Judgment.

Eligible Assignee: a Person that is (i) a Lender or a U.S.-based Affiliate of a Lender, (ii) if such Person is to hold U.S. Facility Obligations, an Approved Fund; (iii) if such Person is to hold Canadian Facility Obligations, such person is at all times, other than during any Event of Default, a Canadian Qualified Lender and an Affiliate or branch of a U.S. Lender; (iv) if such Person is to hold U.K. Facility Obligations, such person is at all times, other than during any Event of Default, a U.K. Qualified Lender and an Affiliate of a U.S. Lender; (v) if such Person is to hold German Facility Obligations, such person is at all times, other than during any Event of Default, a U.S. Lender or an Affiliate or branch of a U.S. Lender, (vi) any other financial institution approved by Agent and Borrower Agent (which approval by Borrower Agent shall not be unreasonably withheld or delayed), that is organized under the laws of the United States or Canada or any state, province or district thereof, has total assets in excess of \$5 billion, extends asset-based lending facilities in its Ordinary Course of Business and whose becoming an assignee would not constitute a prohibited transaction under Section 4975 of the Code or any other Applicable Law; and (vii) during any Event of Default, any Person acceptable to Agent in its discretion.

Eligible Costco Inventory: Inventory consisting of finished goods owned by a U.S. Borrower and consigned to Costco that would otherwise be Eligible Inventory if it were not consigned to a Person in violation of clause (h)(i) of the definition of "Eligible Inventory" and either (a) Costco has delivered to Agent a Lien Waiver with respect to such Inventory, or (b) Costco is rated BBB- (or better) by S&P and Baa3 (or better) by Moody's as of the applicable date of determination.

Eligible Inventory: Inventory owned by a Borrower that Agent, in its Credit Judgment, deems to satisfy the criteria set forth below. No Inventory shall be Eligible Inventory unless it (a) is finished goods or raw materials, and not packaging or shipping materials, labels, samples, display items, bags, replacement parts or manufacturing supplies; (b) is not held on consignment, nor subject to any deposit or down payment; (c) is in new and saleable condition and is not damaged, defective, shopworn or otherwise unfit for sale; (d) is not slow-moving (as determined by Agent from time to time), perishable, obsolete or unmerchantable, and does not constitute returned or repossessed goods; (e) meets all standards imposed by any Governmental Authority, has not been acquired from a Person that is the target of any Sanction or on any specially designated nationals list maintained by OFAC, and does not constitute hazardous materials under any Environmental Law; (f) conforms with the covenants and representations herein; (g) is subject to Agent's duly perfected, first priority Lien which must, (i) in the case of any Inventory

of the U.K. Borrower located in Germany, be a German law governed Lien pursuant to a security transfer agreement on substantially the same terms as the German Security Transfer Agreement and (ii) in the case of any Inventory of the German Borrower located in the United Kingdom, be an English law governed Lien pursuant to a floating charge on substantially the same terms as the U.K. Security Agreements, and no other Lien; (h) (i) other than Eligible Costco Inventory, is not consigned to any Person, and (ii) other than Eligible In-Transit Inventory, is within: (A) the continental United States, in the case of Inventory of a U.S. Borrower, (B) Canada, in the case of Inventory of the Canadian Borrower, (C) Germany, or, with the consent of the Agent, the United Kingdom in the case of Inventory of the German Borrower, and (D) the United Kingdom, or, with the consent of the Agent, Germany in the case of Inventory of the U.K. Borrower; (i) other than Eligible In-Transit Inventory, is not in transit unless it is, in the case of: (i) Inventory of a U.S. Borrower, in transit between facilities in the United States of the U.S. Borrowers, (ii) Inventory of the Canadian Borrower, in transit between facilities in Canada of the Canadian Borrower, (iii) Inventory of the German Borrower, in transit between facilities in Germany of the German Borrower, and (iv) Inventory of the U.K. Borrower, in transit between facilities in England, Wales, Scotland or Northern Ireland of the U.K. Borrower; (j) is not subject to any warehouse receipt or negotiable Document; (k) is not subject to any License or other arrangement that restricts such Borrower's or Agent's right to dispose of such Inventory, unless Agent has received an appropriate Lien Waiver; (l) is not located on leased premises or in the possession of a warehouseman, processor, repairman, mechanic, shipper, freight forwarder or other Person, unless the lessor or such Person has delivered a Lien Waiver or an appropriate U.S. Rent and Charges Reserve (in the case of the U.S. Borrowers), a Canadian Rent and Charges Reserve (in the case of the Canadian Borrower), a German Rent and Charges Reserve (in the case of the German Borrower), or a U.K. Rent and Charges Reserve (in the case of the U.K. Borrower) has been established; (m) is reflected in the details of a current perpetual inventory report and (n) is not located at a retail location of a German Borrower.

The criteria for Eligible Inventory set forth above may only be changed and any new criteria for Eligible Inventory may only be established by Agent in its Credit Judgment, based on: (i) an event, condition or other circumstance arising after the date hereof, (ii) an event, condition or other circumstance existing on the date hereof to the extent that the Agent has no knowledge thereof or its effect on Inventory, or (iii) facts, information, or circumstances provided to or learned by Agent in the course of its administration of the facility, including, without limitation, in connection with field exams, audits, reports and other information received, and observance of Collateral and the Obligors' business performance, in any case under clauses (i), (ii) or (iii), which adversely affects or would reasonably be expected to adversely affect the Inventory as determined by Agent in its Credit Judgment.

Eligible In-Transit Inventory: Inventory consisting of finished goods owned by a Borrower that would be Eligible Inventory if it were not subject to a Document and in transit from a foreign location to a location of a Borrower within the United States, Canada, England, or Germany, and that Agent, in its Credit Judgment, deems to be Eligible In-Transit Inventory, and thus to be Eligible Inventory. Without limiting the foregoing, no Inventory shall be Eligible In-Transit Inventory unless it (a) is finished goods, (b) has been delivered to a carrier in a foreign port or foreign airport for receipt by a Borrower in the United States (in the case of the U.S. Borrowers) or Canada (in the case of the Canadian Borrower) or England, Wales, Scotland or Northern Ireland (in the case of the U.K. Borrower) or Germany (in the case of the German Borrower) within sixty (60) days of the date of determination, but which has not yet been received by the applicable Borrower, (c) is subject to a negotiable Document showing Agent (or, with the consent of Agent, the applicable Borrower) as consignee, which Document is in the possession of Agent or such other Person as Agent shall approve; (d) is fully insured in a manner satisfactory to Agent; (e) has been identified to the applicable sales contract and title has passed to the applicable Borrower; (f) is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against

the Inventory, or with respect to whom any Borrower is in default of any obligations; (g) is subject to purchase orders and other sale documentation satisfactory to Agent; (h) is shipped by a common carrier that is not affiliated with the vendor and is not the target of any Sanction or on any specially designated nationals list maintained by OFAC; and (i) is being handled by a customs broker, freight-forwarder or other handler that has delivered a Lien Waiver.

Eligible Real Estate: Real Estate owned by a U.S. Borrower that is located at 2180 Rutherford Road, Carlsbad, CA 92008, and that Agent, in its Credit Judgment, deems to satisfy the criteria set forth in the subsequent sentence. Such Real Estate shall not be Eligible Real Estate unless: (a) a first priority Mortgage, in substantially the form attached hereto as **Exhibit E**, has been executed, delivered and recorded with respect to such Real Estate, and (b) Agent shall have received the Related Real Estate Documents with respect to such Real Estate.

EMU Legislation: the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

Enforcement Action: any action to enforce any Obligations (other than Secured Bank Product Obligations) or Loan Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, exercise of any right to vote or act in an Obligor's Insolvency Proceeding, or otherwise).

Environmental Laws: all Applicable Laws (including all programs, permits and guidance promulgated by regulatory agencies) relating to public health (but excluding occupational safety and health, to the extent regulated by OSHA) or the protection or pollution of the environment, including CERCLA, RCRA, CWA, the Environmental Protection Act (Ontario) and similar Applicable Laws of foreign jurisdictions.

Environmental Notice: a notice (whether written or oral) from any Governmental Authority or other Person of any possible noncompliance with, investigation of a possible violation of, litigation relating to, or potential fine or liability under any Environmental Law, or with respect to any Environmental Release, environmental pollution or hazardous materials, including any complaint, summons, citation, order, claim, demand or request for correction, remediation or otherwise.

Environmental Release: a release as defined in CERCLA or under any other Environmental Law.

Equity Interest: the interest of any (a) shareholder in a corporation; (b) partner in a partnership (whether general, limited, limited liability or joint venture); (c) member in a limited liability company; or (d) other Person having any other form of equity security or ownership interest.

ERISA: the Employee Retirement Income Security Act of 1974.

ERISA Affiliate: any trade or business (whether or not incorporated) under common control with an Obligor 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: (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it 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 Obligor or 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 Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) any Obligor or ERISA Affiliate fails to meet any funding obligations with respect to any Pension Plan or Multiemployer Plan, or requests a minimum funding waiver; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (g) 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 Obligor or ERISA Affiliate.

EU Bail-In Legislation Schedule: the EU Bail-In Legislation Schedule published by the Loan Market Association, as in effect from time to time.

EU Regulation: as defined in **Section 9.1.25**.

Euro or €: the lawful currency of the Participating Member States introduced in accordance with EMU Legislation.

Event of Default: as defined in **Section 11**.

Excess Amount: as defined in **Section 5.13**.

Exchange Rate: on any date of determination, with respect to Canadian Dollars, British Pounds, Euros, Swiss Francs or another foreign currency in relation to Dollars, the Spot Rate for Canadian Dollars, British Pounds, Euros, Swiss Francs or such other foreign currency, as applicable.

Excluded Intellectual Property: any Intellectual Property: (i) owned by travisMathew or Travis Mathew Retail as of the Third Amended Original Closing Date; (ii) hereafter developed by travisMathew or Travis Mathew Retail (and unrelated to any Intellectual Property of the Obligors (other than travisMathew or Travis Mathew Retail) as of the Third Amended Original Closing Date); or (iii) related to the brands of travisMathew or Travis Mathew Retail as of the Third Amended Original Closing Date.

“Excluded Property” shall mean

(1) any permit or license issued by a Governmental Authority to any U.S. Domiciled Obligor or any agreement to which any U.S. Domiciled Obligor is a party, in each case, only to the extent and for so long as the terms of such permit, license or agreement or any requirement of law applicable thereto, validly prohibit the creation by such U.S. Domiciled Obligor of a security interest in such permit, license or agreement in favor of the Agent (after giving effect to Sections 9-406(d), 9-407(a), 9-408(a) or 9-409 of the UCC (or any successor provision or provisions) or any other applicable law (including the U.S. Bankruptcy Code) or principles of equity);

(2) assets owned by any U.S. Domiciled Obligor on the date hereof or hereafter acquired and any proceeds thereof that are subject to a Lien permitted by **Section 10.2.1(j)** or **Section 10.2.1(p)** of the Credit Agreement to the extent and for so long as the contract or other agreement in which such Lien is granted (or the documentation providing for the Capital Lease, Off-Balance Sheet Liability or purchase money obligation subject to such Lien) validly prohibits the creation of any other Lien on such assets and proceeds;

(3) any Equity Interests of a Foreign Subsidiary to the extent and for so long as the pledge thereof to the Agent would constitute an investment of earnings in United States property under Section 956 (or a successor provision) of the Code, which investment would or could reasonably be expected to trigger a material increase in the net income of a United States shareholder of such Foreign Subsidiary pursuant to Section 951 (or a successor provision) of the Code, as reasonably determined by the Agent; provided that, this clause (c) shall not apply to (a) voting stock of any Subsidiary which is a first-tier controlled foreign corporation (as defined in Section 957(a) of the Code) representing 65% of the total voting power of all outstanding voting stock of such Subsidiary and (b) 100% of the Equity Interests not constituting voting stock of any such Subsidiary, except that any such Equity Interests constituting “stock entitled to vote” within the meaning of Treasury Regulation Section 1.956-2(c)(2) shall be treated as voting stock for purposes of this clause (c);

(4) any intent-to-use trademark application to the extent and for so long as creation by a U.S. Domiciled Obligor of a security interest therein would result in the loss by such U.S. Domiciled Obligor of any material rights therein;

(5) any fee owned real property (other than Material Real Property and the fee-owned real property located at 2180 Rutherford Road, Carlsbad, CA 92008), and any leasehold rights and interests in such real property;

(6) Margin Stock;

(7) motor vehicles and other assets subject to certificates of title other than to the extent a security interest therein can be perfected by a UCC filing;

(8) pledges and security interests prohibited by applicable law, rule, regulation or contractual obligation after giving effect to the anti-assignment provisions of the UCC and other applicable law; and

(9) those assets as to which the Agent and the Borrowers reasonably agree that the cost or other consequence (including any adverse tax consequences to the Borrowers or any of their Subsidiaries) of obtaining such a security interest or perfection thereof are excessive in relation to the value afforded thereby;

provided, however, that Excluded Property shall not include any Proceeds, substitutions or replacements of any Excluded Property referred to in clause (a), (b), (c), (d), (e), (f), (g), (h) or (i) (unless such Proceeds, substitutions or replacements would constitute Excluded Property referred to in clauses (a), (b), (c), (d), (e), (f), (g), (h) or (i)).

Excluded Stock Repurchases: any Common Stock Repurchases made, or dividends paid on Parent’s common stock, in accordance with Section **10.2.6(g)**.

Excluded Subsidiary: (i) for the period commencing on the Fourth Amendment to Fourth Amended and Restated Effective Date and ending on the sooner to occur of (A) the consummation of the Top Golf Acquisition, and (B) the date that is five (5) Business Days after the Termination Date (as defined in the Top Golf Acquisition Agreement) (or such later date as agreed by ~~Administrative~~ Agent in its sole discretion), 51 Steps, Inc., a Delaware corporation (“Merger Sub”), and (ii) effective immediately upon the consummation of the Top Golf Acquisition, each of Top Golf and each entity at least 50% of whose voting securities or Equity Interests are on such date or thereafter owned by Top Golf (including indirect ownership by Top Golf through other entities in which Top Golf directly or indirectly owns at least 50% of the voting securities or Equity Interests); provided, that (a) no Subsidiary of Parent in existence as of

the Fourth Amendment to Fourth Amended and Restated Effective Date (other than Merger Sub) will be an Excluded Subsidiary, and (b) no Obligor will be an Excluded Subsidiary at any time.

Excluded Swap Obligation: with respect to an Obligor, each Swap Obligation as to which, and only to the extent that, such Obligor's guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Obligor does not constitute an "eligible contract participant" as defined in the Act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Obligor and all guarantees of Swap Obligations by other Obligors) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a Hedging Agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Obligor.

Excluded Tax: with respect to Agent, any Lender, any Issuing Bank or any other recipient of a payment to be made by or on account of any Obligation, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located; (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Borrower Agent is located; (c) any backup withholding tax required by the Code to be withheld from amounts payable to a Lender that has failed to comply with **Section 5.10**; (d) in the case of a Foreign Lender, any United States withholding tax that is (i) required pursuant to laws in force at the time such Lender becomes a Lender (or designates a new Lending Office) hereunder, or (ii) attributable to such Lender's failure or inability (other than as a result of a Change in Law) to comply with **Section 5.10**, except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from Borrowers with respect to such withholding tax; and (e) any U.S. federal withholding Taxes imposed under FATCA.

Expeditors: Expeditors International of Washington, Inc., a Washington corporation.

Existing Letters of Credit: those letter(s) of credit described on **Schedule E-1**.

Extraordinary Expenses: all costs, expenses or advances that Agent or any Lender may incur during a Default or Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Agent's Liens with respect to any Collateral), Loan Documents, Letters of Credit or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of Agent or any Lender in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations; and (g) Protective Advances. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses. Notwithstanding the foregoing, absent a conflict of interest among Lenders, Extraordinary Expenses shall not include (i) legal fees for more than one

counsel to the Lenders (plus any local counsel deemed necessary by the Lenders) in addition to any counsel engaged by Agent or (ii) other costs, expenses or advances incurred by any Lender to the extent unreasonably duplicative of such costs, expenses or advances incurred by the Agent.

Facility Termination Date: May 17, 2024.

FATCA: Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantially 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.

Federal Funds Rate: (a) the weighted average of interest rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on the applicable Business Day (or on the preceding Business Day, if the applicable day is not a Business Day), as published by the Federal Reserve Bank of New York on the next Business Day; or (b) if no such rate is published on the next Business Day, the average rate (rounded up, if necessary, to the nearest 1/8 of 1%) charged to Bank of America on the applicable day on such transactions, as determined by Agent; provided, that in no event shall the Federal Funds Rate be less than zero.

Fee Letters: each fee letter agreement between Agent and Borrowers (or any of them).

Fifth Amendment to Fourth Amended and Restated Loan Agreement: that certain Fifth Amendment to Fourth Amended and Restated Loan and Security Agreement dated as of the Fifth Amendment to Fourth Amended and Restated Effective Date, by and among the Borrowers, the Agent and the Lenders and other parties thereto.

Fifth Amendment to Fourth Amended and Restated Effective Date: December 16, 2021.

Financial Administration Act: the Financial Administration Act (Canada) and all regulations and schedules thereunder.

First Amendment to Second Amended and Restated Effective Date: June 11, 2012.

First Amendment to Third Amended and Restated Effective Date: November 29, 2018.

Fiscal Quarter: each period of three months, commencing on the first day of a Fiscal Year.

Fiscal Year: the fiscal year of Parent and its Subsidiaries for accounting and tax purposes, ending on December 31 of each year.

Fixed Charge Coverage Ratio: the ratio, determined on a consolidated basis for Parent and its Subsidiaries for the most recent twelve calendar months, of (a) EBITDA minus Capital Expenditures (except those financed with Borrowed Money other than Revolver Loans or Term Loans) and cash taxes paid (which amount may not be less than zero), to (b) Fixed Charges; provided, however, that solely for the purposes of calculating the Fixed Charge Coverage Ratio under **Section 10.3**, Fixed Charges shall not include any Excluded Stock Repurchases.

Fixed Charges: the sum of cash interest expense, principal payments made on Borrowed Money (other than voluntary prepayments, prior to the scheduled maturity thereof, of Debt permitted under clauses (r) or (s) of **Section 10.2.3**), and Distributions made (other than Distributions made to Obligor to the extent permitted hereunder).

FLSA: the Fair Labor Standards Act of 1938.

Flood Laws: the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973 and related laws.

Foreign Base Rate: for any day, the reference rate for German Base Rate Loans or U.K. Base Rate Loans, being a fluctuating rate of interest per annum equal to the rate of interest in effect for such day as announced from time to time by the local branch of Bank of America in the jurisdiction in which such currency is funded as its “base rate” with respect to such currency; provided, that in no event shall the Foreign Base Rate be less than ~~1.0%~~zero. Any change in such rate shall take effect at the opening of business on the day of such change.

Foreign Lender: any Lender that is (a) in the case of the U.S. Borrowers, organized under the laws of a jurisdiction other than the laws of the United States, or any state or district thereof, (b) in the case of the Canadian Borrower, not a Canadian Qualified Lender, and (c) in the case of the U.K. Borrower, not a U.K. Qualified Lender.

Foreign Plan: any employee benefit plan or arrangement (a) maintained or contributed to by any Obligor or Subsidiary that is not subject to the laws of the United States or Canada; or (b) mandated by a government other than the United States or Canada for employees of any Obligor or Subsidiary.

Foreign Subsidiary: a Subsidiary of Parent that is a “controlled foreign corporation” under Section 957 of the Code.

Fourth Amendment to Fourth Amended and Restated Credit Agreement: that certain Fourth Amendment to Fourth Amended and Restated Credit Agreement dated as of the Fourth Amendment to Fourth Amended and Restated Effective Date by and among Parent, the other Obligors party thereto, Agent and the Lenders party thereto.

Fourth Amendment to Fourth Amended and Restated Effective Date: October 27, 2020.

Fronting Exposure: a Defaulting Lender’s Pro Rata share of U.S. LC Obligations, Canadian LC Obligations, German LC Obligations, U.K. LC Obligations, U.S. Swingline Loans, Canadian Swingline Loans, German Swingline Loans, or U.K. Swingline Loans, as applicable, except to the extent allocated to other Lenders under **Section 4.2**.

FSCO: the Financial Services Commission of Ontario or like body in any other province of Canada and any other Governmental Authority succeeding to the functions thereof.

Full Payment: with respect to any Obligations, (a) the full and indefeasible cash payment thereof in the applicable currency required hereunder, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); (b) if such Obligations are LC Obligations or inchoate or contingent in nature, Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Agent in its discretion, in the amount of required Cash Collateral); and (c) a release of any Claims of Obligors against Agent, Lenders and Issuing Banks arising on or before the payment date. No Loans shall be deemed to have been paid in full until all Commitments related to such Loans have expired or been terminated.

Funded Debt: as of any date of determination, all Debt for borrowed money of Parent and its Subsidiaries, determined on a consolidated basis in accordance with GAAP.

GAAP: generally accepted accounting principles in effect in the United States from time to time.

General Intangibles: as defined in the UCC (and/or with respect to any General Intangible of a Canadian Subsidiary, an “intangible” as defined in the PPSA).

German Account Pledge Agreement: each German law account pledge agreement executed and delivered by a relevant German Facility Obligor in favor of the Agent, substantially in the form of **Exhibit F-1**.

German Accounts Formula Amount: (a) as of any date of determination within the period beginning on May 1 through and including October 31 of each Fiscal Year, 85% of the Value of Eligible Accounts of the German Borrower; and (b) as of any date of determination within the period beginning on November 1 through and including April 30 of each Fiscal Year, 90% of the Value of Eligible Accounts of the German Borrower.

German Availability: as of any date of determination, the German Borrowing Base as of such date of determination minus the aggregate principal amount of all German Revolver Loans outstanding on such date of determination.

German Availability Reserve: the sum (without duplication) of (a) the Inventory Reserve with respect to the German Borrower's Inventory; (b) the German Rent and Charges Reserve; (c) the German LC Reserve; (d) the German Bank Product Reserve; (e) all accrued Royalties of the German Domiciled Obligors, whether or not then due and payable by a German Domiciled Obligor; (f) the aggregate amount of liabilities secured by Liens upon German Facility Collateral that are senior to the Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (g) the German Dilution Reserve; (h) the German Top Golf Reserve; (i) a reserve for fees payable to an insolvency administrator pursuant to the Applicable Law in Germany; (j) a reserve on account of any form of retention of title arrangements; (k) the amount of any applicable sales tax including any applicable VAT; and (l) such additional reserves, in such amounts and with respect to such matters, as Agent in its Credit Judgment may elect to impose from time to time with respect to the German Borrowing Base.

German Bank Product Reserve: the aggregate amount of reserves established by Agent from time to time in its discretion in respect of Secured Bank Product Obligations owing by the German Domiciled Obligors and their Subsidiaries.

German Base Rate Loan: a German Revolver Loan, or portion thereof, funded in Dollars and bearing interest calculated by reference to the Foreign Base Rate.

German Borrower: as defined in the preamble to this Agreement.

German Borrowing Base: on any date of determination, an amount equal to the lesser of (a) the result of: (i) the Maximum German Facility Amount, minus (ii) the German LC Reserve, minus (iii) the German Top Golf Reserve; or (b) the result of: (i) the German Accounts Formula Amount, plus (ii) the German Inventory Formula Amount, plus (iii) 100% of the amount of German Pledged Cash, minus (iv) the German Availability Reserve.

German Borrowing Base Certificate: a certificate, in form and substance satisfactory to Agent, by which the German Borrower certifies calculation of the German Borrowing Base.

German Cash Collateral Account: a demand deposit, money market or other account established by Agent at Bank of America, N.A. or such other financial institution as Agent may

select in its discretion, which account shall be for the benefit of the German Facility Secured Parties and shall be subject to Agent's Liens securing the German Facility Obligations.

German Dilution Reserve: as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts of the German Borrower by 1% for each whole percentage point (or portion thereof) by which the Dilution Percent is in excess of 5.0%.

German Domiciled Obligor: each German Subsidiary which is at any time an Obligor, and "German Domiciled Obligors" means all such Persons, collectively.

German Dominion Account: a special account established by the German Borrower at Bank of America, N.A. or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes during any Dominion Trigger Period.

German Expeditors Reserve: as of any date of determination, the aggregate amount of accounts payable owed by any German Facility Obligor to Expeditors, as determined by Agent in its Credit Judgment.

German Facility Collateral: all Collateral that now or hereafter secures (or is intended to secure) any of the German Facility Obligations, including Property of each German Domiciled Obligor, each U.S. Domiciled Obligor, each U.K. Domiciled Obligor and each Canadian Domiciled Obligor.

German Facility Guarantee: each guarantee agreement (including this Agreement) at any time executed by a German Facility Guarantor in favor of Agent guaranteeing all or any portion of the German Facility Obligations.

German Facility Guarantor: Parent, each U.K. Subsidiary, each Canadian Subsidiary, each U.S. Subsidiary (other than uPlay unless uPlay becomes a Guarantor in accordance with Section 10.2.15), each German Subsidiary, and each other Person (if any) who guarantees payment and performance of any German Facility Obligations.

German Facility Obligations: all Obligations of the German Facility Obligors (excluding, for the avoidance of doubt, the Obligations of the U.S. Domiciled Obligors as guarantors of any U.S. Facility Obligations).

German Facility Obligor: each of the German Borrower or any German Facility Guarantor, and "German Facility Obligors" means all of such Persons, collectively.

German Facility Secured Parties: the Agent, the German Issuing Bank, the German Lenders and the Secured Bank Product Providers who provide Bank Products to the German Facility Obligors and their Subsidiaries.

German Global Assignment: each German global assignment executed and delivered by a relevant German Facility Obligor in favor of the Agent, substantially in the form of **Exhibit F-2**.

German Guarantor: as defined in **Section 5.11.7**.

German Inventory Formula Amount: as of any date of determination, the lesser of (a) the sum of (i) with respect to Eligible Inventory that has been owned by the German Borrower for less than one (1) calendar year as of the applicable date of determination, (A) for the period beginning on March 1 through and including September 30 of each Fiscal Year, 65% of the Value of such German Borrower's Eligible Inventory, (B) for the period beginning on October 1

through and including February 28 (or February 29, as applicable) of each Fiscal Year, 75% of the Value of such German Borrower's Eligible Inventory, plus (ii) with respect to Eligible Inventory that has been owned by the German Borrower for more than one (1) calendar year, as of the applicable date of determination, 50% of the Value of such German Borrower's Eligible Inventory; or (b) 85% of the NOLV Percentage of the Value of the German Borrower's Eligible Inventory. Notwithstanding the foregoing, the aggregate amount of the German Inventory Formula Amount which may be attributed to Eligible In-Transit Inventory (the "German In-Transit Availability") shall not exceed \$2,000,000; provided that, the German In-Transit Availability (after taking into effect the previous proviso) shall be reduced by the German Expeditors Reserve if, as of any date of determination, either (I) German Net Excess Availability is less than 10% of the Maximum German Facility Amount, or (II) there are any accounts payable owed by any German Facility Obligor to Expeditors which are aged in excess of historical levels (except in cases of good faith disputes).

German Issuing Bank: Bank of America or an Affiliate of Bank of America.

German LC Obligations: the sum (without duplication) of (a) all amounts owing by the German Borrower for any drawings under Letters of Credit; (b) the stated amount of all outstanding Letters of Credit issued for the account of the German Borrower, which if such Letter of Credit is denominated in a currency other than Dollars, British Pounds, Swiss Francs or Euros, may be stated by Agent (at its option) in Dollars, British Pounds, Swiss Francs or Euros calculated at the Spot Rate; and (c) all fees and other amounts owing with respect to Letters of Credit issued for the account of the German Borrower.

German LC Reserve: the aggregate of all German LC Obligations, other than those that have been Cash Collateralized.

German Lenders: each Lender that has issued a German Revolver Commitment (provided that such Person or an Affiliate of such Person also has a U.S. Revolver Commitment).

German Letter of Credit Subline: \$2,000,000.

German Letters of Credit: any standby or documentary letter of credit issued by the German Issuing Bank for the account of the German Borrower, or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by Agent or the German Issuing Bank for the benefit of the German Borrower or any of its Subsidiaries.

German Management Confirmation: as defined in **Section 5.11.7**.

German Net Excess Availability: as of any date of determination, an amount equal to the German Availability minus the aggregate amount, if any, of all trade payables of German Domiciled Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of German Domiciled Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

German Overadvance: as defined in **Section 2.1.5**.

German Overadvance Loan: a German Revolver Loan made to the German Borrower when a German Overadvance exists or is caused by the funding thereof.

German Overadvance Loan Balance: on any date, the amount by which the aggregate German Revolver Exposure exceeds the amount of the German Borrowing Base on such date.

German Pledged Cash: the funds maintained in a blocked Deposit Account or securities account of the German Borrower subject to a Deposit Account Control Agreement or securities account control agreement, as applicable, which give Agent at all times exclusive access and control for withdrawal purposes to the exclusion of the German Borrower and precluding the German Borrower from withdrawing or otherwise giving any instructions in connection therewith and which may not be withdrawn without the Agent's prior written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such withdrawal, no Default or Event of Default shall have occurred and be continuing and (ii) immediately after such withdrawal (for clarification, including after giving effect to any recalculation of the German Borrowing Base upon giving effect to such withdrawal), German Availability would be a positive number), and which are subject to effective security documents, in form and substance satisfactory to Agent, that provide Agent with an unencumbered perfected first priority/ranking security interest in and Lien on such funds.

German Reimbursed Foreign Currency: as defined in **Section 2.5.2**.

German Reimbursement Date: as defined in **Section 2.5.2**.

German Relevant Party: any Obligor that qualifies as a resident party domiciled in Germany (*Inländer*) within the meaning of section 2 paragraph 15 German Foreign Trade Act (*Außenwirtschaftsgesetz*) (including any of its directors, managers, officers, agents and employees).

German Rent and Charges Reserve: the aggregate of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any German Facility Collateral or could assert a Lien on any German Facility Collateral; and (b) a reserve at least equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

German Required Lenders: German Lenders (subject to **Section 4.2**) having (a) German Revolver Commitments in excess of 50% of the aggregate German Revolver Commitments; and (b) if the German Revolver Commitments have terminated, German Revolver Loans and German LC Obligations in excess of 50% of all outstanding German Revolver Loans and German LC Obligations; provided, however, that the German Revolver Commitments and German Revolver Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more German Lenders, "German Required Lenders" must include at least 3 German Lenders, and (ii) less than 3 German Lenders, "German Required Lenders" must include all German Lenders.

German Revolver Commitment: for any German Lender, its obligation to make German Revolver Loans and to participate in German LC Obligations, in the applicable Available Currencies, up to the maximum principal amount shown on **Schedule 1.1**, or as hereafter determined pursuant to each Assignment and Acceptance to which it is a party, as such German Revolver Commitment may be adjusted from time to time in accordance with the provisions of **Sections 2.1.4** or **11.2**. "German Revolver Commitments" means the aggregate amount of such commitments of all German Lenders.

German Revolver Commitment Termination Date: the earliest of (a) the U.S. Revolver Commitment Termination Date (without regard to the reason therefor), (b) the date on which the Borrower Agent terminates or reduces to zero all of the German Revolver Commitments pursuant to **Section 2.1.4**, and (c) the date on which the German Revolver Commitments are terminated pursuant to **Section 11.2**.

German Revolver Exposure: on any date, an amount equal to the sum of the Dollar Equivalent of the German Revolver Loans outstanding on such date plus the German LC Obligations on such date.

German Revolver Loan: a Revolver Loan made by German Lenders to the German Borrower pursuant to **Section 2.1.1(c)**, which Revolver Loan shall be either a German Base Rate Loan (which shall be denominated in Dollars only) or a LIBOR Loan (which may be denominated in Dollars, British Pounds, Swiss Francs or Euros, as selected by the Borrower Agent), and any German Swingline Loan, German Overadvance Loan or Protective Advance made to or owed by the German Borrower.

German Revolver Notes: a promissory note executed by the German Borrower in favor of a German Lender in the form of **Exhibit A-4**, in the amount of such German Lender's German Revolver Commitment.

German Security Documents: each German Account Pledge Agreement, each German Global Assignment, each German Security Transfer Agreement and all other documents, instruments and agreements governed by the laws of Germany or England and Wales now or hereafter securing any German Facility Obligations.

German Security Transfer Agreement: each security transfer agreement executed and delivered by a relevant German Facility Obligor in favor of the Agent, substantially in the form of **Exhibit F-3**.

German Subsidiary: a Subsidiary of Parent incorporated or organized under the laws of Germany.

German Swingline Loan: any Borrowing of German Base Rate Loans funded with Agent's funds, until such Borrowing is settled among the German Lenders or repaid by the German Borrower.

German Top Golf Reserve: a reserve established by Agent at Parent's request in accordance with the definition of Top Golf Proceeds, in an initial amount as of such establishment equal to \$0. The German Top Golf Reserve (a) shall be reduced on a dollar for dollar basis for the amount expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)(ii)(D)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)(ii)(D)**; (b) may be permanently reduced from time to time upon Parent's written request to Agent; and (c) subject to Agent's written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such adjustment, no Default or Event of Default shall have occurred and be continuing, and (ii) immediately after such adjustment (for clarification, including after giving effect to any recalculation of the Canadian Borrowing Base, U.K. Borrowing Base and U.S. Borrowing Base upon giving effect to such adjustment), Canadian Availability, U.K. Availability and U.S. Availability would be a positive number), may be reallocated on a dollar for dollar basis to the Canadian Top Golf Reserve, the U.K. Top Golf Reserve and/or the U.S. Top Golf Reserve upon Parent's written request to Agent; provided, however, that once reduced pursuant to clause (b) above, the German Top Golf Reserve may not be increased. The parties agree that the German Top Golf Reserve shall never be less than zero (-0-). For clarification, the aggregate amount of the German Top Golf Reserve, the Canadian Top Golf Reserve, the U.K. Top Golf Reserve, and the U.S. Top Golf Reserve may not exceed an amount equal to the aggregate amount of Top Golf Proceeds received by Parent as reflected in all Top Golf Proceeds Notices (less any amounts Parent elects to deposit into the Top Golf Blocked Account) less all amounts expended in

connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)** and less all permanent reductions elected by Parent pursuant to clause (b) of each of the definitions of German Top Golf Reserve, Canadian Top Golf Reserve, U.K. Top Golf Reserve, and U.S. Top Golf Reserve.

German Unused Line Fee Rate: a per annum rate equal to 0.25%.

Governmental Approvals: all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

Governmental Authority: any federal, state, provincial, municipal, foreign or other governmental department, agency, commission, board, bureau, court, tribunal, instrumentality, political subdivision, or other entity or officer exercising executive, legislative, judicial, regulatory or administrative functions for or pertaining to any government or court, in each case whether it is or is not associated with the United States, a state, district or territory thereof, Canada, a province or territory thereof or any other foreign entity or government.

Guarantee: each guarantee agreement (including this Agreement, the Canadian Facility Guarantee, the German Facility Guarantee and the U.K. Facility Guarantee) executed by a Guarantor in favor of Agent guaranteeing all or any portion of any Canadian Facility Obligation, U.S. Facility Obligation, German Facility Obligation or U.K. Facility Obligation.

Guarantor Payment: as defined in **Section 5.11**.

Guarantors: Canadian Facility Guarantors, U.S. Facility Guarantors, U.K. Facility Guarantors, German Facility Guarantors, and each other Person who guarantees payment or performance of any Obligations.

Hedging Agreement: any "swap agreement" as defined in Section 101(53B)(A) of the U.S. Bankruptcy Code.

Immaterial Subsidiary: at any time, any Subsidiary of Parent that is not a Material Subsidiary.

Indemnified Taxes: Taxes other than Excluded Taxes.

Indemnitees: Agent Indemnitees, Lender Indemnitees, Issuing Bank Indemnitees and Bank of America Indemnitees.

Insolvency Proceeding: any case or proceeding or proposal commenced by or against a Person under any state, provincial, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the U.S. Bankruptcy Code, or any other insolvency, debtor relief, bankruptcy, receivership, debt adjustment law or other similar law (whether state, provincial, federal or foreign), including the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), the United Kingdom Insolvency Act 1986 and/or the Enterprise Act 2002; (b) the appointment of a Creditor Representative or other custodian for such Person or any part of its Property; (c) an assignment or trust mortgage for the benefit of creditors; or (d) in case of a German Domiciled Obligor, any petition for insolvency proceedings in respect of its assets (*Antrag auf Eröffnung eines Insolvenzverfahrens*) is filed in relation to such German Domiciled Obligor.

Intellectual Property: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights (and all associated moral and neighboring rights), mask works, industrial design rights, trademarks and service marks (together with all associated goodwill), trade names, trade dress, domain names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

Intellectual Property Claim: any claim or assertion (whether in writing, by suit or otherwise) that an Obligor's or Subsidiary's ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person's Intellectual Property.

Intercreditor Agreement: that certain Intercreditor Agreement dated as of the Second Amendment to Third Amended and Restated Effective Date between Agent and the Term Loan Collateral Agent, relating to the Debt permitted under **Section 10.2.3(s)**.

Interest Payment Date: (a) as to any Alternative Currency Daily Rate Loan, the first day of each month and the applicable maturity date set forth in this Agreement and (b) 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 months after the beginning of such Interest Period shall be Interest Payment Dates.

Interest Period: as defined in **Section 3.1.4**.

Interest Period Loans: LIBOR Loans or Canadian BA Rate Loans.

Inventory: as defined in the UCC (and/or with respect to any inventory located in Canada, as defined in the PPSA), including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in the applicable Obligor's business (but excluding Equipment).

Inventory Reserve: reserves established by Agent in its Credit Judgment to reflect factors that may negatively impact the Value of Inventory, including change in salability, obsolescence, seasonality, theft, shrinkage, imbalance, change in composition or mix, markdowns and vendor chargebacks.

Investment: 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 capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Contingent Obligation in respect of Debt of, assumption of Debt of, or purchase or other acquisition of any other Debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. 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.

IP Assignment: a collateral assignment or security agreement pursuant to which an Obligor grants a Lien on its Intellectual Property to Agent, as security for its Obligations.

IRS: the United States Internal Revenue Service.

Issuing Bank Indemnitees: the Issuing Banks and their officers, directors, employees, Affiliates, branches, agents and attorneys.

Issuing Banks: the U.S. Issuing Bank, the Canadian Issuing Bank, the German Issuing Bank, and the U.K. Issuing Bank.

Japanese Yen or ¥: the lawful currency of Japan.

LC Application: an application by a Borrower or Borrower Agent on behalf of a Borrower to an Issuing Bank for issuance of a Letter of Credit, in form and substance satisfactory to such Issuing Bank.

LC Conditions: the following conditions necessary for issuance of a Letter of Credit: (a) each of the conditions set forth in **Section 6**; (b) after giving effect to such issuance, total U.S. LC Obligations do not exceed the U.S. Letter of Credit Subline, no U.S. Overadvance exists or would result therefrom and, if no U.S. Revolver Loans are outstanding, the U.S. LC Obligations do not exceed the U.S. Borrowing Base (without giving effect to the U.S. LC Reserve for purposes of this calculation); (c) after giving effect to such issuance, total Canadian LC Obligations do not exceed the Canadian Letter of Credit Subline, no Canadian Overadvance exists or would result therefrom and, if no Canadian Revolver Loans are outstanding, the Canadian LC Obligations do not exceed the Canadian Borrowing Base (without giving effect to the Canadian LC Reserve for purposes of this calculation); (d) after giving effect to such issuance, total German LC Obligations do not exceed the German Letter of Credit Subline, no German Overadvance exists or would result therefrom and, if no German Revolver Loans are outstanding, the German LC Obligations do not exceed the German Borrowing Base (without giving effect to the German LC Reserve for purposes of this calculation); (e) after giving effect to such issuance, total U.K. LC Obligations do not exceed the U.K. Letter of Credit Subline, no U.K. Overadvance exists or would result therefrom and, if no U.K. Revolver Loans are outstanding, the U.K. LC Obligations do not exceed the U.K. Borrowing Base (without giving effect to the U.K. LC Reserve for purposes of this calculation); (f) the expiration date of such Letter of Credit is (i) no more than 365 days from issuance (or such other expiration date beyond 365 days agreed to by Agent and the applicable Issuing Bank), in the case of standby Letters of Credit, provided, however, that any standby Letter of Credit may provide for the automatic extension thereof for any number of additional periods each of up to 365 days in duration issuance (or such other days in duration beyond 365 days agreed to by Agent and the applicable Issuing Bank), and (ii) no more than 120 days from issuance, in the case of documentary Letters of Credit; (g) in the case of U.S. Letters of Credit, the Letter of Credit and payments thereunder are denominated in Dollars or any foreign currency acceptable to Agent and U.S. Issuing Bank and, unless otherwise specified by Agent or U.S. Issuing Bank (at their respective option) that it requires payment in Dollars calculated at the Spot Rate, payments thereunder are to be made in the same currency in which the Letter of Credit was denominated; (h) in the case of Canadian Letters of Credit, the Letter of Credit and payments thereunder are denominated in Dollars, Canadian Dollars, or any foreign currency acceptable to Agent and Canadian Issuing Bank and, unless otherwise specified by Agent or Canadian Issuing Bank (at their respective option) that it requires payment in Dollars or Canadian Dollars calculated at the Spot Rate, payments thereunder are to be made in the same currency in which the Letter of Credit was denominated; (i) in the case of U.K. Letters of Credit, the Letter of Credit and payments thereunder are denominated in Dollars, British Pounds, Euros, or any foreign currency acceptable to the Agent and U.K. Issuing Bank and, unless otherwise specified by Agent or U.K. Issuing Bank (at their respective option) that it requires payment in Dollars, British Pounds or Euros calculated at the Spot Rate, payments thereunder are to be made in the same currency in which the Letter of Credit was denominated; (j) in the case of German Letters of Credit, the Letter of Credit and payments thereunder are denominated in Dollars, British Pounds, Euros, Swiss Francs, or any foreign currency acceptable to the Agent and German Issuing Bank and, unless otherwise

specified by Agent or German Issuing Bank (at their respective option) that it requires payment in Dollars, British Pounds, Swiss Francs, or Euros calculated at the Spot Rate, payments thereunder are to be made in the same currency in which the Letter of Credit was denominated, and (k) the form of the proposed Letter of Credit is satisfactory to Agent and the applicable Issuing Bank in their discretion.

LC Documents: all documents, instruments and agreements (including LC Requests and LC Applications) delivered by the Borrower Agent on behalf of a Borrower or by any other Person to an Issuing Bank or Agent in connection with the issuance, amendment or renewal of, or payment under, any Letter of Credit.

LC Obligations: the U.S. LC Obligations, the Canadian LC Obligations, the German LC Obligations, and the U.K. LC Obligations.

LC Request: a request for issuance of a Letter of Credit, to be provided by the U.S. Borrowers, the Canadian Borrower, the German Borrower, the U.K. Borrower, or the Borrower Agent, as applicable, to an Issuing Bank, in form satisfactory to Agent and such Issuing Bank.

Lender Indemnitees: Lenders and their officers, directors, employees, Affiliates, agents and attorneys.

Lenders: as defined in the preamble to this Agreement, including the U.S. Lenders, the Canadian Lenders, the German Lenders, the U.K. Lenders, Agent in its capacity as a provider of Swingline Loans and any other Person who hereafter becomes a "Lender" pursuant to an Assignment and Acceptance or in accordance with **Section 2.1.7**.

Lending Office: the office designated as such by the applicable Lender at the time it becomes party to this Agreement or thereafter by notice to Agent and Borrower Agent.

Letter of Credit: any U.S. Letter of Credit, Canadian Letter of Credit, German Letter of Credit, or U.K. Letter of Credit.

Leverage Ratio: means, as of any date of determination, the ratio of (a) the amount of Funded Debt as of such date, to (b) EBITDA for the most recently 12 month period ended for which financial statements have been delivered pursuant to **Section 10.1.1**, in each case, determined on a consolidated basis for Parent and its Subsidiaries.

LIBOR: for any Interest Period with respect to a LIBOR Loan, the per annum rate of interest, determined by Agent at approximately 11:00 a.m. (London time) two Business Days prior to commencement of such Interest Period, for a term comparable to such Interest Period, equal to (a) the applicable Screen Rate for the currency of that LIBOR Loan; or (b) if the Screen Rate is not available for any reason, the interest rate at which deposits in the applicable Available Currency in the approximate amount of the LIBOR Loan would be offered by Bank of America's London branch to major banks in the London interbank eurocurrency market; provided, that in no event shall LIBOR be less than ~~1.0%~~ zero. If the Board of Governors imposes a Reserve Percentage with respect to LIBOR deposits, then LIBOR shall be the foregoing rate, divided by 1 minus the Reserve Percentage.

LIBOR Loan: each set of LIBOR Revolver Loans or LIBOR Term Loans having a common length and commencement of Interest Period.

LIBOR Revolver Loan: a Revolver Loan that bears interest based on LIBOR.

LIBOR Screen Rate: as defined in **Section 1.7**.

LIBOR Successor Rate: as defined in **Section 1.7**.

~~LIBOR Successor Rate Conforming Changes: with respect to any proposed LIBOR Successor Rate, any conforming changes to this Agreement, including changes to U.S. Base Rate, Canadian Base Rate, Interest Period, timing and frequency of determining rates and payments of interest and other administrative matters as may be appropriate, in Agent's discretion, in consultation with the Borrowers, to reflect the adoption of such LIBOR Successor Rate and to permit its administration by Agent in a manner substantially consistent with market practice (or, if 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 Agent determines in consultation with Borrowers). Such changes shall provide that the LIBOR Successor Rate cannot be less than zero for purposes of this Agreement.~~

LIBOR Term Loan: a Term Loan that bears interest based on LIBOR.

License: any license or agreement under which an Obligor or Subsidiary is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Licensor: any Person from whom an Obligor obtains the right to use any Intellectual Property.

Lien: any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever in respect of property (including any conditional sale or other title retention agreement and any financing lease having substantially the same economic effect as any of the foregoing).

Lien Waiver: an agreement, in form and substance satisfactory to Agent, by which (unless, in each case, otherwise agreed to by Agent in its sole discretion) (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for Agent, and agrees to deliver the Collateral to Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Agent upon request; (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to Agent the right, vis-à-vis such Licensor, to enforce Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License; and (e) for any Collateral held by Costco on consignment on behalf of a U.S. Domiciled Obligor, Costco acknowledges the applicable Obligor's ownership of such Collateral, acknowledges Agent's Lien on such Collateral, authorizes the filing of UCC financing statements naming Costco as consignee, the applicable Obligor as consignor, and Agent as such Obligor's assignee, and agrees to deliver the Collateral to Agent upon request.

Loan: a Revolver Loan or Term Loan.

Loan Account: the loan account established by each Lender on its books pursuant to **Section 5.8**.

Loan Documents: this Agreement, Other Agreements and Security Documents.

Margin Stock: as defined in Regulation U of the Board of Governors.

Material Adverse Effect: (a) a material adverse change in, or a material adverse effect upon, the operations, business, Properties, condition (financial or otherwise) of Parent and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Borrower or Guarantor to perform its obligations under any Loan Document to which it is a party; (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Borrower or Guarantor of any Loan Document to which it is a party or on the validity or priority of Agent's Liens on the Collateral; or (d) the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, otherwise impairs the ability of Agent or any Lender to enforce or collect any Obligations or to realize upon any material portion of the Collateral.

Material Real Property: means any fee-owned real property that is owned by any U.S Domiciled Obligor with a fair market value in excess of \$15,000,000 (at the Second Amendment Third Amended and Restated Effective Date or, with respect to fee-owned real property acquired after the Second Amendment Third Amended and Restated Effective Date, at the time of acquisition, in each case, as reasonably estimated by the U.S. Borrowers in good faith), other than the property located at 2180 Rutherford Road, Carlsbad, CA 92008.

Material Subsidiary: at any time, any Subsidiary of Parent (other than an Obligor) (a) in which the aggregate Investments made by Parent and its Subsidiaries (excluding Investments in the nature of inter-company receivables payable by such Subsidiary arising in the Ordinary Course of Business for the sale of Inventory and provision of services but, in the case of Investments in a Foreign Subsidiary, including Investments in Subsidiaries of such Foreign Subsidiary other than any such receivables) exceed \$20,000,000 or (b) that had net annual sales during the four fiscal quarters most recently ended (calculated on a Pro Forma Basis after giving effect to any Acquisition made during such period) of \$50,000,000 or more

Maximum Canadian Facility Amount: on any date of determination, the lesser of (i) the Canadian Revolver Commitments on such date and (ii) \$25,000,000 (or such greater or lesser amount after giving effect to any increases or reductions in the Commitments and/or Canadian Revolver Commitments pursuant to and in accordance with **Section 2.1.4** from time to time); it being acknowledged and agreed that at no time can the aggregate of all Maximum Country Facility Amounts exceed the Maximum Facility Amount in effect at such time.

Maximum Country Facility Amounts: each of the Maximum U.S. Facility Amount, the Maximum Canadian Facility Amount, the Maximum German Facility Amount, and the Maximum U.K. Facility Amount. "Maximum Country Facility Amount" means any of the Maximum U.S. Facility Amount, the Maximum Canadian Facility Amount, the Maximum German Facility Amount, or the Maximum U.K. Facility Amount, as the context requires.

Maximum Facility Amount: \$400,000,000, or such greater or lesser amount as shall then be in effect after giving effect to any reductions in the Commitments pursuant to and in accordance with **Section 2.1.4** and increases in the U.S. Revolver Commitments pursuant to and in accordance with **Section 2.1.7**.

Maximum German Facility Amount: on any date of determination, the lesser of (i) the German Revolver Commitments on such date and (ii) \$70,000,000 (or such greater or lesser amount after giving effect to any increases or reductions in the Commitments and/or German Revolver Commitments pursuant to and in accordance with **Section 2.1.4** from time to time); it

being acknowledged and agreed that at no time can the aggregate of all Maximum Country Facility Amounts exceed the Maximum Facility Amount in effect at such time.

Maximum U.K. Facility Amount: on any date of determination, the lesser of (i) the U.K. Revolver Commitments on such date and (ii) \$45,000,000 (or such greater or lesser amount after giving effect to any increases or reductions in the Commitments and/or the U.K. Revolver Commitments pursuant to and in accordance with **Section 2.1.4** from time to time); it being acknowledged and agreed that at no time can the aggregate of all Maximum Country Facility Amounts exceed the Maximum Facility Amount in effect at such time.

Maximum U.S. Facility Amount: on any date of determination, the lesser of (i) the U.S. Revolver Commitments on such date and (ii) \$260,000,000 (or such greater or lesser amount after giving effect to any increases or reductions in the Commitments and/or the U.S. Revolver Commitments pursuant to and in accordance with **Section 2.1.4** and increases in the Commitments and/or the U.S. Revolver Commitments pursuant to and in accordance with **Section 2.1.7** from time to time); it being acknowledged and agreed that at no time can the aggregate of all Maximum Country Facility Amounts exceed the Maximum Facility Amount in effect at such time.

Moody's: Moody's Investors Service, Inc., and its successors.

Mortgage: a mortgage, deed of trust, deed of immovable hypothec or deed to secure debt pursuant to which an Obligor grants a Lien on its Real Estate to Agent, as security for the applicable Obligations.

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

Net Excess Availability: as of any date of determination, an amount equal to the Availability minus the aggregate amount, if any, of all trade payables of Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

Net Orderly Liquidation Value: with respect to trademarks of any Person, the net orderly liquidation value of such trademarks expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of such trademarks performed by an appraiser and on terms satisfactory to Agent.

Net Proceeds: with respect to an Asset Disposition, proceeds (including, when received, any deferred or escrowed payments) received by an Obligor or Subsidiary in cash from such disposition, net of (a) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (b) amounts applied to repayment of Debt secured by a Permitted Lien senior to Agent's Liens on Collateral sold; (c) transfer or similar taxes; and (d) reserves for indemnities, until such reserves are no longer needed (after which, any such amounts previously held as reserves shall become Net Proceeds when received).

New Lender: as defined in **Section 5.9.2(n)**.

NOLV Percentage: with respect to each category of each Borrower's Inventory (as determined by Agent from to time in its discretion) the net orderly liquidation value of such Inventory, expressed as a percentage (such percentage to be adjusted seasonally at such times consistent with the most recently delivered appraisal, as determined by Agent), expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of such Inventory performed by an appraiser and on terms satisfactory to Agent.

Notes: each Revolver Note or other promissory note executed by a Borrower to evidence any Obligations.

Notice of Borrowing: a Notice of Borrowing to be provided by Borrower Agent to request a Borrowing of Loans, in form satisfactory to Agent.

Notice of Conversion/Continuation: a Notice of Conversion/Continuation to be provided by Borrower Agent to request a conversion or continuation of any Loans as LIBOR Loans or Canadian BA Rate Loans, in form satisfactory to Agent.

Noticed Hedge: Secured Bank Product Obligations arising under a Hedging Agreement.

Obligations: all (a) principal of and premium, if any, on the Loans, (b) U.S. LC Obligations and other obligations of the U.S. Facility Obligors with respect to Letters of Credit, (c) Canadian LC Obligations and other obligations of the Canadian Facility Obligors with respect to Letters of Credit, (d) German LC Obligations and other obligations of the German Facility Obligors with respect to Letters of Credit, (e) U.K. LC Obligations and other obligations of the U.K. Facility Obligors with respect to Letters of Credit, (f) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Obligors under Loan Documents, (g) Secured Bank Product Obligations, and (h) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several; provided, that Obligations of an Obligor shall not include its Excluded Swap Obligations.

Obligor: each Borrower, Guarantor, or other Person that is liable for payment of any Obligations or that has granted a Lien in favor of Agent on its assets to secure any Obligations; *provided* that, notwithstanding anything to the contrary herein (including, without limitation, Section 10.1.12), in no event shall any Excluded Subsidiary be required to become an Obligor.

Obligor Group: a group consisting of (a) Canadian Facility Obligors, (b) U.S. Facility Obligors, (c) German Facility Obligors, or (d) U.K. Facility Obligors.

OFAC: Office of Foreign Assets Control of the U.S. Treasury Department.

Off-Balance Sheet Liabilities: with respect to any Person, the (a) monetary obligations of such Person under a so-called synthetic lease, off-balance sheet or tax retention lease, if such obligations are considered indebtedness for borrowed money for tax purposes but such lease is classified as an operating lease under GAAP, but in any case excluding any obligations (i) that are liabilities of any such Person as lessee under any operating lease so long as the terms of such operating lease do not require any payment by or on behalf of such Person at termination of such operating lease pursuant to a required purchase by or on behalf of such Person of the property or assets subject to such operating lease or (ii) under any arrangement pursuant to which such Person guarantees or otherwise assures any other Person of the value of the property or assets

subject to such operating lease and (b) the monetary obligations under any sale and leaseback transaction which does not create a liability on the consolidated balance sheet of such Person.

Ordinary Course of Business: with respect to any Person, the ordinary course of business of such Person, consistent with past practices.

Organic Documents: with respect to (a) any Person (other than any Person organized under the laws of Germany), its charter, certificate or articles of incorporation, amalgamation or continuance, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, memorandum of association, articles of association, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person and (b) any Person organized under the laws of Germany, its articles of association (*Satzung*) or partnership agreement, as the case may be, and, if applicable, any by-laws of its supervisory or advisory board.

Original Agreement Closing Date: June 30, 2011.

Original Amended and Restated Loan Agreement: as defined in the recitals hereto.

Original Loan Agreement: as defined in the recitals hereto.

Original Obligations: as defined in **Section 14.19**.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Agreement: the Intercreditor Agreement; each Note; LC Document; Fee Letter; Lien Waiver; Borrowing Base Certificate, Compliance Certificate, financial statement or report delivered hereunder; or other document, instrument or agreement (other than this Agreement or a Security Document) now or hereafter delivered by an Obligor or other Person to Agent or a Lender in connection with any transactions relating hereto.

Other Rate Early Opt-in: the Agent and the Borrower Agent 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 3.6(b)(ii)** and paragraph (2) of the definition of "Benchmark Replacement".

Other Taxes: all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

Overadvance: a Canadian Overadvance, German Overadvance, U.S. Overadvance, or U.K. Overadvance, as the context requires.

Overadvance Loan: a Canadian Overadvance Loan and/or a German Overadvance Loan, and/or a U.S. Overadvance Loan, and/or a U.K. Overadvance Loan, as the context requires.

Parallel Debt Undertaking: as defined in **Section 14.19**.

Parallel Obligations: as defined in **Section 14.19**.

Parent: as defined in the preamble to this Agreement.

Participant: as defined in **Section 13.2**.

Participating Member State: each member state of the European Union that has the Euro as its lawful currency so described in any EMU Legislation.

Patriot Act: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment Item: each check, draft or other item of payment payable to an Obligor, including those constituting proceeds of any Collateral.

PBA: the Pension Benefits Act (Ontario) or any other Canadian federal or provincial statute in relation to Canadian Pension Plans, and any regulations thereunder, as amended from time to time.

PBGC: the Pension Benefit Guaranty Corporation.

Pension Plan: any employee pension benefit plan (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

Permitted Acquisition: any Acquisition by Parent or any of its Subsidiaries where:

(a) the Board of Directors or authorized management committee of Parent or of the applicable Subsidiary and of the Person whose assets or Equity Interests are being acquired has approved such Acquisition;

(b) the business acquired in connection with such Acquisition is engaged in one or more of the leisure goods, products and services businesses generally or any business activities that are substantially similar, related, incidental or complementary thereto;

(c) both before and after giving effect to such Acquisition and the Loans and Letters of Credit (if any) requested to be made in connection therewith, each of the representations and warranties in the Loan Documents is true and correct in all material (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) respects (except (i) any such representation or warranty which relates to a specified prior date and (ii) to the extent the Agent has been notified in writing by Borrower Agent that any representation or warranty is not correct and the Required Lenders have explicitly waived in writing compliance with such representation or warranty) and no Default or Event of Default exists, will exist, or would result therefrom;

(d) after giving effect to the Acquisition, the Parent and its Subsidiaries will continue to be in compliance with the covenants in this Agreement, determined on a Pro Forma Basis;

(e) the purchase consideration payable in respect of all Permitted Acquisitions (including the proposed Acquisition and including deferred payment obligations) shall not exceed the Acquisition Cap in the aggregate; provided, however, that no such Acquisition shall count against the Acquisition Cap if either: (i) (A) on a Pro Forma Basis after giving effect to such Acquisition, Net Excess Availability has been greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount at all times during the thirty (30) day

period immediately prior to the consummation of such Acquisition, (B) Net Excess Availability is greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount after giving effect to such Acquisition, and (C) the Fixed Charge Coverage Ratio, on a Pro Forma Basis after giving effect to such Acquisition (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (ii) (A) average daily Net Excess Availability, on a Pro Forma Basis after giving effect to such Acquisition, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the consummation of such Acquisition, (B) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such Acquisition, and (C) no Term Loans are outstanding at the time such Acquisition is consummated and after giving effect to the payment of any consideration in connection with such Acquisition;

(f) as soon as available, but not less than 15 Business Days prior to such Acquisition, Borrower Agent has provided Agent (i) notice of such Acquisition and (ii) a copy of all available business and financial information reasonably requested by Agent including pro forma financial statements, statements of cash flow, financial covenant projections, and Availability projections;

(g) not later than: (i) 15 Business Days prior to the anticipated closing date of such Acquisition, Borrower Agent shall have provided Agent with the then current drafts of the acquisition agreement and other material documents relative to such Acquisition, and (ii) 3 Business Days prior to the anticipated closing date of such Acquisition, Borrower Agent shall have provided Agent with the final copies of the acquisition agreement and other material documents relative to such Acquisition;

(h) the assets being acquired (other than a *de minimis* amount of assets in relation to the assets being acquired) are located within the United States, Canada or the U.K., or the Person whose Equity Interests are being acquired is organized in a jurisdiction located within the United States, Canada or the U.K.; provided, however, that this clause (h) shall not be applicable to any Acquisition if either: (i) (A) on a Pro Forma Basis after giving effect to such Acquisition, Net Excess Availability has been greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the consummation of such Acquisition, (B) Net Excess Availability is greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount after giving effect to such Acquisition, and (C) the Fixed Charge Coverage Ratio, on a Pro Forma Basis after giving effect to such Acquisition (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (ii) (A) average daily Net Excess Availability, on a Pro Forma Basis after giving effect to such Acquisition, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the consummation of such Acquisition, (B) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such Acquisition; and (C) no Term Loans are outstanding at the time such Acquisition is consummated and after giving effect to the payment of any consideration in connection with such Acquisition; and

(i) concurrently with such Acquisition, any Person required to become a Guarantor or to execute or to deliver any Loan Document will do so in accordance with the requirements of this Agreement.

In no event will assets exceeding \$15,000,000 in Value acquired pursuant to a Permitted Acquisition constitute assets eligible for inclusion in the Borrowing Base prior to completion of a field examination, appraisal and other due diligence acceptable to Agent in its discretion, and if such satisfactory field examination, appraisal and due diligence is undertaken prior to the closing of such Acquisition, the assets acquired pursuant to such Acquisition may be taken into account

in the applicable Borrowing Base (subject to all eligibility criteria) in determining whether the foregoing conditions are satisfied. Assets less than \$15,000,000 in Value acquired pursuant to a Permitted Acquisition shall constitute assets eligible for inclusion in the applicable Borrowing Base (subject to all eligibility criteria) on a temporary basis pending completion of a field examination, appraisal and other due diligence acceptable to Agent in its discretion.

Permitted Lien: as defined in **Section 10.2.1**.

Person: any individual, corporation, limited liability company, unlimited liability company, partnership, joint venture, joint stock company, land trust, business trust, unincorporated organization, Governmental Authority or other entity.

Plan: any employee benefit plan (as such term is defined in Section 3(3) of ERISA) established by an Obligor or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, an ERISA Affiliate.

PPSA: the Personal Property Security Act (Ontario) and the regulations thereunder; provided, however, if validity, perfection and effect of perfection and non-perfection of Agent's security interest in and Lien on any Collateral are governed by the personal property security laws of any jurisdiction other than Ontario, PPSA shall mean those personal property security laws (including the Civil Code of Quebec) in such other jurisdiction for the purposes of the provisions hereof relating to such validity, perfection, and effect of perfection and non-perfection and for the definitions related to such provisions, as from time to time in effect.

Pro Forma Basis: with respect to compliance with any test or covenant hereunder, in connection with or after the occurrence of an Acquisition, compliance with such covenant or test after giving effect to any such Acquisition as if such Acquisition had occurred on the first day of the relevant test period (including pro forma adjustments arising out of events which are directly attributable to the proposed Acquisition, are factually supportable and are expected to have a continuing impact, in each case to be mutually and reasonably agreed upon by Borrower Agent and Agent).

Pro Rata: (a) with respect to any U.S. Lender and in reference to its U.S. Revolver Commitment, U.S. Facility Obligations, or other matters (including (A) payments of principal, accrued interest and fees related thereto, (B) participations in U.S. LC Obligations and U.S. Swingline Loans, (C) increases or reductions to the U.S. Revolver Commitments pursuant to **Section 2.1.4** or **2.1.7**, and (D) obligations to pay or reimburse Agent for Extraordinary Expenses owed by or in respect of the U.S. Facility Obligors or to indemnify any Indemnitees for Claims relating to the U.S. Facility Obligors) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the U.S. Revolver Commitments are outstanding, by dividing the amount of such U.S. Lender's U.S. Revolver Commitment by the aggregate amount of all U.S. Revolver Commitments, and (ii) at any other time, by dividing the amount of such U.S. Lender's U.S. Revolver Loans and U.S. LC Obligations by the aggregate amount of all U.S. Revolver Loans and U.S. LC Obligations; (b) with respect to any Canadian Lender and in reference to its Canadian Revolver Commitment, Canadian Facility Obligations or other matters (including (A) payments of principal, accrued interest and fees related thereto, (B) participations in Canadian LC Obligations and Canadian Swingline Loans, (C) increases or reductions to the Canadian Revolver Commitments pursuant to **Section 2.1.4**, and (D) obligations to pay or reimburse Agent for Extraordinary Expenses owed by or in respect of the Canadian Facility Obligors or to indemnify any Indemnitees for Claims relating to the Canadian Facility Obligors) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the Canadian Revolver Commitments are outstanding, by dividing such Canadian Lender's Canadian Revolver Commitment by the aggregate amount of all Canadian Revolver Commitments, and (ii) at any other time, by dividing the amount of such Canadian Lender's

Canadian Revolver Loans and Canadian LC Obligations by the aggregate amount of all Canadian Revolver Loans and Canadian LC Obligations; (c) with respect to any U.K. Lender and in reference to its U.K. Revolver Commitment, U.K. Facility Obligations or other matters (including (A) payments of principal, accrued interest and fees related thereto, (B) participations in U.K. LC Obligations and U.K. Swingline Loans, (C) increases or reductions to the U.K. Revolver Commitments pursuant to **Section 2.1.4**, and (D) obligations to pay or reimburse Agent for Extraordinary Expenses owed by or in respect of the U.K. Facility Obligors or to indemnify any Indemnitees for Claims relating to the U.K. Facility Obligors) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the U.K. Revolver Commitments are outstanding, by dividing such U.K. Lender's U.K. Revolver Commitment by the aggregate amount of all U.K. Revolver Commitments, and (ii) at any other time, by dividing the amount of such U.K. Lender's U.K. Revolver Loans and U.K. LC Obligations by the aggregate amount of all U.K. Revolver Loans and U.K. LC Obligations; (d) with respect to any German Lender and in reference to its German Revolver Commitment, German Facility Obligations or other matters (including (A) payments of principal, accrued interest and fees related thereto, (B) participations in German LC Obligations and German Swingline Loans, (C) increases or reductions to the German Revolver Commitments pursuant to **Section 2.1.4**, and (D) obligations to pay or reimburse Agent for Extraordinary Expenses owed by or in respect of the German Facility Obligors or to indemnify any Indemnitees for Claims relating to the German Facility Obligors) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the German Revolver Commitments are outstanding, by dividing such German Lender's German Revolver Commitment by the aggregate amount of all German Revolver Commitments, and (ii) at any other time, by dividing the amount of such German Lender's German Revolver Loans and German LC Obligations by the aggregate amount of all German Revolver Loans and German LC Obligations; (e) with respect to any U.S. Lender and in reference to its Term Loan Commitment or other matters (including payments of principal, accrued interest and fees related thereto) relating thereto, as applicable, a percentage (carried out to the ninth decimal place) determined (i) while the Term Loan Commitments are outstanding, by dividing the amount of such U.S. Lender's Term Loan Commitment by the aggregate amount of all Term Loan Commitments, and (ii) at any other time, by dividing the amount of such U.S. Lender's Term Loans and by the aggregate amount of all Term Loans; (f) with respect to any U.S. Lender and in reference to U.S. Facility Obligations or other matters (including obligations to pay or reimburse Agent for Extraordinary Expenses owed by or in respect of the U.S. Facility Obligors or to indemnify any Indemnitees for Claims relating to the U.S. Facility Obligors) relating thereto which, in each case, are not governed by clause (a) or clause (e) preceding of this definition (as reasonably determined by Agent from time to time), a percentage (carried out to the ninth decimal place) determined by dividing the amount of such U.S. Lender's unused U.S. Revolver Commitment, unused Term Loan Commitment, and outstanding U.S. Revolver Loans, U.S. LC Obligations, and Term Loans, by the aggregate amount of all unused U.S. Revolver Commitments, all unused Term Loan Commitments, and all U.S. Revolver Loans, U.S. LC Obligations, and Term Loans; and (g) with respect to any Lender and in reference to any other matter relating to this Agreement or any other Loan Document which is not governed by any of the preceding clauses of this definition (as reasonably determined by Agent from time to time), a percentage (carried out in the ninth decimal place) determined by dividing the amount of such Lender's unused Revolver Commitments, unused Term Loan Commitment, and outstanding Loans and LC Obligations, by the aggregate amount of all unused Revolver Commitments, all unused Term Loan Commitments, and all outstanding Loans and LC Obligations.

Proceeds: as defined in **Section 7.1**.

Proceeds of Crime Act: the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) (or any successor statute), as amended from time to time, and includes all regulations thereunder.

Project Max Commitment Letter: that certain Commitment Letter, dated as of the First Amendment to Third Amended and Restated Effective Date, by and among Parent, Bank of America, N.A. (or any of its designated affiliates), JPMorgan Chase Bank, N.A. (together with any of its designated affiliates) and any Additional Lead Arranger (as defined therein) and any Additional Initial Lender (as defined therein) appointed in accordance with the terms thereof.

Properly Contested: with respect to any obligation of any Person, (a) the obligation is subject to a bona fide dispute regarding amount or such Person's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not have a Material Adverse Effect; (e) no Lien is imposed on assets of such Person or its Affiliates (other than any Excluded Subsidiary) in an aggregate amount in excess of \$1,000,000 for all such Liens, unless bonded and stayed to the reasonable satisfaction of Agent; and (f) if the obligation results from entry of a judgment or other order in an aggregate amount in excess of \$1,000,000 for all such obligations, such judgment or order is stayed pending appeal or other judicial review.

Property: any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

Protective Advances: as defined in **Section 2.1.6**.

Qualified ECP: an Obligor with total assets exceeding \$10,000,000, or that constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" under Section 1a(18)(A)(v)(II) of such Act.

RCRA: the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

RDPRM: Quebec Register of Personal and Movable Real Rights or Registre des droits personnels et reels mobiliers du Quebec.

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon.

Related Real Estate Documents: with respect to any Real Estate subject to a Mortgage, the following, in form and substance reasonably satisfactory to Agent (or such other Persons as expressly set forth below): (a) all information requested by Agent or any Lender for due diligence and required for Agent or any Lender to comply with Flood Laws; and (b) (i) a mortgagee title policy (or binder therefor) covering Agent's interest under the Mortgage, by an insurer reasonably acceptable to Agent, which must be fully paid as of the date of the applicable Mortgage; (ii) such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as Agent may reasonably require and which would be customarily obtained by a lender in connection with a mortgage financing of a property such as the Real Estate with respect to other Persons having an interest in the Real Estate; (iii) a current, as-built survey of the Real Estate and certified by a licensed surveyor reasonably acceptable to Agent; (iv) a life-of-loan flood hazard determination and, if any Real Estate is located in a special flood hazard zone, flood insurance documentation and coverage as required by Flood Laws; (v) a current appraisal of the Real Estate, prepared by an appraiser acceptable to Agent, and in form and substance satisfactory to all Lenders; (vi) an environmental assessment, prepared by environmental engineers acceptable to Agent, a customary environmental indemnity agreement if appropriate, and such other reports, certificates, studies or data as Agent may reasonably require, all in form and substance satisfactory to all Lenders; and (vii) such other documents, legal opinions, instruments or agreements as Agent may reasonably require with respect to the Real Estate and Mortgage and which are customary for a mortgage financing transaction.

Relevant Governmental Body: ~~the Board of Governors of the Federal Reserve Board and/or FRBNY System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve Board and/System or FRBNY for the purpose of recommending a benchmark rate to replace LIBOR in loan agreements similar to this Agreement~~ Federal Reserve Bank of New York, or any successor thereto.

Relevant Rate: with respect to any Loan denominated in (a) British Pounds, SONIA, (b) Swiss Francs, SARON, and (c) Euros, EURIBOR, as applicable.

Report: as defined in **Section 12.2.3**.

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

Reporting Trigger Period: the period (a) commencing on the day that an Event of Default occurs, or Net Excess Availability is less than, at any time, an amount equal to 10% of the Maximum Facility Amount; and (b) continuing until, during the preceding 30 consecutive days, no Event of Default has existed and Net Excess Availability has been greater than, at all times, an amount equal to 10% of the Maximum Facility Amount.

Required Lenders: Lenders (subject to **Section 4.2**) having unused Revolver Commitments, unused Term Loan Commitments, and outstanding Loans and LC Obligations, in excess of 50% of the aggregate amount of all unused Revolver Commitments, all unused Term Loan Commitments, and all outstanding Loans and LC Obligations; provided, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more Lenders, "Required Lenders" must include at least 3 Lenders, and (ii) less than 3 Lenders, "Required Lenders" must include all Lenders.

Reserve Percentage: the reserve percentage (expressed as a decimal, rounded up to the nearest 1/16th of 1%) applicable to member banks under regulations issued by the Board of Governors for determining the maximum reserve requirement for Eurocurrency liabilities.

Reset Date: as defined **Section 5.13**.

Resolution Authority: means an EEA Resolutions Authority or, with respect to any U.K. Financial Institution, a U.K. Resolution Authority.

Restrictive Agreement: an agreement (other than a Loan Document) that conditions or restricts the right of any Borrower, Subsidiary or other Obligor to incur or repay Borrowed Money, to grant Liens on any assets, to declare or make Distributions, to modify, extend or renew any agreement evidencing Borrowed Money, or to repay any intercompany Debt.

Revolver Commitment: a U.S. Revolver Commitment and/or a Canadian Revolver Commitment and/or a German Revolver Commitment and/or a U.K. Revolver Commitment, as the context requires. "Revolver Commitment Total" means the U.S. Revolver Commitments and/or the Canadian Revolver Commitments and/or the German Revolver Commitments and/or the U.K. Revolver Commitment, as the context requires. "Revolver Commitments" means the aggregate of the U.S. Revolver Commitments, the Canadian Revolver Commitments, the German Revolver Commitments, and the U.K. Revolver Commitments.

Revolver Facilities: as defined in **Section 14.11(a)(vi)**.

Revolver Loan: a U.S. Revolver Loan and/or a Canadian Revolver Loan and/or a German Revolver Loan and/or a U.K. Revolver Loan, as the context requires.

Revolver Notes: collectively, the U.S. Revolver Notes, the Canadian Revolver Notes, the German Revolver Notes, and the U.K. Revolver Notes.

Royalties: all royalties, fees, expense reimbursement and other amounts payable by an Obligor or a Subsidiary under a License.

S&P: Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

Sanction: any sanction administered or enforced by the U.S. government (including OFAC), United Nations Security Council, European Union, U.K. government, Canadian government, German government or other sanctions authority.

Scheduled Unavailability Date: as defined in **Section 1.7**

SARON: with respect to any applicable determination date, the Swiss Average Rate Overnight published on such date on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the 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: with respect to SARON, -0.0571% per annum.

Screen Rate: in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters.

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

Second Amended and Restated Loan Agreement: as defined in the recitals hereto.

Second Amended Original Closing Date: as defined in the recitals hereto.

Second Amendment Effective Date: March 20, 2020.

Second Amendment to Third Amended and Restated Effective Date: January 4, 2019.

Secured Bank Product Obligations: Bank Product Debt owing to a Secured Bank Product Provider, up to the maximum amount (in the case of any Secured Bank Product Provider other than Bank of America and its Affiliates) specified by such provider in writing to Agent, which amount may be established or increased (by further written notice to Agent from time to time) as long as no Default or Event of Default exists and no Overadvance would result from establishment of a Canadian Bank Product Reserve, German Bank Product Reserve, U.S. Bank Product Reserve, or U.K. Bank Product Reserve, as applicable, for such amount and all other Secured Bank Product Obligations; provided, that Secured Bank Product Obligations of an Obligor shall not include its Excluded Swap Obligations.

Secured Bank Product Provider: (a) Bank of America or any of its Affiliates; and (b) any other Lender or Affiliate of a Lender that is providing a Bank Product, provided such provider delivers written notice to Agent, in form and substance satisfactory to Agent, by the later of the Closing Date or 10 days following creation of the Bank Product (for the avoidance of doubt, written notices delivered to Agent prior to the Closing Date do not need to be re-delivered), (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by **Section 12.13**.

Secured Parties: Canadian Facility Secured Parties and/or German Facility Secured Parties and/or U.S. Facility Secured Parties and/or U.K. Facility Secured Parties, as the context requires.

Security Documents: this Agreement, the Guarantees, Mortgages, IP Assignments, Canadian Security Agreements, German Security Documents, U.K. Security Documents, Deposit Account Control Agreements, and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Senior Officer: the chairman of the board, director, president, chief executive officer, chief financial officer or treasurer of a Borrower or, if the context requires, an Obligor.

Settlement Report: a report delivered by Agent to the Applicable Lenders summarizing the Revolver Loans and, if applicable, participations in LC Obligations outstanding as of a given settlement date, allocated to the Applicable Lenders on a Pro Rata basis in accordance with their Revolver Commitments.

~~**SOFR:** with respect to any day, the secured overnight financing rate that is published for such day by FRBNY as administrator of the benchmark (or a successor administrator) on FRBNY's website and that has been selected or recommended by the Relevant Governmental Body.~~

~~**SOFR-Based Rate:** SOFR or Term SOFR. **Early Opt-in:** the Agent and the Borrower Agent have elected to replace LIBOR pursuant to (1) an Early Opt-in Election and (2) **Section 3.6(b)(i)** and paragraph (1) of the definition of "Benchmark Replacement".~~

Solidary Claim: as defined in **Section 12.1.1(b)**.

Solvent: as to any Person, such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not "insolvent" within the meaning of Section 101(32) of the U.S. Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. "**Fair salable value**" means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase. In addition to the

foregoing, “Solvent” means, with respect to any Canadian Subsidiary, that such Canadian Subsidiary is (i) adequately capitalized, (ii) owns assets, the value of which, on a going concern basis, exceeds the liabilities of such Person, (iii) will have sufficient working capital to pay its debts as they become due, (iv) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either the present or future creditors of such Subsidiary or any of its Affiliates, and (v) is not an “insolvent person” as defined in the Bankruptcy and Insolvency Act (Canada). “Solvent” means, with respect to any U.K. Subsidiary, it is not and is not deemed for the purpose of and under the Insolvency Act 1986 to be unable to pay its debts as they fall due (other than under section 123(1)(a) of the Insolvency Act 1986). “Solvent” means, with respect to any German Domiciled Obligor, such Person not being illiquid (*zahlungsunfähig*) or overindebted (*✓berschuldet*) in accordance with section 17 and section 19, respectively, of the German Insolvency Code (*Insolvenzordnung*).

SONIA: with respect to any applicable determination date, the Sterling Overnight Index Average Reference Rate published on such date on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Agent from time to time); provided 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: with respect to SONIA, 0.0326% per annum.

Specified Obligor: an Obligor that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to **Section 5.11**).

Spot Rate: the exchange rate, as determined by Agent, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source designated by Agent) as of the end of the preceding business day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding business day in Agent’s principal foreign exchange trading office for the first currency.

Subsidiary: any entity at least 50% of whose voting securities or Equity Interests are owned by the Parent (including indirect ownership by the Parent through other entities in which the Parent directly or indirectly owns at least 50% of the voting securities or Equity Interests), but excluding the Excluded Subsidiaries.

Successor Rate: has the meaning set forth in Section 3.11(g).

Supermajority Lenders: Lenders (subject to **Section 4.2**) having (a) Revolver Commitments in excess of 75% of the aggregate Revolver Commitments; and (b) if the Revolver Commitments have terminated, Revolver Loans and LC Obligations in excess of 75% of all outstanding Revolver Loans and LC Obligations; provided, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation.

Swap: as defined in Section 1a(47) of the Commodity Exchange Act.

Swap Obligations: with respect to an Obligor, its obligations under a Hedging Agreement that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

Swingline Loans: the Canadian Swingline Loans, the German Swingline Loans, the U.S. Swingline Loans, and the U.K. Swingline Loans.

Swiss Francs or CHF: the lawful currency of Switzerland and Liechtenstein.

~~TARGET Day: any day on which~~ TARGET2: the Trans-European Automated Real-time Gross Settlement Express Transfer (~~TARGET~~) payment system which utilizes a single shared platform and which was launched on November 19, 2007.

TARGET Day: any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Agent acting reasonably to be a suitable replacement) is open for the settlement of payments in Euros.

Tax Credit: a credit against, relief or remission for, or repayment of any Tax.

Tax Deduction: as defined in **Section 5.9.2(a)**.

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

Term Loan: a loan made by a U.S. Lender to the U.S. Borrowers pursuant to **Section 2.6**, which Loan shall be denominated in Dollars and shall be either a U.S. Base Rate Loan or a LIBOR Loan, in each case as selected by Borrower Agent.

Term Loan Collateral Agent: as defined in the Intercreditor Agreement.

Term Loan Commitment: for any U.S. Lender, the obligation of such U.S. Lender to make a Term Loan hereunder, up to the principal amount shown on **Schedule 1.1**, or as hereafter determined pursuant to each Assignment and Acceptance to which it is a party. "Term Loan Commitments" means the aggregate amount of such commitments of all Lenders.

Term Loan Commitment Termination Date: the earliest of (a) the Facility Termination Date, (b) the date on which the Borrower Agent terminates the Term Loan Commitments pursuant to **Section 2.6.4**, (c) September 30, 2020, and (d) the date on which the Term Loan Commitments are terminated pursuant to **Section 11.2**.

Term Loan Facility Agreement: as defined in the Intercreditor Agreement.

Term Loan Maturity Date: the earlier of (a) the Facility Termination Date, and (b) the date that is the three year anniversary of the making of the Terms Loans pursuant to **Section 2.6**.

Term SOFR: ~~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 for any period that is approximately (as determined by Agent) as long as any interest period option 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 selected by Agent from time to time in its discretion.~~

Term Loan Unused Commitment Fee Rate: a per annum rate equal to 0.50%.

Termination Event: (a) the whole or partial withdrawal of a Canadian Subsidiary from a Canadian Pension Plan during a plan year; or (b) the filing of a notice of interest to terminate in whole or in part a Canadian Pension Plan or the treatment of a Canadian Pension Plan amendment as a termination or partial termination; or (c) the institution of proceedings by any Governmental Authority to terminate in whole or in part or have a trustee appointed to administer a Canadian Pension Plan; or (d) any other event or condition which might constitute grounds for the termination of or winding up, or partial termination of or winding up, or the appointment of a trustee to administer, any Canadian Pension Plan.

Third Amended Original Closing Date: as defined in the recitals hereto.

Third Amendment to Second Amended and Restated Effective Date: June 23, 2014.

Third Amendment to Third Amended and Restated Effective Date: February 1, 2019.

Threshold Percentage: 15%.

Top Golf: Topgolf International, Inc., a Delaware corporation.

Top Golf Acquisition: the Acquisition by Parent, directly or indirectly, of 100% of the Equity Interests of Top Golf in accordance with the Top Golf Acquisition Agreement.

Top Golf Acquisition Agreement: the Agreement and Plan of Merger by and among Parent, Merger Sub, and Top Golf, dated October 27, 2020, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time (a) in a manner that is not materially adverse to the Lenders in their capacities as such (it being understood that any decrease in the purchase price shall not be materially adverse to the Lenders and any increase in the purchase price, to the extent funded with equity interests of Parent, shall not be materially adverse to the Lenders), or (b) with the consent of the Required Lenders (such consent not to be unreasonably withheld or delayed), pursuant to which Merger Sub merges with and into Top Golf, with Top Golf as the surviving entity of such merger.

Top Golf Blocked Account: as defined in the definition of Top Golf Proceeds.

Top Golf Proceeds: cash proceeds received by Parent in connection with any: (a) sale of all or a portion of the Equity Interests of Top Golf owned by Parent (other than in connection with the Top Golf Acquisition), or (b) dividend received by Parent from Top Golf on account of Parent's ownership interest in Top Golf; provided that (i) Parent elects to designate such proceeds as Top Golf Proceeds by at least five (5) Business Days (or such lesser time as approved by Agent in its sole discretion) prior written notice (such notice, the "Top Golf Proceeds Notice") to Agent of the occurrence of such transaction which will give rise to such cash proceeds; (ii) Parent sends written notice to Agent on the Business Day prior to the consummation of such transaction which will give rise to such cash proceeds; (iii) on the day such cash proceeds are received by Parent, either (in accordance with Parent's election made in the Top Golf Proceeds Notice): (A) Parent deposits all of such proceeds in a separate Deposit Account (such Deposit Account, the "Top Golf Blocked Account"), and provides evidence to Agent, in form and substance satisfactory to Agent, of such deposit, or (B) Agent establishes or modifies, as applicable, the U.S. Top Golf Reserve, the U.K. Top Golf Reserve, the German Top Golf Reserve and the Canadian Top Golf Reserve; (iv) the Top Golf Blocked Account shall not contain any other funds other than Top Golf Proceeds; (v) Parent may remove Top Golf Proceeds from the Top Golf Blocked Account, provided, however that (A) once removed other than (1) to consummate Common Stock Repurchases or pay dividends on Parent's common stock, in each case in accordance with **Section 10.2.6(g)(A)** on the date of such removal or (2) to make Investments in accordance with **Section 10.2.2(k)(A)** on the date of such removal, such funds

shall no longer constitute Top Golf Proceeds, and (B) Parent shall provide Agent (1) three (3) Business Days' prior written notice of such removal, and (2) evidence of the removal of such funds from the Top Golf Blocked Account within two (2) Business Days of such removal; (vi) Parent shall provide Agent with copies of all monthly statements with respect to the Top Golf Blocked Account and such other information with respect to such Deposit Account as reasonably requested by Agent from time to time; and (vii) the Top Golf Blocked Account shall be subject to a Deposit Account Control Agreement prior to any Top Golf Proceeds being deposited into the Top Golf Blocked Account.

Top Golf Proceeds Notice: as defined in the definition of Top Golf Proceeds.

Total Revolver Exposure: as of any date of determination, the sum of the U.S. Revolver Exposure plus the Canadian Revolver Exposure plus the German Revolver Exposure plus the U.K. Revolver Exposure.

Transferee: any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

Travis Mathew Retail: Travis Mathew Retail, LLC, a California limited liability company.

Treaty Lender: a Lender which: (a) is treated as a resident of a Treaty State for the purposes of a Treaty; and (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected.

Treaty State: a jurisdiction having a double taxation agreement (a "Treaty") with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

Type: any type of a Loan (*i.e.*, a LIBOR Loan, a U.S. Base Rate Loan, a Canadian BA Rate Loan, a Canadian Base Rate Loan, a Canadian Prime Rate Loan, a German Base Rate Loan, ~~or~~ a U.K. Base Rate Loan, an Alternative Currency Daily Rate Loan, or an Alternative Currency Term Rate Loan) and, in the case of LIBOR Loans ~~and~~, Canadian BA Rate Loans and Alternative Currency Term Rate Loans, the same Interest Period.

UCC: the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

Unfunded Pension Liability: the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year and includes any unfunded liability or solvency deficiency as determined for the purposes of the PBA in respect of any Canadian Pension Plan.

uPlay: uPlay, Inc., a Delaware corporation.

U.K./Canadian/German Allocable Amount: as defined in **Section 5.11**.

U.K./Canadian/German Guarantor Payment: as defined in **Section 5.11**.

U.K. and United Kingdom: the United Kingdom of Great Britain and Northern Ireland.

U.K. Accounts Formula Amount: (a) as of any date of determination within the period beginning on May 1 through and including October 31 of each Fiscal Year, 85% of the Value of Eligible Accounts of the U.K. Borrower; and (b) as of any date of determination within the period beginning on November 1 through and including April 30 of each Fiscal Year, 90% of the Value of Eligible Accounts of the U.K. Borrower.

U.K. Availability: as of any date of determination, the U.K. Borrowing Base as of such date of determination minus the aggregate principal amount of all U.K. Revolver Loans outstanding on such date of determination.

U.K. Availability Reserve: the sum (without duplication) of (a) the Inventory Reserve with respect to the U.K. Borrower's Inventory; (b) the U.K. Rent and Charges Reserve; (c) the U.K. LC Reserve; (d) the U.K. Bank Product Reserve; (e) all accrued Royalties of the U.K. Domiciled Obligors, whether or not then due and payable by a U.K. Domiciled Obligor; (f) the aggregate amount of liabilities secured by Liens upon U.K. Facility Collateral that are senior to the Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (g) the U.K. Dilution Reserve; (h) the U.K. Top Golf Reserve; (i) the U.K. Priority Payables Reserve; and (j) such additional reserves, in such amounts and with respect to such matters, as Agent in its Credit Judgment may elect to impose from time to time with respect to the U.K. Borrowing Base.

U.K. Bank Product Reserve: the aggregate amount of reserves established by Agent from time to time in its discretion in respect of Secured Bank Product Obligations owing by the U.K. Domiciled Obligors and their Subsidiaries.

U.K. Base Rate Loan: a U.K. Revolver Loan, or portion thereof, funded in Dollars and bearing interest calculated by reference to the Foreign Base Rate.

U.K. Borrower: as defined in the preamble to this Agreement.

U.K. Borrowing Base: on any date of determination, an amount equal to the lesser of (a) the result of: (i) the Maximum U.K. Facility Amount, minus (ii) the U.K. LC Reserve, minus (iii) the U.K. Top Golf Reserve; or (b) the result of: (i) the U.K. Accounts Formula Amount, plus (ii) the U.K. Inventory Formula Amount, plus (iii) 100% of the amount of U.K. Pledged Cash, minus (iv) the U.K. Availability Reserve.

U.K. Borrowing Base Certificate: a certificate, in form and substance satisfactory to Agent, by which the U.K. Borrower certifies calculation of the U.K. Borrowing Base.

U.K. Cash Collateral Account: a demand deposit, money market or other account established by Agent at Bank of America, N.A. (London Branch) or such other financial institution as Agent may select in its discretion, which account shall be for the benefit of the U.K. Facility Secured Parties and shall be subject to Agent's Liens securing the U.K. Facility Obligations.

U.K. Dilution Reserve: as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts of the U.K. Borrower by 1% for each whole percentage point (or portion thereof) by which the Dilution Percent is in excess of 5.0%.

U.K. Domiciled Obligor: each U.K. Subsidiary which is at any time an Obligor, and "U.K. Domiciled Obligors" means all such Persons, collectively.

U.K. Dominion Account: a special account established by the U.K. Borrower at Bank of America, N.A. (London Branch) or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes at all times.

U.K. Eligible Foreign Account: an Account of the U.K. Borrower that is owed by an Account Debtor that is organized or has its principal offices or assets in a jurisdiction (a) that has been a Participating Member State since before May 2004 or (b) that is listed on **Schedule 1.1C**.

U.K. Expeditors Reserve: as of any date of determination, the aggregate amount of accounts payable owed by any U.K. Facility Obligor to Expeditors, as determined by Agent in its Credit Judgment.

U.K. Facility Collateral: all Collateral that now or hereafter secures (or is intended to secure) any of the U.K. Facility Obligations, including Property of each U.K. Domiciled Obligor, each U.S. Domiciled Obligor, each German Domiciled Obligor, and each Canadian Domiciled Obligor.

U.K. Facility Guarantee: each guarantee agreement (including this Agreement) at any time executed by a U.K. Facility Guarantor in favor of Agent guaranteeing all or any portion of the U.K. Facility Obligations.

U.K. Facility Guarantor: Parent, each U.K. Subsidiary, each Canadian Subsidiary, each German Subsidiary, each U.S. Subsidiary (other than uPlay unless uPlay becomes a Guarantor in accordance with **Section 10.2.15**), and each other Person (if any) who guarantees payment and performance of any U.K. Facility Obligations.

U.K. Facility Obligations: all Obligations of the U.K. Facility Obligors (excluding, for the avoidance of doubt, the Obligations of the U.S. Domiciled Obligors as guarantors of any U.S. Facility Obligations).

U.K. Facility Obligor: each of the U.K. Borrower or any U.K. Facility Guarantor, and “**U.K. Facility Obligors**” means all of such Persons, collectively.

U.K. Facility Secured Parties: the Agent, the U.K. Issuing Bank, the U.K. Lenders and the Secured Bank Product Providers who provide Bank Products to the U.K. Facility Obligors and their Subsidiaries.

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

U.K. Holdings: Callaway Golf European Holding Company Limited, a company incorporated in England with company number 06468420.

U.K. Inventory Formula Amount: as of any date of determination, the lesser of (a) the sum of (i) with respect to Eligible Inventory that has been owned by the U.K. Borrower for less than one (1) calendar year as of the applicable date of determination, (A) for the period beginning on March 1 through and including September 30 of each Fiscal Year, 65% of the Value of such U.K. Borrower's Eligible Inventory, (B) for the period beginning on October 1 through and including February 28 (or February 29, as applicable) of each Fiscal Year, 75% of the Value of such U.K. Borrower's Eligible Inventory, plus (ii) with respect to Eligible Inventory

that has been owned by the U.K. Borrower for more than one (1) calendar year, as of the applicable date of determination, 50% of the Value of such U.K. Borrower's Eligible Inventory; or (b) 85% of the NOLV Percentage of the Value of the U.K. Borrower's Eligible Inventory. Notwithstanding the foregoing, the aggregate amount of the U.K. Inventory Formula Amount which may be attributed to Eligible In-Transit Inventory (the "U.K. In-Transit Availability") shall not exceed \$2,000,000; provided that, the U.K. In-Transit Availability (after taking into effect the previous proviso) shall be reduced by the U.K. Expeditors Reserve if, as of any date of determination, either (I) U.K. Net Excess Availability is less than 10% of the Maximum U.K. Facility Amount, or (II) there are any accounts payable owed by any U.K. Facility Obligor to Expeditors which are aged in excess of historical levels (except in cases of good faith disputes).

U.K. Issuing Bank: Bank of America or an Affiliate of Bank of America.

U.K. LC Obligations: the sum (without duplication) of (a) all amounts owing by the U.K. Borrower for any drawings under Letters of Credit; (b) the stated amount of all outstanding Letters of Credit issued for the account of the U.K. Borrower, which if such Letter of Credit is denominated in a currency other than Dollars, British Pounds or Euros, may be stated by Agent (at its option) in Dollars, British Pounds or Euros calculated at the Spot Rate; and (c) all fees and other amounts owing with respect to Letters of Credit issued for the account of the U.K. Borrower.

U.K. LC Reserve: the aggregate of all U.K. LC Obligations, other than those that have been Cash Collateralized.

U.K. Lenders: each Lender that has issued a U.K. Revolver Commitment (provided that such Person or an Affiliate of such Person also has a U.S. Revolver Commitment).

U.K. Letter of Credit Subline: \$2,000,000.

U.K. Letters of Credit: any standby or documentary letter of credit issued by the U.K. Issuing Bank for the account of the U.K. Borrower, or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by Agent or the U.K. Issuing Bank for the benefit of the U.K. Borrower or any of its Subsidiaries.

U.K. Net Excess Availability: as of any date of determination, an amount equal to the U.K. Availability minus the aggregate amount, if any, of all trade payables of U.K. Domiciled Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of U.K. Domiciled Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

U.K. Non-Bank Lender: means:

(a) where a Lender becomes a party to this Agreement on the day on which this Agreement is entered into, any Lender listed in **Schedule 1.1D**; and

(b) where a Lender becomes a party to this Agreement after the day on which this Agreement is entered into, a Lender which gives a U.K. Tax Confirmation in the assignment notice which it executes pursuant to, or in connection with, **Section 13.3** below.

U.K. Overadvance: as defined in **Section 2.1.5**.

U.K. Overadvance Loan: a U.K. Revolver Loan made to the U.K. Borrower when a U.K. Overadvance exists or is caused by the funding thereof.

U.K. Overadvance Loan Balance: on any date, the amount by which the aggregate U.K. Revolver Exposure exceeds the amount of the U.K. Borrowing Base on such date.

U.K. Pledged Cash: the funds maintained in a blocked Deposit Account or securities account of the U.K. Borrower subject to a Deposit Account Control Agreement or securities account control agreement, as applicable, which give Agent at all times exclusive access and control for withdrawal purposes to the exclusion of the U.K. Borrower and precluding the U.K. Borrower from withdrawing or otherwise giving any instructions in connection therewith and which may not be withdrawn without the Agent's prior written consent, and which are subject to effective security documents, in form and substance satisfactory to Agent, that provide Agent with an unencumbered perfected first priority/ranking security interest in and Lien on such funds.

U.K. Priority Payables Reserve: as of any date of determination, a reserve in such amount as the Agent may determine in its Credit Judgment to reflect the full amount of any liabilities or amounts which (by virtue of any Liens or any statutory provision) rank or are capable of ranking in priority to the Agent's Liens and/or for amounts which may represent costs relating to the enforcement of the Agent's Liens including, without limitation, but only to the extent prescribed pursuant to English law and statute then in force, (i) amounts due to employees in respect of unpaid wages and holiday pay, (ii) the amount of all scheduled but unpaid pension contributions, (iii) the "prescribed part" of floating charge realisations held for unsecured creditors, and (iv) the expenses and liabilities incurred by any administrator (or other insolvency officer) and any remuneration of such administrator (or other insolvency officer).

U.K. Qualified Lender:

(i) a Lender (other than a Lender within paragraph (ii) below) which is beneficially entitled to interest payable to that Lender in respect of any advance under the Loan Documents and is:

(A) a Lender:

(1) which is a bank (as defined for the purpose of section 879 of the Income Tax Act 2007 (United Kingdom) ("ITA")) making an advance under the Loan Documents; or

(2) in respect of an advance made under the Loan Documents by a person that was a bank (as defined for the purpose of section 879 of ITA) at the time that that advance was made

and with respect to (i)(A)(1) and (i)(A)(2), which is within the charge to U.K. corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the Corporation Taxes Act 2009 (United Kingdom) ("CTA"); or

(B) a Lender which is:

(1) a company resident in the U.K. for U.K. tax purposes;

(2) a partnership each member of which is:

(a) a company so resident in the U.K.; or

(b) a company not so resident in the U.K. which carries on a trade in the U.K. through a permanent establishment and which brings into

account in computing its chargeable profits (within the meaning of section 19 of the CTA the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

- (3) a company not so resident in the U.K. which carries on a trade in the U.K. through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or

(C) a Treaty Lender; or

(ii) a building society (as defined for the purposes of section 880 of ITA) making an advance under the Loan Documents.

U.K. Reimbursement Date: as defined in **Section 2.2.2**.

U.K. Rent and Charges Reserve: the aggregate of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any U.K. Facility Collateral or could assert a Lien on any U.K. Facility Collateral; and (b) a reserve at least equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

U.K. Required Lenders: U.K. Lenders (subject to **Section 4.2**) having (a) U.K. Revolver Commitments in excess of 50% of the aggregate U.K. Revolver Commitments; and (b) if the U.K. Revolver Commitments have terminated, U.K. Revolver Loans and U.K. LC Obligations in excess of 50% of all outstanding U.K. Revolver Loans and U.K. LC Obligations; provided, however, that the U.K. Revolver Commitments and U.K. Revolver Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more U.K. Lenders, "U.K. Required Lenders" must include at least 3 U.K. Lenders, and (ii) less than 3 U.K. Lenders, "U.K. Required Lenders" must include all U.K. Lenders.

U.K. Resolution Authority: means the Bank of England or any other public administrative authority having responsibility for the resolution of any U.K. Financial Institution.

U.K. Revolver Commitment: for any U.K. Lender, its obligation to make U.K. Revolver Loans and to participate in U.K. LC Obligations, in the applicable Available Currencies, up to the maximum principal amount shown on **Schedule 1.1**, or as hereafter determined pursuant to each Assignment and Acceptance to which it is a party, as such U.K. Revolver Commitment may be adjusted from time to time in accordance with the provisions of **Sections 2.1.4** or **11.2**. "U.K. Revolver Commitments" means the aggregate amount of such commitments of all U.K. Lenders.

U.K. Revolver Commitment Termination Date: the earliest of (a) the U.S. Revolver Commitment Termination Date (without regard to the reason therefor), (b) the date on which the Borrower Agent terminates or reduces to zero all of the U.K. Revolver Commitments pursuant to **Section 2.1.4**, and (c) the date on which the U.K. Revolver Commitments are terminated pursuant to **Section 11.2**.

U.K. Revolver Exposure: on any date, an amount equal to the sum of the Dollar Equivalent of the U.K. Revolver Loans outstanding on such date plus the U.K. LC Obligations on such date.

U.K. Revolver Loan: a Revolver Loan made by U.K. Lenders to the U.K. Borrower pursuant to **Section 2.1.1(c)**, which Revolver Loan shall be either a U.K. Base Rate Loan (which

shall be denominated in Dollars only) or a LIBOR Loan (which may be denominated in Dollars, British Pounds or Euros, as selected by the Borrower Agent), and any U.K. Swingline Loan, U.K. Overadvance Loan or Protective Advance made to or owed by the U.K. Borrower.

U.K. Revolver Notes: a promissory note executed by the U.K. Borrower in favor of a U.K. Lender in the form of **Exhibit A-3**, in the amount of such U.K. Lender's U.K. Revolver Commitment.

U.K. Security Agreement:

- (a) the debenture dated 15 June 2012 and made by the U.K. Borrower in favor of the Agent;
- (b) the supplemental debenture dated 18 December 2013 and made by the U.K. Borrower in favor of the Agent;
- (c) the debenture dated 15 June 2012 and made by U.K. Holdings in favor of the Agent;
- (d) the debenture dated 20 November 2017 and made by the U.K. Borrower in favor of the Agent;
- (e) the debenture dated 20 November 2017 and made by U.K. Holdings in favor of the Agent;
- (f) the debenture dated as of the date hereof and made by the U.K. Borrower in favor of the Agent;
- (g) the debenture dated as of the date hereof and made by U.K. Holdings in favor of the Agent; and

(h) any other debenture, deed of charge or other similar agreement, instrument or document governed by the laws of England and Wales, Scotland or Northern Ireland, in each case now or hereafter securing (or given with the interest to secure) the U.K. Facility Obligations.

U.K. Security Documents: means the U.K. Security Agreements and any other similar agreement, instrument or document governed by the laws of any jurisdiction, including Germany, in each case now or hereafter securing (or given with the interest to secure) the U.K. Facility Obligations.

U.K. Subsidiary: a Subsidiary of Parent incorporated or organized under the laws of England and Wales.

U.K. Swingline Loan: any Borrowing of U.K. Base Rate Loans funded with Agent's funds, until such Borrowing is settled among the U.K. Lenders or repaid by the U.K. Borrower.

U.K. Tax Confirmation: means a confirmation by a Lender that the person beneficially entitled to interest payable to it in respect of an advance under a Loan Document is either:

- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
- (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or

(ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of Section 19 of CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of CTA; or

(c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of Section 19 of CTA) of that company.

U.K. Tax Payment: as defined in **Section 5.9.2(m)**.

U.K. Top Golf Reserve: a reserve established by Agent at Parent's request in accordance with the definition of Top Golf Proceeds, in an initial amount as of such establishment equal to \$0. The U.K. Top Golf Reserve (a) shall be reduced on a dollar for dollar basis for the amount expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)(ii)(D)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)(ii)(D)**; (b) may be permanently reduced from time to time upon Parent's written request to Agent; and (c) subject to Agent's written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such adjustment, no Default or Event of Default shall have occurred and be continuing, and (ii) immediately after such adjustment (for clarification, including after giving effect to any recalculation of the Canadian Borrowing Base, the German Borrowing Base and U.S. Borrowing Base upon giving effect to such adjustment), Canadian Availability, German Availability and U.S. Availability would be a positive number), may be reallocated on a dollar for dollar basis to the Canadian Top Golf Reserve, the German Top Golf Reserve and/or the U.S. Top Golf Reserve upon Parent's written request to Agent; provided, however, that once reduced pursuant to clause (b) above, the U.K. Top Golf Reserve may not be increased. The parties agree that the U.K. Top Golf Reserve shall never be less than zero (-0-). For clarification, the aggregate amount of the Canadian Top Golf Reserve, the U.K. Top Golf Reserve, the German Top Golf Reserve and the U.S. Top Golf Reserve may not exceed an amount equal to the aggregate amount of Top Golf Proceeds received by Parent as reflected in all Top Golf Proceeds Notices (less any amounts Parent elects to deposit into the Top Golf Blocked Account) less all amounts expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)** and less all permanent reductions elected by Parent pursuant to clause (b) of each of the definitions of Canadian Top Golf Reserve, U.K. Top Golf Reserve, German Top Golf Reserve and U.S. Top Golf Reserve.

U.K. Unused Line Fee Rate: a per annum rate equal to 0.25%.

U.S. Accounts Formula Amount: (a) as of any date of determination within the period beginning on May 1 through and including October 31 of each Fiscal Year, 85% of the Value of Eligible Accounts of the U.S. Borrowers; and (b) as of any date of determination within the period beginning on November 1 through and including April 30 of each Fiscal Year, 90% of the Value of Eligible Accounts of the U.S. Borrowers.

U.S. Availability: as of any date of determination, the U.S. Borrowing Base as of such date of determination minus the aggregate principal amount of U.S. Revolver Loans outstanding on such date of determination.

U.S. Availability Reserve: the sum (without duplication) of (a) the Inventory Reserve with respect to the U.S. Borrowers' Inventory; (b) the U.S. Rent and Charges Reserve; (c) the U.S. LC Reserve; (d) the U.S. Bank Product Reserve; (e) all accrued Royalties of the U.S. Facility Obligors, whether or not then due and payable by a U.S. Facility Obligor; (f) the aggregate amount of liabilities secured by Liens upon U.S. Facility Collateral that are senior to the Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (g) the U.S. Dilution Reserve; (h) the Canadian Overadvance Loan Balance, if any, outstanding on such date, the German Overadvance Loan Balance, if any, outstanding on such date, and the U.K. Overadvance Loan Balance, if any, outstanding on such date; (i) the U.S. Top Golf Reserve; and (j) such additional reserves, in such amounts and with respect to such matters, as Agent in its Credit Judgment may elect to impose from time to time with respect to the U.S. Borrowing Base.

U.S. Bank Product Reserve: the aggregate amount of reserves established by Agent from time to time in its discretion in respect of Secured Bank Product Obligations owing by the U.S. Domiciled Obligors and their Subsidiaries.

U.S. Bankruptcy Code: Title 11 of the United States Code.

U.S. Base Rate: for any day, a per annum rate equal to the greater of (a) the U.S. Prime Rate for such day; (b) the Federal Funds Rate for such day, plus 0.50%; or (c) LIBOR for a 30 day interest period as determined on such day, plus 1.0%.

U.S. Base Rate Loan: a Loan that bears interest based on the U.S. Base Rate.

U.S. Base Rate Revolver Loan: a Revolver Loan that bears interest based on the U.S. Base Rate.

U.S. Borrowers: as defined in the preamble to this Agreement.

U.S. Borrowing Base: on any date of determination, an amount equal to the lesser of (a) the result of: (i) the Maximum U.S. Facility Amount, minus (ii) the U.S. LC Reserve, minus (iii) the Canadian Overadvance Loan Balance, if any, outstanding on such date, minus (iv) the U.K. Overadvance Loan Balance, if any, outstanding on such date, minus (v) the German Overadvance Loan Balance, if any, outstanding on such date, minus (vi) the U.S. Top Golf Reserve; or (b) the result of: (i) the U.S. Accounts Formula Amount, plus (ii) the U.S. Inventory Formula Amount, plus (iii) the U.S. Trademark Formula Amount, plus (iv) the U.S. Real Estate Formula Amount, plus (v) 100% of the amount of U.S. Pledged Cash, minus (vi) the U.S. Availability Reserve; provided, that clause (b)(iv) above may be removed from such calculation in accordance with **Section 2.1.4(d)**.

U.S. Borrowing Base Certificate: a certificate, in form and substance satisfactory to Agent, by which the U.S. Borrowers certify calculation of the U.S. Borrowing Base.

U.S. Cash Collateral Account: a demand deposit, money market or other account established by Agent at Bank of America or such other financial institution as Agent may select in its discretion, which account shall be for the benefit of the U.S. Facility Secured Parties and shall be subject to Agent's Liens securing the U.S. Facility Obligations.

U.S. Dilution Reserve: as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts of the U.S. Borrowers by one (1) percentage point for each whole percentage point (or portion thereof) by which the Dilution Percent is in excess of 5.0%.

U.S. Domiciled Obligor: each of the Parent, any U.S. Borrower or any U.S. Subsidiary which it is at any time an Obligor, and “U.S. Domiciled Obligors” means all such Persons, collectively.

U.S. Dominion Account: a special account established by the U.S. Borrowers at Bank of America or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes during any Dominion Trigger Period.

U.S. Expeditors Reserve: as of any date of determination, the aggregate amount of accounts payable owed by any U.S. Facility Obligor to Expeditors, as determined by Agent in its Credit Judgment.

U.S. Facility Collateral: all Collateral that now or hereafter secures (or is intended to secure) any of the U.S. Facility Obligations, including Property of each U.S. Domiciled Obligor.

U.S. Facility Guarantee: each guarantee agreement (including this Agreement) at any time executed by a U.S. Facility Guarantor in favor of Agent guaranteeing all or any portion of the U.S. Facility Obligations.

U.S. Facility Guarantor: each U.S. Subsidiary other than uPlay (unless uPlay becomes a Guarantor in accordance with **Section 10.2.15**) and each other Person (if any) who guarantees payment and performance of any U.S. Facility Obligations.

U.S. Facility Obligations: all Obligations of the U.S. Facility Obligors (including, for the avoidance of doubt, the Obligations of the U.S. Domiciled Obligors as guarantors of the Canadian Facility Obligations, German Facility Obligations and U.K. Facility Obligations).

U.S. Facility Obligor: each of any U.S. Borrower or any U.S. Facility Guarantor, and “U.S. Facility Obligors” means all of such Persons, collectively.

U.S. Facility Secured Parties: the Agent, the U.S. Issuing Bank, the U.S. Lenders and the Secured Bank Product Providers who provide Bank Products to the U.S. Facility Obligors and their Subsidiaries.

U.S. Inventory Formula Amount: as of any date of determination, the lesser of (a) the sum of (i) with respect to Eligible Inventory that has been owned by a U.S. Borrower for less than one (1) calendar year as of the applicable date of determination, (A) for the period beginning on March 1 through and including September 30 of each Fiscal Year, 65% of the Value of such U.S. Borrowers’ Eligible Inventory, (B) for the period beginning on October 1 through and including February 28 (or February 29, as applicable) of each Fiscal Year, 75% of the Value of such U.S. Borrowers’ Eligible Inventory, plus (ii) with respect to Eligible Inventory that has been owned by a U.S. Borrower for more than one (1) calendar year, as of the applicable date of determination, 50% of the Value of such U.S. Borrowers’ Eligible Inventory; or (b) 85% of the NOLV Percentage of the Value of the U.S. Borrowers’ Eligible Inventory. Notwithstanding the foregoing, (1) the aggregate amount of the U.S. Inventory Formula Amount which may be attributed to Eligible In-Transit Inventory (the “U.S. In-Transit Availability”) shall not exceed \$25,000,000; provided that, the U.S. In-Transit Availability (after taking into effect the previous proviso) shall be reduced by the U.S. Expeditors Reserve if, as of any date of determination, either (I) U.S. Net Excess Availability is less than 10% of the Maximum U.S. Facility Amount, or (II) there are any accounts payable owed by any U.S. Facility Obligor to Expeditors which are aged in excess of historical levels (except in cases of good faith disputes); and (2) so long as there is no Lien Waiver then in place with respect thereto, the aggregate amount of the U.S. Inventory Formula Amount which may be attributed to Eligible Costco Inventory shall not exceed \$20,000,000.

U.S. Issuing Bank: Bank of America or an Affiliate or branch of Bank of America

U.S. LC Obligations: the sum (without duplication) of (a) all amounts owing by the U.S. Borrowers for any drawings under Letters of Credit; (b) the stated amount of all outstanding Letters of Credit issued for the account of any U.S. Borrower, which if such Letter of Credit is denominated in a currency other than Dollars, may be stated by Agent (at its option) in Dollars calculated at the Spot Rate; and (c) all fees and other amounts owing with respect to Letters of Credit issued for the account of any U.S. Borrower.

U.S. LC Reserve: the aggregate of all U.S. LC Obligations, other than those that have been Cash Collateralized.

U.S. Lenders: Bank of America and each other Lender (other than Canadian Lenders, German Lenders or U.K. Lenders) party hereto.

U.S. Letter of Credit Subline: \$20,000,000.

U.S. Letters of Credit: any standby or documentary letter of credit issued by the U.S. Issuing Bank for the account of the U.S. Borrowers (or any U.S. Borrower), or any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support issued by Agent or the U.S. Issuing Bank for the benefit of any U.S. Borrower or any of its Subsidiaries, and shall include the Existing Letters of Credit.

U.S. Net Excess Availability: as of any date of determination, an amount equal to the U.S. Availability minus the aggregate amount, if any, of all trade payables of U.S. Domiciled Obligors that are more than 60 days past due (or such later date as Agent may approve in its sole discretion) and all book overdrafts of U.S. Domiciled Obligors in excess of historical practices with respect thereto, in each case as determined by Agent in its Credit Judgment.

U.S. Overadvance: as defined in **Section 2.1.5**.

U.S. Overadvance Loan: a U.S. Revolver Loan made to the U.S. Borrowers or the amount owed by the U.S. Borrowers when a U.S. Overadvance exists or is caused by the funding thereof.

U.S. Pledged Cash: the funds maintained in a blocked Deposit Account or securities account of a U.S. Borrower subject to a Deposit Account Control Agreement or securities account control agreement, as applicable, which give Agent at all times exclusive access and control for withdrawal purposes to the exclusion of the U.S. Borrowers and precluding the U.S. Borrowers from withdrawing or otherwise giving any instructions in connection therewith and which may not be withdrawn without the Agent's prior written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such withdrawal, no Default or Event of Default shall have occurred and be continuing and (ii) immediately after such withdrawal (for clarification, including after giving effect to any recalculation of the U.S. Borrowing Base upon giving effect to such withdrawal), U.S. Availability would be a positive number), and which are subject to effective security documents, in form and substance satisfactory to Agent, that provide Agent with an unencumbered perfected first priority/ranking security interest in and Lien on such funds.

U.S. Prime Rate: the rate of interest announced by Bank of America from time to time as its prime rate. Such rate is set by Bank of America on the basis of various factors, including its costs and desired return, general 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 rate. Any

change in such 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.

U.S. Real Estate Formula Amount: as of any date of determination, the lesser of (a) 80% of the fair market value of the Eligible Real Estate, as determined from the most recent appraisal of such Real Estate performed by an appraiser and on terms satisfactory to Agent; or (b) \$28,600,000 (such amount in this clause (b) to be reduced by \$476,666.67 on the first day of each calendar quarter occurring after the Third Amended Original Closing Date, commencing with the calendar quarter beginning on April 1, 2018).

U.S. Reimbursement Date: as defined in **Section 2.3.2**.

U.S. Rent and Charges Reserve: the aggregate of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any U.S. Facility Collateral or could assert a Lien on any U.S. Facility Collateral; and (b) a reserve at least equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

U.S. Required Lenders: U.S. Lenders (subject to **Section 4.2**) having (a) U.S. Revolver Commitments in excess of 50% of the aggregate U.S. Revolver Commitments; and (b) if the U.S. Revolver Commitments have terminated, U.S. Revolver Loans and U.S. LC Obligations in excess of 50% of all outstanding U.S. Revolver Loans and U.S. LC Obligations; provided, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more U.S. Lenders with U.S. Revolver Commitments or outstanding U.S. Revolver Loans or U.S. LC Obligations, "U.S. Required Lenders" must include at least 3 such U.S. Lenders, and (ii) less than 3 U.S. Lenders with U.S. Revolver Commitments or outstanding U.S. Revolver Loans or U.S. LC Obligations, "U.S. Required Lenders" must include all such U.S. Lenders.

U.S. Required Term Lenders: U.S. Lenders (subject to **Section 4.2**) having (a) Term Loan Commitments in excess of 50% of the aggregate Term Loan Commitments; and (b) if the Term Loan Commitments have terminated, Term Loans in excess of 50% of all outstanding Term Loans; provided, however, that the Commitments and Loans of any Defaulting Lender shall be excluded from such calculation; provided, further, that at any time there are: (i) 3 or more U.S. Lenders with Term Loan Commitments or outstanding Term Loans, "U.S. Required Term Lenders" must include at least 3 such U.S. Lenders, and (ii) less than 3 U.S. Lenders with Term Loan Commitments or outstanding Term Loans, "U.S. Required Term Lenders" must include all such U.S. Lenders.

U.S. Revolver Commitment: for any U.S. Lender, its obligation to make U.S. Revolver Loans and to participate in U.S. LC Obligations up to the maximum principal amount shown on **Schedule 1.1**, or as hereafter determined pursuant to each Assignment and Acceptance to which it is a party, as such U.S. Revolver Commitment may be adjusted from time to time in accordance with the provisions of **Sections 2.1.4, 2.1.7, or 11.2**. "U.S. Revolver Commitments" means the aggregate amount of such commitments of all U.S. Lenders.

U.S. Revolver Commitment Termination Date: the earliest of (a) the Facility Termination Date, (b) the date on which the Borrower Agent terminates or reduces to zero the U.S. Revolver Commitments pursuant to **Section 2.1.4**, and (c) the date on which the U.S. Revolver Commitments are terminated pursuant to **Section 11.2**.

U.S. Revolver Exposure: on any date, an amount equal to the sum of the U.S. Revolver Loans outstanding on such date plus the U.S. LC Obligations on such date.

U.S. Revolver Loan: a Revolver Loan made by a U.S. Lender to a U.S. Borrower pursuant to **Section 2.1.1(a)**, which Loan shall be denominated in Dollars and shall be either a U.S. Base Rate Revolver Loan or a LIBOR Loan, in each case as selected by Borrower Agent, and any U.S. Swingline Loan, U.S. Overadvance Loan or Protective Advance made to or owed by the U.S. Borrowers.

U.S. Revolver Notes: a promissory note executed by U.S. Borrowers in favor of a U.S. Lender in the form of **Exhibit A-2**, in the amount of such U.S. Lender's U.S. Revolver Commitment.

U.S. Subsidiary: a Subsidiary of Parent that is organized under the laws of a state of the United States or the District of Columbia.

U.S. Swingline Loan: any Borrowing of U.S. Base Rate Revolver Loans funded with Agent's funds, until such Borrowing is settled among the U.S. Lenders or repaid by the U.S. Borrowers.

U.S. Top Golf Reserve: a reserve established by Agent at Parent's request in accordance with the definition of Top Golf Proceeds, in an initial amount as of such establishment equal to the amount of the Top Golf Proceeds received as of the date of such establishment. The U.S. Top Golf Reserve (a) shall be reduced on a dollar for dollar basis for the amount expended in connection with (x) any Common Stock Repurchases made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)(ii)(B)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)(ii)(B)**; (b) may be permanently reduced from time to time upon Parent's written request to Agent; and (c) subject to Agent's written consent (such consent not to be unreasonably withheld if (i) upon and after giving effect to such adjustment, no Default or Event of Default shall have occurred and be continuing, and (ii) immediately after such adjustment (for clarification, including after giving effect to any recalculation of the Canadian Borrowing Base, the German Borrowing Base and U.K. Borrowing Base upon giving effect to such adjustment), Canadian Availability, German Availability and U.K. Availability would be a positive number), may be reallocated on a dollar for dollar basis to the Canadian Top Golf Reserve, the German Top Golf Reserve and/or the U.K. Top Golf Reserve upon Parent's written request to Agent; provided, however, that once reduced pursuant to clause (b) above, the U.S. Top Golf Reserve may not be increased. The parties agree that the U.S. Top Golf Reserve shall never be less than zero (-0-). For clarification, the aggregate amount of the Canadian Top Golf Reserve, the U.K. Top Golf Reserve, the German Top Golf Reserve and the U.S. Top Golf Reserve may not exceed an amount equal to the aggregate amount of Top Golf Proceeds received by Parent as reflected in all Top Golf Proceeds Notices (less any amounts Parent elects to deposit into the Top Golf Blocked Account) less all amounts expended in connection with (x) any Common Stock Repurchase made, or dividends paid on Parent's common stock, in each case after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.6(g)** and (y) any Investments made after the Third Amendment to Second Amended and Restated Effective Date in accordance with **Section 10.2.2(k)** and less all permanent reductions elected by Parent pursuant to clause (b) of each of the definitions of Canadian Top Golf Reserve, U.K. Top Golf Reserve, German Top Golf Reserve and U.S. Top Golf Reserve.

U.S. Trademark Formula Amount: as of any date of determination, the lesser of (a) 42% of the Net Orderly Liquidation Value of the Company Trademark; or (b) \$70,000,000 (such amount in this clause (b) to be permanently reduced by \$1,666,666.67 on the first day of each calendar quarter occurring after the Closing Date, commencing with the calendar quarter beginning on July 1, 2019, until such amount (for the avoidance of doubt, at all times) is less

than or equal to the lesser of (i) \$50,000,000 and (ii) 30% of the Net Orderly Liquidation Value of the Company Trademark).

U.S. Unused Line Fee Rate: a per annum rate equal to 0.25%.

Value: (a) for Inventory, its Dollar Equivalent value determined on the basis of the lower of cost or market, calculated on a first-in, first-out basis, and excluding any portion of cost attributable to intercompany profit among Borrowers and their Affiliates; and (b) for an Account, its Dollar Equivalent face amount, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could be claimed by the Account Debtor or any other Person.

Wage Earner Protection Act Reserve: on any date of determination, a reserve established from time to time by Agent in its Credit Judgment in such amount as Agent determines reflects the amounts that may become due under the *Wage Earner Protection Program Act* (Canada) with respect to the employees of any Obligor employed in Canada which would give rise to a Lien with priority under Applicable Law over the Lien of Agent.

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

1. Accounting Terms. Under the Loan Documents (except as otherwise specified herein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of Obligors delivered to Agent before the Original Agreement Closing Date and using the same inventory valuation method as used in such financial statements, except for any change required or permitted by GAAP if Obligors' certified public accountants concur in such change, the change is disclosed to Agent, and **Section 10.3** and any other provision hereof are amended in a manner satisfactory to Required Lenders to take into account the effects of the change, if any. No calculations under the Loan Documents shall give effect to any such change prior to any such amendment.

2. Uniform Commercial Code/PPSA. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: "Chattel Paper," "Commercial Tort Claim," "Equipment," "Goods," "Instrument," "Investment Property," "Letter-of-Credit Right" and "Supporting Obligation" and, as such terms relate to any such Property of any Canadian Domiciled Obligor, such terms shall refer to such Property as defined in the PPSA (to the extent such terms are defined therein).

3. Certain Matters of Construction. The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, "from" means "from and including," and "to" and "until" each mean "to but excluding." The terms "including" and "include" shall mean "including, without limitation" and, for purposes of each Loan

Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document. All references to (a) laws or statutes include all related rules, regulations, interpretations, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Loan Documents); (c) any section mean, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and assigns; (f) except as otherwise specified herein, time of day means time of day at Agent's notice address under **Section 14.3.1**; or (g) discretion of Agent, any Issuing Bank or any Lender mean the sole and absolute discretion of such Person. Except as expressly otherwise provided herein, all calculations of Value, fundings of Loans, issuances of Letters of Credit and payments of Obligations shall be in Dollars and, unless the context otherwise requires, all determinations (including calculations of Borrowing Base and financial covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise satisfactory to Agent (and not necessarily calculated in accordance with GAAP). Obligors shall have the burden of establishing any alleged negligence, misconduct or lack of good faith by Agent, any Issuing Bank or any Lender under any Loan Documents. No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Whenever the phrase "to the best of an Obligor's knowledge" or words of similar import are used in any Loan Documents, it means actual knowledge of a Senior Officer of such Obligor, or knowledge that a Senior Officer of such Obligor would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter to which such phrase relates.

4. Calculations. All references in the Loan Documents to Loans, Letters of Credit, Obligations, Borrowing Base components and other amounts shall be denominated in Dollars, unless expressly provided otherwise. The Dollar equivalent of any amounts denominated or reported under a Loan Document in a currency other than Dollars shall be determined by Agent on a daily basis, based on the current Spot Rate. Borrowers shall report Value and other Borrowing Base components to Agent in the currency invoiced by Obligors or shown in Obligors' financial records, and unless expressly provided otherwise, shall deliver financial statements and calculate financial covenants in Dollars. Notwithstanding anything herein to the contrary, if any Obligation is funded and expressly denominated in a currency other than Dollars, Obligors shall repay such Obligation in such other currency.

5. Interpretation (Quebec). For purposes of any Collateral located in the Province of Quebec or charged by any deed of hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of a Loan Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall be deemed to include "movable property", (b) "real property" shall be deemed to include "immovable property", (c) "tangible property" shall be deemed to include "corporeal property", (d) "intangible property" shall be deemed to include "incorporeal property", (e) "security interest" and "mortgage" shall be deemed to include a "hypothec", (f) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Québec, (g) all references to "perfection" of or "perfected" Liens shall be deemed to include a reference to the "opposability" of such Liens to third parties, (h) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (i) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall be deemed to include a "mandatary" (k) "construction liens"

shall be deemed to include "legal hypothecs", (l) "joint and several" shall be deemed to include "solidary", (m) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross fault", (n) "beneficial ownership" shall be deemed to include "ownership on behalf of another as mandatory", (o) "servitude" shall be deemed to include "easement", (p) "priority" shall be deemed to include "prior claim", (q) "survey" shall be deemed to include "certificate of location and plan", (r) "fee simple title" shall be deemed to include "absolute ownership" and (s) "foreclosure" shall be deemed to include the "exercise of a hypothecary right". For purposes of greater certainty, the reference to the "Loan Agreement" in the deed of hypothec dated November 3, 2017 executed by the Canadian Borrower in favor of the Agent means this Agreement.

~~1.7 — **LIBOR Amendment.** Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if Agent determines (which determination shall be conclusive absent manifest error), or Borrower Agent or Required Lenders notify Agent (with, in the case of the Required Lenders, a copy to Borrower Agent) that Borrowers or Required Lenders (as applicable) have determined, that:~~

~~(a) — adequate and reasonable means do not exist for ascertaining LIBOR for any applicable interest period, because the LIBOR quote on the applicable screen page (or other source) used by Agent to determine LIBOR ("LIBOR Screen Rate") is not available or published on a current basis and such circumstances are unlikely to be temporary; or~~

~~(b) — the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over Agent has made a public statement identifying a specific date ("Scheduled Unavailability Date") after which LIBOR or the LIBOR Screen Rate will no longer be available or used for determining the interest rate of loans, provided that, at the time of such statement, there is no successor administrator satisfactory to Agent that will continue to provide LIBOR after the Scheduled Unavailability Date; or~~

~~(c) — syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;~~

~~then, reasonably promptly after such determination or receipt of notice by Agent, Agent and Borrower Agent may amend this Agreement to replace LIBOR with (x) one or more SOFR-Based Rates or (y) another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar Dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service selected by Agent from time to time in its discretion and may be periodically updated ("Adjustment" and any such proposed rate, a "LIBOR Successor Rate"), and the amendment shall be effective at 5:00 p.m. on the fifth Business Day after Agent posts the amendment to all Lenders and Borrowers unless, prior to such time, Required Lenders notify Agent that they (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; provided, that in the case of clause (A), 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 Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by Agent.~~

~~If no LIBOR Successor Rate has been determined and the circumstances under clause (a) above exist or the Scheduled Unavailability Date has occurred, Agent will promptly notify Borrowers and Lenders. Thereafter, (i) the obligation of Lenders to make or maintain LIBOR Loans shall be suspended (to the extent of the affected LIBOR Loans or Interest Periods), and (ii) the LIBOR component shall no longer be used in determining the U.S. Base Rate or the Canadian Base Rate. Upon receipt of such notice, the Borrower Agent may revoke any pending request for a funding of, conversion to or continuation of a LIBOR Loan (to the extent of the affected LIBOR Loans or Interest Periods) or, failing that, will be deemed to have submitted a request for a U.S. Base Rate Loan, a Canadian Base Rate Loan, a U.K. Base Rate Loan or a German Base Rate Loan (but in the case of any such pending request in relation to a LIBOR Loan for the U.K. Borrower or a German Borrower, if (a) that LIBOR Loan was denominated in British Pounds, Swiss Francs or Euros, the Borrower Agent shall be deemed to have revoked any such pending request for a Borrowing of, conversion to or continuation of that LIBOR Loan, and the U.K. Borrower or German Borrower, as applicable, shall repay any such outstanding LIBOR Loan which was the subject of a continuation request, and (b) only if that LIBOR Loan was denominated in Dollars shall the Borrower Agent be deemed to have submitted a request for a U.K. Base Rate Loan or German Base Rate Loan, as applicable).~~

~~Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such rate be less than zero for purposes of this Agreement. In connection with the implementation of a LIBOR Successor Rate, Agent shall 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.~~

Section 2. CREDIT FACILITIES

2.a Revolver Commitments.

2.1.1. Revolver Loans.

1. U.S. Revolver Loans to U.S. Borrowers. Each U.S. Lender agrees, severally and not jointly with the other U.S. Lenders, upon the terms and subject to the conditions set forth herein, to make U.S. Revolver Loans to the U.S. Borrowers on any Business Day during the period from the Closing Date to the U.S. Revolver Commitment Termination Date, not to exceed in aggregate principal amount outstanding at any time such U.S. Lender's U.S. Revolver Commitment at such time, which U.S. Revolver Loans may be repaid and reborrowed in accordance with the terms and provisions of this Agreement; provided, however, that such U.S. Lenders shall have no obligation to the U.S. Borrowers whatsoever to honor any request for a U.S. Revolver Loan on or after the U.S. Revolver Commitment Termination Date or if the amount of the proposed U.S. Revolver Loan exceeds U.S. Availability on the proposed funding date for such U.S. Revolver Loan. Each Borrowing of U.S. Revolver Loans shall be funded by the U.S. Lenders on a Pro Rata basis. The U.S. Revolver Loans shall bear interest as set forth in **Section 3.1**. Each U.S. Revolver Loan shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of U.S. Base Rate Revolver Loans or LIBOR Revolver Loans. The U.S. Revolver Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all of the U.S. Facility Collateral. U.S. Borrowers shall be jointly and severally liable to pay all of the U.S. Revolver Loans. Each U.S. Revolver Loan shall be funded and repaid in Dollars.

2. Canadian Revolver Loans to Canadian Borrower. Each Canadian Lender agrees, severally and not jointly with the other Canadian Lenders, upon the terms and subject to

the conditions set forth herein, to make Canadian Revolver Loans to the Canadian Borrower on any Business Day during the period from the Closing Date to the Canadian Revolver Commitment Termination Date, not to exceed in aggregate principal amount outstanding at any time such Canadian Lender's Canadian Revolver Commitment at such time, which Canadian Revolver Loans may be repaid and reborrowed in accordance with the terms and provisions of this Agreement; provided, however, that such Canadian Lenders shall have no obligation to the Canadian Borrower whatsoever to honor any request for a Canadian Revolver Loan on or after the Canadian Revolver Commitment Termination Date or if the amount of the proposed Canadian Revolver Loan exceeds Canadian Availability on the proposed funding date for such Canadian Revolver Loan. Each Borrowing of Canadian Revolver Loans shall be funded by the Canadian Lenders on a Pro Rata basis. The Canadian Revolver Loans shall bear interest as set forth in **Section 3.1**. Each Canadian Revolver Loan shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of Canadian Prime Rate Loans or Canadian BA Rate Loans if denominated in Canadian Dollars, or shall consist entirely of Canadian Base Rate Loans or LIBOR Loans if denominated in Dollars. The Canadian Revolver Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all of the Canadian Facility Collateral. Each Canadian Revolver Loan shall be funded in Canadian Dollars or, at the option of the Borrower Agent, Dollars and repaid in the same currency as such underlying Canadian Revolver Loan was made.

3. U.K. Revolver Loans to U.K. Borrower. Each U.K. Lender agrees, severally and not jointly with the other U.K. Lenders, upon the terms and subject to the conditions set forth herein, to make U.K. Revolver Loans to the U.K. Borrower on any Business Day during the period from the Closing Date to the U.K. Revolver Commitment Termination Date, not to exceed in aggregate principal amount outstanding at any time such U.K. Lender's U.K. Revolver Commitment at such time, which U.K. Revolver Loans may be repaid and reborrowed in accordance with the terms and provisions of this Agreement; provided, however, that such U.K. Lenders shall have no obligation to the U.K. Borrower whatsoever to honor any request for a U.K. Revolver Loan on or after the U.K. Revolver Commitment Termination Date or if the amount of the proposed U.K. Revolver Loan exceeds U.K. Availability on the proposed funding date for such U.K. Revolver Loan. Each Borrowing of U.K. Revolver Loans shall be funded by the U.K. Lenders on a Pro Rata basis. The U.K. Revolver Loans shall bear interest as set forth in **Section 3.1**. Each U.K. Revolver Loan shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of U.K. Base Rate Loans or LIBOR Loans (provided, that U.K. Base Rate Loans shall only be denominated in Dollars). The U.K. Revolver Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all of the U.K. Facility Collateral. Each U.K. Revolver Loan shall be funded in Dollars, British Pounds and/or Euros (in the case of LIBOR Loans) and Dollars only (in the case of U.K. Base Rate Loans) and shall be repaid in the same currency as such underlying U.K. Revolver Loan was made.

4. German Revolver Loans to German Borrower. Each German Lender agrees, severally and not jointly with the other German Lenders, upon the terms and subject to the conditions set forth herein, to make German Revolver Loans to the German Borrower on any Business Day during the period from the Closing Date to the German Revolver Commitment Termination Date, not to exceed in aggregate principal amount outstanding at any time such German Lender's German Revolver Commitment at such time, which German Revolver Loans may be repaid and reborrowed in accordance with the terms and provisions of this Agreement; provided, however, that such German Lenders shall have no obligation to the German Borrower whatsoever to honor any request for a German Revolver Loan on or after the German Revolver Commitment Termination Date or if the amount of the proposed German Revolver Loan exceeds German Availability on the proposed funding date for such German Revolver Loan. Each Borrowing of German Revolver Loans shall be funded by the German Lenders on a Pro Rata

basis. The German Revolver Loans shall bear interest as set forth in **Section 3.1**. Each German Revolver Loan shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of German Base Rate Loans or LIBOR Loans (provided, that German Base Rate Loans shall only be denominated in Dollars). The German Revolver Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all of the German Facility Collateral. Each German Revolver Loan shall be funded in Dollars, British Pounds, Swiss Francs and/or Euros (in the case of LIBOR Loans) and Dollars only (in the case of German Base Rate Loans) and shall be repaid in the same currency as such underlying German Revolver Loan was made.

5. Maximum Total Revolver Exposure. Notwithstanding anything to the contrary contained in this **Section 2.1.1**, in no event shall any Borrower be entitled to receive a Revolver Loan if, at the time of the proposed funding of such Loan (and after giving effect thereto and all pending requests for Loans), the Total Revolver Exposure exceeds (or would exceed) the lesser of the Maximum Facility Amount and the Revolver Commitments.

2.1.2. Revolver Notes. The Revolver Loans made by each Lender and interest accruing thereon shall be evidenced by the records of Agent and such Lender. At the request of any Lender, the U.S. Borrowers and/or the Canadian Borrower and/or the U.K. Borrower and/or the German Borrower shall execute and deliver a U.S. Revolver Note and/or a Canadian Revolver Note and/or a U.K. Revolver Note and/or a German Revolver Note, respectively, to such Lender in the amount of such Lender's applicable Revolver Commitment(s).

2.1.3. Use of Proceeds. The proceeds of Revolver Loans shall be used by Borrowers solely (a) to satisfy existing Debt on the Original Agreement Closing Date; (b) to pay fees and transaction expenses associated with the closing of this credit facility; (c) to pay Obligations in accordance with this Agreement; and (d) for working capital and other lawful corporate purposes not prohibited by this Agreement. Borrowers shall not, directly or indirectly, use any Letter of Credit or Loan proceeds, nor use, lend, contribute or otherwise make available any Letter of Credit or Loan proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any country or territory, that, at the time of issuance of the Letter of Credit or funding of the Loan, is the target of a Sanction; or (ii) in any manner that would result in a violation of a Sanction by any Person (including any Secured Party or other individual or entity participating in the transaction) or in violation of Anti-Corruption Laws.

2.1.4. Voluntary Reallocation, Reduction or Termination of Revolver Commitments.

1. Termination of a Revolver Commitment.

(1) The Canadian Revolver Commitments shall terminate on the Canadian Revolver Commitment Termination Date, the U.K. Revolver Commitments shall terminate on the U.K. Revolver Commitment Termination Date, the German Revolver Commitments shall terminate on the German Revolver Commitment Termination Date, and the U.S. Revolver Commitments shall terminate on the U.S. Revolver Commitment Termination Date, in each case, unless sooner terminated in accordance with this Agreement.

(2) Upon at least 10 days' prior written notice to Agent from the Borrower Agent, (A) U.S. Borrowers may, at their option, terminate the U.S. Revolver Commitments and this credit facility and/or (B) the Canadian Borrower may, at its option, terminate the Canadian Revolver Commitments and/or (C) the U.K. Borrower

may, at its option, terminate the U.K. Revolver Commitments and/or (D) the German Borrower may, at its option, terminate the German Revolver Commitments, in each case, without premium or penalty (other than funding losses payable pursuant to **Section 3.9**). If the U.S. Borrowers elect to reduce to zero or terminate the U.S. Revolver Commitments pursuant to the previous sentence, the Canadian Revolver Commitments, German Revolver Commitments and U.K. Revolver Commitments shall automatically terminate concurrently with the termination of the U.S. Revolver Commitments. Any notice of termination given by Borrowers pursuant to this **Section 2.1.4** shall be irrevocable but may be conditioned on a refinancing or another material event.

(3) On the Canadian Revolver Commitment Termination Date, the Canadian Borrower shall make Full Payment of all Canadian Facility Obligations. On the U.K. Revolver Commitment Termination Date, the U.K. Borrower shall make Full Payment of all U.K. Facility Obligations. On the German Revolver Commitment Termination Date, the German Borrower shall make Full Payment of all German Facility Obligations. On the U.S. Revolver Commitment Termination Date, the U.S. Borrowers shall make Full Payment of all U.S. Facility Obligations.

6. Reduction of the Maximum Facility Amount.

(4) So long as (x) no Default or Event of Default then exists or would result therefrom, and (y) no U.S. Overadvance, Canadian Overadvance, German Overadvance or U.K. Overadvance then exists or would result therefrom, the Borrower Agent may permanently and irrevocably reduce the Maximum Facility Amount by giving Agent at least 10 days' prior irrevocable written notice thereof from a Senior Officer of the Borrower Agent, which notice shall (A) specify the date (which shall be a Business Day) and amount of such reduction (which shall be in a minimum amount of \$10,000,000 and increments of \$5,000,000 in excess thereof), (B) specify the allocation of such reduction to, and the corresponding reductions of, each of the Maximum U.S. Facility Amount and/or the Maximum Canadian Facility Amount and/or the Maximum U.K. Facility Amount and/or the Maximum German Facility Amount (and the respective U.S. Revolver Commitments, Canadian Revolver Commitments, U.K. Revolver Commitments and the German Revolver Commitments of the U.S. Lenders, the Canadian Lenders, the U.K. Lenders and the German Lenders, respectively, in respect thereof, each of which shall be allocated to such Lenders on a Pro Rata basis at the time of such reduction) and (C) certify the satisfaction of the foregoing conditions precedent (including calculations thereof in reasonable detail) both as of the date of such certificate and as of the effective date of any such proposed reduction.

(5) In addition to and without limiting the generality of the foregoing, (A) each reduction in the Maximum U.S. Facility Amount and the U.S. Revolver Commitments shall in no event exceed U.S. Availability and shall be in a minimum amount of \$5,000,000 and increments of \$1,000,000 in excess thereof, (B) each reduction in the Maximum Canadian Facility Amount and the Canadian Revolver Commitments shall in no event exceed Canadian Availability and shall be in a minimum amount of \$5,000,000 and increments of \$1,000,000 in excess thereof, (C) each reduction in the Maximum U.K. Facility Amount and the U.K. Revolver Commitments shall in no event exceed U.K. Availability and shall be in a minimum amount of \$5,000,000 and increments of \$1,000,000 in excess thereof, and (D) each reduction in the Maximum German Facility Amount and the German Revolver Commitments shall in no event exceed German Availability and shall be in a minimum amount of \$5,000,000 and increments of \$1,000,000 in excess thereof.

(1) Reallocation of the Maximum Country Facility Amounts.

(6) So long as (x) no Default or Event of Default then exists or would result therefrom, and (y) no U.S. Overadvance, Canadian Overadvance, German Overadvance or U.K. Overadvance then exists or would result therefrom, the Borrower Agent may, on no more than two occasions per calendar year, reduce one or more Maximum Country Facility Amounts, and, on a dollar for dollar basis by the amount of such reduction, increase one or more of the other Maximum Country Facility Amounts, by delivering to Agent (A) at least 30 days' prior irrevocable written notice thereof from a Senior Officer of the Borrower Agent, which notice shall (1) specify the date (which shall be a Business Day) of such proposed reallocation, (2) specify the reallocation amount(s) amongst each applicable Maximum Country Facility Amount, and (3) certify the satisfaction of the foregoing conditions precedent (including calculations thereof in reasonable detail) both as of the date of such certificate and as of the effective date of any such proposed reallocation, and (B) pro forma Borrowing Base Certificates at least three Business Days prior to the requested date of such proposed reallocation prepared in accordance with **Section 8.1** and which give effect to such proposed reallocation.

(7) Each reallocation in the Maximum Country Facility Amounts pursuant to **Section 2.1.4(c)(i)** shall reduce or increase, as applicable, the corresponding Revolver Commitment Total, which such reduction or increase shall be allocated amongst the Lenders holding such Revolver Commitment Total on a Pro Rata basis at the time of such reallocation.

(8) In addition to and without limiting the generality of the foregoing,

1. (1) each reduction in the Maximum U.S. Facility Amount and the U.S. Revolver Commitments shall in no event exceed U.S. Availability, (2) after giving effect to such reduction in the Maximum U.S. Facility Amount and the U.S. Revolver Commitments, the U.S. Revolver Commitments shall represent at least 60.0% of the aggregate Revolver Commitments, and (3) each reallocation in the Maximum U.S. Facility Amount and the U.S. Revolver Commitments shall be in a minimum amount of \$5,000,000 and increments of \$5,000,000 in excess thereof;

2. (1) each reduction in the Maximum Canadian Facility Amount and the Canadian Revolver Commitments shall in no event exceed Canadian Availability, (2) unless the Canadian Revolver Commitments are terminated in their entirety pursuant to **Section 2.1.4(a)** above, no reduction in the Maximum Canadian Facility Amount or the Canadian Revolver Commitments shall reduce the aggregate Canadian Revolver Commitments to less than \$10,000,000, and (3) each reallocation in the Maximum Canadian Facility Amount and the Canadian Revolver Commitments shall be in a minimum amount of \$5,000,000 and increments of \$5,000,000 in excess thereof;

3. (1) each reduction in the Maximum German Facility Amount and the German Revolver Commitments shall in no event exceed German Availability, (2) unless the German Revolver Commitments are terminated in their entirety pursuant to **Section 2.1.4(a)** above, no reduction in the Maximum German Facility Amount or the German Revolver Commitments shall reduce the aggregate German Revolver Commitments to less than \$10,000,000, and (3) each reallocation in the Maximum German Facility Amount and the German Revolver Commitments shall be in a minimum amount of \$5,000,000 and increments of \$5,000,000 in excess thereof; and

4. (1) each reduction in the Maximum U.K. Facility Amount and the U.K. Revolver Commitments shall in no event exceed U.K. Availability, (2) unless the U.K. Revolver Commitments are terminated in their entirety pursuant to **Section 2.1.4(a)** above, no reduction in the Maximum U.K. Facility Amount or the U.K. Revolver Commitments shall reduce the aggregate U.K. Revolver Commitments to less than \$10,000,000, and (3) each reallocation in the Maximum U.K. Facility Amount and the U.K. Revolver Commitments shall be in a minimum amount of \$5,000,000 and increments of \$5,000,000 in excess thereof.

(1) Upon at least 10 days' prior written notice to Agent from the Borrower Agent, U.S. Borrowers may, at their option, permanently remove the U.S. Real Estate Formula Amount from the calculation of the U.S. Borrowing Base, without premium or penalty (other than funding losses payable pursuant to **Section 3.9**). Any notice of removal given by Borrowers pursuant to this **Section 2.1.4(d)** shall be irrevocable. Agent and the Lenders agree that Agent shall release any Liens with respect to the Eligible Real Estate to the extent the U.S. Real Estate Formula Amount is removed from the calculation of the U.S. Borrowing Base in accordance with this **Section 2.1.4(d)** and so long as no Default or Event of Default has occurred and is continuing.

1. Overadvances. If the aggregate U.S. Revolver Loans exceed the U.S. Borrowing Base (a "U.S. Overadvance") at any time, the excess amount shall be payable by U.S. Borrowers **on demand** by Agent, but all such U.S. Revolver Loans shall nevertheless constitute U.S. Facility Obligations secured by the U.S. Facility Collateral. If the aggregate Canadian Revolver Loans exceed the Canadian Borrowing Base (a "Canadian Overadvance") at any time, the excess amount shall be payable by Canadian Borrower **on demand** by Agent, but all such Canadian Revolver Loans shall nevertheless constitute Canadian Facility Obligations secured by the Canadian Facility Collateral. If the aggregate U.K. Revolver Loans exceed the U.K. Borrowing Base (a "U.K. Overadvance") at any time, the excess amount shall be payable by the U.K. Borrower **on demand** by Agent, but all such U.K. Revolver Loans shall nevertheless constitute U.K. Facility Obligations secured by the U.K. Facility Collateral. If the aggregate German Revolver Loans exceed the German Borrowing Base (a "German Overadvance") at any time, the excess amount shall be payable by the German Borrower **on demand** by Agent, but all such German Revolver Loans shall nevertheless constitute German Facility Obligations secured by the German Facility Collateral. Agent may require the Applicable Lenders to honor requests for Overadvance Loans and to forbear from requiring the applicable Borrowers to cure an Overadvance, (a) when no other Event of Default is known to Agent, as long as (i) the Overadvance does not continue for more than 30 consecutive days (and no Overadvance may exist for at least five consecutive days thereafter before further Overadvance Loans are required), and (ii) the Overadvance is not known by Agent to exceed 7.5% of the U.S. Borrowing Base with respect to the U.S. Borrowers, 7.5% of the Canadian Borrowing Base with respect to the Canadian Borrower, 7.5% of the German Borrowing Base with respect to the German Borrower, or 7.5% of the U.K. Borrowing Base with respect to the U.K. Borrower; and (b) regardless of whether an Event of Default exists, if Agent discovers an Overadvance not previously known by it to exist, as long as from the date of such discovery the Overadvance does not continue for more than 30 consecutive days. In no event shall Overadvance Loans be required that would cause the outstanding U.S. Revolver Exposure to exceed the aggregate U.S. Revolver Commitments, the outstanding Canadian Revolver Exposure to exceed the aggregate Canadian Revolver Commitments, the outstanding U.K. Revolver Exposure to exceed the aggregate U.K. Revolver Commitments, or the outstanding German Revolver Exposure to exceed the aggregate German Revolver Commitments. Any funding of an Overadvance Loan or sufferance of an Overadvance shall not constitute a waiver by Agent or Lenders of the Event of Default caused thereby. In no event shall any Borrower or other Obligor be deemed a beneficiary of this Section

nor authorized to enforce any of its terms. Required Lenders may at any time revoke Agent's authority to knowingly make further Overadvance Loans by written notice to Agent.

2. Protective Advances. Agent shall be authorized, in its discretion, at any time that any conditions in **Section 6** are not satisfied, and without regard to the aggregate U.S. Revolver Commitments, the Canadian Revolver Commitments, the U.K. Revolver Commitments, or the German Revolver Commitments to make U.S. Base Rate Revolver Loans, Canadian Prime Rate Loans, U.K. Base Rate Loans, and German Base Rate Loans, as applicable (each a "Protective Advance") (a) up to an aggregate amount of (i) 10% of the aggregate Canadian Revolver Commitments (minus the aggregate amount of any outstanding Canadian Overadvances), with respect to the Canadian Borrower, (ii) 10% of the aggregate U.S. Revolver Commitments (minus the aggregate amount of any outstanding U.S. Overadvances), with respect to the U.S. Borrowers, (iii) 10% of the aggregate U.K. Revolver Commitments (minus the aggregate amount of any outstanding U.K. Overadvances), with respect to the U.K. Borrower, or (iv) 10% of the aggregate German Revolver Commitments (minus the aggregate amount of any outstanding German Overadvances), with respect to the German Borrower, in each case, outstanding at any time, if Agent deems such Loans necessary or desirable to preserve or protect Collateral, or to enhance the collectibility or repayment of Obligations; or (b) to pay any other amounts chargeable to Obligor under any Loan Documents, including costs, fees and expenses. Each Applicable Lender shall participate in each Protective Advance on a Pro Rata basis. Required Lenders may at any time revoke Agent's authority to make further Protective Advances under clause (a) by written notice to Agent. Absent such revocation, Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. All Protective Advances made by Agent with respect to U.S. Borrowers shall be U.S. Facility Obligations, secured by the U.S. Facility Collateral and shall be treated for all purposes as Extraordinary Expenses. All Protective Advances made by Agent with respect to Canadian Borrower shall be Canadian Facility Obligations, secured by the Canadian Facility Collateral and shall be treated for all purposes as Extraordinary Expenses. All Protective Advances made by Agent with respect to the U.K. Borrower shall be U.K. Facility Obligations, secured by the U.K. Facility Collateral and shall be treated for all purposes as Extraordinary Expenses. All Protective Advances made by Agent with respect to the German Borrower shall be German Facility Obligations, secured by the German Facility Collateral and shall be treated for all purposes as Extraordinary Expenses. In no event shall Protective Advances be made by Agent if it would cause the outstanding U.S. Revolver Exposure to exceed the aggregate U.S. Revolver Commitments, the outstanding Canadian Revolver Exposure to exceed the aggregate Canadian Revolver Commitments, the outstanding U.K. Revolver Exposure to exceed the aggregate U.K. Revolver Commitments, or the outstanding German Revolver Exposure to exceed the aggregate German Revolver Commitments.

3. Increase in U.S. Revolver Commitments. Borrowers may request an increase in the aggregate U.S. Revolver Commitments from time to time upon notice to Agent, as long as (a) the requested increase is in a minimum amount of \$10,000,000 and is offered on the same terms as the existing U.S. Revolver Commitments, except for fees mutually agreed upon by Borrowers and Agent, (b) increases under this Section do not exceed \$150,000,000 in the aggregate and no more than 3 increases are made, (c) no reduction in Revolver Commitments pursuant to **Section 2.1.4** has occurred prior to the requested increase, (d) no Default or Event of Default shall have occurred and be continuing at the time of such increase or result therefrom, and (e) Borrowers shall certify in writing to Agent that Borrowers are not in default under the Term Loan Facility Agreement after giving effect to the requested increase. Agent shall promptly notify U.S. Lenders of the requested increase and, within 10 Business Days thereafter, each U.S. Lender shall notify Agent if and to what extent such Lender commits to increase its U.S. Revolver Commitment. No such increases shall be consummated unless each U.S. Lender agrees to increase its U.S. Revolver Commitment on a Pro Rata basis. Any U.S. Lender not responding within such period shall be deemed to have declined an increase. Provided the

conditions set forth in **Section 6.2** are satisfied, total U.S. Revolver Commitments shall be increased by the requested amount (or such lesser amount committed by U.S. Lenders on a Pro Rata basis) on a date agreed upon by Agent and Borrower Agent, but no later than 45 days following Borrowers' increase request. Agent, Borrowers, and U.S. Lenders shall execute and deliver such documents and agreements as Agent deems appropriate to evidence the increase in and allocations of U.S. Revolver Commitments (which shall be on a Pro Rata basis among U.S. Lenders).

2.a U.K. Letter of Credit Facility.

1. **Issuance of U.K. Letters of Credit.** U.K. Issuing Bank shall issue U.K. Letters of Credit from time to time on and after the Closing Date until 30 days prior to the Facility Termination Date (or until the U.K. Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(2) The U.K. Borrower acknowledges that U.K. Issuing Bank's issuance of any U.K. Letter of Credit is conditioned upon U.K. Issuing Bank's receipt of a LC Application with respect to the requested U.K. Letter of Credit, as well as such other instruments and agreements as U.K. Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. U.K. Issuing Bank shall have no obligation to issue any U.K. Letter of Credit unless (i) U.K. Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender that is a U.K. Lender exists, such Lender or the U.K. Borrower has entered into arrangements satisfactory to Agent and U.K. Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, U.K. Issuing Bank receives written notice from U.K. Required Lenders that a LC Condition has not been satisfied, U.K. Issuing Bank shall not issue the requested U.K. Letter of Credit. Prior to receipt of any such notice, U.K. Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(3) U.K. Letters of Credit may be requested by the U.K. Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Agent. The renewal or extension of any U.K. Letter of Credit shall be treated as the issuance of a new U.K. Letter of Credit, except that delivery of a new LC Application shall be required at the discretion of U.K. Issuing Bank.

(4) The U.K. Borrower assumes all risks of the acts, omissions or misuses of any U.K. Letter of Credit by the beneficiary. In connection with issuance of any U.K. Letter of Credit, none of Agent, Issuing Banks or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a U.K. Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and the U.K. Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any U.K. Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Banks, Agent or any Lender, including any act or omission of a Governmental Authority. The rights and remedies of U.K. Issuing Bank under the Loan Documents shall be cumulative. U.K. Issuing Bank shall be fully subrogated to the rights

and remedies of each beneficiary whose claims against the U.K. Borrower are discharged with proceeds of any U.K. Letter of Credit.

(5) In connection with its administration of and enforcement of rights or remedies under any U.K. Letters of Credit or LC Documents, U.K. Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by U.K. Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. U.K. Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. U.K. Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to U.K. Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

2.2.i. Reimbursement; Participations.

(6) If U.K. Issuing Bank honors any request for payment under a U.K. Letter of Credit, the U.K. Borrower shall pay to U.K. Issuing Bank, on the same day ("U.K. Reimbursement Date"), the amount paid by U.K. Issuing Bank under such U.K. Letter of Credit in the same currency in which the Letter of Credit was denominated unless otherwise specified by Agent or U.K. Issuing Bank (at their respective option) that it requires payment in Dollars, British Pounds or Euros calculated at the Spot Rate, together with interest at the interest rate for U.K. Base Rate Loans from the U.K. Reimbursement Date until payment by the U.K. Borrower. The obligation of the U.K. Borrower to reimburse U.K. Issuing Bank for any payment made under a U.K. Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any U.K. Letter of Credit or the existence of any claim, setoff, defense or other right that the U.K. Borrower may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, the U.K. Borrower shall be deemed to have requested a Borrowing of a LIBOR Revolver Loan (the initial Interest Period of which shall be 30 days commencing on the relevant Reimbursement Date) in an amount necessary to pay all amounts due U.K. Issuing Bank on that U.K. Reimbursement Date and each U.K. Lender agrees to fund its Pro Rata share of such Borrowing whether or not the U.K. Revolver Commitments have terminated, a U.K. Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied. In the event that (i) a drawing denominated in a foreign currency (other than Dollars, British Pounds and Euros) (such foreign currency, a "U.K. Reimbursed Foreign Currency") is to be reimbursed in Dollars, British Pounds or Euros pursuant to the first sentence in this **Section 2.2.2(a)**; and (ii) the Dollars, British Pounds or Euros amount, as applicable, paid by the U.K. Borrower shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the U.K. Reimbursed Foreign Currency equal to the drawing, the U.K. Borrower agrees, as a separate and independent obligation, to indemnify U.K. Issuing Bank for the loss resulting from its inability on that date to purchase the U.K. Reimbursed Foreign Currency in the full amount of the drawing.

(7) Upon issuance of a U.K. Letter of Credit, each U.K. Lender shall be deemed to have irrevocably and unconditionally purchased from U.K. Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all U.K. LC Obligations relating to the U.K. Letter of Credit. If U.K. Issuing Bank makes any payment under a U.K. Letter of Credit and the U.K. Borrower does not reimburse such payment on the U.K. Reimbursement Date, Agent shall promptly notify U.K. Lenders and each U.K. Lender shall promptly (within one Business Day) and unconditionally pay to Agent, for the benefit of U.K. Issuing Bank, the U.K. Lender's Pro Rata share of such payment in the same currency as required of the U.K. Borrower in accordance with **Section 2.2.2(a)**. Upon request by a U.K.

Lender, U.K. Issuing Bank shall furnish copies of any U.K. Letters of Credit and LC Documents in its possession at such time.

(8) The obligation of each U.K. Lender to make payments to Agent for the account of U.K. Issuing Bank in connection with U.K. Issuing Bank's payment under a U.K. Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a U.K. Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Obligor may have with respect to any Obligations. U.K. Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by the U.K. Borrower or other Person of any obligations under any LC Documents. U.K. Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Obligor. U.K. Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(9) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct. U.K. Issuing Bank shall not have any liability to any Lender if U.K. Issuing Bank refrains from any action under a Letter of Credit or LC Documents until it receives written instructions from U.K. Required Lenders.

2. Cash Collateral. If any U.K. LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default exists, (b) that U.K. Availability is less than zero, or (c) within 10 Business Days prior to the U.K. Revolver Commitment Termination Date, then the U.K. Borrower shall, at U.K. Issuing Bank's or Agent's request, Cash Collateralize the stated amount of all outstanding U.K. Letters of Credit and pay to U.K. Issuing Bank the amount of all other U.K. LC Obligations. The U.K. Borrower shall, **on demand** by U.K. Issuing Bank or Agent from time to time, Cash Collateralize the Fronting Exposure of any Defaulting Lender which is a U.K. Lender. If the U.K. Borrower fails to provide any Cash Collateral as required hereunder, U.K. Lenders may (and shall upon direction of Agent) advance, as U.K. Revolver Loans, the amount of the Cash Collateral required (whether or not the U.K. Revolver Commitments have terminated, a U.K. Overadvance exists or the conditions in **Section 6** are satisfied).

3. Resignation of U.K. Issuing Bank. U.K. Issuing Bank may resign at any time upon notice to Agent and the U.K. Borrower. On the effective date of such resignation, U.K. Issuing Bank shall have no further obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and obligations of an Issuing Bank hereunder, including under **Sections 2.2, 12.6 and 14.2**, relating to any Letter of Credit issued prior to such date. Agent shall promptly appoint a replacement U.K. Issuing Bank, which, as long as no Default or Event of Default exists, shall be reasonably acceptable to the U.K. Borrower.

2.b U.S. Letter of Credit Facility.

2.3.i Issuance of U.S. Letters of Credit. U.S. Issuing Bank shall issue U.S. Letters of Credit from time to time until 30 days prior to the Facility Termination Date (or until the U.S.

Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(10) Each U.S. Borrower acknowledges that U.S. Issuing Bank's issuance of any U.S. Letter of Credit is conditioned upon U.S. Issuing Bank's receipt of a LC Application with respect to the requested U.S. Letter of Credit, as well as such other instruments and agreements as U.S. Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. U.S. Issuing Bank shall have no obligation to issue any U.S. Letter of Credit unless (i) U.S. Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender that is a U.S. Lender exists, such Lender or U.S. Borrowers have entered into arrangements satisfactory to Agent and U.S. Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, U.S. Issuing Bank receives written notice from U.S. Required Lenders that a LC Condition has not been satisfied, U.S. Issuing Bank shall not issue the requested U.S. Letter of Credit. Prior to receipt of any such notice, U.S. Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(11) U.S. Letters of Credit may be requested by a U.S. Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Agent. The renewal or extension of any U.S. Letter of Credit shall be treated as the issuance of a new U.S. Letter of Credit, except that delivery of a new LC Application shall be required at the discretion of U.S. Issuing Bank.

(12) U.S. Borrowers assume all risks of the acts, omissions or misuses of any U.S. Letter of Credit by the beneficiary. In connection with issuance of any U.S. Letter of Credit, none of Agent, Issuing Banks or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a U.S. Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and a U.S. Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any U.S. Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Banks, Agent or any Lender, including any act or omission of a Governmental Authority. The rights and remedies of U.S. Issuing Bank under the Loan Documents shall be cumulative. U.S. Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims against U.S. Borrowers are discharged with proceeds of any U.S. Letter of Credit.

(13) In connection with its administration of and enforcement of rights or remedies under any U.S. Letters of Credit or LC Documents, U.S. Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by U.S. Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. U.S. Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. U.S. Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to U.S.

Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

(14) Obligors, Agent and Lenders hereby acknowledge and agree that all Existing Letters of Credit shall constitute U.S. Letters of Credit under this Agreement on and after the Original Agreement Closing Date with the same effect as if such Existing Letters of Credit were issued by U.S. Issuing Bank at the request of U.S. Borrowers on the Original Agreement Closing Date.

2.3.i.Reimbursement; Participations.

(15) If U.S. Issuing Bank honors any request for payment under a U.S. Letter of Credit, U.S. Borrowers shall pay to U.S. Issuing Bank, on the same day ("U.S. Reimbursement Date"), the amount paid by U.S. Issuing Bank under such U.S. Letter of Credit in the same currency in which the Letter of Credit was denominated unless otherwise specified by Agent or U.S. Issuing Bank (at their respective option) that it requires payment in Dollars calculated at the Spot Rate, together with interest at the interest rate for U.S. Base Rate Revolver Loans from the U.S. Reimbursement Date until payment by U.S. Borrowers. The obligation of U.S. Borrowers to reimburse U.S. Issuing Bank for any payment made under a U.S. Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any U.S. Letter of Credit or the existence of any claim, setoff, defense or other right that U.S. Borrowers may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, U.S. Borrowers shall be deemed to have requested a Borrowing of U.S. Base Rate Revolver Loans in an amount necessary to pay all amounts due U.S. Issuing Bank on any U.S. Reimbursement Date and each U.S. Lender agrees to fund its Pro Rata share of such Borrowing whether or not the U.S. Revolver Commitments have terminated, a U.S. Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied. In the event that (i) a drawing denominated in a foreign currency (such foreign currency, a "U.S. Reimbursed Foreign Currency") is to be reimbursed in Dollars pursuant to the first sentence in this **Section 2.3.2(a)**; and (ii) the Dollars amount paid by the U.S. Borrowers shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the U.S. Reimbursed Foreign Currency equal to the drawing, the U.S. Borrowers agree, as a separate and independent obligation, to indemnify U.S. Issuing Bank for the loss resulting from its inability on that date to purchase the U.S. Reimbursed Foreign Currency in the full amount of the drawing.

(16) Upon issuance of a U.S. Letter of Credit, each U.S. Lender shall be deemed to have irrevocably and unconditionally purchased from U.S. Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all U.S. LC Obligations relating to the U.S. Letter of Credit. If U.S. Issuing Bank makes any payment under a U.S. Letter of Credit and U.S. Borrowers do not reimburse such payment on the U.S. Reimbursement Date, Agent shall promptly notify U.S. Lenders and each U.S. Lender shall promptly (within one Business Day) and unconditionally pay to Agent, for the benefit of U.S. Issuing Bank, the U.S. Lender's Pro Rata share of such payment in the same currency as required of the U.S. Borrowers in accordance with **Section 2.3.2(a)**. Upon request by a U.S. Lender, U.S. Issuing Bank shall furnish copies of any U.S. Letters of Credit and LC Documents in its possession at such time.

(17) The obligation of each U.S. Lender to make payments to Agent for the account of U.S. Issuing Bank in connection with U.S. Issuing Bank's payment under a U.S. Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a U.S. Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or

any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Obligor may have with respect to any Obligations. U.S. Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by any U.S. Borrower or other Person of any obligations under any LC Documents. U.S. Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Obligor. U.S. Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(18) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct. U.S. Issuing Bank shall not have any liability to any Lender if U.S. Issuing Bank refrains from any action under a Letter of Credit or LC Documents until it receives written instructions from U.S. Required Lenders.

2.3.ii. Cash Collateral. If any U.S. LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default exists, (b) that U.S. Availability is less than zero, or (c) within 10 Business Days prior to the U.S. Revolver Commitment Termination Date, then U.S. Borrowers shall, at U.S. Issuing Bank's or Agent's request, Cash Collateralize the stated amount of all outstanding U.S. Letters of Credit and pay to U.S. Issuing Bank the amount of all other U.S. LC Obligations. U.S. Borrowers shall, **on demand** by U.S. Issuing Bank or Agent from time to time, Cash Collateralize the Fronting Exposure of any Defaulting Lender which is a U.S. Lender. If U.S. Borrowers fail to provide any Cash Collateral as required hereunder, U.S. Lenders may (and shall upon direction of Agent) advance, as U.S. Revolver Loans, the amount of the Cash Collateral required (whether or not the U.S. Revolver Commitments have terminated, a U.S. Overadvance exists or the conditions in **Section 6** are satisfied).

2.3.iii. Resignation of U.S. Issuing Bank. U.S. Issuing Bank may resign at any time upon notice to Agent and U.S. Borrowers. On the effective date of such resignation, U.S. Issuing Bank shall have no further obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and obligations of an Issuing Bank hereunder, including under **Sections 2.3, 12.6** and **14.2**, relating to any Letter of Credit issued prior to such date. Agent shall promptly appoint a replacement U.S. Issuing Bank, which, as long as no Default or Event of Default exists, shall be reasonably acceptable to U.S. Borrowers.

2.b Canadian Letter of Credit Facility.

2.4.i. Issuance of Canadian Letters of Credit. Canadian Issuing Bank shall issue Canadian Letters of Credit from time to time until 30 days prior to the Facility Termination Date (or until the Canadian Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(19) Canadian Borrower acknowledges that Canadian Issuing Bank's issuance of any Canadian Letter of Credit is conditioned upon Canadian Issuing Bank's receipt of a LC Application with respect to the requested Canadian Letter of Credit, as well as such other instruments and agreements as Canadian Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. Canadian Issuing Bank shall have no obligation to issue any Canadian Letter of Credit unless (i) Canadian Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender that is a Canadian Lender exists, such

Lender or Canadian Borrower has entered into arrangements satisfactory to Agent and Canadian Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, Canadian Issuing Bank receives written notice from Canadian Required Lenders that a LC Condition has not been satisfied, Canadian Issuing Bank shall not issue the requested Canadian Letter of Credit. Prior to receipt of any such notice, Canadian Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(20) Canadian Letters of Credit may be requested by Canadian Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Agent. The renewal or extension of any Canadian Letter of Credit shall be treated as the issuance of a new Canadian Letter of Credit, except that delivery of a new LC Application shall be required at the discretion of Canadian Issuing Bank.

(21) Canadian Borrower assumes all risks of the acts, omissions or misuses of any Canadian Letter of Credit by the beneficiary. In connection with issuance of any Canadian Letter of Credit, none of Agent, Issuing Banks or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Canadian Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and Canadian Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Canadian Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Banks, Agent or any Lender, including any act or omission of a Governmental Authority. The rights and remedies of Canadian Issuing Bank under the Loan Documents shall be cumulative. Canadian Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims against Canadian Borrower are discharged with proceeds of any Canadian Letter of Credit.

(22) In connection with its administration of and enforcement of rights or remedies under any Canadian Letters of Credit or LC Documents, Canadian Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by Canadian Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. Canadian Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. Canadian Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to Canadian Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

2.4.ii. Reimbursement; Participations.

(23) If Canadian Issuing Bank honors any request for payment under a Canadian Letter of Credit, Canadian Borrower shall pay to Canadian Issuing Bank, on the same day ("Canadian Reimbursement Date"), the amount paid by Canadian Issuing Bank under such Canadian Letter of Credit in the same currency in which the Letter of Credit was denominated unless otherwise specified by Agent or Canadian Issuing Bank (at their respective option) that it requires payment in Dollars or Canadian Dollars calculated at the Spot Rate, together with

interest at the interest rate for Canadian Prime Rate Loans from the Canadian Reimbursement Date until payment by Canadian Borrower. The obligation of Canadian Borrower to reimburse Canadian Issuing Bank for any payment made under a Canadian Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any Canadian Letter of Credit or the existence of any claim, setoff, defense or other right that Canadian Borrower may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, Canadian Borrower shall be deemed to have requested a Borrowing of Canadian Prime Rate Loans in an amount necessary to pay all amounts due Canadian Issuing Bank on any Canadian Reimbursement Date and each Canadian Lender agrees to fund its Pro Rata share of such Borrowing whether or not the Canadian Revolver Commitments have terminated, a Canadian Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied. In the event that (i) a drawing denominated in a foreign currency (other than Dollars or Canadian Dollars) (such foreign currency, a “Canadian Reimbursed Foreign Currency.”) is to be reimbursed in Dollars or Canadian Dollars pursuant to the first sentence in this **Section 2.4.2(a)**; and (ii) the Dollars or Canadian Dollars amount, as applicable, paid by Canadian Borrower shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Canadian Reimbursed Foreign Currency equal to the drawing, Canadian Borrower agrees, as a separate and independent obligation, to indemnify Canadian Issuing Bank for the loss resulting from its inability on that date to purchase the Canadian Reimbursed Foreign Currency in the full amount of the drawing.

(24) Upon issuance of a Canadian Letter of Credit, each Canadian Lender shall be deemed to have irrevocably and unconditionally purchased from Canadian Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all Canadian LC Obligations relating to the Canadian Letter of Credit. If Canadian Issuing Bank makes any payment under a Canadian Letter of Credit and Canadian Borrower does not reimburse such payment on the Canadian Reimbursement Date, Agent shall promptly notify Canadian Lenders and each Canadian Lender shall promptly (within one Business Day) and unconditionally pay to Agent, for the benefit of Canadian Issuing Bank, the Canadian Lender’s Pro Rata share of such payment in the same currency as required of the Canadian Borrower in accordance with **Section 2.4.2(a)**. Upon request by a Canadian Lender, Canadian Issuing Bank shall furnish copies of any Canadian Letters of Credit and LC Documents in its possession at such time.

(25) The obligation of each Canadian Lender to make payments to Agent for the account of Canadian Issuing Bank in connection with Canadian Issuing Bank’s payment under a Canadian Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a Canadian Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Obligor may have with respect to any Obligations. Canadian Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by Canadian Borrower or other Person of any obligations under any LC Documents. Canadian Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Obligor. Canadian Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(26) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct. Canadian Issuing Bank shall not have any liability to any Lender if Canadian Issuing Bank refrains from any action under a Letter of Credit or LC Documents until it receives written instructions from Canadian Required Lenders.

2.4.i. Cash Collateral. If any Canadian LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default exists, (b) that Canadian Availability is less than zero, or (c) within 10 Business Days prior to the Canadian Revolver Commitment Termination Date, then Canadian Borrower shall, at Canadian Issuing Bank's or Agent's request, Cash Collateralize the stated amount of all outstanding Canadian Letters of Credit and pay to Canadian Issuing Bank the amount of all other Canadian LC Obligations. Canadian Borrower shall, **on demand** by Canadian Issuing Bank or Agent from time to time, Cash Collateralize the Fronting Exposure of any Defaulting Lender which is a Canadian Lender. If Canadian Borrower fails to provide any Cash Collateral as required hereunder, Canadian Lenders may (and shall upon direction of Agent) advance, as Canadian Revolver Loans, the amount of the Cash Collateral required (whether or not the Canadian Revolver Commitments have terminated, a Canadian Overadvance exists or the conditions in **Section 6** are satisfied).

2.4.ii. Resignation of Canadian Issuing Bank. Canadian Issuing Bank may resign at any time upon notice to Agent and Canadian Borrower. On the effective date of such resignation, Canadian Issuing Bank shall have no further obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and obligations of an Issuing Bank hereunder, including under **Sections 2.4, 12.6 and 14.2**, relating to any Letter of Credit issued prior to such date. Agent shall promptly appoint a replacement Canadian Issuing Bank, which, as long as no Default or Event of Default exists, shall be reasonably acceptable to Canadian Borrower.

2.c German Letter of Credit Facility.

2.5.i. Issuance of German Letters of Credit. German Issuing Bank shall issue German Letters of Credit from time to time on and after the Closing Date until 30 days prior to the Facility Termination Date (or until the German Revolver Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(27) The German Borrower acknowledges that German Issuing Bank's issuance of any German Letter of Credit is conditioned upon German Issuing Bank's receipt of a LC Application with respect to the requested German Letter of Credit, as well as such other instruments and agreements as German Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. German Issuing Bank shall have no obligation to issue any German Letter of Credit unless (i) German Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender that is a German Lender exists, such Lender or the German Borrower have entered into arrangements satisfactory to Agent and German Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, German Issuing Bank receives written notice from German Required Lenders that a LC Condition has not been satisfied, German Issuing Bank shall not issue the requested German Letter of Credit. Prior to receipt of any such notice, German Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(28) German Letters of Credit may be requested by the German Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Agent. The renewal or extension of any German Letter of Credit shall be treated as the issuance

of a new German Letter of Credit, except that delivery of a new LC Application shall be required at the discretion of German Issuing Bank.

(29) The German Borrower assumes all risks of the acts, omissions or misuses of any German Letter of Credit by the beneficiary. In connection with issuance of any German Letter of Credit, none of Agent, Issuing Banks or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a German Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and the German Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any German Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Banks, Agent or any Lender, including any act or omission of a Governmental Authority. The rights and remedies of German Issuing Bank under the Loan Documents shall be cumulative. German Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims against the German Borrower are discharged with proceeds of any German Letter of Credit.

(30) In connection with its administration of and enforcement of rights or remedies under any German Letters of Credit or LC Documents, German Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by German Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. German Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. German Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to German Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

2.5.ii. Reimbursement; Participations.

(31) If German Issuing Bank honors any request for payment under a German Letter of Credit, the German Borrower shall pay to German Issuing Bank, on the same day ("German Reimbursement Date"), the amount paid by German Issuing Bank under such German Letter of Credit in the same currency in which the Letter of Credit was denominated unless otherwise specified by Agent or German Issuing Bank (at their respective option) that it requires payment in Dollars, British Pounds, Swiss Francs or Euros calculated at the Spot Rate, together with interest at the interest rate for German Base Rate Loans from the German Reimbursement Date until payment by the German Borrower. The obligation of the German Borrower to reimburse German Issuing Bank for any payment made under a German Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any German Letter of Credit or the existence of any claim, setoff, defense or other right that the German Borrower may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, the German Borrower shall be deemed to have requested a Borrowing of a LIBOR Revolver Loan (the initial Interest Period of which shall be 30 days commencing on the relevant Reimbursement Date) in an amount necessary to pay all amounts due German Issuing Bank on that German

Reimbursement Date and each German Lender agrees to fund its Pro Rata share of such Borrowing whether or not the German Revolver Commitments have terminated, a German Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied. In the event that (i) a drawing denominated in a foreign currency (other than Dollars, British Pounds, Swiss Francs and Euros) (such foreign currency, a “German Reimbursed Foreign Currency”) is to be reimbursed in Dollars, British Pounds, Swiss Francs or Euros pursuant to the first sentence in this **Section 2.5.2(a)**; and (ii) the Dollars, British Pounds, Swiss Francs or Euros amount, as applicable, paid by the German Borrower shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the German Reimbursed Foreign Currency equal to the drawing, the German Borrower agrees, as a separate and independent obligation, to indemnify German Issuing Bank for the loss resulting from its inability on that date to purchase the German Reimbursed Foreign Currency in the full amount of the drawing.

(32) Upon issuance of a German Letter of Credit, each German Lender shall be deemed to have irrevocably and unconditionally purchased from German Issuing Bank, without recourse or warranty, an undivided Pro Rata interest and participation in all German LC Obligations relating to the German Letter of Credit. If German Issuing Bank makes any payment under a German Letter of Credit and the German Borrower does not reimburse such payment on the German Reimbursement Date, Agent shall promptly notify German Lenders and each German Lender shall promptly (within one Business Day) and unconditionally pay to Agent, for the benefit of German Issuing Bank, the German Lender’s Pro Rata share of such payment in the same currency as required of the German Borrower in accordance with **Section 2.5.2(a)**. Upon request by a German Lender, German Issuing Bank shall furnish copies of any German Letters of Credit and LC Documents in its possession at such time.

(33) The obligation of each German Lender to make payments to Agent for the account of German Issuing Bank in connection with German Issuing Bank’s payment under a German Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a German Letter of Credit having been determined to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or the existence of any setoff or defense that any Obligor may have with respect to any Obligations. German Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by the German Borrower or other Person of any obligations under any LC Documents. German Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, LC Documents or any Obligor. German Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectibility, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(34) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct. German Issuing Bank shall not have any liability to any Lender if German Issuing Bank refrains from any action under a Letter of Credit or LC Documents until it receives written instructions from German Required Lenders.

2.5.i.Cash Collateral. If any German LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that an Event of Default exists, (b)

that German Availability is less than zero, or (c) within 10 Business Days prior to the German Revolver Commitment Termination Date, then the German Borrower shall, at German Issuing Bank's or Agent's request, Cash Collateralize the stated amount of all outstanding German Letters of Credit and pay to German Issuing Bank the amount of all other German LC Obligations. The German Borrower shall, **on demand** by German Issuing Bank or Agent from time to time, Cash Collateralize the Fronting Exposure of any Defaulting Lender which is a German Lender. If the German Borrower fail to provide any Cash Collateral as required hereunder, German Lenders may (and shall upon direction of Agent) advance, as German Revolver Loans, the amount of the Cash Collateral required (whether or not the German Revolver Commitments have terminated, a German Overadvance exists or the conditions in **Section 6** are satisfied).

2.5.ii. Resignation of German Issuing Bank. German Issuing Bank may resign at any time upon notice to Agent and the German Borrower. On the effective date of such resignation, German Issuing Bank shall have no further obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and obligations of an Issuing Bank hereunder, including under **Sections 2.2, 12.6 and 14.2**, relating to any Letter of Credit issued prior to such date. Agent shall promptly appoint a replacement German Issuing Bank, which, as long as no Default or Event of Default exists, shall be reasonably acceptable to the German Borrower.

2.d Term Loans

2.6.i. Term Loans to U.S. Borrowers. Each U.S. Lender agrees, severally (and not jointly) on a Pro Rata basis up to its Term Loan Commitment, upon the terms and subject to the conditions set forth herein and subject to Agent's receipt, after the Second Amendment Effective Date, of an appraisal with respect to the Eligible Real Estate performed by an appraiser and on terms satisfactory to Agent, to make a one-time Term Loan to the U.S. Borrowers on any Business Day during the period from the Second Amendment Effective Date to September 30, 2020; provided, however, that such U.S. Lenders shall have no obligation to the U.S. Borrowers whatsoever to honor any request for a Term Loan on or after the Term Loan Commitment Termination Date. The Term Loans shall bear interest as set forth in Section 3.1. The Term Loans shall, at the option of the Borrower Agent, be made or continued as, or converted into, part of one or more Borrowings that, unless specifically provided herein, shall consist entirely of Base Rate Term Loans or LIBOR Term Loans. The Term Loans shall be repaid in accordance with the terms of this Agreement and shall be secured by all of the U.S. Facility Collateral. U.S. Borrowers shall be jointly and severally liable to pay all of the Term Loans. The Term Loans shall be funded and repaid in Dollars. For clarification, once repaid, the Term Loans may not be reborrowed.

2.6.ii. Term Notes. The Term Loans made by each U.S. Lender and interest accruing thereon shall be evidenced by the records of Agent and such Lender. At the request of any U.S. Lender, the U.S. Borrowers shall execute and deliver a promissory note to such Lender, evidencing its Term Loans.

2.6.iii. Use of Term Loan Proceeds. The proceeds of the Term Loans shall be used by U.S. Borrowers solely (a) to pay Obligations in accordance with this Agreement; and (b) for working capital and other lawful corporate purposes of U.S. Borrowers.

2.6.iv. Termination of Term Loan Commitments. The Term Loan Commitments shall terminate on the Term Loan Commitment Termination Date unless sooner terminated in accordance with this Agreement. Any unused Term Loan Commitment shall terminate on the date of the making of the Term Loans. Upon at least 10 days' prior written notice to Agent from the Borrower Agent, U.S. Borrowers may, at their option, terminate the Term Loan

Commitments without premium or penalty. Any notice of termination given by Borrowers pursuant to this Section 2.6.4 shall be irrevocable but may be conditioned on a refinancing or another material event.

Section 3. INTEREST, FEES AND CHARGES

3.a Interest.

3.1.i. Rates and Payment of Interest.

(1) The Obligations shall bear interest (i) if a U.S. Base Rate Revolver Loan, at the U.S. Base Rate in effect from time to time, plus the Applicable Margin, (ii) if a LIBOR Revolver Loan, at LIBOR for the applicable Interest Period, plus the Applicable Margin; (iii) if a Canadian Prime Rate Loan, at the Canadian Prime Rate in effect from time to time, plus the Applicable Margin, (iv) if a Canadian Base Rate Loan, at the Canadian Base Rate in effect from time to time, plus the Applicable Margin, (v) if a Canadian BA Rate Loan, at the Canadian BA Rate for the applicable Interest Period, plus the Applicable Margin, (vi) if a U.K. Base Rate Loan, at the Foreign Base Rate in effect from time to time, plus the Applicable Margin, (vii) if a German Base Rate Loan, at the Foreign Base Rate in effect from time to time, plus the Applicable Margin, (viii) if a Base Rate Term Loan, at the U.S. Base Rate in effect from time to time, plus the Applicable Margin, (ix) if a LIBOR Term Loan, at LIBOR for the applicable Interest Period, plus the Applicable Margin, (x) if any other U.S. Facility Obligation (including, to the extent permitted by law, interest not paid when due), at the U.S. Base Rate in effect from time to time, plus the Applicable Margin for U.S. Base Rate Revolver Loans; (xi) if any other Canadian Facility Obligation (including, to the extent permitted by law, interest not paid when due), at the Canadian Prime Rate in effect from time to time, plus the Applicable Margin for Canadian Prime Rate Loans; (xii) if any other U.K. Facility Obligation (including, to the extent permitted by law, interest not paid when due), at the Foreign Base Rate in effect from time to time, plus the Applicable Margin for U.K. Base Rate Loans; and (xiii) if any other German Facility Obligation (including, to the extent permitted by law, interest not paid when due), at the Foreign Base Rate in effect from time to time, plus the Applicable Margin for German Base Rate Loans. Interest shall accrue from the date the Loan is advanced or the Obligation is incurred or payable, until paid by the applicable Borrower(s). If a Loan is repaid on the same day made, one day's interest shall accrue.

(2) Interest on the Revolver Loans shall be payable in the currency (*i.e.*, Dollars, Canadian Dollars, British Pounds, Swiss Francs or Euros, as the case may be) of the underlying Revolver Loan (which shall be Dollars only in the case of any U.K. Base Rate Loan or German Base Rate Loan).

(3) During an Insolvency Proceeding with respect to any Obligor (other than any Insolvency Proceedings against a German Domiciled Obligor initiated by any winding-up petition that is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement), or during any other Event of Default if Agent or Required Lenders in their discretion so elect, Obligations shall bear interest at the Default Rate (whether before or after any judgment). Each Obligor acknowledges that the cost and expense to Agent and Lenders due to an Event of Default are difficult to ascertain and that the Default Rate is a fair and reasonable estimate to compensate Agent and Lenders for this.

(4) Interest accrued on the Loans shall be due and payable (i) on the last day of the relevant Interest Period with respect to Interest Period Loans (or in the case of an Interest Period Loan with an Interest Period of more than 90 days' duration, on each quarterly anniversary of the first day of such Interest Period) or, in arrears on the first day of each month with respect to Base Rate Loans, and (ii) on any date of prepayment, with respect to the principal

amount of Loans being prepaid. In addition, interest accrued on the Canadian Revolver Loans shall be due and payable in arrears on the Canadian Revolver Commitment Termination Date, interest accrued on the U.S. Revolver Loans shall be due and payable in arrears on the U.S. Revolver Commitment Termination Date, interest accrued on the U.K. Revolver Loans shall be due and payable in arrears on the U.K. Revolver Commitment Termination Date, and interest accrued on the German Revolver Loans shall be due and payable in arrears on the German Revolver Commitment Termination Date. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents and, if no payment date is specified, shall be due and payable **on demand**. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable **on demand**.

3.1.ii. Application of LIBOR to Outstanding Loans.

(5) Borrowers may on any Business Day, subject to delivery of a Notice of Conversion/Continuation, elect to convert any portion of the U.S. Base Rate Loans, the Canadian Base Rate Loans, the U.K. Base Rate Loans, or the German Base Rate Loans, as applicable, to, or to continue any LIBOR Loan at the end of its Interest Period as, a LIBOR Loan; provided that, in the case of U.K. Base Rate Loans and German Base Rate Loans only, portions of such Loans may be converted to a LIBOR Loan denominated in Dollars only. During any Default or Event of Default, Agent may (and shall at the direction of Required Lenders) declare that no Loan may be made, converted or continued as a LIBOR Loan.

(6) Whenever Borrowers desire to convert or continue Loans as LIBOR Loans, Borrower Agent shall give Agent a Notice of Conversion/Continuation, no later than 11:00 a.m. at least three Business Days (and at least four Business Days in the case of a U.K. Revolver Loan or a German Revolver Loan) before the requested conversion or continuation date. Promptly after receiving any such notice, Agent shall notify each Applicable Lender (or Lenders with outstanding Term Loans if related to the Term Loans) thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be 30 days if not specified). If, upon the expiration of any Interest Period in respect of any LIBOR Loans, Borrower Agent shall have failed to deliver a Notice of Conversion/Continuation, Borrowers shall be deemed to have elected to convert such Loans into U.S. Base Rate Loans (if owing by the U.S. Borrowers), Canadian Base Rate Loans (if owing by the Canadian Borrower), a U.K. Base Rate Loan (if owing by the U.K. Borrower) if that LIBOR Loan was denominated in Dollars, or (as the case may be) a LIBOR Loan (the initial Interest Period of which shall be 30 days commencing on the date of expiration of the Interest Period applicable to that LIBOR Loan) if that LIBOR Loan was denominated in British Pounds, Swiss Francs or Euros, or a German Base Rate Loan (if owing by the German Borrower) if that LIBOR Loan was denominated in Dollars, or (as the case may be) a LIBOR Loan (the initial Interest Period of which shall be 30 days commencing on the date of expiration of the Interest Period applicable to that LIBOR Loan) if that LIBOR Loan was denominated in British Pounds, Swiss Francs or Euros.

3.1.i. Application of Canadian BA Rate to Outstanding Loans.

(7) Canadian Borrower may on any Business Day, subject to delivery of a Notice of Conversion/Continuation and the other terms hereof, elect to convert any portion of the Canadian Prime Rate Loans, or to continue any Canadian BA Rate Loan at the end of its Interest Period as, a Canadian BA Rate Loan. During any Default or Event of Default, Agent may (and shall at the direction of Required Lenders) declare that no Loan may be made, converted or continued as a Canadian BA Rate Loan.

(8) Whenever Canadian Borrower desires to convert or continue Loans as Canadian BA Rate Loans, Borrower Agent shall give Agent a Notice of Conversion/Continuation, no later than 11:00 a.m. at least three Business Days before the requested conversion or continuation date. Promptly after receiving any such notice, Agent shall notify each Canadian Lender thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be one month if not specified). If, upon the expiration of any Interest Period in respect of any Canadian BA Rate Loans, Borrower Agent shall have failed to deliver a Notice of Conversion/Continuation with respect thereto as required above, Canadian Borrower shall be deemed to have elected to convert such Loans into Canadian Prime Rate Loans.

3.1.iii. Interest Periods. (a) In connection with the making, conversion or continuation of any LIBOR Loans or Canadian BA Rate Loans, Borrower Agent shall select an interest period ("Interest Period") to apply, which interest period shall be 30, ~~60, 90~~ ~~or (other than with respect to LIBOR Loans in Dollars) 60, 90 or (other than with respect to Canadian BA Rate Loans) 180 days;~~ provided, however, that:

(a)-(i) the Interest Period shall commence on the date the Loan is made or continued as, or converted into, a LIBOR Loan or Canadian BA Rate Loan, and shall expire on the numerically corresponding day in the calendar month at its end;

(b)-(ii) if any Interest Period commences on a day for which there is no corresponding day in the calendar month at its end or if such corresponding day falls after the last Business Day of such month, then the Interest Period shall expire on the last Business Day of such month; and if any Interest Period would expire on a day that is not a Business Day, the period shall expire on the next Business Day; and

(c)-(iii) no Interest Period shall extend beyond: (i) the U.S. Revolver Commitment Termination Date in the case of any Revolving Loan owing by the U.S. Borrowers, (ii) the Canadian Revolver Commitment Termination Date in the case of any Loan owing by the Canadian Borrower, (iii) the U.K. Revolver Commitment Termination Date in the case of any Loan owing by the U.K. Borrower, (iv) the German Revolver Commitment Termination Date in the case of any Loan owing by the German Borrower, and (v) the Term Loan Maturity Date in the case of any Term Loan owing by the U.S. Borrowers. No Interest Period for a LIBOR Term Loan may be established that would require repayment before the end of an Interest Period in order to make any scheduled principal payment on Term Loans; and

(9) Notwithstanding anything to the contrary in the foregoing, as to each Alternative Currency Term Rate Loan, "Interest Period" shall mean the period commencing on the date such Alternative Currency Term Rate Loan is disbursed or converted to or continued as an Alternative Currency Term Rate Loan and ending on the date one, three or six months thereafter (in each case, subject to availability for the interest rate applicable to the relevant currency), as selected by the Borrower Agent in its Notice of Borrowing, or such other period that is twelve months or less requested by the Borrower Agent and consented to by all the applicable Lenders; provided that:

(i) 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, in the case of an Alternative Currency Term Rate Loan, such Business Day falls in

another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period pertaining to an Alternative Currency Term Rate Loan 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

(iii) no Interest Period shall extend beyond the applicable maturity date set forth in this Agreement.

3.1.ii. **Interest Rate Not Ascertainable.** If Agent shall determine that, on any date for determining LIBOR or the Canadian BA Rate, due to any circumstance affecting the London interbank market or the Canadian interbank bankers' acceptances market, respectively, adequate and fair means do not exist for ascertaining such rate on the basis provided herein, then Agent shall immediately notify the Borrower Agent of such determination. Until Agent notifies the Borrower Agent that such circumstance no longer exists, the obligation of the Lenders to make LIBOR Loans or Canadian BA Rate Loans, as applicable, shall be suspended, and no further Loans may be converted into or continued as LIBOR Loans or Canadian BA Rate Loans, as applicable.

3.b Fees.

3.2.i. Unused Line Fee.

(10) U.S. Borrowers shall pay to Agent, for the Pro Rata benefit of U.S. Lenders, a fee equal to the U.S. Unused Line Fee Rate times the amount by which the average daily U.S. Revolver Commitments exceed the average daily balance of U.S. Revolver Loans and stated amount of U.S. Letters of Credit, in each case, during any month. Such fee shall be payable in arrears, on the first day of each month and on the U.S. Revolver Commitment Termination Date.

(11) Canadian Borrower shall pay to Agent, for the Pro Rata benefit of Canadian Lenders, a fee equal to the Canadian Unused Line Fee Rate times the amount by which the average daily Canadian Revolver Commitments exceed the average daily balance of Canadian Revolver Loans and stated amount of Canadian Letters of Credit, in each case, during any month. Such fee shall be payable in arrears, on the first day of each month and on the Canadian Revolver Commitment Termination Date.

(12) The U.K. Borrower shall pay to Agent, for the Pro Rata benefit of U.K. Lenders, a fee equal to the U.K. Unused Line Fee Rate times the amount by which the average daily U.K. Revolver Commitments exceed the average daily balance of U.K. Revolver Loans and stated amount of U.K. Letters of Credit, in each case, during any month. Such fee shall be payable in arrears, on the first day of each month and on the U.K. Revolver Commitment Termination Date.

(13) The German Borrower shall pay to Agent, for the Pro Rata benefit of German Lenders, a fee equal to the German Unused Line Fee Rate times the amount by which the average daily German Revolver Commitments exceed the average daily balance of German Revolver Loans and stated amount of German Letters of Credit, in each case, during any month. Such fee shall be payable in arrears, on the first day of each month and on the German Revolver Commitment Termination Date.

3.2.ii.U.S. LC Facility Fees. The U.S. Borrowers shall pay (a) to Agent, for the Pro Rata benefit of the U.S. Lenders, a fee equal to the per annum rate of the Applicable Margin in effect for LIBOR Revolver Loans times the average daily stated amount of U.S. Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (b) to Agent, for its own account, a fronting fee equal to 0.125% per annum on the stated amount of each U.S. Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (c) to the U.S. Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of U.S. Letters of Credit, which charges shall be paid as and when incurred. At the election of Agent or the U.S. Required Lenders, during an Event of Default, the fee payable under clause (a) shall be increased by 2% per annum.

3.2.iii.Canadian LC Facility Fees. The Canadian Borrower shall pay (a) to Agent, for the Pro Rata benefit of the Canadian Lenders, a fee equal to the per annum rate of the Applicable Margin in effect for Canadian BA Rate Loans times the average daily stated amount of Canadian Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (b) to Agent, for its own account, a fronting fee equal to 0.125% per annum on the stated amount of each Canadian Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (c) to the Canadian Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of Canadian Letters of Credit, which charges shall be paid as and when incurred. At the election of Agent or the Canadian Required Lenders, during an Event of Default, the fee payable under clause (a) shall be increased by 2% per annum.

3.2.iv.U.K. LC Facility Fees. The U.K. Borrower shall pay (a) to Agent, for the Pro Rata benefit of the U.K. Lenders, a fee equal to the per annum rate of the Applicable Margin in effect for LIBOR Revolver Loans times the average daily stated amount of U.K. Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (b) to Agent, for its own account, a fronting fee equal to 0.125% per annum on the stated amount of each U.K. Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (c) to the U.K. Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of U.K. Letters of Credit, which charges shall be paid as and when incurred. At the election of Agent or the U.K. Required Lenders, during an Event of Default, the fee payable under clause (a) shall be increased by 2% per annum.

3.2.v.German LC Facility Fees. The German Borrower shall pay (a) to Agent, for the Pro Rata benefit of the German Lenders, a fee equal to the per annum rate of the Applicable Margin in effect for LIBOR Revolver Loans times the average daily stated amount of German Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (b) to Agent, for its own account, a fronting fee equal to 0.125% per annum on the stated amount of each German Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (c) to the German Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of German Letters of Credit, which charges shall be paid as and when incurred. At the election of Agent or the German Required Lenders, during an Event of Default, the fee payable under clause (a) shall be increased by 2% per annum.

3.2.vi.U.S. Term Loan Fees. U.S. Borrowers shall pay to Agent, for the Pro Rata benefit of U.S. Lenders with Term Loan Commitments, a fee equal to the Term Loan Unused Commitment Fee Rate times the Term Loan Commitments during each month from the Second Amendment Effective Date to the earlier of (a) date of the making of the Term Loans or (b) Term Loan Commitment Termination Date. Such fee shall be payable in arrears, on the first day

of each month and on the earlier of (x) date of the making of the Term Loans or (y) the Term Loan Commitment Termination Date.

3.2.vii. Other Fees. Borrowers shall pay such other fees as described in the Fee Letters.

3.c Computation of Interest, Fees, Yield Protection. All interest, as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed, based on a year of 360 days, or, in the case of (a) interest based on the Canadian Prime Rate or Canadian BA Rate or (b) a Revolver Loan made in British Pounds, on the basis of a 365 day year, as the case may be. Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by any Borrower under **Section 3.4, 3.5, 3.7, 3.9** or **5.9**, submitted to the Borrower Agent by Agent or the affected Lender or Issuing Bank, as applicable, shall be final, conclusive and binding for all purposes, absent manifest error, and the Borrowers shall pay such amounts to the appropriate party within 10 days following receipt of the certificate. For the purposes of the *Interest Act* (Canada), the yearly rate of interest to which any rate calculated on the basis of a period of time different from the actual number of days in the year (360 days, for example) is equivalent is the stated rate multiplied by the actual number of days in the year (365 or 366, as applicable) and divided by the number of days in the shorter period (360 days, in the example), and the parties hereto acknowledge that there is a material distinction between the nominal and effective rates of interest and that they are capable of making the calculations necessary to compare such rates and that the calculations herein are to be made using the nominal rate method and not on any basis that gives effect to the principle of deemed reinvestment of interest. Each Canadian Domiciled Obligor confirms that it fully understands and is able to calculate the rate of interest applicable to Loans and other Obligations based on the methodology for calculating per annum rates provided for in this Agreement and each Canadian Domiciled Obligor hereby irrevocably agrees not to plead or assert, whether by way of defense or otherwise, in any proceeding relating to this Agreement or to any other Loan Documents, that the interest payable under this Agreement and the calculation thereof has not been adequately disclosed to the Canadian Domiciled Obligors as required pursuant to Section 4 of the Interest Act (Canada).

3.d Reimbursement Obligations. Borrowers within each Borrower Group shall reimburse Agent and each Lender for all Extraordinary Expenses incurred by Agent or such Lender in reference to such Borrower Group or its related Obligations or Collateral. In addition to such Extraordinary Expenses, such Borrowers shall also reimburse Agent for all legal, accounting, appraisal, consulting, and other fees, costs and expenses incurred by it in connection with (a) negotiation and preparation of any Loan Documents, including any amendment or other modification thereof; (b) administration of and actions relating to any Collateral for its Obligations, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any such Collateral, to maintain any insurance required hereunder or to verify such Collateral; and (c) subject to any limits of **Section 10.1.1(b)**, each inspection, audit or appraisal with respect to any Obligor within such Borrowers' related Obligor Group or Collateral securing such Obligor Group's Obligations, whether prepared by Agent's personnel or a third party. All legal, accounting and consulting fees shall be charged to Borrowers by Agent's professionals at their full hourly rates, regardless of any reduced or alternative fee billing arrangements that Agent, any Lender or any of their Affiliates may have with such professionals with respect to this or any other transaction. If, for any reason (including inaccurate reporting on financial statements, a Borrowing Base Certificate, or a Compliance Certificate), it is determined that a higher Applicable Margin, U.S. Unused Line Fee Rate, Canadian Unused Line Fee Rate, U.K. Unused Line Fee Rate, or German Unused Line Fee

Rate should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and the applicable Borrowers shall immediately pay to Agent, for the Pro Rata benefit of Applicable Lenders (or Lenders with outstanding Term Loans in the case of interest related to the Term Loans), an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid. All amounts payable by Borrowers under this Section shall be due **on demand**.

3.e Illegality. If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund LIBOR Loans or Canadian BA Rate Loans, or to determine or charge interest rates based upon LIBOR or the Canadian BA Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, the applicable Available Currency in the London interbank market, or Canadian Dollars through bankers' acceptances, then, on notice thereof by such Lender to Agent, any obligation of such Lender to make or continue LIBOR Loans or Canadian BA Rate Loans, as applicable, or to convert U.S. Base Rate Loans or Canadian Base Rate Loans to LIBOR Loans, or Canadian Prime Rate Loans to Canadian BA Rate Loans, or U.K. Base Rate Loans or German Base Rate Loans to LIBOR Loans, as applicable, shall be suspended until such Lender notifies Agent that the circumstances giving rise to such determination no longer exist. Upon delivery of such notice, the applicable Borrower(s) with respect to such Loans shall prepay or, if applicable, convert all LIBOR Loans of such Lender to U.S. Base Rate Loans, Canadian Base Rate Loans, U.K. Base Rate Loans or German Base Rate Loans (which alternative to prepayment aforesaid shall only be applicable in relation to any LIBOR Loans of such Lenders to the U.K. Borrower or a German Borrower, in each case, in the case of any such LIBOR Loans denominated in Dollars), or all Canadian BA Rate Loans to Canadian Prime Rate Loans, as applicable, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Loans or Canadian BA Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Loans or Canadian BA Rate Loans. Upon any such prepayment or conversion, the applicable Borrower(s) with respect to such Loans shall also pay accrued interest on the amount so prepaid or converted.

3.f Inability to Determine Rates. (a) If the U.S. Required Lenders, with respect to U.S. Revolver Loans, or the U.S. Required Term Lenders, with respect to Term Loans, or the Canadian Required Lenders, with respect to Canadian Revolver Loans, or the U.K. Required Lenders, with respect to U.K. Revolver Loans, or the German Required Lenders, with respect to German Revolver Loans, notify Agent for any reason in connection with a request for a Borrowing of, or conversion to or continuation of, a LIBOR Loan or a Canadian BA Rate Loan that (a) deposits or bankers' acceptances in the relevant Available Currency are not being offered to, as regards LIBOR, banks in the London interbank eurocurrency market or, as regards Canadian BA Rate, Persons in Canada, for the applicable amount and Interest Period of such Loan, (b) adequate and reasonable means do not exist for determining LIBOR or the Canadian BA Rate for the requested Interest Period, or (c) LIBOR or the Canadian BA Rate for the requested Interest Period does not adequately and fairly reflect the cost to such Lenders of funding such Loan, then Agent will promptly so notify the Borrower Agent and each Applicable Lender (or Lenders with outstanding Term Loans if related to Term Loans). Thereafter, the obligation of the Applicable Lenders (or Lenders with Term Loan Commitments or outstanding Term Loans if related to the Term Loans) to make or maintain the affected LIBOR Loans or Canadian BA Rate Loans shall be suspended until Agent (upon instruction by the U.S. Required Lenders, U.S. Required Term Lenders, Canadian Required Lenders, U.K. Required Lenders or German Required Lenders, as applicable) revokes such notice. Upon receipt of such notice, the Borrower Agent may revoke any pending request for a Borrowing of, conversion to or continuation of a LIBOR Loan or a Canadian BA Rate Loan or, failing that, will be deemed to have submitted a request for a U.S. Base Rate Loan, a Canadian Prime Rate Loan, a U.K. Base

Rate Loan or a German Base Rate Loan (but in the case of any such pending request in relation to a LIBOR Loan for the U.K. Borrower or a German Borrower, if ~~(a)~~A) that LIBOR Loan was denominated in British Pounds, Swiss Francs or Euros, the Borrower Agent shall be deemed to have revoked any such pending request for a Borrowing of, conversion to or continuation of that LIBOR Loan, and the U.K. Borrower or German Borrower, as applicable, shall repay any such outstanding LIBOR Loan which was the subject of a continuation request, and ~~(b)~~B) only if that LIBOR Loan was denominated in Dollars shall the Borrower Agent be deemed to have submitted a request for a U.K. Base Rate Loan or German Base Rate Loan, as applicable).

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, solely with respect to Loans funded in Dollars:

(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) ~~(x)~~ Upon (A) the occurrence of a Benchmark Transition Event or (B) a determination by the 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 Applicable 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 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).

(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 Borrower Agent’s receipt of notice from the 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 U.S. Base Rate based upon the Benchmark will not be used in any determination of U.S. Base Rate.

(iv) In connection with the implementation and administration of a Benchmark Replacement, the 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 Agent will promptly notify the Borrower Agent 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 Agent pursuant to this Section 3.6(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, 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 3.6(b).

(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 Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B) the Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

3.g Increased Costs; Capital Adequacy.

3.7.i.Change in Law. If any Change in Law shall:

(14) 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 reflected in LIBOR or the Canadian BA Rate) or any Issuing Bank;

(15) subject any Lender or any Issuing Bank to any Tax with respect to any Loan, Loan Document, Letter of Credit or participation in LC Obligations, or change the basis of taxation of payments to such Lender or such Issuing Bank in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 5.9 (or would be covered by Section 5.9 but for exclusions in Sections 5.9.2(a) and 5.9.2(l)) and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or such Issuing Bank); or

(16) impose on any Lender or any Issuing Bank or the London interbank market or the Canadian bankers' acceptances market any other condition, cost or expense affecting any Loan, Loan Document, Letter of Credit, participation in LC Obligations, or Commitment;

and the result thereof shall be to increase the cost to such Lender of making or maintaining any LIBOR Loan or Canadian BA Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such Issuing Bank of participating in, issuing or 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 such Issuing Bank hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such Issuing Bank, the Borrower(s) of any Borrower Group with respect to such Commitments, Loans, Letters of Credit or participations in LC Obligations) will

pay to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as applicable, for such additional costs incurred or reduction suffered.

3.7.ii. Capital Adequacy. If any Lender or any Issuing Bank determines that any Change in Law affecting such Lender or such Issuing Bank or any Lending Office of such Lender or such Lender's or such Issuing Bank'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, such Issuing Bank's or holding company's capital as a consequence of this Agreement, or such Lender's or such Issuing Bank's Commitments, Loans, Letters of Credit or participations in LC Obligations, to a level below that which such Lender, such Issuing Bank or holding company could have achieved but for such Change in Law (taking into consideration such Lender's, such Issuing Bank's and holding company's policies with respect to capital adequacy), then from time to time the Borrowers (or the applicable Borrower(s) of any Borrower Group with respect to such Commitments, Loans, Letters of Credit or participations in LC Obligations) will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate it or its holding company for any such reduction suffered.

3.7.iii. Compensation. Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of its right to demand such compensation, but the Borrower(s) of any Borrower Group shall not be required to compensate a Lender or an Issuing Bank for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or such Issuing Bank notifies the Borrower Agent of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.h Mitigation. If any Lender gives a notice under **Section 3.5** or requests compensation under **Section 3.7**, or if the Borrower(s) of any Borrower Group are required to pay additional amounts with respect to a Lender under **Section 5.9**, then such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or unlawful. The Borrower(s) of each affected Borrower Group shall pay all reasonable costs and expenses incurred by any Lender that has issued a Commitment to such Borrower Group in connection with any such designation or assignment.

3.i Funding Losses. If for any reason (other than default by a Lender) (a) any Borrowing of, or conversion to or continuation of, a LIBOR Loan or a Canadian BA Rate Loan does not occur on the date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation (whether or not withdrawn), (b) any repayment or conversion of a LIBOR Loan or a Canadian BA Rate Loan occurs on a day other than the end of its Interest Period, (c) a Lender (other than a Defaulting Lender) is required to assign a LIBOR Loan or Canadian BA Rate Loan prior to the end of its Interest Period pursuant to **Section 13.4**, or (d) the Borrower(s) of any Borrower Group fail(s) to repay a LIBOR Loan or a Canadian BA Rate Loan when required hereunder, then such applicable Borrower(s) shall pay to Agent its customary administrative charge and to each Applicable Lender all losses and expenses that it sustains as a consequence thereof, including loss of anticipated profits and any loss or expense arising from liquidation or redeployment of funds or from fees payable to terminate deposits of matching funds but excluding the Applicable Margin. The Lenders shall not be required to purchase deposits in the

London interbank market or any other offshore market to fund any LIBOR Loan or to transact in bankers' acceptances to make any Canadian BA Rate Loan, but the provisions hereof shall be deemed to apply as if each Applicable Lender had purchased such deposits to fund its LIBOR Loans or Canadian BA Rate Loans, as applicable.

3.j Maximum Interest. 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 ("maximum rate"). If 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 Obligations of the Borrower Group to which such excess interest relates or, if it exceeds such unpaid principal, refunded to such Borrower Group. In determining whether the interest contracted for, charged or received by 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. Without limiting the generality of the foregoing provisions of this **Section 3.10**, if any provision of any of the Loan Documents would obligate any Canadian Domiciled Obligor to make any payment of interest with respect to the Canadian Facility Obligations in an amount or calculated at a rate which would be prohibited by Applicable Law or would result in the receipt of interest with respect to the Canadian Facility Obligations at a criminal rate (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rates shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the applicable recipient of interest with respect to the Canadian Facility Obligations at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (i) first, by reducing the amount or rates of interest required to be paid by the Canadian Domiciled Obligors to the applicable recipient under the Loan Documents; and (ii) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid by the Canadian Domiciled Obligors to the applicable recipient which would constitute interest with respect to the Canadian Facility Obligations for purposes of Section 347 of the Criminal Code (Canada). Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if the applicable recipient shall have received an amount in excess of the maximum permitted by that section of the Criminal Code (Canada), then the Canadian Domiciled Obligors shall be entitled, by notice in writing to Agent, to obtain reimbursement from the applicable recipient in an amount equal to such excess, and, pending such reimbursement, such amount shall be deemed to be an amount payable by the applicable recipient to the applicable Canadian Domiciled Obligor. Any amount or rate of interest with respect to the Canadian Facility Obligations referred to in this **Section 3.10** shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that any Loans to the Canadian Borrower remain outstanding on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the Criminal Code (Canada)) shall, if they relate to a specific period of time, be pro rated over that period of time and otherwise be pro rated over the period from the Original Agreement Closing Date to the date of Full Payment of the Canadian Facility Obligations, and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Agent shall be conclusive for the purposes of such determination.

1.a Terms Applicable to Alternative Currency Loans. From and after the Fifth Amendment to Fourth Amended and Restated Effective Date, notwithstanding any provision of this Agreement or any other Loan Document to the contrary, the parties hereto agree as follows with respect to the Alternative Currencies (it being understood that, for the avoidance of doubt, to the extent provisions in this Agreement (other than this Section 3.11) apply to the Alternative Currencies and such provisions are not specifically addressed by this Section 3.11, the provisions

in this Agreement (other than this Section 3.11) shall continue to apply to the Alternative Currencies):

1. Alternative Currencies. (i) No Alternative Currency shall be considered a currency for which there is a published LIBOR rate, and (ii) any request for a new Loan denominated in an Alternative Currency, or to continue an existing Loan denominated in an Alternative Currency, shall be deemed to be a request for a new Loan bearing interest at the Alternative Currency Daily Rate or Alternative Currency Term Rate, as applicable; provided, that, to the extent any Loan denominated in an Alternative Currency bearing interest at the LIBOR Rate is outstanding on the Fifth Amendment to Fourth Amended and Restated Effective Date, such Loan shall continue to bear interest at LIBOR until the end of the current Interest Period or payment period applicable to such Loan unless, in the case of a Loan that bears interest at a daily floating rate, such daily floating rate is no longer representative or being made available, in which case such Loan shall bear interest at the applicable Alternative Currency Rate immediately upon the effectiveness of the Fifth Amendment to Fourth Amended and Restated Loan Agreement.

2. References to LIBOR and LIBOR Loans in this Agreement and Loan Documents.

(1) References to LIBOR and LIBOR Loans in provisions of this Agreement and the other Loan Documents that relate to Loans denominated in Alternative Currencies and that are not specifically addressed in this Section 3.11 (and the definitions of the defined terms used in this Section 3.11 (other than the definitions of LIBOR and LIBOR Loan)) shall be deemed to include Alternative Currency Daily Rates, Alternative Currency Term Rates, and Alternative Currency Loans, as applicable.

(2) For purposes of any requirement for the Borrowers to compensate Lenders for losses in this Agreement resulting from any continuation, conversion, payment or prepayment of any Alternative Currency Loan on a day other than the last day of any Interest Period, references to the Interest Period shall be deemed to include any relevant interest payment date or payment period for an Alternative Currency Loan.

1. Interest Rates. The Agent does not warrant, nor accept responsibility, nor shall the Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "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 such rate or the effect of any of the foregoing, or of any Conforming Changes.

2. Borrowings and Continuations of Alternative Currency Loans. In addition to any other borrowing requirements set forth herein:

(3) Alternative Currency Loans. Each Borrowing of Alternative Currency Loans, and each continuation of an Alternative Currency Term Rate Loan shall be made upon the Borrower Agent's irrevocable notice to Agent, which may be given by (A) telephone or (B) a Notice of Borrowing; provided, that any telephonic notice must be confirmed promptly by delivery to Agent of a Notice of Borrowing. Each such Notice of Borrowing must be received by the Agent not later than 11:00 a.m. three Business Days prior to the requested date of any Borrowing or, in the case of Alternative Currency Term Rate Loans, any continuation. Each Borrowing of or continuation of Alternative Currency Loans shall be in (i) a minimum principal amount of, in the case of Alternative Currency Loans denominated in (x) British Pounds, £1,000,000, (y) Swiss Francs,

CHF1,000,000 or (z) Euros, Euros 1,000,000 or (ii) an increment of, in the case of Alternative Currency Loans denominated in (x) British Pounds, £1,000,000, (y) Swiss Francs, CHF1,000,000 or, (z) Euros, Euros 1,000,000, in excess thereof. Each Notice of Borrowing shall specify (i) whether the Borrower is requesting a Borrowing or a continuation of Alternative Currency Term Rate Loans, (ii) the requested date of the Borrowing or continuation, as the case may be (which shall be a Business Day), (iii) the currency and principal amount of Loans to be borrowed or continued, (iv) the Type of Loans to be borrowed, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a currency in a Loan Notice requesting a Borrowing, then the Loans so requested shall be made in Dollars. If the Borrower fails to specify a Type of Loan in a Notice of Borrowing or if such Borrower fails to give a timely notice requesting a continuation, then the applicable Loans shall be made as Base Rate Loans denominated in Dollars; *provided, however,* that in the case of a failure to timely request a continuation of Alternative Currency Term Rate Loans, such Loans shall be continued as Alternative Currency Term Rate Loans in their original currency with an Interest Period of one (1) month. If the Borrower requests a Borrowing or continuation of Alternative Currency Term Rate Loans in any such Notice of Borrowing, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Except as otherwise specified in this Agreement, no Alternative Currency 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 Alternative Currency Loan and reborrowed in the other currency.

(4) Conforming Changes. With respect to any Alternative Currency Rate, 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, Agent shall post each such amendment implementing such Conforming Changes to Borrower Agent and the Lenders reasonably promptly after such amendment becomes effective.

(5) Notice of Borrowing. For purposes of a Borrowing of Alternative Currency Loans, or a continuation of and Alternative Currency Term Rate Loan, Borrower Agent shall use a Notice of Borrowing.

3. Interest.

(6) Subject to the provisions hereof with respect to default interest, (x) each Alternative Currency Daily Rate Loan shall 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 Margin; and (y) 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 Margin.

(7) Interest on each Alternative Currency Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified in this Agreement. 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.

(1) Computations. All computations of interest for Alternative Currency Loans (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, or, in the case of interest in respect of Alternative Currency Loans as to which market practice differs from the foregoing, in accordance with such market practice. All other computations of fees and interest with respect to 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). Interest shall accrue on each Alternative Currency Loan for the day on which the Alternative Currency Loan is made, and shall not accrue on an Alternative Currency Loan, or any portion thereof, for the day on which the Alternative Currency Loan or such portion is paid, provided that any Alternative Currency Loan that is repaid on the same day on which it is made shall, subject to the terms hereof, bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(2) Inability to Determine Rate; Successor Rates.

(i) Defined Terms. For purposes of this Section 3.11(g), those Lenders that either have not made, or do not have an obligation hereunder to make, the relevant Loans in the relevant Alternative Currency shall be excluded from any determination of Required Lenders.

(ii) Inability to Determine Rates. If in connection with any request for an Alternative Currency Loan or a continuation of any of such Loans, as applicable, (A) Agent determines (which determination shall be conclusive absent manifest error) that (x) no Successor Rate for the Relevant Rate for the applicable currency has been determined in accordance with Section 3.11(g)(iii) and the circumstances under clause (x) of Section 3.11(g)(iii) or the Scheduled Unavailability Date has occurred with respect to such Relevant Rate (as applicable), or (y) adequate and reasonable means do not otherwise exist for determining the Relevant Rate for the applicable currency for any determination date(s) or requested Interest Period, as applicable, with respect to a proposed Alternative Currency Loan, or (B) Agent or the Required Lenders determine for any reason that the Relevant Rate with respect to a proposed Loan denominated in a currency for any requested Interest Period or determination date(s) does not adequately and fairly reflect the cost to such Lenders of funding such Loan, Agent will promptly so notify the Borrower Agent and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Loans in the affected currencies, as applicable, shall be suspended in each case to the extent of the affected Alternative Currency Loans or Interest Period or determination date(s), as applicable, in each case until Agent (or, in the case of a determination by the Required Lenders described in clause (B) of this Section, until Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (A) the Borrower Agent may revoke any pending request for a Borrowing of, or continuation of Alternative Currency Loans to the extent of the affected Alternative Currency Loans or Interest 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 (B) any outstanding affected Alternative Currency Loans, at the 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, in the case of an Alternative Currency Term Rate Loan or (2) be prepaid in full immediately, in the case of an Alternative Currency Daily Rate Loan, or at the end of the applicable Interest Period, in the case of an Alternative Currency

Term Rate Loan; provided that if no election is made by the Borrower Agent (x) in the case of an Alternative Currency Daily Rate Loan, by the date that is three Business Days after receipt by the Borrower Agent 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 Borrower Agent shall be deemed to have elected clause (1) above.

(iii) Replacement of Relevant Rate or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if Agent determines (which determination shall be conclusive absent manifest error), or the Borrower Agent or Required Lenders notify Agent (with, in the case of the Required Lenders, a copy to the Borrower Agent) that the Borrower Agent or Required Lenders (as applicable) have determined, that:

(x) adequate and reasonable means do not exist for ascertaining the Relevant Rate for an Alternative Currency because none of the tenors of such Relevant Rate (including any forward-looking term rate thereof) is available or published on a current basis and such circumstances are unlikely to be temporary; or

(y) the Applicable Authority has made a public statement identifying a specific date after which all tenors of the 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 Agent that will continue to provide such 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

(z) syndicated loans currently being executed and agented in the United States, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the Relevant Rate for an Alternative Currency;

or if the events or circumstances of the type described in Section 3.11(g)(iii)(x), (iii)(y) or (iii)(z) have occurred with respect to the Successor Rate then in effect, then, Agent and the Borrowers may amend this Agreement 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 3.11(g)(iii) with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the United States and denominated in such Alternative Currency for such alternative benchmarks, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the United States 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 Agent from time to time in its reasonable discretion and may be periodically updated (and any such proposed rate, including for the avoidance of doubt, any adjustment thereto, a "Successor Rate"), and any.

such amendment shall become effective at 5:00 p.m. on the fifth Business Day after Agent shall have posted such proposed amendment to all Lenders and the Borrower Agent unless, prior to such time, Lenders comprising the Required Lenders have delivered to Agent written notice that such Required Lenders object to such amendment.

Agent will promptly (in one or more notices) notify the Borrower Agent 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 to the extent such market practice is not administratively feasible for Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by Agent.

Notwithstanding anything else in this Agreement, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, 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; provided, that, with respect to any such amendment effected, Agent shall post each such amendment implementing such Conforming Changes to the Borrower Agent and the Lenders reasonably promptly after such amendment becomes effective.

Section 4. LOAN ADMINISTRATION

4.a Manner of Borrowing and Funding Revolver Loans.

4.1.i. Notice of Borrowing.

(1) Whenever Borrowers within a Borrower Group desire funding of a Borrowing of Revolver Loans, Borrower Agent shall give Agent a Notice of Borrowing. Such notice must be received by Agent no later than 11:00 a.m. (i) on the Business Day of the requested funding date, in the case of U.S. Base Rate Loans, Canadian Prime Rate Loans, or Canadian Base Rate Loans, (ii) on the Business Day prior to the requested funding date, in the case of U.K. Base Rate Loans or German Base Rate Loans, and (iii) at least three Business Days prior (and at least four Business Days in the case of a U.K. Revolver Loan or a German Revolver Loan) to the requested funding date, in the case of LIBOR Loans or Canadian BA Rate Loans. Notices received after 11:00 a.m. shall be deemed received on the next Business Day. Each Notice of Borrowing shall be irrevocable and shall specify (A) the amount of the Borrowing, (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a U.S. Base Rate Loan or a LIBOR Loan (in the case of a Borrowing by the U.S. Borrowers), or as a Canadian Base Rate Loan, a Canadian Prime Rate Loan, LIBOR Loan, or a Canadian BA Rate Loan (in the case of a Borrowing by the Canadian Borrower), or as a U.K. Base Rate Loan or a LIBOR Loan (in the case of a Borrowing by the U.K. Borrower), or as a German Base Rate Loan or a LIBOR Loan (in the case of a Borrowing by a German Borrower), (D) in the case of LIBOR Loans or Canadian BA Rate Loans, the duration of the applicable Interest Period (which shall be deemed to be 30 days if not specified), (E) in the case of a Borrowing by the Canadian Borrower, whether such Loan is to be denominated in Dollars or Canadian Dollars, and (F) in the case of a Borrowing by the U.K. Borrower or a German

Borrower, in the case of LIBOR Loans only, whether such Loan is to be denominated in Dollars, British Pounds, Swiss Francs or Euros.

(2) Unless payment is otherwise timely made by Borrowers within a Borrower Group, the becoming due of any amount required to be paid with respect to any of the Obligations of the Obligor Group to which such Borrower Group belongs (whether principal, interest, fees or other charges, including Extraordinary Expenses, LC Obligations, Cash Collateral and Secured Bank Product Obligations) shall be deemed to be a request for Revolver Loans by such Borrower Group on the due date, in the amount of such Obligations and shall bear interest at the per annum rate applicable hereunder to U.S. Base Rate Revolver Loans, in the case of such Obligations owing by any U.S. Facility Obligor, or to Canadian Prime Rate Loans, in the case of such Obligations owing by a Canadian Domiciled Obligor, or to U.K. Base Rate Loans, in the case of such Obligations owing by a U.K. Domiciled Obligor, or to German Base Rate Loans, in the case of such Obligations owing by a German Domiciled Obligor. The proceeds of such Revolver Loans shall be disbursed as direct payment of the relevant Obligation. In addition, Agent may, at its option, charge such Obligations of an Obligor Group against any operating, investment or other account of an Obligor within such Obligor Group maintained with Agent or any of its Affiliates.

(3) If Borrowers within a Borrower Group establish a controlled disbursement account with Agent or any branch or Affiliate of Agent, then the presentation for payment of any check, ACH or electronic debit, or other payment item at a time when there are insufficient funds to cover it shall be deemed to be a request for Revolver Loans by such Borrower Group on the date of such presentation, in the amount of such payment item, and shall bear interest at the per annum rate applicable hereunder to U.S. Base Rate Revolver Loans, in the case of insufficient funds owing by any U.S. Facility Obligor, or to Canadian Prime Rate Loans, in the case of insufficient funds owing by a Canadian Domiciled Obligor, or to U.K. Base Rate Loans, in the case of insufficient funds owing by a U.K. Domiciled Obligor, or to German Base Rate Loans, in the case of insufficient funds owing by a German Domiciled Obligor. The proceeds of such Revolver Loans may be disbursed directly to the controlled disbursement account or other appropriate account.

(4) Whenever U.S. Borrowers desire funding of the Borrowing of the Term Loans, Borrower Agent shall give Agent a Notice of Borrowing. Such notice must be received by Agent no later than 11:00 a.m. (i) at least two (2) Business Days prior to the requested funding date in the case of Base Rate Term Loans and (ii) at least three (3) Business Days prior to the requested funding date in the case of LIBOR Term Loans. Notices received after 11:00 a.m. shall be deemed received on the next Business Day. Any such Notice of Borrowing shall be irrevocable (subject to the last sentence of this Section 4.1.1(d)) and shall specify (A) the amount of the Term Loans to be borrowed (subject to the limits set forth herein), (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a Base Rate Term Loan or a LIBOR Term Loan, and (D) in the case of LIBOR Term Loans, the duration of the applicable Interest Period (which shall be deemed to be 30 days if not specified). Notwithstanding the foregoing, a request for a Base Rate Term Loan (a "Base Rate Term Loan Request") meeting the foregoing requirements may be conditioned by U.S. Borrowers on a material event occurring, provided, that, Agent must receive notice no later than 11:00 a.m. on the requested funding date on whether such material event has, or shall be deemed to have, occurred (a "Material Event Confirmation") (it being understood that to the extent Agent does not receive a Material Event Confirmation by such time, the corresponding Base Rate Term Loan Request shall be deemed null and void).

4.1.ii. Fundings by Lenders.

(5) Each Applicable Lender shall timely honor its Revolver Commitment by funding its Pro Rata share of each Borrowing of Revolver Loans that is properly requested hereunder. Except for Borrowings to be made as Swingline Loans, Agent shall endeavor to notify the Applicable Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 12:00 noon (Applicable Time Zone) on the proposed funding date (and by 12:00 p.m. (Applicable Time Zone) on the Business Day prior to the proposed funding date, in the case of U.K. Base Rate Loans and German Base Rate Loans) for U.S. Base Rate Loans, Canadian Base Rate Loans, Canadian Prime Rate Loans, U.K. Base Rate Loans or German Base Rate Loans, or by 3:00 p.m. (Applicable Time Zone) at least two Business Days before any proposed funding of LIBOR Loans or Canadian BA Rate Loans. Each Applicable Lender shall fund to Agent such Lender's Pro Rata share of the Borrowing to the account specified by Agent in immediately available funds not later than 2:00 p.m. (Applicable Time Zone) on the requested funding date, unless Agent's notice is received after the times provided above, in which case Lender shall fund its Pro Rata share by 11:00 a.m. (Applicable Time Zone) on the next Business Day. Subject to its receipt of such amounts from the Applicable Lenders, Agent shall disburse the proceeds of the Revolver Loans as directed by Borrower Agent. Unless Agent shall have received (in sufficient time to act) written notice from an Applicable Lender that it does not intend to fund its Pro Rata share of a Borrowing, Agent may assume that such Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to the applicable Borrower(s). If an Applicable Lender's share of any Borrowing or of any settlement pursuant to **Section 4.1.3(b)** is not received by Agent, then the Borrowers within the applicable Borrower Group agree to repay to Agent **on demand** the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing.

(6) Each U.S. Lender shall timely honor its Term Loan Commitment by funding its Pro Rata share of the Term Loans that are properly requested hereunder. Agent shall endeavor to notify the U.S. Lenders with Term Loan Commitments of any Notice of Borrowing to request the Term Loans by 12:00 noon (Pacific time) at least three (3) Business Days prior to the proposed funding date. Each U.S. Lender with a Term Loan Commitment shall fund to Agent such Lender's Pro Rata share of the Borrowing to the account specified by Agent in immediately available funds not later than 2:00 p.m. (Pacific time) on the requested funding date. Subject to its receipt of such amounts from such U.S. Lenders, Agent shall disburse the proceeds of the Term Loans as directed by Borrower Agent. Unless Agent shall have received (in sufficient time to act) written notice from a U.S. Lender with a Term Loan Commitment that it does not intend to fund its Pro Rata share of such Borrowing, Agent may assume that such U.S. Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to the applicable U.S. Borrower(s). If a U.S. Lender's share of any such Borrowing is not received by Agent, then the U.S. Borrowers agree to repay to Agent on demand the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing.

4.1.i. Swingline Loans; Settlement.

(7) Agent may, but shall not be obligated to, advance U.S. Swingline Loans to the U.S. Borrowers, up to an aggregate outstanding amount equal to 10% of the aggregate U.S. Revolver Commitments, unless the funding is specifically required to be made by all U.S. Lenders hereunder. Each U.S. Swingline Loan shall constitute a U.S. Base Rate Revolver Loan for all purposes, except that payments thereon shall be made to Agent for its own account. The obligation of the U.S. Borrowers to repay U.S. Swingline Loans shall be evidenced by the records of Agent and need not be evidenced by any promissory note. Agent (acting through its Canada branch) may, but shall not be obligated to, advance Canadian Swingline Loans to the Canadian Borrower, up to an aggregate outstanding amount equal to 10% of the aggregate Canadian Revolver Commitments, unless the funding is specifically required to be made by all Canadian Lenders hereunder. Each Canadian Swingline Loan shall constitute a Canadian Prime

Rate Revolver Loan or a Canadian Base Rate Loan, as applicable, for all purposes, except that payments thereon shall be made to Agent (acting through its Canada branch) for its own account. The obligation of the Canadian Borrower to repay Canadian Swingline Loans shall be evidenced by the records of Agent (acting through its Canada branch) and need not be evidenced by any promissory note. Agent may, but shall not be obligated to, advance U.K. Swingline Loans to the U.K. Borrower, up to an aggregate outstanding amount equal to 10% of the aggregate U.K. Revolver Commitments, unless the funding is specifically required to be made by all U.K. Lenders hereunder. Each U.K. Swingline Loan shall be made in and denominated only in Dollars, and shall constitute a U.K. Base Rate Loan for all purposes, except that payments thereon shall be made to Agent for its own account. The obligation of the U.K. Borrower to repay U.K. Swingline Loans shall be evidenced by the records of Agent and need not be evidenced by any promissory note. Agent may, but shall not be obligated to, advance German Swingline Loans to the German Borrower, up to an aggregate outstanding amount equal to 10% of the aggregate German Revolver Commitments, unless the funding is specifically required to be made by all German Lenders hereunder. Each German Swingline Loan shall be made in and denominated only in Dollars, and shall constitute a German Base Rate Loan for all purposes, except that payments thereon shall be made to Agent for its own account. The obligation of the German Borrower to repay German Swingline Loans shall be evidenced by the records of Agent and need not be evidenced by any promissory note.

(8) Settlement of Swingline Loans and other Revolver Loans among Lenders and Agent shall take place on a date determined from time to time by Agent (but at least weekly), in accordance with the Settlement Report delivered by Agent to Lenders. Between settlement dates, Agent may in its discretion apply payments on Revolver Loans to Swingline Loans, regardless of any designation by any Borrower or any provision herein to the contrary. Each Lender's obligation to make settlements with Agent is absolute and unconditional, without offset, counterclaim or other defense, and whether or not the Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any U.S. Swingline Loan may not be settled among the U.S. Lenders hereunder, then each U.S. Lender shall be deemed to have purchased from Agent a Pro Rata participation in such Loan and shall transfer the amount of such participation to Agent, in immediately available funds, within one Business Day after Agent's request therefor. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any Canadian Swingline Loan may not be settled among the Canadian Lenders hereunder, then each Canadian Lender shall be deemed to have purchased from Agent a Pro Rata participation in such Loan and shall transfer the amount of such participation to Agent, in immediately available funds, within one Business Day after Agent's request therefor. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any U.K. Swingline Loan may not be settled among the U.K. Lenders hereunder, then each U.K. Lender shall be deemed to have purchased from Agent a Pro Rata participation in such Loan and shall transfer the amount of such participation to Agent, in immediately available funds, within one Business Day after Agent's request therefor. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any German Swingline Loan may not be settled among the German Lenders hereunder, then each German Lender shall be deemed to have purchased from Agent a Pro Rata participation in such Loan and shall transfer the amount of such participation to Agent, in immediately available funds, within one Business Day after Agent's request therefor.

4.1.iii. Notices. Borrowers may request, convert or continue Loans, select interest rates and transfer funds based on telephonic or e-mailed instructions to Agent. Borrowers shall confirm each such request by prompt delivery to Agent of a Notice of Borrowing or Notice of Conversion/Continuation, if applicable, but if it differs materially from the action taken by Agent or Lenders, the records of Agent and Lenders shall govern. Neither Agent nor any Lender shall have any liability for any loss suffered by a Borrower as a result of Agent or any Lender acting upon its understanding of telephonic or e-mailed instructions from a person believed in good

faith by Agent or any Lender to be a person authorized to give such instructions on a Borrower's behalf.

4.b Defaulting Lender.

4.2.i. Reallocation of Pro Rata Share; Amendments. For purposes of determining Lenders' obligations to fund or participate in Loans or Letters of Credit, Agent may exclude the Commitments and Loans of any Defaulting Lender(s) from the calculation of Pro Rata shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in **Section 14.1.1(c)**.

4.2.ii. Payments; Fees. Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Loan Documents, and a Defaulting Lender shall be deemed to have assigned to Agent such amounts until all Obligations owing to Agent, non-Defaulting Lenders and other Secured Parties have been paid in full. Agent may apply such amounts to the Defaulting Lender's defaulted obligations, use the funds to Cash Collateralize such Lender's Fronting Exposure, or readvance the amounts, in accordance with this Agreement, to the Borrowers of the Borrower Group to which such defaulted obligations relate. A Lender shall not be entitled to receive any fees accruing hereunder during the period in which it is a Defaulting Lender, and the unfunded portion of its Commitment shall be disregarded for purposes of calculating the unused line fees under **Section 3.2.1**. If any LC Obligations owing to a Defaulted Lender are reallocated to other Lenders, fees attributable to such LC Obligations under **Section 3.2.2**, **Section 3.2.3**, and **Section 3.2.4**, as applicable, shall be paid to such Lenders. Agent shall be paid all fees attributable to LC Obligations that are not reallocated.

4.2.iii. Cure. Borrowers, Agent and Issuing Banks may agree in writing that a Lender is no longer a Defaulting Lender. At such time, Pro Rata shares shall be reallocated without exclusion of such Lender's Commitments and Loans, and all outstanding Revolver Loans, LC Obligations and other exposures under the Revolver Commitments shall be reallocated among Lenders and settled by Agent (with appropriate payments by the reinstated Lender) in accordance with the readjusted Pro Rata shares. Unless expressly agreed by Borrowers, Agent and Issuing Banks, or as expressly provided herein with respect to Bail-In Actions and related matters, no reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform its obligations hereunder shall not relieve any other Lender of its obligations, and no Lender shall be responsible for default by another Lender.

4.c Number and Amount of LIBOR Loans and Canadian BA Rate Loans; Determination of Rate.

4.3.i. With respect to the U.S. Borrowers, (a) no more than 10 Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans to U.S. Borrowers having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose, and (b) each Borrowing of LIBOR Loans when made, continued or converted shall be in a minimum amount of \$1,000,000 or an increment of \$1,000,000, in excess thereof.

4.3.ii. With respect to the Canadian Borrower, (a) no more than 5 Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose, (b) no more than 5 Borrowings of Canadian BA Rate Loans may be outstanding at any time, and all Canadian BA Rate Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose, and (c) each Borrowing of such Loans when made, continued or converted shall be in a

minimum amount of \$1,000,000 (or, in the case of Canadian BA Rate Loans, Cdn\$1,000,000) or an increment of \$1,000,000 (or, in the case of Canadian BA Rate Loans, Cdn\$1,000,000), in excess thereof.

4.3.iii. With respect to the U.K. Borrower, (a) no more than 5 Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans having the same length and beginning date of their Interest Periods and in the same Available Currency shall be aggregated together and considered one Borrowing for this purpose, and (b) each Borrowing of such Loans when made, continued or converted shall be in a minimum amount of \$1,000,000 (or, in the case of LIBOR Loans denominated in British Pounds, £1,000,000 or, in the case of LIBOR Loans denominated in Euros, Euros 1,000,000) or an increment of \$1,000,000 (or, in the case of LIBOR Loans denominated in British Pounds, £1,000,000 or, in the case of LIBOR Loans denominated in Euros, Euros 1,000,000), in excess thereof.

4.3.iv. With respect to the German Borrower, (a) no more than 5 Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans having the same length and beginning date of their Interest Periods and in the same Available Currency shall be aggregated together and considered one Borrowing for this purpose, and (b) each Borrowing of such Loans when made, continued or converted shall be in a minimum amount of \$1,000,000 (or, in the case of LIBOR Loans denominated in (x) British Pounds, £1,000,000, (y) Swiss Francs, CHF1,000,000 or (z) Euros, Euros 1,000,000) or an increment of \$1,000,000 (or, in the case of LIBOR Loans denominated in (x) British Pounds, £1,000,000, (y) Swiss Francs, CHF1,000,000 or, (z) Euros, Euros 1,000,000), in excess thereof.

4.3.v. Upon determining LIBOR or the Canadian BA Rate for any Interest Period requested by the Borrower Agent on behalf of a Borrower Group, Agent shall promptly notify the Borrower Agent thereof by telephone or electronically and, if requested by the Borrower Agent, shall confirm any telephonic notice in writing.

4.d Borrower Agent. Each Borrower and other Obligor hereby designates Callaway Golf Company, a Delaware corporation ("Borrower Agent") as its representative and agent for all purposes under the Loan Documents, including requests for Loans and Letters of Credit, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrowing Base and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent, any Issuing Bank or any Lender. Borrower Agent hereby accepts such appointment. Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower. Agent and Lenders may give any notice or communication with a Borrower or other Obligor hereunder to Borrower Agent on behalf of such Borrower or other Obligor. Each of Agent, Issuing Banks and Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for any or all purposes under the Loan Documents. Each Borrower and other Obligor agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by Borrower Agent shall be binding upon and enforceable against it.

4.e One Obligation. The Loans, LC Obligations and other Obligations of the applicable Borrower(s) of each Borrower Group and their respective Guarantors shall constitute one general obligation of such Borrower(s) of such Borrower Group and their respective Guarantors and (unless otherwise expressly provided in any Loan Document) shall be secured by Agent's Lien upon all Collateral of such Borrower(s) of such Borrower Group and their respective Guarantors; provided, however, that each Credit Party shall be deemed to be a creditor of, and the holder of a separate claim against, each Borrower or other Obligor to the extent of

any Obligations jointly or severally owed by such Borrower or other Obligor to such Credit Party.

4.f Effect of Termination. On the effective date of any termination of any of the Revolver Commitments, all Obligations with respect thereto shall be immediately due and payable, and any Lender may terminate its and its Affiliates' Bank Products. All undertakings of Borrowers contained in the Loan Documents shall survive any termination, and Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents until Full Payment of the Obligations. Notwithstanding Full Payment of the Obligations, Agent shall not be required to terminate its Liens in any Collateral unless, with respect to any damages Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, Agent receives (a) a written agreement satisfactory to Agent, executed by Borrowers and any Person whose advances are used in whole or in part to satisfy the Obligations, indemnifying Agent and Lenders from such damages; and (b) such Cash Collateral as Agent, in its discretion, deems appropriate to protect against such damages. **Sections 2.2, 2.3, 2.4, 3.4, 3.6, 3.7, 3.9, 5.5, 5.9, 5.10, 12, 14.2** and this Section, and the obligation of each Obligor and Lender with respect to each indemnity given by it in any Loan Document, shall survive Full Payment of the Obligations and any release relating to this credit facility.

Section 5. PAYMENTS

5.a General Payment Provisions.

5.1.i. All payments of Obligations shall be made without offset, counterclaim or defense of any kind, free of (and without deduction for) any Taxes, and in immediately available funds, not later than 12:00 noon (Applicable Time Zone) on the due date. Any payment after such time shall be deemed made on the next Business Day. Any payment of a LIBOR Loan or a Canadian BA Rate Loan prior to the end of its Interest Period shall be accompanied by all amounts due under **Section 3.9**. Any prepayment of Loans by a Borrower Group shall be applied first to U.S. Base Rate Loans, Canadian Base Rate Loans, Canadian Prime Rate Loans, German Base Rate Loans, or U.K. Base Rate Loans, as applicable, of such Borrower Group and then to LIBOR Loans or Canadian BA Rate Loans, as applicable, of such Borrower Group.

5.1.ii. All payments with respect to any U.S. Facility Obligations shall be made in Dollars. All payments with respect to any Canadian Facility Obligations shall be made in Canadian Dollars or, if any portion of such Canadian Facility Obligations is denominated in Dollars, then in Dollars. All payments with respect to any U.K. Facility Obligations shall be made in British Pounds or, if any portion of such U.K. Facility Obligations is denominated in Euros, then in Euros or, if any portion of such U.K. Facility Obligations is denominated in Dollars, then in Dollars. All payments with respect to any German Facility Obligations shall be made in Euros or, if any portion of such German Facility Obligations is denominated in British Pounds, then in British Pounds, if any portion of such German Facility Obligations is denominated in Swiss Francs, then in Swiss Francs, or, if any portion of such German Facility Obligations is denominated in Dollars, then in Dollars.

5.b Repayment of Revolver Loans.

5.2.i. All U.S. Revolver Loans shall be due and payable in full on the U.S. Revolver Commitment Termination Date, all Canadian Revolver Loans shall be due and payable in full on the Canadian Revolver Commitment Termination Date, all German Revolver Loans shall be due and payable in full on the German Revolver Commitment Termination Date, and all U.K. Revolver Loans shall be due and payable in full on the U.K. Revolver Commitment Termination Date, in each case unless payment is sooner required hereunder. Revolver Loans may be prepaid

from time to time, without penalty or premium, subject to, in the case of LIBOR Loans and Canadian BA Rate Loans, **Section 3.9**.

5.2.ii.If any Asset Disposition includes the disposition of Accounts or Inventory of an Obligor, then Net Proceeds equal to the greater of (a) the net book value of such Accounts and Inventory, or (b) the reduction in the applicable Borrowing Base (*i.e.*, the U.S. Borrowing Base in the case of an Asset Disposition with respect to Accounts or Inventory of the U.S. Borrowers, the Canadian Borrowing Base in the case of an Asset Disposition with respect to Accounts or Inventory of the Canadian Borrower, the German Borrowing Base in the case of an Asset Disposition with respect to Accounts or Inventory of the German Borrower, and the U.K. Borrowing Base in the case of an Asset Disposition with respect to Accounts or Inventory of the U.K. Borrower) upon giving effect to such disposition, shall be applied to the applicable Revolver Loans (*i.e.*, the U.S. Revolver Loans in the case of an Asset Disposition of Accounts or Inventory of the U.S. Borrowers, the Canadian Revolver Loans in the case of an Asset Disposition with respect to the Accounts or Inventory of the Canadian Borrower, the German Revolver Loans in the case of an Asset Disposition with respect to the Accounts or Inventory of the German Borrower, and the U.K. Revolver Loans in the case of an Asset Disposition with respect to the Accounts or Inventory of the U.K. Borrower).

5.2.iii.Notwithstanding anything herein to the contrary, if an Overadvance exists (including as a result of any Asset Disposition), the applicable Borrower(s) (*i.e.*, the U.S. Borrowers in the case of a U.S. Overadvance, the Canadian Borrower in the case of a Canadian Overadvance, the German Borrower in the case of a German Overadvance, and the U.K. Borrower in the case of a U.K. Overadvance) shall, on the sooner of Agent's demand or the first Business Day after any such Borrower has knowledge thereof, repay the outstanding applicable Revolver Loans (*i.e.*, the U.S. Revolver Loans in the case of a U.S. Overadvance, the Canadian Revolver Loans in the case of a Canadian Overadvance, the German Revolver Loans in the case of a German Overadvance, and the U.K. Revolver Loans in the case of a U.K. Overadvance) in an amount sufficient to reduce the principal balance of such Revolver Loans to the applicable Borrowing Base (*i.e.*, the U.S. Borrowing Base in the case of a U.S. Revolver Loans, the Canadian Borrowing Base in the case of Canadian Revolver Loans, the German Borrowing Base in the case of German Revolver Loans, and the U.K. Borrowing Base in the case of U.K. Revolver Loans).

5.c Repayment of Term Loans.

5.3.i.Payment of Principal. Commencing on the first day of the fiscal quarter immediately following the fiscal quarter ending June 30, 2020 (or the fiscal quarter ending September 30, 2020 if the Term Loan is made after June 30, 2020) (in either case, such month, the "First Term Loan Repayment Quarter"), and on the first day of each fiscal quarter ending after the First Term Loan Repayment Quarter, the principal amount of the Term Loans shall be repaid by an amount equal to \$2,500,000. In addition to the foregoing, on the earlier of the Term Loan Maturity Date and the U.S. Revolver Commitment Termination Date, all principal, interest and other amounts owing with respect to the Term Loans shall be due and payable in full. Each installment shall be paid to Agent for the Pro Rata benefit of Lenders. Once repaid, whether such repayment is voluntary or required, Term Loans may not be reborrowed. Any prepayment of Term Loans shall be accompanied by all interest accrued thereon and any amounts payable under Section 3.9.

5.3.ii.Mandatory Prepayments.

(1) Concurrently with any Asset Disposition by any U.S. Facility Obligor of any Revolving Real Estate Collateral (as defined in the Intercreditor Agreement) or Intellectual Property (other than Term Loan Priority Intellectual Property, as defined in the Intercreditor

Agreement), U.S. Borrowers shall prepay Term Loans in an amount equal to the Net Proceeds of such disposition. Any such prepayment of the Term Loans shall be applied to principal in inverse order of maturity.

5.3.iii. Optional Prepayments. U.S. Borrowers may, at their option from time to time, prepay Term Loans, which prepayment must be at least \$5,000,000, plus any increment of \$1,000,000 in excess thereof. Borrower Agent shall give written notice to Agent of an intended prepayment of Term Loans, which notice shall specify the amount of the prepayment and the date of such prepayment (which must be a Business Day), shall be irrevocable once given, and shall be given at least 3 Business Days prior to the date of such prepayment. Any such voluntary prepayment of the Term Loans shall be applied to principal in inverse order of maturity.

5.d Payment of Other Obligations. Obligations other than Loans, including LC Obligations and Extraordinary Expenses, shall be paid by Borrowers as provided in the Loan Documents or, if no payment date is specified, **on demand**.

5.e Marshaling; Payments Set Aside. None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Borrowers or any other Obligor is made to Agent, any Issuing Bank or any Lender, or Agent, any Issuing Bank or any Lender exercises a 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 Agent, such Issuing Bank or such Lender in its discretion) to be repaid to a Creditor Representative or any other Person, then to the extent of such recovery, the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

5.f Post-Default Allocation of Payments.

5.6.i. Allocation. Notwithstanding anything herein to the contrary, during an Event of Default, monies to be applied to the Obligations, whether arising from payments by or on behalf of any Obligor, realization on Collateral, setoff or otherwise, shall be allocated as follows:

(2) with respect to monies, payments, Property or Collateral of or from any U.S. Domiciled Obligor:

1. first, to all costs and expenses, including Extraordinary Expenses, owing to Agent;
2. second, to all Extraordinary Expenses owing to any U.S. Lender;
3. third, to all amounts owing to Agent on U.S. Swingline Loans;
4. fourth, to all amounts owing to U.S. Issuing Bank on account of U.S. LC Obligations;
5. fifth, to all Obligations constituting fees (other than Secured Bank Product Obligations) owing by any U.S. Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligors, the German Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the U.S. Domiciled Obligors);
6. sixth, to all U.S. Facility Obligations constituting interest (other than Secured Bank Product Obligations and other than on account of the Term Loans)

owing by any U.S. Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligors, German Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the U.S. Domiciled Obligors);

7. seventh, to Cash Collateralize the U.S. LC Obligations;

8. eighth, to all U.S. Revolver Loans and Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the U.S. Borrowing Base immediately prior to the time of such allocation) of any U.S. Domiciled Obligor, including Cash Collateralization of Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the U.S. Borrowing Base immediately prior to the time of such allocation) of any U.S. Domiciled Obligor;

9. ninth, to all other U.S. Facility Obligations (exclusive of any such amounts owing by the Canadian Domiciled Obligors, German Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the U.S. Domiciled Obligors);

10. tenth, ratably: (i) to be applied in accordance with clause (b) below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any Canadian Domiciled Obligor, (ii) to be applied in accordance with clause (c) below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any U.K. Domiciled Obligor and (iii) to be applied in accordance with clause (d) below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any German Domiciled Obligor;

11. eleventh, to all interest owing by any U.S. Domiciled Obligor on account of the Term Loans; and

12. twelfth, to all Term Loans.

(3) with respect to monies, payments, Property or Collateral of or from any Canadian Domiciled Obligor, together with any allocations pursuant to subclause (x) of clause (a) above, subclause (x) of clause (c) below and subclause (x) of clause (d) below:

1. first, to all costs and expenses, including Extraordinary Expenses, owing to Agent, to the extent owing by any Canadian Domiciled Obligor;

2. second, to all Extraordinary Expenses owing to any Canadian Lender;

3. third, to all amounts owing to Agent (acting through its Canada branch) on Canadian Swingline Loans;

4. fourth, to all amounts owing to the Canadian Issuing Bank on account of Canadian LC Obligations;

5. fifth, to all Canadian Facility Obligations constituting fees (other than Secured Bank Product Obligations) owing by any Canadian Domiciled Obligor (exclusive of any such amounts owing by the German Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the Canadian Domiciled Obligors);

6. sixth, to all Canadian Facility Obligations constituting interest (other than Secured Bank Product Obligations) owing by any Canadian Domiciled

Obligor (exclusive of any such amounts owing by the German Domiciled Obligor or U.K. Domiciled Obligor which are guaranteed by the Canadian Domiciled Obligor);

7. seventh, to Cash Collateralize the Canadian LC Obligations;

8. eighth, to all Canadian Revolver Loans and Noticed Hedges of any Canadian Domiciled Obligor (solely to the extent such Noticed Hedges were reserved for by Agent under the Canadian Borrowing Base immediately prior to the time of such allocation), including Cash Collateralization of Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the Canadian Borrowing Base immediately prior to the time of such allocation) of any Canadian Domiciled Obligor;

9. ninth, to all other Canadian Facility Obligations (exclusive of any such amounts owing by the German Domiciled Obligor or U.K. Domiciled Obligor which are guaranteed by the Canadian Domiciled Obligor); and

10. tenth, ratably: (i) to be applied in accordance with clause (c) below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any U.K. Domiciled Obligor and (ii) to be applied in accordance with clause (d) below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any German Domiciled Obligor.

(4) with respect to monies, payments, Property or Collateral of or from any U.K. Domiciled Obligor, together with any allocations pursuant to subclause (x) of clause (a) above, subclause (x) of clause (b) above and subclause (x) of clause (d) below:

13. first, to all costs and expenses, including Extraordinary Expenses, owing to Agent, to the extent owing by any U.K. Domiciled Obligor;

14. second, to all Extraordinary Expenses owing to any U.K. Lender;

15. third, to all amounts owing to Agent on U.K. Swingline Loans;

16. fourth, to all amounts owing to the U.K. Issuing Bank on account of U.K. LC Obligations;

17. fifth, to all U.K. Facility Obligations constituting fees (other than Secured Bank Product Obligations) owing by any U.K. Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligor or German Domiciled Obligor which are guaranteed by the U.K. Domiciled Obligor);

18. sixth, to all U.K. Facility Obligations constituting interest (other than Secured Bank Product Obligations) owing by any U.K. Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligor or German Domiciled Obligor which are guaranteed by the U.K. Domiciled Obligor);

19. seventh, to Cash Collateralize the U.K. LC Obligations;

20. eighth, to all U.K. Revolver Loans and Noticed Hedges of any U.K. Domiciled Obligor (solely to the extent such Noticed Hedges were reserved for by Agent under the U.K. Borrowing Base immediately prior to the time of such allocation), including Cash Collateralization of Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the U.K. Borrowing Base immediately prior to the time of such allocation) of any U.K. Domiciled Obligor;

21. ninth, to all other U.K. Facility Obligations (exclusive of any such amounts owing by the Canadian Domiciled Obligors or German Domiciled Obligors which are guaranteed by the U.K. Domiciled Obligors); and

22. tenth, ratably: (i) to be applied in accordance with clause (b) above, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any Canadian Domiciled Obligor and (ii) to be applied in accordance with clause (d) below, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any German Domiciled Obligor.

(5) with respect to monies, payments, Property or Collateral of or from any German Domiciled Obligor, together with any allocations pursuant to subclause (x) of clause (a) above, subclause (x) of clause (b) above and subclause (x) of clause (c) above:

(a) first, to all costs and expenses, including Extraordinary Expenses, owing to Agent, to the extent owing by any German Domiciled Obligor;

(b) second, to all Extraordinary Expenses owing to any German Lender;

(1) third, to all amounts owing to Agent on German Swingline Loans;

(2) fourth, to all amounts owing to the German Issuing Bank on account of German LC Obligations;

(3) fifth, to all German Facility Obligations constituting fees (other than Secured Bank Product Obligations) owing by any German Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the German Domiciled Obligors);

(4) sixth, to all German Facility Obligations constituting interest (other than Secured Bank Product Obligations) owing by any German Domiciled Obligor (exclusive of any such amounts owing by the Canadian Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the German Domiciled Obligors);

(5) seventh, to Cash Collateralize the German LC Obligations;

(6) eighth, to all German Revolver Loans and Noticed Hedges of any German Domiciled Obligor (solely to the extent such Noticed Hedges were reserved for by Agent under the German Borrowing Base immediately prior to the time of such allocation), including Cash Collateralization of Noticed Hedges (solely to the extent such Noticed Hedges were reserved for by Agent under the German Borrowing Base immediately prior to the time of such allocation) of any German Domiciled Obligor;

(7) ninth, to all other German Facility Obligations (exclusive of any such amounts owing by the Canadian Domiciled Obligors or U.K. Domiciled Obligors which are guaranteed by the German Domiciled Obligors); and

(8) tenth, ratably: (i) to be applied in accordance with clause (b) above, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any Canadian Domiciled Obligor and (ii) to be applied in accordance with clause (c) above, to the extent there are insufficient funds for the Full Payment of all Obligations owing by any U.K. Domiciled Obligor.

5.6.ii. General Application Provisions. Amounts shall be applied to each category of Obligations set forth above until Full Payment thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. Amounts distributed with respect to any Secured Bank Product Obligations shall be the lesser of the maximum Secured Bank Product Obligations last reported to Agent or the actual Secured Bank Product Obligations as calculated by the methodology reported to Agent for determining the amount due. Monies and proceeds obtained from an Obligor shall not be applied to its Excluded Swap Obligations, but appropriate adjustments shall be made with respect to amounts obtained from other Obligors to preserve the allocations in any applicable category. Agent shall have no obligation to calculate the amount to be distributed with respect to any Secured Bank Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Secured Party. If a Secured Party fails to deliver such calculation within five days following request by Agent, Agent may assume the amount to be distributed is the last reported amount. The allocations set forth in this Section are solely to determine the rights and priorities of Agent and Secured Parties as among themselves, and may be changed by agreement among them without the consent of any Obligor. This Section is not for the benefit of or enforceable by any Borrower.

5.6.iii. Erroneous Application. Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been made shall be to recover the amount from the Person that actually received it (and, if such amount was received by any Lender, such Lender hereby agrees to return it).

5.g Application of Payments

5.7.i. Dominion Account(s) of U.S. Borrowers. The ledger balance in the main Dominion Account of the U.S. Borrowers as of the end of a Business Day shall be applied to the Obligations of the U.S. Borrowers at the beginning of the next Business Day, during any Dominion Trigger Period. If, at the end of a Business Day, after giving effect to such application, if any, a credit balance exists, the balance shall not accrue interest in favor of the U.S. Borrowers and shall be made available to the U.S. Borrowers as long as the Obligations have not been accelerated on account of an Event of Default. During any Dominion Trigger Period, each U.S. Borrower and other Obligor irrevocably waive the right to direct the application of any payments or Collateral proceeds, and agree that Agent shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as Agent deems advisable.

5.7.ii. Dominion Account(s) of Canadian Borrower. The ledger balance in the main Dominion Account of the Canadian Borrower as of the end of a Business Day shall be applied to the Obligations of the Canadian Borrower at the beginning of the next Business Day, during any Dominion Trigger Period. If, at the end of a Business Day, after giving effect to such application, if any, a credit balance exists, the balance shall not accrue interest in favor of the Canadian Borrower and shall be made available to the Canadian Borrower as long as the Obligations have not been accelerated on account of an Event of Default. During any Dominion Trigger Period, the Canadian Borrower and each other Obligor irrevocably waive the right to direct the application of any payments or Collateral proceeds, and agree that Agent shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as Agent deems advisable.

5.7.iii. Dominion Account(s) of U.K. Borrower. The ledger balance in the main Dominion Account of the U.K. Borrower as of the end of a Business Day occurring on and after the Closing Date shall be applied to the Obligations of the U.K. Borrower at the beginning of the next Business Day. If, at the end of a Business Day occurring after the Closing Date, after giving

effect to such application, if any, a credit balance exists, the balance shall not accrue interest in favor of the U.K. Borrower and shall be made available to the U.K. Borrower as long as the Obligations have not been accelerated on account of an Event of Default and in any event subject to the terms of the U.K. Security Agreements. The U.K. Borrower and each other Obligor irrevocably waive the right to direct the application of any payments or Collateral proceeds, and agree that Agent shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as Agent deems advisable.

5.7.iv. Dominion Account(s) of German Borrower. Commencing 90 days after the Closing Date (or such later date as Agent may approve in its sole discretion), the ledger balance in the main Dominion Account of the German Borrower as of the end of a Business Day shall be applied to the Obligations of the German Borrower at the beginning of the next Business Day, during any Dominion Trigger Period. If, at the end of a Business Day, after giving effect to such application, if any, a credit balance exists, the balance shall not accrue interest in favor of the German Borrower and shall be made available to the German Borrower as long as the Obligations have not been accelerated on account of an Event of Default. During any Dominion Trigger Period, the German Borrower and each other Obligor irrevocably waive the right to direct the application of any payments or Collateral proceeds, and agree that Agent shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as Agent deems advisable.

5.h Loan Account; Account Stated.

5.8.i. Loan Account. Agent shall maintain, in accordance with its usual and customary practices, an account or accounts ("Loan Account") evidencing the Debt of each of the Borrower(s) within each Borrower Group resulting from each Loan made to such Borrower Group or issuance of a Letter of Credit for the account of such Borrower(s) from time to time. Any failure of Agent to record anything in any Loan Account, or any error in doing so, shall not limit or otherwise affect the obligations of the applicable Borrower(s) to pay any amount owing hereunder. Agent may maintain a single Loan Account in the name of the Borrower Agent, and each Borrower and other Obligor confirms that such arrangement shall have no effect on the joint and several character of its liability for the Obligations as and to the extent provided herein or in the other Loan Documents.

5.8.ii. Entries Binding. Entries made in any Loan Account shall constitute presumptive evidence of the information contained therein. If any information contained in the Loan Account is provided to or inspected by any Person, then such information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Agent in writing within 30 days after receipt or inspection that specific information is subject to dispute.

5.i Taxes.

5.9.i. Payments Free of Taxes. All payments by or on behalf of any Obligor hereunder shall be free and clear of and without withholding or deduction for any Taxes. If Applicable Law requires any Obligor or Agent to withhold or deduct any Tax (including backup withholding or withholding Tax), the withholding or deduction shall be based on information provided pursuant to **Section 5.10** and Agent shall pay the amount withheld or deducted to the relevant Governmental Authority. If the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the applicable Borrowers or other Obligors shall be increased so that Agent, each Lender and each Issuing Bank, as applicable, receives an amount equal to the sum it would have received if no such withholding or deduction (including withholdings or deductions applicable to additional sums payable under this Section) had been

made. In addition, Borrowers and the other Obligors shall timely pay all Other Taxes to the relevant Governmental Authorities.

5.9.ii. Payments Free of Tax by the U.K. Borrower.

(6) Payments Free of Tax. A payment by the U.K. Borrower under this Agreement shall not be increased under **Section 5.9.1** above by reason of a withholding or deduction on account of Tax imposed by the United Kingdom ("Tax Deduction"), if on the date on which the payment falls due:

23. the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a U.K. Qualified Lender, but on that date that Lender is not or has ceased to be a U.K. Qualified Lender other than as a result of any change after the date it became a 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; or

24. the relevant Lender is a U.K. Qualified Lender solely by virtue of paragraph (i)(B) of the definition of U.K. Qualified Lender; and (A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "Direction") under section 931 of ITA which relates to the payment and that Lender has received from the U.K. Borrower making the payment a certified copy of that Direction; and (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or

25. the Lender is a U.K. Qualified Lender solely by virtue of paragraph (i)(B) of the definition of U.K. Qualified Lender and (A) the Lender has not given a U.K. Tax Confirmation to the U.K. Borrower; and (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a U.K. Tax Confirmation to the U.K. Borrower, on the basis that the U.K. Tax Confirmation would have enabled the U.K. Borrower to have formed a reasonable belief that the payment was an "**excepted payment**" for the purposes of Section 930 of ITA; or

26. the relevant Lender is a Treaty Lender and the U.K. Borrower making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under **Section 5.9.2(d)** below.

(7) Timing and Amount. If the U.K. Borrower is required to make a Tax Deduction, the U.K. Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(8) Evidence of Payment. Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the U.K. Borrower shall deliver to the Agent for the Lender or the Agent entitled to the payment a statement under Section 975 of ITA or other evidence reasonably satisfactory to that Lender or the Agent that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

(9) Co-operation between a Treaty Lender and the U.K. Borrower. A Treaty Lender and the U.K. Borrower making a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for U.K. Borrower to obtain authorization to make that payment without a Tax Deduction.

(10) Exceptions. Nothing in **Section 5.9.2(d)** above shall require a Treaty Lender to: (a) register under the HMRC DT Treaty Passport scheme; (b) apply the HMRC DT Treaty Passport scheme to any Loan if it has so registered; or (c) file Treaty forms if it has included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with **Section 5.9.2(h)** below or **Section 5.9.2(o)** below and the Obligor making that payment has complied with its obligations under **Section 5.9.2(i)** below or **Section 5.9.2(p)** below.

(11) Existing Lenders. A U.K. Non-Bank Lender which becomes a Lender on the day on which this Agreement is entered into gives a U.K. Tax Confirmation to the U.K. Borrower by entering into this Agreement.

(12) Notice. A U.K. Non-Bank Lender shall promptly notify the U.K. Borrower and the Agent if there is any change in the position from that set out in the U.K. Tax Confirmation.

(13) HMRC DT Treaty Passport schemes. A Treaty Lender which becomes a party to this Agreement on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which then wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) by including its scheme reference number and its jurisdiction of tax residence opposite its name in **Schedule 5.9.9**.

(14) Form DTTP2. Where a Lender includes the indication described in **Section 5.9.2(h)** above in **Schedule 5.9.9**, the U.K. Borrower shall, to the extent that such Lender is a Lender under the facilities made available to the U.K. Borrower pursuant to **Section 2.1** or **Section 2.2**, file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of the date of this Agreement and shall promptly provide such Lender with a copy of that filing.

(15) No Filings. If a Lender has not included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with **Section 5.9.2(h)** above or **Section 5.9.2(o)** below, no Obligor shall file a form DTTP2 or any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's commitment(s) or its participation in any facility made available under this Agreement.

(16) Payment. Obligors shall indemnify, hold harmless and reimburse (within 10 days after demand therefor) Agent, Lenders and Issuing Banks for any Indemnified Taxes or Other Taxes (including those attributable to amounts payable under this Section) paid by Agent, any Lender or any Issuing Bank, with respect to any Obligations of such Borrower's Borrower Group, Letters of Credit of such Borrower's Borrower Group or Loan Documents, whether or not such Taxes were properly asserted by the relevant Governmental Authority, and including all penalties, interest and reasonable expenses relating thereto, as well as any amount that a Lender or an Issuing Bank fails to pay indefeasibly to Agent under **Section 5.10**. A certificate as to the amount of any such payment or liability delivered to Borrower Agent by Agent, or by a Lender or an Issuing Bank (with a copy to Agent), shall be conclusive, absent manifest error. As soon as practicable after any payment of Taxes by any Obligor, Borrower Agent shall deliver to Agent a receipt from the Governmental Authority or other evidence of payment satisfactory to Agent.

(17) Payment by the U.K. Borrower. **Section 5.9.2(k)** shall not apply:

11. with respect to any Tax assessed on a Lender or the Agent: (A) under the law of the jurisdiction in which that Lender or the Agent is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Lender or the Agent is treated as

resident for tax purposes or (B) under the law of the jurisdiction in which that Lender's or the Agent's lending office is located in respect of amounts received or receivable in that jurisdiction, if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Lender or the Agent; or

12. to the extent a loss, liability or cost: (A) is compensated for by an increased payment under **Section 5.9.1** or (B) would have been compensated for by an increased payment under **Section 5.9.1** but was not so compensated solely because one of the exclusions in **Section 5.9.2(a)** applied.

(18) **Tax Credit**. If the U.K. Borrower makes a payment under **Section 5.9.1** or **Section 5.9.2(k)** (a "U.K. Tax Payment") and either a Lender or the Agent determines that (i) a Tax Credit is attributable either to an increased payment of which that U.K. Tax Payment forms part, or to that U.K. Tax Payment and (ii) that Lender or the Agent has obtained, utilized and retained that Tax Credit, that Lender or the Agent shall pay an amount to the U.K. Borrower which that Lender or the Agent determines will leave it (after that payment) in the same after-Tax position as it would have been in had the U.K. Tax Payment not been required to be made by the U.K. Borrower.

(19) **New Lenders**. Each Lender which becomes a party to this Agreement in the capacity of a U.K. Lender after the date of this Agreement ("New Lender") shall indicate, at the time it becomes a New Lender, on and for the benefit of the Agent and without liability to the U.K. Borrower, which of the following categories it falls in (i) not a U.K. Qualified Lender; (ii) a U.K. Qualified Lender (other than a Treaty Lender); or (iii) a Treaty Lender. If a New Lender fails to indicate its status in accordance with this **Section 5.9.2(n)** then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a U.K. Qualified Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the U.K. Borrower). For the avoidance of doubt, an assignment in accordance with **Section 13.3** shall not be invalidated by any failure of a New Lender to comply with this **Section 5.9.2(n)**.

(20) **HMRC DT Treaty Passport schemes – New Lenders**. A New Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which then wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) in the assignment notice which it executes pursuant to, or in connection with, **Section 13.3** below by including its scheme reference number and its jurisdiction of tax residence in that assignment notice.

(21) **Form DTTP2 – New Lenders**. Where a New Lender includes the indication described in **Section 5.9.2(o)** above in the relevant assignment notice the U.K. Borrower shall, to the extent that that New Lender becomes a Lender under a facility which is made available to the U.K. Borrower pursuant to **Section 2.1** or **Section 2.2**, file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of the date of that assignment and shall promptly provide the Lender with a copy of that filing.

5.9.iii. **FATCA Grandfathering**. For purposes of determining withholding Taxes imposed under FATCA, from and after the Third Amended Original Closing Date, the Borrowers and the Agent shall treat (and the Lenders hereby authorize the Agent to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2) (i).

5.j Lender Tax Information.

5.10.i.Status of Lenders. Each Lender shall deliver documentation and information to Agent and Borrower Agent, at the times and in form required by Applicable Law or reasonably requested by Agent or Borrower Agent, sufficient to permit Agent or Borrowers to determine (a) whether or not payments made with respect to Obligations are subject to Taxes, (b) if applicable, the required rate of withholding or deduction, and (c) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes for such payments or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction.

5.10.ii.Documentation. If a Borrower is resident for tax purposes in the United States, any Lender that is a "United States person" within the meaning of section 7701(a)(30) of the Code shall deliver to Agent and Borrower Agent IRS Form W-9 or such other documentation or information prescribed by Applicable Law or reasonably requested by Agent or Borrower Agent to determine whether such Lender is subject to backup withholding or information reporting requirements. If any Foreign Lender is entitled to any exemption from or reduction of withholding tax for payments with respect to the U.S. Facility Obligations, it shall deliver to Agent and Borrower Agent, on or prior to the date on which it becomes a Lender hereunder (and from time to time thereafter upon request by Agent or Borrower Agent, but only if such Foreign Lender is legally entitled to do so), (a) IRS Form W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States is a party; (b) IRS Form W-8ECI; (c) IRS Form W-8IMY and all required supporting documentation; (d) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, IRS Form W-8BEN-E and a certificate showing such Foreign Lender is not (i) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (ii) a "10 percent shareholder" of any Obligor within the meaning of section 881(c)(3)(B) of the Code, or (iii) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code; or (e) any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in withholding tax, together with such supplementary documentation necessary to allow Agent and Borrowers to determine the withholding or deduction required to be made.

5.10.iii.Lender Obligations. Each Lender and each Issuing Bank shall promptly notify Borrower Agent and Agent of any change in circumstances that would change any claimed Tax exemption or reduction. Each Lender and each Issuing Bank, in each case severally and not jointly with the other Lenders and/or applicable Issuing Bank, shall indemnify, hold harmless and reimburse (within 10 days after demand therefor) the affected Borrower to which such Lender or such Issuing Bank (as applicable) has issued a Commitment and Agent for any Taxes, losses, claims, liabilities, penalties, interest and expenses (including reasonable attorneys' fees) incurred by or asserted against such affected Borrower or Agent by any Governmental Authority due to such Lender's or such Issuing Bank's failure to deliver, or inaccuracy or deficiency in, any documentation required to be delivered by it pursuant to this Section. Each Lender and each Issuing Bank authorizes Agent to set off any amounts due to Agent under this Section against any amounts payable to such Lender or such Issuing Bank under any Loan Document.

5.k Guarantee by Obligors.

5.11.i.Guarantee by U.S. Domiciled Obligors.

(22) Joint and Several Liability. Each U.S. Domiciled Obligor agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to the Secured Parties the prompt payment and performance of, all Obligations and all agreements of each other Obligor under the Loan Documents, except its Excluded Swap Obligations, and that it is a U.S. Facility Guarantor, a Canadian Facility Guarantor, a German Facility Guarantor, and a U.K. Facility Guarantor hereunder. Each U.S. Domiciled Obligor agrees that its guaranty or guarantee

of obligations as a U.S. Facility Guarantor, a Canadian Facility Guarantor, a German Facility Guarantor, and a U.K. Facility Guarantor hereunder, as applicable, constitute a continuing guaranty or guarantee of payment and not of collection, that such obligations shall not be discharged until Full Payment of all Obligations, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by any Secured Party with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty or guarantee for the Obligations or any action, or the absence of any action, by any Secured Party in respect thereof (including the release of any security or guaranty or guarantee); (d) the insolvency of any Obligor; (e) any election by Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the U.S. Bankruptcy Code or similar provision of other Applicable Law; (f) any borrowing or grant of a Lien by any other Obligor, as debtor-in-possession under Section 364 of the U.S. Bankruptcy Code, under other Applicable Law or otherwise; (g) the disallowance of any claims of any Secured Party against any Obligor for the repayment of any Obligations under Section 502 of the U.S. Bankruptcy Code, under other Applicable Law or otherwise; (h) any other insolvency, debtor relief or debt adjustment law (whether state, provincial, federal or foreign, including the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), and the Insolvency Act 1986 of the United Kingdom and the Enterprise Act 2002 of the United Kingdom); (i) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of any Obligor or any other person; (j) any merger, amalgamation or consolidation of any Obligor with any person or persons; (k) the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of any governmental body or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the Obligations under the Loan Documents; (l) the existence of any claim, set-off, compensation or other rights which any Obligor may have at any time against any other Obligor or any other person, or which any Obligor may have at any time against the Secured Parties, whether in connection with the Loan Documents or otherwise; or (m) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of all Obligations.

(23) Waivers.

27. Each U.S. Domiciled Obligor expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Obligor. Each U.S. Domiciled Obligor waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of all Obligations. It is agreed among each U.S. Domiciled Obligor, Agent and Lenders that the provisions of this **Section 5.11** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and Lenders would decline to make Loans and issue Letters of Credit. Each U.S. Domiciled Obligor acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

28. Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral (including any Real Estate owned by any Obligor) by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this **Section 5.11**. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any

Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any U.S. Domiciled Obligor or other Person, whether because of any Applicable Laws pertaining to “election of remedies” or otherwise, each U.S. Domiciled Obligor consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any U.S. Domiciled Obligor might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any U.S. Domiciled Obligor shall not impair any other U.S. Domiciled Obligor’s obligation to pay the full amount of the Obligations. Each U.S. Domiciled Obligor waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such U.S. Domiciled Obligor’s rights of subrogation against any other Person. Agent may bid all or a portion of the Obligations at any foreclosure or trustee’s sale or at any private sale, and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this **Section 5.11**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

(24) Extent of Liability; Contribution.

13. Notwithstanding anything herein to the contrary, each U.S. Domiciled Obligor’s liability under this **Section 5.11** shall be limited to the greater of (i) all amounts for which such U.S. Domiciled Obligor is primarily liable, as described below, and (ii) such U.S. Domiciled Obligor’s Allocable Amount.

14. If any U.S. Domiciled Obligor makes a payment under this **Section 5.11** of any Obligations (other than amounts for which such U.S. Domiciled Obligor is primarily liable) (a “Guarantor Payment”) that, taking into account all other Guarantor Payments previously or concurrently made by any other U.S. Domiciled Obligor, exceeds the amount that such U.S. Domiciled Obligor would otherwise have paid if each U.S. Domiciled Obligor had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such U.S. Domiciled Obligor’s Allocable Amount bore to the total Allocable Amounts of all U.S. Domiciled Obligors, then such U.S. Domiciled Obligor shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other U.S. Domiciled Obligor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The “Allocable Amount” for any U.S. Domiciled Obligor shall be the maximum amount that could then be recovered from such U.S. Domiciled Obligor under this **Section 5.11** without rendering such payment voidable under Section 548 of the U.S. Bankruptcy Code or under any similar applicable fraudulent transfer or conveyance Applicable Law, or the Applicable Law in Canada or any province or territory thereof, or in England.

15. Each U.S. Domiciled Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each other U.S. Domiciled Obligor that is a Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor from time to time to honor all of its obligations under the Loan Documents in respect of such

Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this **Section 5.11** voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each U.S. Domiciled Obligor 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 Obligor for all purposes of the Commodity Exchange Act.

5.11.ii. Guarantee by Canadian Domiciled Obligors, German Domiciled Obligors and U.K. Domiciled Obligors.

(25) **Joint and Several Liability.** Subject to **Section 5.11.7** and to any Applicable Law limitations with respect to the German Domiciled Obligors, each Canadian Domiciled Obligor, German Domiciled Obligor and U.K. Domiciled Obligor agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to the Secured Parties the prompt payment and performance of, all Canadian Facility Obligations, U.K. Facility Obligations, German Facility Obligations, and all agreements of each other Canadian Domiciled Obligor, German Domiciled Obligor and U.K. Domiciled Obligor under the Loan Documents, except its Excluded Swap Obligations, and that it is a Canadian Facility Guarantor, a German Facility Guarantor and a U.K. Facility Guarantor hereunder. Each Canadian Domiciled Obligor, German Domiciled Obligor and U.K. Domiciled Obligor agrees that its guaranty or guarantee of obligations as a Canadian Facility Guarantor, a German Facility Guarantor and a U.K. Facility Guarantor hereunder, as applicable, constitute a continuing guaranty or guarantee of payment and not of collection, that such obligations shall not be discharged until Full Payment of all Obligations, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by any Secured Party with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty or guarantee for the Obligations or any action, or the absence of any action, by any Secured Party in respect thereof (including the release of any security or guaranty or guarantee); (d) the insolvency of any Obligor; (e) any election by Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the U.S. Bankruptcy Code or similar provision of other Applicable Law; (f) any borrowing or grant of a Lien by any other Obligor, as debtor-in-possession under Section 364 of the U.S. Bankruptcy Code, under other Applicable Law or otherwise; (g) the disallowance of any claims of any Secured Party against any Obligor for the repayment of any Obligations under Section 502 of the U.S. Bankruptcy Code, under other Applicable Law or otherwise; (h) any other insolvency, debtor relief or debt adjustment law (whether state, provincial, federal or foreign, including the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), and the Insolvency Act 1986 of England and the Enterprise Act 2002 of England); (i) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of any Obligor or any other person; (j) any merger, amalgamation or consolidation of any Obligor with any person or persons; (k) the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of any governmental body or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the Obligations under the Loan Documents; (l) the existence of any claim, set-off, compensation or other rights which any Obligor may have at any time against any other Obligor or any other person, or which any Obligor may have at any time against the Secured Parties, whether in connection with the Loan Documents or otherwise; or (m) any other action or

circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of all Obligations.

(26) Waivers.

29. Each Canadian Domiciled Obligor, German Domiciled Obligor and U.K. Domiciled Obligor expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Obligor. Each Canadian Domiciled Obligor, German Domiciled Obligor and U.K. Domiciled Obligor waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of all Obligations. It is agreed among each Canadian Domiciled Obligor, German Domiciled Obligor and U.K. Domiciled Obligor, Agent and Lenders that the provisions of this **Section 5.11** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and Lenders would decline to make Loans and issue Letters of Credit. Each Canadian Domiciled Obligor, German Domiciled Obligor and U.K. Domiciled Obligor acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

30. Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral (including any Real Estate owned by any Obligor) by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this **Section 5.11**. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor or other Person, whether because of any Applicable Laws pertaining to "election of remedies" or otherwise, each Canadian Domiciled Obligor, German Domiciled Obligor and U.K. Domiciled Obligor consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor shall not impair any other Canadian Domiciled Obligor's, German Domiciled Obligor's or U.K. Domiciled Obligor's obligation to pay the full amount of the Obligations it is jointly and severally liable for and has guaranteed under the Loan Documents. Each Canadian Domiciled Obligor, German Domiciled Obligor and U.K. Domiciled Obligor waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Canadian Domiciled Obligor's, German Domiciled Obligor's or U.K. Domiciled Obligor's rights of subrogation against any other Person. Agent may bid all or a portion of the Obligations at any foreclosure or trustee's sale or at any private sale, and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this **Section 5.11**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

(27) Extent of Liability; Contribution.

16. Notwithstanding anything herein to the contrary, each Canadian Domiciled Obligor's, German Domiciled Obligor's and U.K. Domiciled Obligor's liability under this **Section 5.11** shall be limited to the greater of (i) all amounts for which such Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor is primarily liable, as described below, and (ii) such Canadian Domiciled Obligor's, German Domiciled Obligor's and U.K. Domiciled Obligor's U.K./Canadian/German Allocable Amount.

17. If any Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor makes a payment under this **Section 5.11** of any Obligations (other than amounts for which such Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor is primarily liable) (a "U.K./Canadian/German Guarantor Payment") that, taking into account all other U.K./Canadian/German Guarantor Payments previously or concurrently made by any other Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor, exceeds the amount that such Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor would otherwise have paid if each Canadian Domiciled Obligor, German Domiciled Obligor and U.K. Domiciled Obligor had paid the aggregate Obligations satisfied by such U.K./Canadian/German Guarantor Payments in the same proportion that such Canadian Domiciled Obligor's, German Domiciled Obligor's or U.K. Domiciled Obligor's U.K./Canadian/German Allocable Amount bore to the total U.K./Canadian/German Allocable Amounts of all Canadian Domiciled Obligors, German Domiciled Obligors and U.K. Domiciled Obligors, then such Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Canadian Domiciled Obligor, German Domiciled Obligor and U.K. Domiciled Obligor for the amount of such excess, pro rata based upon their respective U.K./Canadian/German Allocable Amounts in effect immediately prior to such U.K./Canadian/German Guarantor Payment. The "U.K./Canadian/German Allocable Amount" for any Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor shall be the maximum amount that could then be recovered from such Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor under this **Section 5.11** without rendering such payment voidable under Section 548 of the U.S. Bankruptcy Code or under any similar applicable fraudulent transfer or conveyance Applicable Law, or the Applicable Law in Canada, Germany or any province or territory thereof, or in England and with respect to the German Domiciled Obligors, subject to **Section 5.11.7**.

18. Subject to **Section 5.11.7** and to any Applicable Law limitations with respect to the German Domiciled Obligors, each Canadian Domiciled Obligor, each German Domiciled Obligor and each U.K. Domiciled Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each Canadian Domiciled Obligor, German Domiciled Obligor and U.K. Domiciled Obligor that is a Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this **Section 5.11** voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each Canadian Domiciled Obligor, German Domiciled Obligor and each U.K. Domiciled Obligor 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 Obligor for all purposes of the Commodity Exchange Act.

5.11.i.No Limitation. Nothing contained in this **Section 5.11** shall limit the liability of any Obligor to pay Loans made directly or indirectly to that Obligor (including Loans advanced to any other Obligor and then re-loaned or otherwise transferred to, or for the benefit of, such Obligor), LC Obligations relating to Letters of Credit issued to support such Obligor’s business, and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Obligor shall be primarily liable for all purposes hereunder. Agent and Lenders shall have the right, at any time in their discretion, to condition Loans and Letters of Credit upon a separate calculation of borrowing availability for each Borrower and to restrict the disbursement and use of such Loans and Letters of Credit to such Borrower.

5.11.ii.Joint Enterprise. Each Obligor has requested that Agent and Lenders make the credit facilities available to the applicable Borrowers on a combined basis, in order to finance Borrowers’ business most efficiently and economically. Obligor’s business is a mutual and collective enterprise, and the successful operation of each Obligor is dependent upon the successful performance of the integrated group. The Obligors believe that the credit facilities provided to the applicable Borrowers under this Agreement will enhance the borrowing power of each Borrower and ease administration of such credit facilities, all to their mutual advantage. Obligors acknowledge that Agent’s and Lenders’ willingness to extend credit and to administer the Collateral as provided under the Loan Documents is done solely as an accommodation to Obligors and at Obligors’ request.

5.11.iii.California Waivers.

(28) Notwithstanding anything to the contrary set forth in this Agreement or any of the Loan Documents, each of the Obligors hereby understands and acknowledges that if Agent forecloses judicially or nonjudicially against any Collateral consisting of Real Estate located in California for the Obligations, that foreclosure could impair or destroy any ability that the Obligors may have to seek reimbursement, contribution, or indemnification from one another based on any right any Obligor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by the Obligors under this Agreement. Each of the Obligors further understands and acknowledges that in the absence of this paragraph, such potential impairment or destruction of the Obligors’ rights, if any, may entitle the Obligors to assert a defense to this Agreement based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968). By executing this Agreement, each Obligor freely, irrevocably, and unconditionally: (i) waives and relinquishes that defense and agrees that the Obligors will be fully liable under this Agreement even though Agent may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations; (ii) agrees that the Obligors will not assert that defense in any action or proceeding which Agent may commence to enforce this Agreement or any other Loan Document; (iii) acknowledges and agrees that the rights and defenses waived by the Obligors in this Agreement include any right or defense that the Obligors may have or be entitled to assert based upon or arising out of any one or more of Sections 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or Section 2848 of the California Civil Code; and (iv) acknowledges and agrees that Agent and the Lenders are relying on this waiver in creating the Obligations, and that this waiver is a material part of the consideration which Agent and the Lenders are receiving for creating the Obligations.

(29) Each of the Obligors waives all rights and defenses that each Obligor may have because of any of the Obligations is secured by Real Estate. This means, among other things: (i) Agent may collect from the Obligors without first foreclosing on any real or personal

property collateral pledged by the Obligors; and (ii) if Agent forecloses on any Collateral consisting of Real Estate pledged by the Obligors: (A) the amount of the Obligations may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the Collateral is worth more than the sale price, and (B) Agent may collect from the Obligors even if Agent, by foreclosing on the Collateral consisting of Real Estate, has destroyed any right the Obligors may have to collect from one another. This is an unconditional and irrevocable waiver of any rights and defenses the Obligors may have because any of the Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(30) Each of the Obligors waives any right or defense it may have at law or equity, including California Code of Civil Procedure Section 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

5.11.iii. Subordination. Each Obligor hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to the Full Payment of all Obligations.

5.11.iv. German Limitations. On the basis of the judgments LG Darmstadt, 25.4.2013 – 16 O 195/12, OLG Frankfurt a. M., 8.11.2013 – 24 U 80/13 A, BGH, 10.1.2017 – II ZR 94/15 and BGH, 21.3.2017 – II ZR 93/16 the respective directors (*Geschäftsführer*) of each German Facility Obligor incorporated or established (as the case may be) in Germany (a “German Guarantor”) have assessed the financing concept provided for in connection with this Agreement and are satisfied by its robustness. In the case that during the lifetime of this Agreement the directors of a German Guarantor reasonably expect to suffer a personal liability in the case of an enforcement of this Section 5.11, the Secured Parties agree to the following limitations in order to avoid a personal liability of the directors (*Geschäftsführer*) or managing directors, respectively, of that German Guarantor (and/ or in the case of a GmbH & Co. KG or a GmbH & Co. KGaA, its general partner’s directors (*Geschäftsführer*)) as follows:

- (i) To the extent a German Guarantor guarantees or indemnifies any obligations under this Section 5.11 or any other provision of the Loan Documents of any of its Holding Companies or Affiliates (other than a Subsidiary of that German Guarantor) and that the German Guarantor is a GmbH, a GmbH & Co. KG or a GmbH & Co. KGaA, the enforcement of the respective obligations of that German Guarantor under this Section 5.11 (or any other relevant provision of the Loan Documents) shall, subject to paragraphs (b) to (d) below, be limited to the amount that would not lead to the situation, that (i) such German Guarantor’s net assets (for the purposes of this clause net assets means the assets (taking into consideration the assets listed under Section 266 paragraph 2 A, B, C, D and E of the German Commercial Code (*HGB*)) less the aggregate of its liabilities (taking into consideration the liabilities listed under Section 266 paragraph 3 B, C, D and E of the German Commercial Code (*HGB*)) of the German Guarantor in each case as calculated in accordance with the applicable law at that time fall below its (or in the case of a GmbH & Co. KG, its general partner’s) registered share capital (*Stammkapital*) or (ii), if its (or in the case of a GmbH & Co. KG or a GmbH & Co. KGaA, its general partner’s) net assets are already below its (or in the case of a GmbH & Co. KG or a GmbH & Co. KGaA, its general partner’s) registered share capital, the existing shortage in its (or in the case of a GmbH & Co. KG or a GmbH & Co. KGaA, its general partner’s) net assets would be further increased in each case in violation of Sections 30, 31 of the German Limited Liability Companies’ Act (*GmbHG*).

- (ii) The limitations set out in paragraph (a) of this Section 5.11.7 only apply:
- (1) if and to the extent that the managing directors on behalf of such German Guarantor have evidenced (in reasonable detail) in writing to the Agent (a "German Management Confirmation") within 15 Business Days of demand under this Section 5.11 (or the respective other provision of the Loan Documents) the amount of the obligations under this Section 5.11 (or the respective other provision of the Loan Documents) which cannot be met without causing the net assets of such German Guarantor (or, in the case of a GmbH & Co. KG or a GmbH & Co. KGaA, its general partner) to fall below its registered share capital or further reducing an existing shortage of its net assets below its registered share capital; and
 - (2) in case a Lender raises an objection against the German Management Confirmation and the Agent notifies the respective German Guarantor of such objection, if the Agent receives within 25 Business Days after such notification a written audit report prepared at the expense of the relevant German Guarantor by a firm of auditors of international standard and reputation that has been appointed by the respective German Guarantor with a view to investigating to what extent the net assets of that German Guarantor (or in the case of a GmbH & Co. KG or a GmbH & Co. KGaA, its general partner) exceeded its registered share capital.
- (iii) The limitations set out in paragraph (a) of this Section 5.11.7 shall not apply to a guarantee in respect of loans made to the German Guarantor under this Agreement to the extent they are on-lent to, or letters of credit (or similar instruments under any Ancillary Facility) to the extent issued for the benefit of, that German Guarantor or its Subsidiaries (and/ or in the case of a GmbH & Co. KG or a GmbH & Co. KGaA, its general partner and the general partner's Subsidiaries) and such amount on-lent or benefit granted has not been returned prior to the time of the intended enforcement.
- (iv) In any event the Secured Parties shall be entitled to enforce the guarantee and indemnities up to the amount that is undisputed between them and the relevant German Guarantor and, in relation to the amount which is disputed, the Secured Parties shall be entitled to further pursue their claims (if any) and the German Guarantor shall be entitled to provide evidence that the disputed amount is necessary for maintaining its or its general partner's registered share capital or avoiding a further reduction of an existing shortage of its net assets below its registered share capital.
- (v) In any event the Secured Parties shall be entitled to enforce the guarantee and indemnities without any limitations if:
- (3) a domination and/ or profit and loss pooling agreement (*Beherrschungs- und/ oder Gewinnabführungsvertrag*) has been entered into with the German Guarantor as dominated party (*beherrschtes Unternehmen*);
 - (4) the German Guarantor has an adequate counterclaim (*vollwertiger Gegenanspruch*) against its shareholder for the indemnification of any amount paid by it under the guarantee and indemnities;
 - (5) insolvency proceedings have been opened in relation to that German Guarantor;

- (6) by law, changes in applicable law or applicable court rulings of the Federal Supreme Court the limitations set out in this Section 5.11.7 are not deemed to be longer required to protect the management of the German Guarantor; or
- (7) the German Guarantor has not complied with its obligations under this Section 5.11.7.
- (i) Subject to paragraphs (g) and (h) below, any guarantee and/or indemnity granted under this **Section 5.11** by a German Guarantor that is incorporated as a stock corporation (*Aktiengesellschaft*) or a partnership limited by shares (*Kommanditgesellschaft auf Aktien*), including, for the avoidance of doubt, a GmbH & Co. KGaA, or any Subsidiary of such German Guarantor shall not secure liabilities which are owed by direct or indirect shareholders of such German Guarantor or Subsidiaries of such shareholders (for the avoidance of doubt, such subsidiaries not to include the German Guarantor and its Subsidiaries) except if and for so long as the German Guarantor is a party to a domination and/or profit and loss pooling agreement (*Beherrschungs- und/oder Gewinnabführungsvertrag*) within the meaning of section 291 of the German Stock Corporation Act (*Aktiengesetz*) as the dominated party with a direct or indirect shareholder or any Subsidiary of such shareholder (for the avoidance of doubt, such Subsidiaries not to include the German Guarantor and its Subsidiaries) as the dominating party.
- (ii) If a domination and/or profit and loss pooling agreement (*Beherrschungs- und/oder Gewinnabführungsvertrag*) within the meaning of section 291 of the German Stock Corporation Act (*Aktiengesetz*) is in force between the German Guarantor and a direct or indirect shareholder or any Subsidiary of such shareholder (for the avoidance of doubt, such Subsidiaries not to include the German Guarantor and its Subsidiaries) with the direct or indirect shareholder or relevant Subsidiary as the dominating party, any guarantee and/or indemnity granted under this Section 5.11 by the German Guarantor or by any Subsidiary of such German Guarantor shall be fully enforceable (*vollstreckbar*), except that it shall not be enforceable (*vollstreckbar*) if and to the extent that despite the existence of such circumstances there would be a violation of section 57 para. 1 sentence 1 or section 71a para. 1 sentence 1 of the German Stock Corporation Act (*Aktiengesetz*).
- (iii) Except if and to the extent that despite the existence of the circumstances set out in paragraphs (i) to (iii) below there would be a violation of section 57 para. 1 sentence 1 or section 71a para. 1 sentence 1 of the German Stock Corporation Act (*Aktiengesetz*), the restrictions in paragraphs (f) and (g) above shall not apply to any amounts which:
- (8) correspond to funds that have been borrowed under this Agreement and have been on-lent to, or otherwise been passed on to, the German Guarantor or any of its Subsidiaries, in each case to the extent that any such on-lent or passed-on funds are still outstanding at the date a demand is made under any guarantee and/or indemnity granted under this Section 5.11 (in each case, the “**Demand Date**”);
- (9) correspond to letters of credit or bank guarantees issued for the benefit of creditors of the German Guarantor or any of its Subsidiaries by a Secured

Party under the Loan Documents, in each case to the extent outstanding at the Demand Date; or

- (10) are covered (and to the extent they are covered) by a fully recoverable indemnity claim or claim for refund (*vollwertiger und durchsetzbarer Gegenleistungs- oder Rückgewähranspruch*) of the German Guarantor against its shareholder that can be accounted for in the balance sheet of the German Guarantor at full value (*vollwertig*),

provided that the Agent has waived with binding effect on the Secured Parties any restrictions otherwise applicable to the German Guarantor under the Loan Documents with respect to demanding, enforcing, setting off or otherwise claiming or discharging any of its recourse claims (if any) arising as a result of the enforcement of any guarantee and/or indemnity granted under this Section 5.11 so that it shall be permitted for the German Guarantor to (1) set off its recourse claim (if any) against the loan obligation in respect of any amounts so on-lent to it, (2) otherwise use its recourse claim (if any) to settle or discharge such loan obligation, or (3) to claim to be indemnified by another Obligor (including to bring legal or other proceedings against another Obligor in that regard).

- (vi) The restrictions set forth in paragraph (a) or paragraph (f) of this Section 5.11.7 shall not imply any full or partial waiver of any amount owed under the guarantee and indemnity under this Section 5.11, but shall impede only temporarily the enforcement of the guarantee and indemnity under this Section 5.11 to the extent the enforcement of the guarantee and indemnity under this Section 5.11 is limited by the restrictions set forth in paragraph (a) or paragraph (f), respectively, of this Section 5.11.7.

5.1 Currency Matters. Dollars are the currency of account and payment for each and every sum at any time due from Borrowers hereunder unless otherwise specifically provided in this Agreement, any other Loan Document or otherwise agreed to by Agent. The parties hereto hereby agree as follows:

(31) Each repayment of a Loan or LC Obligation or a part thereof shall be made in the currency in which such Loan or LC Obligation is denominated at the time of that repayment;

(32) Each payment of interest shall be made in the currency in which the principal or other sum in respect of which such interest is denominated;

(33) Each payment of fees by any Borrower pursuant to **Section 3.2** shall be in Dollars;

(34) Each payment in respect of Extraordinary Expenses and any other costs, expenses and indemnities shall be made in the currency in which the same were incurred by the party to whom payment is to be made;

(35) Any amount expressed to be payable in Canadian Dollars shall be paid in Canadian Dollars;

(36) Any amount expressed to be payable in British Pounds shall be paid in British Pounds;

- (37) Any amount expressed to be payable in Swiss Francs shall be paid in Swiss Francs; and
- (38) Any amount expressed to be payable in Euros shall be paid in Euros.

No payment to any Credit Party (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Obligor in respect of which it was made unless and until such Credit Party shall have received Full Payment in the currency in which such obligation or liability is payable pursuant to the above provisions of this **Section 5.12**. To the extent that the amount of any such payment shall, on actual conversion into such currency, be less than the full amount of such obligation or liability (actual or contingent) expressed in that currency, such Obligor (together with the other Obligors who are liable thereunder or obligated therefor) agrees to indemnify and hold harmless such Credit Party with respect to the amount of such deficiency, with such indemnity surviving the termination of this Agreement and any legal proceeding, judgment or court order pursuant to which the original payment was made which resulted in such deficiency. To the extent that the amount of any such payment to a Credit Party shall, upon an actual conversion into such currency, exceed such obligation or liability, actual or contingent, expressed in that currency, such Credit Party shall return such excess to the Borrower Agent.

5.a Currency Fluctuations. On each Business Day or such other date determined by Agent (the "Calculation Date"), Agent shall determine the Exchange Rate as of such date. The Exchange Rate so determined shall become effective on the first Business Day immediately following such determination (a "Reset Date") and shall remain effective until the next succeeding Reset Date. On each Reset Date, Agent shall determine the Dollar Equivalent of the Canadian Revolver Exposure, German Revolver Exposure and the U.K. Revolver Exposure. If, on any Reset Date: (a) the Total Revolver Exposure exceeds the total amount of the Revolver Commitments on such date, (b) the Canadian Revolver Exposure on such date exceeds the lesser of the Canadian Borrowing Base or the Canadian Revolver Commitments on such date, (c) the German Revolver Exposure on such date exceeds the lesser of the German Borrowing Base or the German Revolver Commitments on such date, or (d) the U.K. Revolver Exposure on such date exceeds the lesser of the U.K. Borrowing Base or the U.K. Revolver Commitments on such date (in any case, the amount of any such excess referred to herein as the "Excess Amount") then (i) Agent shall give notice thereof to Borrower Agent and Lenders and (ii) within one (1) Business Day thereafter, Borrowers shall cause such excess to be eliminated, either by repayment of Revolver Loans or depositing of Cash Collateral with Agent with respect to LC Obligations and until such Excess Amount is repaid, Lenders shall not have any obligation to make any Loans and the Issuing Banks shall not have any obligation to issue any Letters of Credit.

Section 6. CONDITIONS PRECEDENT

6.a Conditions Precedent to Effectiveness and Loans. In addition to the conditions set forth in **Section 6.2**, this Agreement shall not become effective and Agent, the Issuing Banks and the Lenders shall not be required to fund any requested Loans, issue any Letter of Credit for the benefit of the Borrowers or otherwise extend credit to the Borrowers hereunder, until the date ("Closing Date") that each of the following conditions has been satisfied:

- (1) Notes shall have been executed by each Borrower and delivered to each Applicable Lender that requests issuance of a Note. Each other Loan Document to which any Obligor is a party shall have been duly executed and delivered to Agent by each of the signatories thereto, and each such Obligor shall be in compliance with all terms thereof.
- (2) U.S. Borrowers shall have paid all fees and expenses to be paid to Agent and Lenders on the Closing Date.

(3) Agent shall have received certificates, in form and substance satisfactory to it, from a knowledgeable Senior Officer of each Obligor certifying that, after giving effect to the initial Loans and transactions hereunder, (i) such Obligor is Solvent; (ii) no Default or Event of Default exists; (iii) the representations and warranties set forth in **Section 9** are true and correct; and (iv) such Obligor has complied with all agreements and conditions to be satisfied by it under the Loan Documents to which such Obligor is a party.

(4) Agent shall have received a certificate of a duly authorized officer of each Obligor certifying (i) that attached copies of such Obligor's Organic Documents (and for any Person organized under the laws of Germany, its extract from the commercial register (*Handelsregisterauszug*)) are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents to which such Obligor is a party is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents to which such Obligor is a party. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.

(5) Agent shall have received written opinions of Gibson, Dunn & Crutcher LLP, Durham Jones & Pinegar, P.C., McMillan LLP, and Norton Rose Fulbright LLP, in form and substance satisfactory to Agent.

(6) Agent shall have received good standing certificates for each Obligor (other than the U.K. Domiciled Obligors and the German Domiciled Obligors), issued by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization.

(7) There shall exist no action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or governmental instrumentality that in Agent's judgment (i) could reasonably be expected to have a material adverse effect on any Obligor's business, assets, properties, liabilities, operations, condition or prospects, or could impair any Obligor's ability to perform satisfactorily under this Agreement and the other Loan Documents; or (ii) could reasonably be expected to materially and adversely affect this Agreement or the transactions contemplated hereby.

(8) (i) Each Canadian Security Agreement (amended as required) shall have been duly executed and delivered to Agent by each of the signatories thereto, and each signatory thereto shall be in compliance with all terms thereof, (ii) all PPSA and other Lien filings or recordations necessary to perfect Agent's Liens on the Collateral of each signatory to the Canadian Security Agreement shall have been filed, and (iii) Agent shall have received PPSA and Lien searches and other evidence satisfactory to Agent that such Liens are the only Liens upon the Collateral of each signatory to the Canadian Security Agreement (including estoppel letters), except Permitted Liens.

(9) Each document listed in paragraphs (a) to (g) of the definition of U.K. Security Agreement shall have been duly executed and delivered to the Agent by each of the signatories thereto, and each U.K. Domiciled Obligor shall be in compliance with all terms thereof.

(10) (i) Each German Security Document shall have been duly executed and delivered to Agent by each of the signatories thereto, and each signatory thereto shall be in compliance with all terms thereof and (ii) all Lien filings or recordations necessary to perfect Agent's Liens on the Collateral of each signatory to the German Security Documents shall have been filed.

(11) In respect of each company incorporated in the United Kingdom whose shares are the subject of a Lien in favor of the Agent (a “Charged Company”), either (i) a certificate of an authorised signatory of U.K. Holdings certifying that (A) Parent and each of its Subsidiaries have complied within the relevant timeframe with any notice they have received pursuant to Part 21A of the Companies Act 2006 from a Charged Company; and (B) no “warning notice” or “restrictions notice” (in each case as defined in Schedule 1B of the Companies Act 2006) has been issued in respect of those shares, together with a copy of the “PSC register” (within the meaning of section 790C(10) of the Companies Act 2006) of that Charged Company, which, is certified by an authorised signatory of U.K. Holdings to be correct, complete and not amended or superseded as at a date no earlier than the date of this Agreement; or (ii) a certificate of an authorised signatory of U.K. Holdings certifying that such Charged Company is not required to comply with Part 21A of the Companies Act 2006.

(12) Each Obligor shall have provided, in form and substance satisfactory to Agent, Issuing Banks and Lenders, all documentation and other information as Agent or any Lender deems appropriate in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including the Patriot Act, Beneficial Ownership Regulation and the AML Legislation. If any Obligor qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, it shall have provided a Beneficial Ownership Certification to Agent, Issuing Banks and Lenders in relation to such Obligor.

6.a Conditions Precedent to All Credit Extensions. Agent, Issuing Banks and Lenders shall not be required to fund any Loans, arrange for issuance of any Letters of Credit or grant any other accommodation to or for the benefit of Borrowers, unless the following conditions are satisfied:

(13) No Default or Event of Default shall exist at the time of, or result from, such funding, issuance or grant;

(14) The representations and warranties of each Obligor in the Loan Documents shall be true and correct on the date of, and upon giving effect to, such funding, issuance or grant (except for representations and warranties that expressly relate to an earlier date);

(15) All conditions precedent in any other Loan Document shall be satisfied; and

(16) With respect to issuance of a Letter of Credit, the LC Conditions shall be satisfied.

Each request (or deemed request) by Borrower Agent or any Borrower for funding of a Loan, issuance of a Letter of Credit or grant of an accommodation shall constitute a representation by Borrowers that the foregoing conditions are satisfied on the date of such request and on the date of such funding, issuance or grant. As an additional condition to any funding, issuance or grant, Agent shall have received such other information, documents, instruments and agreements as it deems appropriate in connection therewith.

Section 7. COLLATERAL

7.a Grant of Security Interest.

7.1.i.(a) To secure the prompt payment and performance of all Obligations (including, without limitation, all Obligations of the Guarantors), each U.S. Domiciled Obligor hereby grants to Agent, for the benefit of the Secured Parties, a continuing security interest in and Lien

upon all Property of such Obligor, in which such Obligor has rights, or the power to transfer rights, including all of the following Property of such Obligor, whether now or in the future, and wherever located:

- (1) all Accounts;
- (2) all Goods, including Inventory, Equipment and fixtures;
- (3) all Deposit Accounts (including all cash, cash equivalents, financial assets, negotiable instruments and other evidence of payment, and other funds on deposit therein or credited thereto);
- (4) all securities accounts (including any and all Investment Property held therein or credited thereto);
- (5) all General Intangibles, including Intellectual Property (including the right to sue and recover for any and all past, present or future infringements of, violations of, dilution of or other damages or injuries to any Intellectual Property);
- (6) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender, and any Cash Collateral;
- (7) all Supporting Obligations;
- (8) all Instruments, Documents and Chattel Paper;
- (9) all Investment Property
- (10) all Letters of Credit (as defined in the UCC) and Letter-of-Credit Rights;
- (11) all Commercial Tort Claims, including those shown on **Schedule 9.1.24**;
- (12) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any of the Property described in this **Section 7.1.1(a)** (the "Proceeds"); and
- (13) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to any of the Property described in this **Section 7.1.1(a)**.

Notwithstanding anything to the contrary contained in clauses (i) through (xiii) above, the security interest granted by the U.S. Domiciled Obligors pursuant to this Agreement shall not extend to, and the "Collateral" of the U.S. Domiciled Obligors shall not include, any Excluded Property.

(b) To secure the prompt payment and performance of all Canadian Facility Obligations (including, without limitation, all Canadian Facility Obligations of each Canadian Facility Guarantor), each Canadian Domiciled Obligor hereby grants to Agent, for the benefit of the Canadian Facility Secured Parties, the German Facility Secured Parties and the U.K. Facility Secured Parties a continuing security interest in and Lien upon all of the following Property of

such Obligor, in which such Obligor has rights, or the power to transfer rights, whether now or in the future, and wherever located:

- (1) all Accounts;
- (14) all Inventory;
- (15) all Deposit Accounts (including all cash, cash equivalents, financial assets, negotiable instruments and other evidence of payment, and other funds on deposit therein or credited thereto);
- (16) all securities accounts (including any and all Investment Property held therein or credited thereto);
- (17) all Intellectual Property (including the right to sue and recover for any and all past, present or future infringements of, violations of, dilution of or other damages or injuries to any Intellectual Property);
- (18) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender that were derived from or consist of any of the Property described in this **Section 7.1.1(b)**, and any Cash Collateral;
- (19) all Supporting Obligations of any of the Property described in this **Section 7.1.1(b)**;
- (20) all Instruments, Documents and Chattel Paper, in each case only to the extent evidencing or governing any of the Property described in this **Section 7.1.1(b)**;
- (21) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any of the Property described in this **Section 7.1.1(b)** (the “Proceeds”); and
- (22) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to any of the Property described in this **Section 7.1.1(b)**, and any General Intangibles to the extent evidencing or governing any of the Property described in this **Section 7.1.1(b)**.

7.b Lien on Deposit Accounts; Cash Collateral.

7.2.i. Deposit Accounts. To further secure the prompt payment and performance of: (i) all Obligations (including, without limitation, all Obligations of the Guarantors), each U.S. Domiciled Obligor hereby grants to Agent, for the benefit of the Secured Parties, and (ii) all Canadian Facility Obligations (including, without limitation, all Canadian Facility Obligations of each Canadian Facility Guarantor), each Canadian Domiciled Obligor hereby grants to Agent, for the benefit of the Canadian Facility Secured Parties, the German Facility Secured Parties and the U.K. Facility Secured Parties, in each case of clauses (i) and (ii), a continuing security interest in and Lien on all amounts credited to any Deposit Account of such Obligor, including any sums in any blocked or lockbox accounts or in any accounts into which such sums are swept. Each Obligor hereby authorizes and directs each bank or other depository to deliver to Agent, upon request, all balances in any Deposit Account maintained by such Obligor, without inquiry into the authority or right of Agent to make such request.

7.2.ii. Cash Collateral.

(17) Any Cash Collateral may be invested, at Agent's discretion (and with the consent of Borrowers, as long as no Event of Default exists), but Agent shall have no duty to do so, regardless of any agreement or course of dealing with any Obligor, and shall have no responsibility for any investment or loss. To further secure the prompt payment and performance of all: (i) Obligations (including, without limitation, all Obligations of the Guarantors), each U.S. Domiciled Obligor hereby grants to Agent, for the benefit of the Secured Parties, (ii) Canadian Facility Obligations (including, without limitation, all Canadian Facility Obligations of each Canadian Facility Guarantor), each Canadian Domiciled Obligor hereby grants to Agent, for the benefit of the Canadian Facility Secured Parties, the German Facility Secured Parties and the U.K. Facility Secured Parties, (iii) German Facility Obligations (including, without limitation, all German Facility Obligations of each German Facility Guarantor), each German Domiciled Obligor hereby, subject to **Section 5.11.7** above, grants to Agent, for the benefit of the German Facility Secured Parties, the U.K. Facility Secured Parties and the Canadian Facility Secured Parties, and (iv) U.K. Facility Obligations (including, without limitation, all U.K. Facility Obligations of each U.K. Facility Guarantor), each U.K. Domiciled Obligor hereby grants to Agent, for the benefit of the U.K. Facility Secured Parties, the German Facility Secured Parties and the Canadian Facility Secured Parties, in each case of clauses (i) through (iv), a continuing security interest in and Lien on all Cash Collateral held from time to time and all proceeds thereof, whether such Cash Collateral is held in a Cash Collateral Account or elsewhere.

(18) Agent may apply Cash Collateral of a U.S. Domiciled Obligor to the payment of any Obligations, may apply Cash Collateral of a Canadian Domiciled Obligor to the payment of any Canadian Facility Obligations, may apply Cash Collateral of a German Domiciled Obligor, subject to, and in accordance with, **Section 5.11.7** above, to the payment of any German Facility Obligations, and may apply Cash Collateral of a U.K. Domiciled Obligor to the payment of any U.K. Facility Obligations, in each case, in such order as Agent may elect, as they become due and payable. Each Cash Collateral Account and all Cash Collateral shall be under the sole dominion and control of Agent.

(19) No U.S. Domiciled Obligor or other Person claiming through or on behalf of any U.S. Domiciled Obligor shall have any right to any Cash Collateral, until Full Payment of all Obligations. No Canadian Domiciled Obligor or other Person claiming through or on behalf of any Canadian Domiciled Obligor shall have any right to any Cash Collateral, until Full Payment of all Canadian Facility Obligations. No German Domiciled Obligor or other Person claiming through or on behalf of any German Domiciled Obligor shall have any right to any Cash Collateral, until Full Payment of all German Facility Obligations. No U.K. Domiciled Obligor or other Person claiming through or on behalf of any U.K. Domiciled Obligor shall have any right to any Cash Collateral, until Full Payment of all U.K. Facility Obligations.

7.c Real Estate Collateral. If any U.S. Domiciled Obligor owns any Material Real Property as of the Second Amendment to Third Amended and Restated Effective Date, Borrowers shall, within 120 days of the Second Amendment to Third Amended and Restated Effective Date, execute, deliver and record a first priority (subject to the terms of the Intercreditor Agreement) Mortgage, in form and substance satisfactory to Agent, together with all Related Real Estate Documents. If any U.S. Domiciled Obligor acquires Material Real Property after the Second Amendment to Third Amended and Restated Effective Date, Borrowers shall promptly notify Agent and, within 120 days, execute, deliver and record a first priority (subject to the terms of the Intercreditor Agreement) Mortgage, in form and substance satisfactory to Agent, together with all Related Real Estate Documents. Notwithstanding anything contained in this Agreement to the contrary, no Mortgage shall be executed and delivered with respect to any real property unless and until each Lender has received, at least

twenty Business Days prior to such execution and delivery, a life of loan flood zone determination and such other documents as it may reasonably request to complete its flood insurance due diligence and has confirmed to the Agent that flood insurance due diligence and flood insurance compliance has been completed to its satisfaction. **Other Collateral**

7.4.i. **Commercial Tort Claims**. U.S. Borrowers shall promptly notify Agent in writing if any U.S. Domiciled Obligor has a Commercial Tort Claim (other than a Commercial Tort Claim for less than \$1,000,000), shall promptly amend **Schedule 9.1.24** to include such claim, and shall take such actions as Agent deems appropriate to subject such claim to a duly perfected, first priority (subject to the terms of the Intercreditor Agreement) Lien in favor of Agent. **Certain After-Acquired Collateral**. Borrowers shall promptly notify Agent in writing if, after the Original Agreement Closing Date, any Obligor obtains any interest in any Collateral consisting of Deposit Accounts, Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights and, upon Agent's request, shall promptly take such actions as Agent deems appropriate to effect Agent's duly perfected, first priority Lien upon such Collateral, including obtaining any appropriate possession, control agreement or Lien Waiver. If any Collateral is in the possession of a third party, at Agent's request, Borrowers shall obtain an acknowledgment that such third party holds the Collateral for the benefit of Agent. **No Assumption of Liability**. The Liens on the Collateral granted hereunder are given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of any Obligor relating to any Collateral. In no event shall the grant of any Lien under any Loan Document secure an Excluded Swap Obligation of the granting Obligor.

7.d **Further Assurances**. Promptly upon request, Obligors shall deliver such instruments, assignments, title certificates, or other documents or agreements, and shall take such actions, as Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Obligor authorizes Agent to file any financing statement that Agent deems desirable to preserve and perfect Agent's security interest in the Collateral of such Obligor, and ratifies any action taken by Agent before the Closing Date to effect or perfect its Lien on any Collateral.

Section 8. COLLATERAL ADMINISTRATION

8.a Borrowing Base Certificates.

8.1.i. By the 20th day of each month, Borrower Agent shall deliver to Agent (and Agent shall promptly deliver same to Lenders) a U.S. Borrowing Base Certificate, Canadian Borrowing Base Certificate, German Borrowing Base Certificate, and a U.K. Borrowing Base Certificate, in each case, prepared as of the close of business of the previous month, and at such other times as Agent may request; provided that during any Reporting Trigger Period, Borrower Agent shall also be required to deliver to Agent weekly U.S. Borrowing Base Certificates, Canadian Borrowing Base Certificates, German Borrowing Base Certificates, and U.K. Borrowing Base Certificates by the 3rd Business Day of each week which begins during such Reporting Trigger Period, in each case, prepared as of the close of business on the last Business Day of the previous week (in the case of matters other than those related to Inventory) or of the close of business of the previous month (in the case of matters relating to Inventory).

8.1.ii. All calculations of U.S. Availability, Canadian Availability, German Availability, or U.K. Availability in any Borrowing Base Certificate shall originally be made by Borrower Agent and certified by a Senior Officer of Borrower Agent; provided, that Agent may from time to time review and adjust any such calculation (a) to reflect its reasonable estimate of declines in value of any Collateral, due to collections received in any Dominion Account or otherwise; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting Collateral; and (c) to the extent the calculation is not made in accordance with this Agreement or

does not accurately reflect the U.S. Availability Reserve and/or the Canadian Availability Reserve and/or the U.K. Availability Reserve and/or the German Availability Reserve.

8.1.iii. The U.S. Borrowing Base Certificate shall set forth the calculation of the U.S. Borrowing Base in Dollars. The Canadian Borrowing Base shall set forth the calculation of the Canadian Borrowing Base in both Canadian Dollars and the Dollar Equivalent thereof along with the Exchange Rate used to determine such Dollar Equivalent. The U.K. Borrowing Base shall set forth the calculation of the U.K. Borrowing Base in each of British Pounds, Dollars and Euros and the Dollar Equivalent thereof along with the Exchange Rate used to determine such Dollar Equivalent. The German Borrowing Base shall set forth the calculation of the German Borrowing Base in each of British Pounds, Swiss Francs, Dollars and Euros and the Dollar Equivalent thereof along with the Exchange Rate used to determine such Dollar Equivalent.

8.b Administration of Accounts.

8.2.i. Records and Schedules of Accounts. Each Obligor shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to Agent sales, collection, reconciliation and other reports in form satisfactory to Agent, on such periodic basis as Agent may request. Borrower Agent shall also provide to Agent, on or before the 20th day of each month, a detailed aged trial balance of all Accounts of each Borrower as of the end of the preceding month, specifying each Account's Account Debtor name and address, amount, invoice date and due date, showing any discount, allowance, credit, authorized return or dispute, and including such proof of delivery, copies of invoices and invoice registers, copies of related documents, repayment histories, status reports and other information as Agent may reasonably request. If Accounts of any Borrower Group in an aggregate face amount of \$2,500,000 or more cease to be Eligible Accounts, Borrower Agent shall notify Agent of such occurrence promptly (and in any event within one Business Day) after any Obligor has knowledge thereof.

8.2.ii. Taxes. If an Account of any Obligor includes a charge for any Taxes, Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Obligor and to charge the Borrowers of the applicable Borrower Group therefor; provided, however, that neither Agent nor Lenders shall be liable for any Taxes that may be due from any Obligor or with respect to any Collateral.

8.2.iii. Account Verification. Whether or not a Default or Event of Default exists, Agent shall have the right at any time, in the name of Agent, any designee of Agent or any Obligor, to verify the validity, amount or any other matter relating to any Accounts of Obligors by mail, telephone or otherwise. Obligors shall cooperate fully with Agent in an effort to facilitate and promptly conclude any such verification process.

8.2.iv. Maintenance of Dominion Accounts.

(1) U.S. Domiciled Obligors, Canadian Domiciled Obligors and commencing 90 days after the Closing Date (or such later date as Agent may approve in its sole discretion), German Domiciled Obligors shall maintain Dominion Accounts pursuant to lockbox or other arrangements acceptable to Agent. U.S. Domiciled Obligors, Canadian Domiciled Obligors, and commencing 90 days after the Closing Date (or such later date as Agent may approve in its sole discretion), German Domiciled Obligors shall obtain an agreement (in form and substance satisfactory to Agent) from each lockbox servicer and Dominion Account bank, establishing Agent's control over and Lien in the lockbox or Dominion Account, which may be exercised by Agent during any Dominion Trigger Period, requiring immediate deposit of all remittances received in the lockbox to a Dominion Account, and waiving offset rights of such servicer or bank, except for customary administrative charges. If a Dominion Account of a U.S. Domiciled

Obligor, Canadian Domiciled Obligor or commencing 90 days after the Closing Date (or such later date as Agent may approve in its sole discretion), German Domiciled Obligor is not maintained with Bank of America or Bank of America (Canada), as applicable, Agent may, during any Dominion Trigger Period, require immediate transfer of all funds in such account to a Dominion Account maintained with Bank of America or Bank of America (Canada), as applicable.

(2) U.K. Domiciled Obligors shall maintain Dominion Accounts at all times pursuant to arrangements acceptable to Agent. U.K. Domiciled Obligors shall obtain an agreement (in form and substance satisfactory to Agent) from each Dominion Account bank, establishing Agent's control over and Lien in the Dominion Account at all times and waiving offset rights of such bank, except for customary administrative charges. If a Dominion Account of a U.K. Domiciled Obligor is not maintained with Bank of America, N.A., London Branch, Agent may require immediate transfer of all funds in such account to a Dominion Account maintained with Bank of America, N.A., London Branch.

(3) Agent and Lenders assume no responsibility to any Obligor for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

8.2.v.Proceeds of Collateral. Obligors (other than the German Domiciled Obligors) shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Dominion Account (or a lockbox relating to a Dominion Account). If any Obligor (other than the German Domiciled Obligors) receives cash or Payment Items with respect to any Collateral, it shall hold same in trust for Agent and promptly (not later than the next Business Day) deposit same into a Dominion Account. Commencing 90 days after the Closing Date (or such later date as Agent may approve in its sole discretion), the German Domiciled Obligors shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a German Dominion Account of such German Domiciled Obligor (or a lockbox relating to a German Dominion Account of such German Domiciled Obligor). Upon completion of the conditions set forth in Section 10.1.18(a), if any German Domiciled Obligor receives cash or Payment Items with respect to any Collateral, it shall hold same in trust for Agent and promptly (not later than the next Business Day) deposit same into a German Dominion Account of such German Domiciled Obligor.

8.c Administration of Inventory.

8.3.i.Records and Reports of Inventory. Each Obligor shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and shall submit to Agent inventory and reconciliation reports in form satisfactory to Agent, on such periodic basis as Agent may request. Each Obligor shall conduct periodic cycle counts consistent with historical practices, and shall provide to Agent a report based on each such count promptly upon completion thereof, together with such supporting information as Agent may request.

8.3.ii.Returns of Inventory. No Obligor shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default, Event of Default or Overadvance exists or would result therefrom; (c) Agent is promptly notified if the aggregate Value of all Inventory returned in any month exceeds \$5,000,000; and (d) any payment received by an Obligor for a return during any Dominion Trigger Period is promptly remitted to Agent for application to the Obligations.

8.3.iii. Acquisition, Sale and Maintenance. No Obligor shall acquire or accept any Inventory on consignment or approval, and each Obligor shall take all steps to assure that all Inventory is produced in accordance with Applicable Law, including the FLSA. Except to the extent permitted by **Section 10.2.5(b)** in the case of consignments, no Obligor shall sell any Inventory on consignment or approval or any other basis under which the customer may return or require an Obligor to repurchase such Inventory. Each Obligor shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all Applicable Law, and, except in cases of good faith disputes, shall make current rent payments (within applicable grace and cure periods provided for in leases) at all locations where any Collateral is located.

8.d Intentionally Omitted.

8.e Administration of Deposit Accounts. Each Obligor shall take all actions necessary to establish Agent's control of all Deposit Accounts (including Dominion Accounts) and securities accounts maintained by such Obligor; provided, however, that such control shall not be required for the following (collectively, the "Excluded Deposit Accounts"): (a) an account exclusively used for payroll, payroll taxes or employee benefits, (b) an account held by a German Domiciled Obligor and used exclusively to collect funds from promotional voucher schemes which that such German Domiciled Obligor holds on trust for the participants of such promotional voucher scheme, (c) at any time during which an Event of Default does not exist, an account containing not more than \$250,000, provided, that the aggregate amounts contained in all such accounts referred to in this clause (c) for which Agent does not have control at any time shall not exceed \$1,000,000, and (d) at any time during which an Event of Default does not exist, an account of a German Domiciled Obligor which is not maintained with a German domiciled bank and which contains not more than €500,000, provided, that the aggregate amounts contained in all such accounts referred to in this clause (d) for which Agent does not have control at any time shall not exceed €2,000,000. The applicable Obligor shall be the sole account holder of each Deposit Account or securities account and shall not allow any other Person (other than Agent) to have control over a Deposit Account, securities account or any Property deposited therein. Each of the Obligors shall promptly notify Agent in writing of any opening or closing of a Deposit Account or securities account and, concurrently with the opening thereof, shall ensure that such account (except an Excluded Deposit Account) is subject to a fully executed Deposit Account Control Agreement or, in the case of a securities account, similar control agreement in favor of Agent and acceptable to Agent.

8.f General Provisions.

8.6.i. Location of Collateral. All tangible items of Collateral, other than Inventory in transit (including in transit to or from a manufacturing facility), shall at all times be kept by Obligors at the business locations for such Obligors set forth in **Schedule 8.6.1**, except that Obligors may (a) make sales or other dispositions of Collateral in accordance with **Section 10.2.5**; and (b) move Collateral to another location in the United States or, in the case of: (i) a Canadian Domiciled Obligor, in Canada, (ii) a German Domiciled Obligor, in Germany, or (iii) a U.K. Domiciled Obligor, in England, Wales, Scotland or Northern Ireland (subject, in each case, to Agent being granted a first priority Lien (subject to Permitted Liens) if none has been previously granted in such province or territory), in each case, upon 15 Business Days' prior written notice to Agent.

8.6.ii. Insurance of Collateral; Condemnation Proceeds.

(4) Each Obligor shall maintain insurance with respect to the Collateral, covering casualty, hazard, theft, malicious mischief, flood and other risks, in amounts, with endorsements and with insurers (with a Best's Financial Strength Rating of at least A- VII,

unless otherwise approved by Agent) satisfactory to Agent; provided, that if Real Estate secures any Obligations, flood hazard diligence, documentation and insurance for such Real Estate shall comply with all Flood Laws or shall otherwise be satisfactory to all Lenders. From time to time upon request, Borrower Agent shall deliver to Agent the originals or certified copies of its insurance policies and updated flood plain searches. Unless Agent shall agree otherwise, each policy shall include satisfactory endorsements (i) showing Agent as lender first loss payee (with respect to property policies only); (ii) requiring at least 30 days prior written notice to Agent in the event of cancellation of the policy for any reason whatsoever; and (iii) specifying that the interest of Agent shall not be impaired or invalidated by any act or neglect of any Obligor or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. If any Obligor fails to provide and pay for any insurance, Agent may, at its option, but shall not be required to, procure the insurance and charge Borrowers therefor. Each Obligor agrees to deliver to Agent, promptly as rendered, copies of all reports made to insurance companies. While no Event of Default exists, Obligors may settle, adjust or compromise any insurance claim, as long as the proceeds are delivered to Agent in accordance with **Section 8.6.2(b)**. If an Event of Default exists, only Agent shall be authorized to settle, adjust and compromise any claims involving any Collateral.

(5) Any proceeds of insurance relating to the Collateral and any awards arising from condemnation of any Collateral shall be paid to Agent for application to the Obligations in accordance with the terms hereof.

8.6.iii.Protection of Collateral. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral, shall be borne and paid by Borrowers. Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Obligors' sole risk.

8.6.iv.Defense of Title to Collateral. Each Obligor shall at all times defend its title to Collateral and Agent's Liens therein against all Persons, claims and demands whatsoever, except Permitted Liens.

8.g Power of Attorney. Each Obligor hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as such Obligor's true and lawful attorney (and agent-in-fact), coupled with an interest, for the purposes provided in this Section. Agent, or Agent's designee, may, without notice and in either its or a an Obligor's name, but at the cost and expense of the Borrowers:

(6) Endorse an Obligor's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent's possession or control; and

(7) During an Event of Default, (i) notify any Account Debtors of the assignment or charging of their Accounts, demand and enforce payment of Accounts, by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Agent deems advisable; (iv) collect, liquidate and receive balances in Deposit Accounts or securities accounts, and take control, in any manner, of any proceeds of Collateral; (v) prepare, file and sign an Obligor's name to a proof of claim or other document in a bankruptcy or other

Insolvency Proceeding of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to an Obligor where the addressor is any Account Debtor or where the addressor is not identifiable with certainty, and notify postal authorities to deliver any such mail to an address designated by Agent; (vii) endorse any Chattel Paper, Document, Instrument, invoice, freight bill, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use an Obligor's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use the information recorded on or contained in any data processing, electronic or information systems relating to any Collateral; (x) make and adjust claims under insurance policies; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which an Obligor is a beneficiary; (xii) exercise any voting or other rights under or with respect to any Investment Property; and (xiii) take all other actions as Agent deems appropriate to fulfill any Obligor's obligations under the Loan Documents.

Section 9. REPRESENTATIONS AND WARRANTIES

9.a General Representations and Warranties. To induce Agent and Lenders to enter into this Agreement and to make available the Commitments, Loans and Letters of Credit, each Obligor represents and warrants that:

9.1.i. Existence, Qualification and Power; Compliance with Applicable Laws. Each Obligor and each Subsidiary (a) is duly organized or formed, validly existing and 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 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, (c) is duly qualified and is licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, and (d) is in compliance with all Applicable Laws; except in each case referred to in clause (b)(i), (c) or (d), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. No Obligor is an EEA Financial Institution. As of the Closing Date, the information included in the Beneficial Ownership Certification most recently provided to Agent and Lenders prior to the Closing Date is true and complete in all respects. The information included in each Beneficial Ownership Certification provided to Agent or any Lender after the Closing Date shall be true and complete in all respects as of the date such Beneficial Ownership Certification is so provided.

9.1.ii. Authorization; No Contravention. The execution, delivery and performance by each Obligor of each Loan Document to which such Person is 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 Organic Documents; (b) conflict with or result in any breach of or contravention under (i) any Contractual Obligation to which such Person is a party or by which it is bound, the termination or adverse modification of which could 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; (c) result in the creation of any Lien (other than Permitted Liens), or (d) violate any Applicable Law.

9.1.iii. Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Obligor of this Agreement or any other Loan Document except for such approvals, consents, exemptions, authorizations, actions, notices and filings which have been obtained, taken, given or made and are in full force and effect. All necessary import, export or

other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and Obligors and Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a Material Adverse Effect.

9.1.iv.Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Obligor that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, in case of **Section 7.2.1** and **Section 7.2.2** above, subject to any notification or other perfection requirements under any Applicable Law, a legal, valid and binding obligation of such Obligor, enforceable against each Obligor that is party thereto in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

9.1.v.Financial Statements; No Material Adverse Effect.

(8) The consolidated and consolidating balance sheets, and related statements of income, cash flow and shareholder's equity, of Parent, its Subsidiaries and the Excluded Subsidiaries, as applicable, that have been and are hereafter delivered to Agent and Lenders (i) are prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial positions and results of operations of Parent, its Subsidiaries and the Excluded Subsidiaries, as applicable, at the dates and for the periods indicated, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of Parent, its Subsidiaries and the Excluded Subsidiaries, as applicable, as of the date thereof, including liabilities for taxes, material commitments and Debt, to the extent required by GAAP to be shown on such financial statements.

(9) Since December 31, 2010, there has been no change in the condition, financial or otherwise, of any Borrower or any Subsidiary that could reasonably be expected to have a Material Adverse Effect.

(10) Each Borrower is Solvent and Parent and the Subsidiaries on a consolidated basis are Solvent.

9.1.vi.Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Obligor, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Borrower or any Subsidiaries 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, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

9.1.vii.No Default. No Borrower or Subsidiary is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

9.1.viii.Ownership of Property; Liens. Each Borrower and each Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all Real Estate necessary or used in the ordinary conduct of its business (other than minor defects in title as

could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect), and all personal Property, including all Property reflected in any financial statements delivered to Agent or Lenders, in each case free of Liens except Permitted Liens. Except disclosed on the survey delivered to Agent as part of the Related Real Estate Documents, no Real Estate is located in a special flood hazard zone, except as disclosed on **Schedule 9.1.8**. Each Borrower and each Subsidiary has paid and discharged all lawful claims that, if unpaid, could become a Lien on its Properties, other than Permitted Liens. All Liens of Agent in the Collateral are duly perfected, first priority Liens, subject only to Permitted Liens that are expressly allowed to have priority over Agent's Liens.

9.1.ix. Environmental Compliance. Borrowers and Subsidiaries conduct in the Ordinary Course of Business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties (including Real Estate), and as a result thereof the Obligors have reasonably concluded that, except as specifically disclosed on **Schedule 9.1.9**, such Environmental Laws and claims could not, individually or in the aggregate reasonably be expected to have a Material Adverse Effect. No Borrower or Subsidiary has any contingent liability with respect to any Environmental Release, environmental pollution or hazardous material on any Real Estate now or previously owned, leased or operated by it.

9.1.x. Insurance. The properties of Borrowers and Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of any Obligor, in such amounts (after giving effect to any self-insurance compatible with the following standards), 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 Borrower or the applicable Subsidiary operates.

9.1.xi. Taxes. Each Borrower and each Subsidiary has filed all federal, state and material local tax returns and other material reports that it is required by law to file, and has paid, or made proper provision in accordance with relevant accounting standards for the payment of, all Taxes upon it, its income and its Properties that are due and payable, except to the extent being Properly Contested.

9.1.xii. ERISA; Canadian Pension Plan Compliance. Except as disclosed on **Schedule 9.1.12**:

(11) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of Obligors, nothing has occurred which would prevent, or cause the loss of, such qualification. Parent and each ERISA Affiliate has made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(12) There are no pending or, to the best knowledge of Obligors, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could be reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(13) No Canadian Borrower or any Canadian Subsidiary provides benefits to retired Canadian Employees or to beneficiaries or dependents of retired Canadian Employees.

Except as would not reasonably be expected to result in a Material Adverse Effect, Canadian Borrower and each Canadian Subsidiary is in compliance with all Requirements of Law and all Canadian Employee Benefits Legislation and health and safety, workers compensation, employment standards, labor relations, health insurance, employment insurance, protection of personal information, human rights laws and any Canadian federal, provincial or local counterparts or equivalents in each case, as applicable to the Canadian Employees and as amended from time to time.

(14) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither Parent nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither Parent nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither Parent nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

(15) Canadian Borrower and Canadian Subsidiaries are in compliance with the requirements of the PBA and other federal, provincial or state laws with respect to each Canadian Pension Plan, except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect. No fact or situation that may reasonably be expected to result in a Material Adverse Effect exists in connection with any Canadian Pension Plan. Neither Canadian Borrower nor any of Canadian Subsidiary has any material withdrawal liability in connection with a Plan. No Termination Event has occurred. Each Canadian Pension Plan has no solvency deficiency and is fully funded as required under the most recent actuarial valuation filed with the applicable Governmental Authority pursuant to generally accepted actuarial practices and principles. No fact or circumstance exists that could adversely affect the tax-exempt status of a Canadian Pension Plan. No Lien has arisen, choate or inchoate, in respect of Canadian Borrower or Canadian Subsidiaries or their property in connection with any Canadian Pension Plan (save for contribution amounts not yet due). No Canadian Pension Plan provides benefits on a defined benefit basis.

(16) With respect to any Foreign Plan, except as could not reasonably be expected to have a Material Adverse Effect, (i) all employer and employee contributions required by law or by the terms of the 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 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 (iii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities.

(17) No U.K. Domiciled Obligor nor any of its U.K. subsidiaries is nor has at any time been: (i) an employer (for the purposes of Sections 38 to 51 of the Pensions Act 2004 of the United Kingdom) of an occupational pension scheme which is not a money purchase scheme (as those terms are defined in the Pension Schemes Act 1993 of the United Kingdom); or (ii) "connected" with or an "associate" of the Parent or any of its Subsidiaries which is such an employer (as those terms are used in Sections 38 and 43 of the Pensions Act 2004 of the United Kingdom) in relation to an occupational pension scheme in the United Kingdom which is not a money purchase scheme.

9.1.i. Subsidiaries. **Schedule 9.1.13** shows, for each Borrower and each Subsidiary, its name and its jurisdiction of organization. **Schedule 9.1.13** shows, for each Subsidiary of Parent, its authorized and issued Equity Interests, the holders of its Equity Interests, and all agreements binding on such holders with respect to their Equity Interests. Except as disclosed on **Schedule 9.1.13**, in the five years preceding the Closing Date, no Borrower or Subsidiary has acquired any substantial assets from any other Person nor been the surviving entity in a merger, amalgamation or combination. Each Borrower has good title to its Equity Interests in its Subsidiaries, and all such Equity Interests are duly issued, fully paid and non-assessable. There are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any Subsidiary of Parent.

9.1.ii. Margin Regulations; Investment Company Act.

(18) No Borrower or Subsidiary is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Loan proceeds or Letters of Credit will be used by Borrowers to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose, in each case, in violation of Regulations T, U or X of the Board of Governors.

(19) None of the Borrowers is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

9.1.xiii. Disclosure. No written report, financial statement, certificate or other written information furnished by or on behalf of any Obligor to Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrowers represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that projections are subject to significant uncertainties and contingencies, many of which are beyond the Borrowers’ control, and that no assurance can be given the projections will be realized).

9.1.xiv. Compliance with Laws. Each Borrower and each Subsidiary is in compliance in all material respects with the requirements of all Applicable 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 Applicable 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. Except as would not reasonably be expected to have a Material Adverse Effect, no Inventory has been produced in violation of the FLSA. The undertakings and covenants provided in this **Section 9.1.16** shall be provided only insofar as they do not result, in relation to a German Relevant Party, in a violation of or conflict with section 7 German Foreign Trade Regulation (*Außenwirtschaftsverordnung*) or any provision of Council Regulation (EC) 2271/1996.

9.1.xv. Intellectual Property; Licenses, Etc. To the best knowledge of Obligors, or as could not reasonably be expected to have a Material Adverse Effect, Borrowers and Subsidiaries own, or possess the lawful right to use, all Intellectual Property necessary for the conduct of its business, without conflict with the rights of any other Person. To the best knowledge of Obligors, no slogan or other advertising device, product, process, method, substance, part or other material now employed by any Borrower or any Subsidiary infringes upon any valid,

proprietary rights held by any other Person that could result in a claim, that, if successful, could reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Obligors, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Borrower Agent has disclosed on **Schedule 9.1.17** (i) all Royalties or other compensation paid by any Borrower or Subsidiary to any Person with respect to any Intellectual Property and (ii) all Intellectual Property registrations, filings and applications for registration owned by any Obligor (in each case other than the German Domiciled Obligors).

9.1.xvi. Accounts. Agent may rely, in determining which Accounts are Eligible Accounts, on all statements and representations made by Borrowers with respect thereto. Borrowers warrant, with respect to each Account at the time it is shown as an Eligible Account in a Borrowing Base Certificate, that:

(20) it is genuine and in all respects what it purports to be, and is not evidenced by a judgment;

(21) it arises out of a completed, bona fide sale and delivery of goods or rendition of services in the Ordinary Course of Business, and substantially in accordance with any purchase order, contract or other document relating thereto;

(22) it is for a sum certain, maturing as stated in the invoice covering such sale or rendition of services, a copy of which has been furnished or is available to Agent on request;

(23) it is not subject to any offset, Lien (other than Agent's Lien), deduction, defense, dispute, counterclaim or other adverse condition except as arising in the Ordinary Course of Business and disclosed to Agent; and it is absolutely owing by the Account Debtor, without contingency in any respect;

(24) no purchase order, agreement, document or Applicable Law restricts assignment of the Account to Agent (regardless of whether, under the UCC or PPSA, the restriction is ineffective), and the applicable Borrower is the sole payee or remittance party shown on the invoice;

(25) no extension, compromise, settlement, modification, credit, deduction or return has been authorized with respect to the Account, except discounts or allowances granted in the Ordinary Course of Business for prompt payment that are reflected on the face of the invoice related thereto and in the reports submitted to Agent hereunder; and

(26) to the best of Borrowers' knowledge, (i) there are no facts or circumstances that are reasonably likely to impair the enforceability or collectibility of such Account; (ii) the Account Debtor had the capacity to contract when the Account arose, continues to meet the applicable Borrower's customary credit standards, is Solvent, is not contemplating or subject to an Insolvency Proceeding, and has not failed, or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against any Account Debtor that could reasonably be expected to have a material adverse effect on the Account Debtor's financial condition.

9.1.iii. Brokers. There are no brokerage commissions, finder's fees or investment banking fees payable in connection with any transactions contemplated by the Loan Documents.

9.1.iv. Trade Relations. Except as would not reasonably be expected to have a Material Adverse Effect, there exists no actual or threatened termination, limitation or modification of any business relationship between any Borrower or Subsidiary and any customer or supplier, or any

group of customers or suppliers, who individually or in the aggregate are material to the business of such Borrower or Subsidiary.

9.1.v. Labor Relations. Except as described on **Schedule 9.1.21**, no Obligor is party to or bound by any collective bargaining agreement. Except as would not reasonably be expected to have a Material Adverse Effect, there are no material grievances, disputes or controversies with any union or other organization of any Borrower's or Subsidiary's employees, or, to any Obligor's knowledge, any asserted or threatened strikes, work stoppages or demands for collective bargaining.

9.1.vi. OFAC. No Obligor (i) or (to the knowledge of any Obligor) any director, officer, employee, agent, affiliate or representative thereof, is or is owned or controlled by any individual or entity that is currently the target of any Sanction or is located, organized or resident in a Designated Jurisdiction, (ii) is a person whose property or interest in property is blocked or subject to blocking pursuant to (A) Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (B) the United Nations Act (Canada), the Special Economic Measures Act (Canada), the Export and Import Permits Act (Canada), the Freezing Assets of Corrupt Foreign Officials Act (Canada), the Criminal Code (Canada), the Defence Production Act (Canada), the Proceeds of Crime Act, the Anti-terrorism Act (Canada) or the Foreign Extraterritorial Measures Act (Canada) (together with and all regulations and orders made thereunder, collectively, "Canadian Sanctions Laws"), or (C) the Proceeds of Crime Act 2002, the Counter-Terrorism Act 2008 and Export Control Order 2008, the Export Control Act 2002, the Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011, the Terrorist Asset-Freezing etc. Act 2010 and the Consolidated List of Financial Sanctions Targets administered by HM Treasury through the Office of Financial Sanctions Implementations, EU Council Regulation 2580/2001 and all supplementary instruments thereto including Implementing Resolution 1169/2012 and EU (EC) Regulation 881/2002, (EU) 753/2011, (EU) 754/2011 and (EU) 2017/1411 (collectively, the "U.K. Sanctions Laws"), (iii) engages in any dealings or transactions prohibited by (A) Section 2 of such executive order, (B) Canadian Sanctions Laws or (C) U.K. Sanctions Laws, or is otherwise associated with any such person in any manner violative of Section 2 of such executive order or by Canadian Sanctions Laws or U.K. Sanctions Laws, or (iv) is a person (A) on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order, (B) on the list of names subject to the Regulations Establishing a List of Entities made under subsection 83.05(1) of the *Criminal Code*, and/or the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* (RIUNRST) and/or *United Nations Al-Qaida and Taliban Regulations* (UNAQTR), or (C) is a person included on the UK's Consolidated List of Financial Sanctions Targets. The representations and warranties provided in this **Section 9.1.22** shall be provided only in so far as they do not result, in relation to any German Relevant Party, in a violation of, or conflict with, section 7 German Foreign Trade Regulation (*Außenwirtschaftsverordnung*) or any provision of Council Regulation (EC) 2271/1996.

9.1.vii. Anti-Corruption Laws. Each Obligor has implemented and maintains in effect policies and procedures designed to ensure compliance by such Obligor, its Subsidiaries, the Excluded Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws of Canada, United Kingdom, United States, and any of the member states of the European Union and applicable Sanctions, and such Obligor, its Subsidiaries, the Excluded Subsidiaries and their respective officers and directors and, to the knowledge of such Obligor, its employees and agents, are in compliance with Anti-Corruption Laws of Canada, United Kingdom, United States, and any of the member states of the European Union and applicable Sanctions in all material respects.

9.1.viii. Commercial Tort Claims. Except as shown on **Schedule 9.1.24**, no U.S. Domiciled Obligor has a Commercial Tort Claim (other than a Commercial Tort Claim for less than \$1,000,000).

9.1.ix. Centre of Main Interests and Establishments. For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the “EU Regulation”), the centre of main interest (as that term is used in Article 3(1) of the EU Regulation) of each Obligor is situated in its jurisdiction of incorporation and it has no “establishment” (as that term is used in Article 2(10) of the EU Regulation) in any other jurisdiction.

Section 10. COVENANTS AND CONTINUING AGREEMENTS

10.a Affirmative Covenants. As long as any Commitments or Obligations are outstanding, each Obligor shall, and shall cause each Subsidiary to (and solely for purposes of the last sentence of Section 10.1.8, shall cause each Excluded Subsidiary to):

10.1.i. Financial Statements. Deliver to Agent (with sufficient copies for each Lender), in form and detail satisfactory to Agent and the Required Lenders:

(1) as soon as available, but in any event within 90 days after the end of each Fiscal Year of Parent, balance sheets as at the end of such Fiscal Year, and the related statements of income or operations, shareholders’ equity and cash flows for such Fiscal Year, on a consolidated basis for Parent, its Subsidiaries and the Excluded Subsidiaries, setting forth in each case in comparative form the figures for the previous Fiscal Year (it being understood that such comparisons shall not be required to include the figures for the Excluded Subsidiaries prior to consummation of the Top Golf Acquisition), all in reasonable detail and prepared in accordance with GAAP, which consolidated statements (x) shall be audited and accompanied by a report and opinion of an independent certified public accountant or chartered accountant, as applicable, of nationally recognized standing, 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 and (y) shall be accompanied by unaudited consolidating information (which consolidating information shall be in form materially consistent with that provided prior to the Fourth Amendment to Fourth Amended and Restated Effective Date), that summarizes in reasonable detail (but shall not be required to include footnotes) the differences between the information relating to Parent, its Subsidiaries and the Excluded Subsidiaries on a consolidated basis, on the one hand, and the information relating to Parent and its Subsidiaries on a stand-alone consolidated basis, on the other hand, which unaudited consolidating information shall be certified by the chief financial officer of Borrower Agent as having been fairly presented in all material respects; *provided*, that if Parent obtains audited financial statements on a consolidated basis for Parent and its Subsidiaries, it shall promptly deliver such audited financial statements to Agent;

(2) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each Fiscal Year of Parent, unaudited balance sheets as at the end of such fiscal quarter, and the related statements of income or operations, shareholders’ equity and cash flows for such fiscal quarter and for the portion of Parent’s fiscal year then ended, on a consolidated basis for Parent, its Subsidiaries and the Excluded Subsidiaries, 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 (it being understood that such comparisons shall not be required to include the figures for the Excluded Subsidiaries prior to consummation of the Top Golf Acquisition), all in reasonable detail, certified by the chief financial officer of Borrower Agent as fairly presenting the financial condition, results of operations, shareholders’ equity and cash flows of Parent, its Subsidiaries

and the Excluded Subsidiaries, as applicable, in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes, which consolidated statements, shall be accompanied by unaudited consolidating information (which consolidating information shall be in form materially consistent with that provided prior to the Fourth Amendment to Fourth Amended and Restated Effective Date) that summarizes in reasonable detail (but shall not be required to include footnotes) the differences between the information relating to Parent, its Subsidiaries and the Excluded Subsidiaries on a consolidated basis, on the one hand, and the information relating to Parent and its Subsidiaries on a stand-alone consolidated basis, on the other hand, which unaudited consolidating information shall be certified by the chief financial officer of Borrower Agent as having been fairly presented in all material respects; and

(3) as soon as available, and in any event within 30 days after the end of each month other than the last month of each fiscal quarter of Parent, unaudited balance sheets as at the end of such month, and the related statements of income or operations for such month and for the portion of Parent's fiscal year then ended, on a consolidated basis for Parent and its Subsidiaries, setting forth in each case in comparative form the figures for the corresponding month of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief financial officer of Borrower Agent as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of Parent and its Subsidiaries in accordance with historical practices (in each case, which shall be in form materially consistent with that provided prior to the Fourth Amendment to Fourth Amended and Restated Effective Date).

10.1.ii. Certificates; Other Information. Deliver to Agent, for delivery to each Lender, in form and detail satisfactory to Agent and the Required Lenders:

(4) concurrently with the delivery of the financial statements referred to in **Sections 10.1.1(a), (b) and (c)**, or more frequently if requested by Agent when a Default or Event of Default exists, a duly completed Compliance Certificate signed by the chief financial officer of the Borrower Agent;

(5) concurrently with the delivery of financial statements under **Section 10.1.1(a)**, 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 Parent by independent accountants in connection with the accounts or books of Borrowers or any Subsidiary, or any audit of any of them;

(6) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Parent, and copies of all annual, regular, periodic and special reports and registration statements which any Obligor may file or be required to file with the Securities and Exchange Commission or any provincial securities commission or regulator, and not otherwise required to be delivered to Agent pursuant hereto;

(7) promptly following the Agent's request therefor, all documentation and other information that the Agent reasonably requests on its behalf or on behalf of any Lender in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Proceeds of Crime Act;

(8) promptly following the Agent's request therefor, copies of (i) any documents described in Section 101(k)(1) of ERISA that any Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l)(1) of ERISA that any Borrower or any of its ERISA Affiliates may request with respect to any Plan or Multiemployer Plan; provided that if any Borrower or any of its ERISA

Affiliates have not requested such documents or notices from the administrator or sponsor of the applicable Plan or Multiemployer Plan prior to the Agent's request therefor, a Borrower or one of its ERISA Affiliates shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof and promptly after the sending or filing thereof, copies of any annual report to be filed in connection with any Canadian Pension Plan or any Foreign Plan of any Obligor incorporated in the U.K. or Germany;

(9) promptly after Borrower Agent has notified Agent of any intention by Borrowers to treat the Loans and/or Letters of Credit and related transactions as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4), a duly completed copy of IRS Form 8886 or any successor form;

(10) not later than 30 days after the end of each Fiscal Year, projections of Parent's consolidated balance sheets, results of operations, cash flow, U.S. Availability, U.K. Availability, German Availability and Canadian Availability for the next Fiscal Year, month by month and in form materially consistent with those provided prior to the Fourth Amendment to Fourth Amended and Restated Effective Date;

(11) at Agent's request, a listing of each Obligor's trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging, all in form satisfactory to Agent;

(12) within 45 days of the end of each fiscal quarter of Parent, or more frequently if requested by Agent when a Default or Event of Default exists: (i) all Royalties or other compensation (to the extent not previously disclosed to Agent in writing) paid by any Borrower or Subsidiary to any Person with respect to any Intellectual Property, and (ii) all Intellectual Property (to the extent not previously disclosed to Agent in writing) owned, used or licensed by, or otherwise subject to any interests of, any Borrower or Subsidiary (in each case other than the German Domiciled Obligors);

(13) promptly upon the Agent's request, a disclosure of all Intellectual Property registrations, filings and applications for registration owned by the German Domiciled Obligors; and

(14) promptly, such additional information regarding the Collateral or the business, financial or corporate affairs of Borrowers, any Subsidiary or any Excluded Subsidiary, or compliance with the terms of the Loan Documents, as Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to **Section 10.1.1(a) or (b)** or **Section 10.1.2(c)** (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 (i) on which Borrower Agent posts such documents, or provides a link thereto on Borrower Agent's website; or (ii) on which such documents are posted on Borrower Agent's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which Agent and each Lender have access (whether a commercial, third-party website or whether sponsored by Agent); provided that: (i) if any Lender so requests, the Borrower Agent shall deliver paper copies or electronic copies via electronic mail of such documents to Agent or any Lender that requests Borrower Agent to deliver such paper or electronic copies until a written request to cease delivering paper or electronic copies is given by Agent or such Lender and (ii) Borrower Agent shall notify (which may be by facsimile or electronic mail) Agent and each Lender of the posting of any such documents. Notwithstanding anything contained herein, in every instance Borrower Agent shall be required to provide paper copies of the Compliance Certificates required by **Section 10.1.2(a)**

to Agent and each of the Lenders. Except for such Compliance Certificates, Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Borrower Agent with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

10.1.i.Notices. Notify Agent and each Lender:

(15) Within five (5) Business Days after the occurrence of a Default or Event of Default under **Section 11.1(f)** and promptly after the occurrence of any other Default or Event of Default;

(16) Promptly of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including, if applicable (i) breach or non-performance of, or any default under, a Contractual Obligation of any Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between any Borrower or any Subsidiary and any Governmental Authority; (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws; or (iv) the assertion of any Intellectual Property Claim;

(17) Promptly of the occurrence of any ERISA Event or Termination Event;

(18) Promptly of any material change in accounting policies or financial reporting practices by any Borrower or any Subsidiary;

(19) Promptly after obtaining knowledge of any pending or threatened labor dispute, strike or walkout, or the expiration of any material labor contract that, in each case, materially and adversely affects any Obligor or any Subsidiary;

(20) Promptly of any judgment affecting any Obligor in an amount exceeding the Dollar Equivalent of \$5,000,000;

(21) Promptly after the discharge or any withdrawal or resignation by Borrowers' accountants; and

(22) At least 30 days prior to any opening of a new office or place of business where Collateral will be located.

Each notice pursuant to this Section shall be accompanied by a statement of a Senior Officer of Borrower Agent setting forth details of the occurrence referred to therein and stating what action Borrowers have taken and proposes to take with respect thereto. Each notice pursuant to **Section 10.1.3** shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

10.1.iii.Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities in an aggregate amount in excess of \$10,000,000, including (a) all Taxes and tax liabilities, assessments and governmental charges or levies upon it or its Properties, unless such Taxes are being Properly Contested; provided, that all such Taxes, tax liabilities, assessments, governmental charges and levies shall be paid and discharged prior to the date on which a Lien on any Collateral shall attach in an aggregate amount in excess of \$250,000 for all federal tax liens and \$2,500,000 for all other liens which is senior to Agent's Lien; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and

(c) all Debt, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Debt.

10.1.iv.Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization except in a transaction permitted by **Section 10.2.4** or **10.2.5**; (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.

10.1.v.Maintenance of Properties. (a) Except for any downsizing, restructuring, closure or partial closure of the golf ball manufacturing operations of Borrowers in existence on the Original Agreement Closing Date, maintain, preserve and protect all of its material properties and material equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; 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.

10.1.vi.Maintenance of Insurance. In addition to the insurance required hereunder with respect to Collateral, maintain insurance with insurers (with a Best Rating of at least A7, unless otherwise approved by Agent) satisfactory to Agent, with respect to the Properties and business of Borrowers and Subsidiaries of such type (including product liability, workers' compensation, larceny, embezzlement, or other criminal misappropriation insurance), in such amounts, and with such coverages and deductibles as are customary for companies similarly situated.

10.1.vii.Compliance with Laws. Comply in all material respects with the requirements of all Applicable 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 Applicable Law or order, write, 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. Materially comply with all Anti-Terrorism Laws.

10.1.viii.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 each Borrower, each Subsidiary and each Excluded Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over each Borrower, each Subsidiary and each Excluded Subsidiary, as the case may be.

10.1.ix.Inspections; Appraisals.

(23) Permit Agent from time to time, subject (except when a Default or Event of Default exists) to reasonable notice and normal business hours, to visit and inspect the Properties of any Borrower or Subsidiary, inspect, audit and make extracts from any Borrower's or Subsidiary's books and records, and discuss with its officers, employees, agents, advisors and independent accountants such Borrower's or Subsidiary's business, financial condition, assets, prospects and results of operations. For each calendar year, at least one examination will be held by Agent during such calendar year and at least two examinations will be held by Agent during such calendar year if Availability on any day during such year is less than, at any time, an amount equal to 10% of the Maximum Facility Amount. Lenders may participate in any such visit or inspection, at their own expense. Neither Agent nor any Lender shall have any duty to

any Borrower to make any inspection, nor to share any results of any inspection, appraisal or report with any Borrower. Borrowers acknowledge that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and Borrowers shall not be entitled to rely upon them.

(24) Reimburse Agent for all charges, costs and expenses of Agent in connection with (i) examinations of any Obligor's books and records or any other financial or Collateral matters as Agent deems appropriate, up to two times per calendar year; (ii) appraisals of Inventory, up to two times per calendar year and (iii) appraisals of Intellectual Property (other than Excluded Intellectual Property), up to one time per calendar year; provided, however, that: (A) Borrowers shall reimburse Agent for all charges, costs and expenses in connection with a third appraisal of Inventory or second appraisal of Intellectual Property (other than Excluded Intellectual Property) in any calendar year if such appraisal is commenced during any Reporting Trigger Period; (B) Borrowers shall reimburse Agent for all charges, costs and expenses in connection with a third examination in any calendar year if such examination is commenced during any Reporting Trigger Period; and (C) if an examination or appraisal is initiated during a Default or Event of Default, all charges, costs and expenses therefor shall be reimbursed by Borrowers without regard to such limits. Borrowers agree to pay Agent's then standard charges for examination activities, including the standard charges of Agent's internal examination and appraisal groups, as well as the charges of any third party used for such purposes.

10.1.ii. Use of Proceeds. Use the proceeds of the Loans or other extensions of credit (a) to refinance existing indebtedness, (b) to issue standby or commercial letters of credit and (c) to finance ongoing working capital needs and for general corporate purposes (including Permitted Acquisitions) not in contravention of any Applicable Law or of any Loan Document.

10.1.iii. Additional Guarantors. Promptly notify Agent upon any Person becoming a Subsidiary and (a) cause (i)(A) each U.S. Subsidiary and (B) any Foreign Subsidiary that loses its status as a "controlled foreign corporation" under Section 957 of the Code promptly to execute and deliver to Agent a Guarantee (including, if requested by Agent, a joinder to this Agreement in form and substance satisfactory to Agent) in favor of Agent for the benefit of the Secured Parties, and (ii) each Canadian Subsidiary, German Subsidiary and U.K. Subsidiary to execute and deliver to Agent a Canadian Facility Guarantee, German Facility Guarantee and U.K. Facility Guarantee (including, if requested by Agent, a joinder to this Agreement in form and substance satisfactory to Agent provided that in case of a Guarantee or joinder to this Agreement in each case delivered by a German Subsidiary, such Guarantee or joinder shall set out any restrictions to the guarantee, indemnity or other collateral granted by such German Subsidiary required to avoid a risk of any personal or criminal liability of any director of such German Subsidiary resulting from the granting of such guarantee, indemnity or collateral) in favor of Agent for the benefit of the Canadian Secured Parties, German Secured Parties and U.K. Secured Parties, (b) cause such Guarantor to deliver to the Agent such certificates of resolutions or other action, incumbency certificates and/or other certificates of Senior Officers or other authorized Persons of such Subsidiary as Agent may require evidencing the identity, authority and capacity of each Senior Officer or other authorized Person thereof in connection with the Guarantee, Canadian Facility Guarantee, German Facility Guarantee, or U.K. Facility Guarantee, as applicable, to which such Subsidiary is a party and such additional and other documents and certifications as Agent may reasonably require to evidence that such Subsidiary is duly organized or formed and is validly existing, in good standing and qualified to engage in business, in each case to the extent applicable, in jurisdictions reasonably identified by Agent, and (c) cause such Guarantor to execute and deliver such documents, instruments and agreements and to take such other actions as Agent shall require to evidence and perfect a Lien in favor of Agent (for the benefit of Secured Parties (in the case of a Subsidiary described in clause (a)(i) above) and the Canadian Secured Parties, the German Secured Parties and U.K. Secured Parties (in the case of a Subsidiary described in clause (a)(ii) above)) on all assets of such Person which are the same

type as the Collateral, including delivery of legal opinions, in form and substance satisfactory to Agent, as it shall deem appropriate. At the request of Agent at any time, Borrowers shall cause the holders of all Equity Interests of the German Borrower to execute and deliver such documents, instruments and agreements and to take such other actions as Agent shall require to evidence and perfect a Lien in favor of Agent on all such Equity Interests of the German Borrower, including delivery of legal opinions, in form and substance satisfactory to Agent, as it shall deem appropriate. Notwithstanding the foregoing or anything to the contrary in this Agreement or in any other Loan Document, in no event shall any Excluded Subsidiary be required to provide a Guarantee, grant any security interest to secure the Obligations or take any other action required by this Section 10.1.12.

10.1.iv. Landlord and Storage Agreements. Upon request, provide Agent with copies of all existing agreements, and promptly after execution thereof provide Agent with copies of all future agreements, between an Obligor and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral may be kept or that otherwise may possess or handle any Collateral.

10.1.v. Licenses. (a) Keep each License affecting any Collateral (including the manufacture, distribution or disposition of Inventory) or any other material Property of Borrowers and Subsidiaries in full force and effect except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) pay all Royalties when due except as would not materially adversely affect the value of the Collateral; and (d) notify Agent of any default or breach asserted by any Person to have occurred under any License which breach would materially adversely affect the value of the Collateral.

10.1.vi. U.K. Pension Plans. Each U.K. Domiciled Obligor shall ensure that it is not and will not be and none of its U.K. subsidiaries will be at any time: (i) an employer (for the purposes of Sections 38 to 51 of the Pensions Act 2004 of the United Kingdom) of an occupational pension scheme which is not a money purchase scheme (as those terms are defined in the Pension Schemes Act 1993 of the United Kingdom); or (ii) “**connected**” with or an “**associate**” of the Parent or any of its Subsidiaries which is an employer (as those terms are used in Sections 38 or 43 of the Pensions Act 2004 of the United Kingdom) in relation to an occupational pension scheme in the United Kingdom which is not a money purchase scheme.

10.1.vii. Anti-Corruption Laws. Each Obligor will maintain in effect and enforce policies and procedures designed to ensure compliance by such Obligor, its Subsidiaries, the Excluded Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws of Canada, United Kingdom, United States, and any of the member states of the European Union and applicable Sanctions.

10.1.viii. People with Significant Control Regime. Parent and each of its Subsidiaries shall (a) within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from any company incorporated in the United Kingdom whose shares are the subject of a Lien in favor of the Agent, and (b) promptly provide the Agent with a copy of such notice.

10.1.ix. Post-Closing.

(25) Within 90 days of the Closing Date (or such later date as Agent may approve in its sole discretion), the German Domiciled Obligors shall (i) establish a cash management system acceptable to the Agent and (ii) ensure each of its Deposit Account or securities account (except an Excluded Deposit Account) is subject to a fully executed Deposit Account Control Agreement or, in the case of a securities account, similar control agreement in favor of Agent and acceptable to Agent.

(26) Within 60 days of the Closing Date (or such later date as Agent may approve in its sole discretion), the U.K. Domiciled Obligors shall close each of their Deposit Accounts or securities accounts maintained with Skandinaviska Enskilda Banken.

10.b Negative Covenants. As long as any Commitments or Obligations are outstanding, each Obligor shall not, and shall cause each Subsidiary not to:

10.2.i. Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, other than the following (collectively, "Permitted Liens"):

(27) Liens in favor of Agent;

(28) Liens existing on the Closing Date that are listed on **Schedule 10.2.1**;

(29) Liens for taxes, fees, assessments or other governmental charges not yet delinquent or being Properly Contested;

(30) 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 30 days or which are being Properly Contested;

(31) 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;

(32) deposits or other Liens to secure the performance of bids, trade contracts and leases (other than Debt), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the Ordinary Course of Business;

(33) easements, rights-of-way, restrictions and other similar encumbrances affecting Real Estate which, are (i) shown in any lender's policy of title insurance insuring any Mortgage, or (ii) in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(34) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution (including, without limitation, any Lien arising by entering into standard banking arrangements (*AGB-Banken oder AGB-Sparkassen*) in Germany);

(35) Liens securing judgments for the payment of money not constituting an Event of Default under **Section 11.1(g)** or securing appeal or other surety bonds related to such judgments (so long as such judgments do not constitute an Event of Default under **Section 11.1(g)**);

(36) Liens securing Debt permitted under **Section 10.2.3(e)**; provided that (i) such Liens do not at any time encumber any property other than the property financed by such Debt and (ii) the Debt secured thereby does not exceed, on the date of acquisition, the cost or fair market value, whichever is lower, of the property being acquired;

(37) any Lien existing on any property or asset (other than Accounts, Inventory, Dominion Accounts, the Company Trademark, and Eligible Real Estate) prior to the acquisition thereof by any Obligor or any Subsidiary or existing on any property or asset (other than Accounts, Inventory, Dominion Accounts, the Company Trademark, and Eligible Real Estate) of any Person that becomes an Obligor or Subsidiary after the date hereof prior to the time such Person becomes an Obligor or Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming an Obligor or Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Obligor or Subsidiary, (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes an Obligor or Subsidiary, as the case may be, (iv) all obligations secured by a Lien permitted under this clause (k) shall not exceed an aggregate amount of \$25,000,000 at any one time outstanding, and (v) if requested by Agent, such Liens will be subject to an intercreditor agreement, in form and substance satisfactory to Agent;

(38) extensions, renewals and replacements of Liens referred to in clauses (a) through (k) above, provided that the property covered thereby is not increased and any renewal or extension of the obligations secured or benefited thereby is permitted by **Section 10.2.3**;

(39) Liens (other than on: (i) Accounts, Inventory, and Dominion Accounts of a Borrower or Guarantor; and (ii) the Company Trademark and Eligible Real Estate) arising under leases, subleases, licenses and rights to use granted to others and permitted under **Section 10.2.5(f)**;

(40) Liens (other than on: (i) Accounts, Inventory, and Dominion Accounts of a Borrower or Guarantor; and (ii) the Company Trademark and Eligible Real Estate) not expressly permitted by clauses (a) through (m) above and as to which the aggregate amount of obligations secured thereby does not exceed \$50,000,000 at any one time;

(41) Liens securing Debt permitted under **Section 10.2.3(q)** or **(s)** so long: (i) such Liens will be subject to an intercreditor agreement, in form and substance satisfactory to Agent; (ii) to the extent any such Liens are on any Collateral (as defined on the First Amendment to Third Amended and Restated Effective Date), such Liens are subordinated to the Liens of Agent pursuant to such intercreditor agreement (provided that, in the case of any Liens securing Debt permitted under **Section 10.2.3(s)**, any such Liens on Term Loan Priority Intellectual Property (as defined in the Intercreditor Agreement) shall be senior to the Liens of Agent hereunder and shall not be subordinated to the Liens of Agent); and (iii) to the extent such Liens extend to Property which does not (or would not) constitute Collateral (as defined on the First Amendment to Third Amended and Restated Effective Date) ("Additional Collateral"), at the request of the Required Lenders, the Obligors and their Subsidiaries shall execute and deliver such documents, instruments and agreements and take such other actions as Agent shall require to evidence and perfect a Lien in favor of Agent (for the benefit of Secured Parties) on all Additional Collateral (it being understood that any such Liens held by Agent on Additional Collateral shall be junior to the Liens permitted under this **Section 10.2.1(o)** as set forth in an intercreditor agreement in form and substance satisfactory to Agent);

(42) Liens securing Debt permitted under **Section 10.2.3(r)**; provided that such Liens do not at any time encumber any property other than the property financed or leased by such Debt;

(43) With respect to German Domiciled Obligors, any Liens created in respect of section 8a of the German Old Age Employees Part Time Act (*Altersteilzeitgesetz*) or section 7e of the Fourth Book of the German Social Code (*Sozialgesetzbuch IV*); and

(44) With respect to German Domiciled Obligors, any Lien arising by operation of law for the benefit of a landlord of any Obligor or Subsidiary of any Obligor in respect of any properties rented by it (*Vermieterpfandrecht*).

10.2.ii. Investments. Make any Investments, except:

(45) advances to officers, directors and employees of the Obligors and Subsidiaries for travel, entertainment, relocation and analogous ordinary business purposes;

(46) Investments in Subsidiaries to the extent existing on the Closing Date and other Investments in existence on the Closing Date and set forth on **Schedule 10.2.2**;

(47) Investments by: (i) a U.S. Borrower in another U.S. Borrower; (ii) a U.S. Domiciled Obligor (other than a U.S. Borrower) in another U.S. Domiciled Obligor; (iii) a U.S. Domiciled Obligor in the Canadian Borrower so long as: (A) the aggregate amount of such Investments shall not exceed \$10,000,000 at any time outstanding, and (B) no Event of Default has occurred and is continuing at the time of such Investment, or would result therefrom; (iv) a U.S. Domiciled Obligor in Callaway de México, S.A. de C.V. so long as such Investments are in the Ordinary Course of Business and consistent with historical practices; (v) any Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor in a Borrower (other than the German Borrower); (vi) a Borrower in a Guarantor or Subsidiary that is not a Borrower or Guarantor so long as: (A) the aggregate amount of such Investments shall not exceed: (I) \$3,000,000 in any calendar year, and (II) \$10,000,000 at any time outstanding, and (B) no Event of Default has occurred and is continuing at the time of such Investment, or would result therefrom; and (vii) a Subsidiary that is not a Borrower or Guarantor in any other Subsidiary;

(48) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the Ordinary Course of Business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(49) Investments consisting of Permitted Acquisitions;

(50) Investments pursuant to Hedging Agreements otherwise permitted hereunder;

(51) Investments in Cash Equivalents;

(52) so long as no Event of Default has occurred and is continuing or would result therefrom, any other Investments (other than an Acquisition) made after the Fourth Amendment to Fourth Amended and Restated Effective Date in an aggregate amount not to exceed \$30,000,000 (such limitation, the "Investment Cap"); provided, however, that no such Investment shall count against the Investment Cap if either: (i) (A) on a pro forma basis after giving effect to such Investment, Net Excess Availability has been greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the consummation of such Investment, (B) Net Excess Availability is greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount after giving effect to such Investment, and (C) the Fixed Charge Coverage Ratio, on a pro forma basis after giving effect to such Investment (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (ii) (A) average daily Net Excess Availability, on a pro forma basis after giving effect to such Investment, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the

consummation of such Investment and (B) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such Investment;

(53) Investments by a U.S. Domiciled Obligor in any Subsidiary that is not a Borrower or Guarantor to the extent such Investments are in the form of a transfer of assets (other than any Collateral) of such U.S. Domiciled Obligor so long as: (A) such assets are in existence as of the First Amendment to Second Amended and Restated Effective Date, and (B) such assets are predominantly used in connection with the golf ball manufacturing operations of Parent;

(54) Investments among German Domiciled Obligors so long as all German Domiciled Obligors (other than Callaway Germany Holdco GmbH) making and/or receiving Investments are each subject to a profit and loss pooling agreement, domination agreement or a combination thereof;

(55) Investments, so long as: (i) no Default or Event of Default has occurred and is continuing or would result therefrom; (ii) the amount expended in connection with any such Investment either (at the written election of Parent in accordance with the definition of Top Golf Proceeds): (A) is made solely using Top Golf Proceeds contained in the Top Golf Blocked Account, (B) does not exceed the U.S. Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, (C)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the Canadian Borrower to Parent, or (II) repayment by the Canadian Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the Canadian Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, (D)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the German Borrower to Parent, or (II) repayment by the German Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the German Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, or (E)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the U.K. Borrower to Parent, or (II) repayment by the U.K. Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the U.K. Top Golf Reserve in effect immediately prior to giving effect to any such expenditures; (iii) the aggregate amount expended in connection with all such Investments consummated under this clause (k) and transactions consummated under clause 10.2.6(g) does not exceed \$150,000,000 in the aggregate; (iv) Parent provides Agent with at least 7 days prior written notice of any such Investment (which notice shall contain the amount to be expended in such transaction and evidence of the source of funds for such expenditure); (v) Parent provides Agent with evidence of the making of any Investment under this clause (k); and (vi) no Term Loans are outstanding at the time such Investment is made.

(56) additional Investments in Top Golf made after the Fourth Amendment to Fourth Amended and Restated Effective Date in an amount not to exceed \$30,000,000 in the aggregate at any time so long as at the time of any such Investment, no Default or Event of Default has occurred and is continuing or would result therefrom;

(57) Investments by any Obligor in any Subsidiary that is not an Obligor so long as: (i) the aggregate amount of such Investments shall not exceed \$10,000,000 at any time outstanding, and (ii) no Event of Default has occurred and is continuing at the time of such Investment, or would result therefrom;

(58) Investments consisting of (i) the non-exclusive licenses of, and non-exclusive rights to use, intellectual property pursuant to joint marketing or other similar arrangements with other Persons so long as such licenses and rights to use do not interfere in any material respect with the business of Parent and its Subsidiaries, taken as a whole, and (ii) Asset Dispositions permitted by **Section 10.2.5(f)**; and

(59) Investments consisting of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of Parent, its Subsidiaries and the Excluded Subsidiaries in an aggregate amount not to exceed \$10,000,000 in any fiscal year of Parent when combined with any Debt incurred pursuant to Section 10.2.3(m) during such fiscal year.

10.2.i. Debt. Create, incur, guarantee or suffer to exist any Debt, except:

(60) the Obligations;

(61) Debt outstanding on the Closing Date and listed on **Schedule 10.2.3**;

(62) Debt consisting of unsecured intercompany loans among Parent, any Subsidiary and any Excluded Subsidiary or unsecured guarantees of Parent or any Subsidiary in respect of Debt of Parent, any Subsidiary or any Excluded Subsidiary so long as, in each case, the corresponding Investment is permitted under **Section 10.2.2**;

(63) Debt of Parent or any Subsidiary existing or arising under any Hedging Agreement, provided that such Hedging Agreement was entered into by such Person to hedge risks arising in the Ordinary Course of Business and not for speculative purposes or constitutes a customary capped call transaction in connection with convertible debt securities of Parent otherwise permitted to be incurred under this Agreement;

(64) Debt in respect of Capital Leases, Off-Balance Sheet Liabilities and purchase money obligations for fixed or capital assets (other than Eligible Real Estate); provided, however, that the aggregate amount of all such Debt at any one time outstanding shall not exceed \$25,000,000;

(65) Debt that is in existence when a Person becomes a Subsidiary or that is secured by an asset when acquired by a Borrower or Subsidiary, as long as such Debt was not incurred in contemplation of such Person becoming a Subsidiary or such acquisition, and does not exceed \$25,000,000 in the aggregate at any time;

(66) Debt of any wholly owned Subsidiary to Parent or another wholly owned Subsidiary constituting the purchase price in respect of intercompany transfers of goods and services made in the Ordinary Course of Business to the extent otherwise permitted by **Section 10.2.8** and not constituting Debt for borrowed money;

(67) Debt of Parent or any Subsidiary in connection with guaranties resulting from endorsement of negotiable instruments in the Ordinary Course of Business;

(68) Debt on account of surety bonds and appeal bonds in connection with the enforcement of rights or claims of Parent or its Subsidiaries or in connection with judgments not resulting in an Event of Default under **Section 11.1(g)**;

(69) any refinancings, refundings, renewals or extensions of Debt permitted pursuant to **Sections 10.2.3(b), (e) and (I)**; provided that (i) the amount of such Debt 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 (ii) Debt subordinated to the Obligations is not refinanced except on subordination terms at least as favorable to Agent and the Lenders and no more restrictive on Parent and its Subsidiaries than the subordinated Debt being refinanced;

(70) Bank Product Debt (other than Debt arising under Hedging Agreements);

(71) Debt incurred by Subsidiaries of Parent organized under the laws of Japan, is not secured by a Lien, and does not exceed ¥7,500,000,000 in the aggregate at any time;

(72) Debt consisting of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of Parent, its Subsidiaries and the Excluded Subsidiaries in an aggregate amount not to exceed \$10,000,000 in any fiscal year of Parent when combined with any Investments made pursuant to Section 10.2.2(o) during such fiscal year;

(73) Debt that is not included in any of the preceding clauses of this Section, is not secured by a Lien, or is secured by a lien permitted by **Section 10.2.1(n)**, and does not exceed \$50,000,000 in the aggregate at any time;

(74) other Debt that is not included in any of the preceding clauses of this Section so long as such Debt: (i) is not secured by a Lien, (ii) has a maturity date that is at least 6 months after the Facility Termination Date, and (iii) does not have scheduled amortization in excess of 10% per year;

(75) Debt to the Person, or the beneficial holders of Equity Interests in the Person, whose assets or Equity Interests are acquired in a Permitted Acquisition where such Debt (i) is payable in full no sooner than three years from the date of such Acquisition, (ii) is repayable in installments of no more than one-third of the initial amount in any year after the date of such Permitted Acquisition, (iii) bears interest and fees that are consistent with then available market rates for such Debt, (iv) is not secured by a Lien and (v) does not exceed (together with all other Debt incurred under this clause (p)) \$25,000,000 in the aggregate at any time;

(76) other Debt that is not included in any of the preceding clauses of this Section so long as: (i) such Debt does not exceed \$250,000,000 in the aggregate at any one time outstanding, (ii) such Debt is not secured by a Lien, or is secured by a lien permitted by **Section 10.2.1(o)**, (iii) such Debt has a maturity date that is at least 6 months after the Facility Termination Date, (iv) such Debt does not have scheduled amortization in excess of 15% per year, and (v) immediately upon and after giving effect to such Debt, the Leverage Ratio is not greater than 4.5 to 1.0;

(77) Debt pursuant to equipment financing and/or leases entered into by one or more Obligors, in an aggregate amount not to exceed \$50,000,000 at any time outstanding;

(78) Debt (i) as described in the Project Max Commitment Letter, as may be modified by the market flex conditions referenced in the Fee Letter (as defined in the Project Max Commitment Letter), as disclosed to Agent prior to the First Amendment to Third Amended and Restated Effective Date, so long as: (A) the aggregate outstanding principal amount of such Debt at any one time does not exceed the amount incurred in connection with the consummation of the Acquisition (as defined in the Project Max Commitment Letter) in accordance with the terms of the Project Max Commitment Letter, less any principal payments made on account of such Debt, (B) any Liens securing such Debt are permitted by **Section 10.2.1(o)**, (C) such Debt has a maturity date that is at least 6 months after the Facility Termination Date; and (D) such Debt is incurred in accordance with the terms of the Project Max Commitment Letter as in effect on the First Amendment to Third Amended and Restated Effective Date, or as amended from time to time thereafter so long as such amendments are not materially adverse to the interest of the Lenders and (ii) any refinancings, refundings, renewals or extensions of such Debt permitted in clause (i) hereto, so long as (A) the amount of such Debt is not increased at the time of such

refinancing, refunding, renewal or extension except by an amount equal to accrued interest, a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing, (B) such Debt has a maturity date that is at least 6 months after the Facility Termination Date, (C) such Debt does not have scheduled amortization in excess of 15% per year, (D) any Liens securing such Debt are permitted by **Section 10.2.1(o)**, and (E) other than with respect to any refinancings, refundings, renewals or extensions of such Debt in connection with the Top Golf Acquisition, upon giving effect to it, no Default or Event of Default exists; and

(79) (x) any loan or other financial assistance received by any Borrower or any of its Subsidiaries from any federal, state, local or foreign government program enacted in response to the COVID-19 outbreak in an aggregate principal amount not to exceed \$50,000,000; and (y) any refinancings, refundings, renewals or extensions of Debt permitted pursuant to clause (x) above; provided, that the amount of such Debt 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.

10.2.iii. Fundamental Changes.

(80) Merge, amalgamate, dissolve, liquidate, consolidate with or into another Person, 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:

(1) Travis Mathew Retail may be dissolved, so long as (A) such dissolution is completed within 30 days of the Second Amendment to Third Amended and Restated Effective Date, and (B) all assets of Travis Mathew Retail are distributed to travisMathew in connection with such dissolution;

(2) any Subsidiary may merge or amalgamate with Parent or any other Subsidiary, provided that (A) in such a merger in which a U.S. Borrower is involved, such U.S. Borrower is the continuing or surviving Person, (B) in such a merger or amalgamation in which the Canadian Borrower is involved (other than with a U.S. Borrower, German Borrower or the U.K. Borrower), the Canadian Borrower is the continuing or surviving Person, (C) in such a merger or amalgamation in which the U.K. Borrower is involved (other than with a U.S. Borrower, German Borrower or the Canadian Borrower), the U.K. Borrower is the continuing or surviving Person, (D) in such a merger or amalgamation in which the German Borrower is involved (other than with a U.S. Borrower, Canadian Borrower or the U.K. Borrower), the German Borrower is the continuing or surviving Person, (E) in such a merger in which a U.S. Domiciled Obligor (other than a U.S. Borrower) is involved (other than with a Borrower), the U.S. Domiciled Obligor is the continuing or surviving Person, (F) in such a merger or amalgamation in which a U.K. Domiciled Obligor (other than the U.K. Borrower) is involved (other than with a U.S. Domiciled Obligor, a Canadian Domiciled Obligor, a German Domiciled Obligor, or the U.K. Borrower), the U.K. Domiciled Obligor is the continuing or surviving Person, (G) in such a merger or amalgamation in which a Canadian Domiciled Obligor (other than the Canadian Borrower) is involved (other than with a U.S. Domiciled Obligor, a U.K. Domiciled Obligor, a German Domiciled Obligor, or the Canadian Borrower), the Canadian Domiciled Obligor is the continuing or surviving Person, and (H) in such a merger or amalgamation in which a German Domiciled Obligor (other than the German Borrower) is involved (other than with a U.S. Domiciled Obligor, a U.K. Domiciled Obligor, a Canadian Domiciled Obligor, or the German Borrower), the German Domiciled Obligor is the continuing or surviving Person;

(3) any Subsidiary which is not an Obligor may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to its immediate parent or another Obligor;

(4) any Immaterial Subsidiary may be wound up, liquidated or dissolved; and

(5) Parent and its Subsidiaries may make those Asset Dispositions permitted by **Section 10.2.5**; or

(81) Change its name; change its tax, charter or other organizational identification number; or change its form or state of organization without 10 Business Days' prior written notice to Agent.

10.2.ii. Disposition of Assets. Make any Asset Disposition or enter into any agreement to make any Asset Disposition, except:

(82) Asset Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the Ordinary Course of Business;

(83) sales of Inventory in the Ordinary Course of Business, and consignments of Inventory in the Ordinary Course of Business so long as the aggregate Value of all such consigned Inventory at any one time does not exceed \$15,000,000;

(84) Asset Dispositions of Equipment or Real Estate (other than Eligible Real Estate unless the U.S. Real Estate Formula Amount has been removed from the U.S. Borrowing Base in accordance with **Section 2.1.4(d)**) 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;

(85) Asset Dispositions by (i) any U.S. Borrower to any other U.S. Borrower, (ii) any U.S. Domiciled Obligor (other than a U.S. Borrower) to any other U.S. Domiciled Obligor, (iii) any Canadian Domiciled Obligor, German Domiciled Obligor or U.K. Domiciled Obligor to any U.S. Borrower, and (iv) any Subsidiary that is not a Borrower or Guarantor to any other Subsidiary;

(86) (i) Asset Dispositions permitted by **Section 10.2.4**, (ii) Investments permitted by **Section 10.2.2**, and (iii) Distributions permitted by **Section 10.2.6**;

(87) leases, subleases, licenses and rights to use granted to others in the Ordinary Course of Business and not otherwise prohibited by this Agreement so long as such leases, subleases, licenses and rights to use do not materially adversely affect the conduct by Parent and its Subsidiaries of their core golf products business or the value of the Collateral;

(88) Asset Dispositions made in connection with the closure, downsizing, restructuring, closure or partial closure of the golf ball manufacturing operations of Parent;

(89) (i) Asset Dispositions of excess Real Estate (other than Eligible Real Estate) and related assets made in connection with the consolidation of business activities in other locations (and if such Real Estate is located in Germany, such Asset Dispositions may not be prohibited pursuant to section 1136 of the German Civil Code (*BGB*)) and (ii) sale and leaseback transactions involving Real Estate (other than Eligible Real Estate unless the U.S. Real Estate Formula Amount has been removed from the U.S. Borrowing Base in accordance with **Sections 2.1.4(d)**) and related assets;

(90) Asset Dispositions consisting of Intellectual Property (other than the Company Trademark), manufacturing assets, inventory, accounts, contracts, domain names, marketing materials and marketing related assets related to the brands disclosed to the Agent and the Lenders on the Business Day prior to the Second Amended Original Closing Date; provided, in each case, that (i) at the time of such Asset Disposition, no Event of Default has occurred or is continuing or would result therefrom, (ii) the Borrowers shall have provided Agent with three (3) Business Days prior written notice of any such Asset Disposition, (iii) if any such Asset Disposition includes the disposition of Accounts or Inventory of an Obligor, the Borrowers shall have complied with **Section 5.2**, and (iv) if any such Asset Disposition includes the disposition of any Eligible Accounts or Eligible Inventory, the Borrowers shall have delivered pro forma Borrowing Base Certificates on or prior to the consummation of such Asset Disposition which give effect to such Asset Disposition; and

(91) other Asset Dispositions (other than with respect to Accounts, Inventory, the Company Trademark and Eligible Real Estate (unless the U.S. Real Estate Formula Amount has been removed from the U.S. Borrowing Base in accordance with **Section 2.1.4(d)**)) in an aggregate amount in any fiscal year not to exceed 5% of the Consolidated Tangible Assets of Parent and its Subsidiaries as of the end of the most recently ended fiscal year of Parent;

provided, however, that any Asset Disposition pursuant to clauses (a) through (j) shall be for fair market value; provided, further, that Parent or any of its Subsidiaries may enter into an agreement to make an Asset Disposition otherwise prohibited by this **Section 10.2.5** if failure to consummate such Asset Disposition would not result in a liability or Debt otherwise prohibited by this Agreement and the consummation of the Asset Disposition contemplated by such agreement is conditioned upon either the termination of this Agreement or receipt of the prior written consent of the Agent and the Required Lenders.

10.2.iv.Distributions. Declare or make, directly or indirectly, any Distribution, or incur any obligation (contingent or otherwise) to do so, except that:

(92) (i) a U.S. Borrower may make Distributions to another U.S. Borrower; (ii) a U.S. Domiciled Obligor (other than a U.S. Borrower) may make Distributions to another U.S. Domiciled Obligor; (iii) a Canadian Domiciled Obligor may make Distributions to a Borrower; (iv) a U.K. Domiciled Obligor may make Distributions to a Borrower; (v) a German Domiciled Obligor may make Distributions to a Borrower; and (vi) a Subsidiary that is not a Borrower or Guarantor may make Distributions to Parent or any Subsidiary;

(93) Parent and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other Equity Interests of such Person;

(94) so long as no Event of Default has occurred and is continuing or would result therefrom, Parent and each Subsidiary may purchase, redeem or otherwise acquire shares of its common stock or other Equity Interests or warrants or options to acquire any such Equity Interests with the proceeds received from the substantially concurrent issue of new shares of its common stock or other Equity Interests;

(95) Parent may purchase Equity Interests in any Obligor or options with respect to Equity Interests in any Obligor held by employees or management of any Obligor in connection with the termination of employment of such employees or management so long as: (i) the aggregate amount of such purchases do not exceed \$5,000,000 in any fiscal year of Parent, and (ii) no Event of Default has occurred and is continuing at the time of any such purchase or would result therefrom;

(96) so long as no Event of Default has occurred and is continuing or would result therefrom, Parent and its Subsidiaries may make other Distributions in an aggregate amount not to exceed \$20,000,000 during each year (the “Distributions Cap”); provided, however, that no such Distribution shall count against the Distributions Cap if at the time such Distribution is declared (subject to the last sentence of this clause (e)) either: (i) (A) on a pro forma basis after giving effect to such Distribution, Net Excess Availability has been greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the making of such Distribution, (B) Net Excess Availability is greater than an amount equal to the Threshold Percentage of the Maximum Facility Amount after giving effect to such Distribution, and (C) the Fixed Charge Coverage Ratio, on a pro forma basis after giving effect to such Distribution (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (ii) (A) average daily Net Excess Availability, on a pro forma basis after giving effect to such Distribution, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the making of such Distribution and (B) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such Distribution; provided, however, that, at any time that any Term Loans are outstanding, (i) no Distributions may be made pursuant to the Distribution Cap, (ii) no Distributions may be made pursuant to subclause (ii) above, and (ii) no purchases, redemptions, or other acquisitions or retirement for value of any Equity Interest may be made pursuant to this clause (e);

(97) so long as no Event of Default has occurred and is continuing or would result therefrom, Parent may make cash payments in lieu of issuance of fractional shares in connection with the conversion of any convertible stock or debt securities of Parent, in an aggregate amount not to exceed \$5,000,000 for all such payments; and

(98) Parent may make Common Stock Repurchases and pay dividends on Parent’s common stock so long as: (i) no Default or Event of Default has occurred and is continuing or would result therefrom; (ii) the amount expended in connection with any such transaction either (at the written election of Parent in accordance with the definition of Top Golf Proceeds): (A) is made solely using Top Golf Proceeds contained in the Top Golf Blocked Account, (B) does not exceed the U.S. Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, (C)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the Canadian Borrower to Parent, or (II) repayment by the Canadian Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the Canadian Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, (D)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the German Borrower to Parent, or (II) repayment by the German Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the German Top Golf Reserve in effect immediately prior to giving effect to any such expenditures, or (E)(1) is made solely using cash proceeds of a substantially contemporaneous (I) dividend from the U.K. Borrower to Parent, or (II) repayment by the U.K. Borrower of an intercompany obligation owing to Parent, and (2) does not exceed the U.K. Top Golf Reserve in effect immediately prior to giving effect to any such expenditures; (iii) the aggregate amount expended in connection with all such transactions consummated under this clause (g) and Investments made under clause 10.2.2(k) does not exceed \$150,000,000 in the aggregate; (iv) Parent provides Agent with at least 7 days prior written notice of any such transaction (which notice shall contain the amount to be expended in such transaction and evidence of the source of funds for such expenditure); (v) Parent provides Agent with evidence of the completion of any such transaction under this clause (g); and (vi) no Term Loans are outstanding at the time any such transaction is consummated.

10.2.i.Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by Parent and its Subsidiaries on

the date hereof, those lines of business conducted by Top Golf and its subsidiaries on the date of the Top Golf Acquisition, one or more of the leisure goods, products and services businesses generally or, in each case, any business substantially related or incidental thereto.

10.2.ii. Affiliate Transactions. Enter into any transaction of any kind with any Affiliate of Parent, except (a) transactions between or among: (i) the U.S. Borrowers, (ii) the U.S. Domiciled Obligors (other than any U.S. Borrower), (iii) the Canadian Domiciled Obligors, (iv) the U.K. Domiciled Obligors, (v) the German Domiciled Obligors, and (vi) Subsidiaries that are not Borrowers or Guarantors; (b) transactions constituting Investments in Subsidiaries or Excluded Subsidiaries as permitted by **Section 10.2.2**, (c) transactions constituting Debt among Parent, any of its Subsidiaries or any Excluded Subsidiaries, in each case as permitted by **Section 10.2.3**; (d) transactions among Parent or any of its Subsidiaries, in each case as permitted by **Section 10.2.4** or **Section 10.2.5**, (e) transactions constituting Distributions permitted by **Section 10.2.6**, (f) transactions constituting reasonable fees and compensation paid to (including issuance and grants of securities and stock options, employment agreements and stock option and ownership plans for the benefit of, and indemnities provided on behalf of) officers, directors, employees and consultants of Parent or any Subsidiary, (g) constituting loans or advances to employees and officers of Parent and its Subsidiaries to the extent permitted by **Section 10.2.2(a)**, (h) transactions with Excluded Subsidiaries (including, without limitation, licenses, sub-licenses, leases, sub-leases, purchases and sales of goods and services and joint marketing arrangements, in each case, to the extent not otherwise prohibited hereunder) entered into in the ordinary course of business so long as such transactions do not interfere in any material respect with the business of Parent and its Subsidiaries, taken as a whole, (i) intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of Parent, its Subsidiaries and the Excluded Subsidiaries to the extent permitted pursuant to Sections 10.2.2(o) and 10.2.3(m), and (j) transactions with Affiliates upon terms no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate and not otherwise prohibited by this Agreement.

10.2.iii. Burdensome Agreements. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability (a) of any Subsidiary to make Distributions to any Borrower or any Guarantor or to otherwise transfer property to any Borrower or any Guarantor, (b) of Parent or any Subsidiary to incur or repay the Obligations, (c) of Parent or any Subsidiary to grant Liens on any Collateral in favor of the Agent for the benefit of the Lenders, or (d) of any U.S. Subsidiary, U.K. Subsidiary, German Subsidiary, or Canadian Subsidiary to guarantee the Obligations; provided, that the restrictions set forth herein shall not apply to (i) customary restrictions on transfers of property subject to a capital lease as set forth in such capital lease; (ii) customary restrictions with respect to a Subsidiary (other than a Borrower) pursuant to an agreement that has been entered into for the sale or disposition (not otherwise prohibited by this Agreement or any other Loan Document) of all or substantially all of the capital stock or assets of such Subsidiary; (iii) customary prohibitions on assignment in any contract or lease; (iv) customary net worth provisions contained in leases and other agreements entered into by a Subsidiary in the Ordinary Course of Business; and (v) customary restrictions with respect to Debt permitted under **Section 10.2.3(s)**.

10.2.iv. Restrictions on Payment of Certain Debt. Make any (a) payments (whether voluntary or mandatory, or a prepayment, redemption, retirement, defeasance or acquisition) with respect to any Debt which is subordinated to the Obligations (which, for the avoidance of doubt, does not include any Debt permitted under **Section 10.2.3(s)**), except regularly scheduled payments of principal, interest and fees, but only to the extent permitted under any subordination agreement relating to such Debt (and a Senior Officer of Borrower Agent shall certify to Agent, not less than five Business Days prior to the date of payment, that all conditions under such agreement have been satisfied); (b) any voluntary payments with respect to any Borrowed Money (other than the Obligations and any intercompany obligations) prior to its due date;

provided, however, that the restriction set forth in clause (b) shall not apply to: (x) any voluntary payments made to consummate a refinancing in full of the Debt permitted under **Section 10.2.3(s)** to the extent such refinancing is permitted under the terms of **Section 10.2.3(s)**; and (y) any payment if either: (A) (1) on a pro forma basis after giving effect to such payment, Net Excess Availability has been greater than an amount equal to 15% of the Maximum Facility Amount at all times during the thirty (30) day period immediately prior to the making of such payment, (2) Net Excess Availability is greater than an amount equal to 15% of the Maximum Facility Amount after giving effect to such payment, and (3) the Fixed Charge Coverage Ratio, on a pro forma basis after giving effect to such payment (calculated on a trailing twelve month basis recomputed for the most recent month for which financial statements have been delivered) is not less than 1.0 to 1.0; or (B) (1) average daily Net Excess Availability, on a pro forma basis after giving effect to such payment, has been greater than an amount equal to 20% of the Maximum Facility Amount for the ninety (90) day period immediately prior to the making of such payment, (2) Net Excess Availability is greater than an amount equal to 20% of the Maximum Facility Amount after giving effect to such payment, and (3) no Term Loans are outstanding at the time such payment is made.

10.2.v.Organic Documents. Amend, modify or otherwise change any of its Organic Documents as in effect on the Original Agreement Closing Date where such amendment, modification or other change would have a Material Adverse Effect.

10.2.vi.Tax Consolidation. File or consent to the filing of any consolidated income tax return with any Person other than Borrowers, Subsidiaries and Excluded Subsidiaries.

10.2.vii.Accounting Changes. Make any material change in accounting treatment or reporting practices, except as required by GAAP and in accordance with **Section 1.2**; or change its Fiscal Year.

10.2.viii.Activities of uPlay. Unless Borrowers cause uPlay to become a Guarantor hereunder in accordance with **Section 10.1.12**, uPlay will not (a) engage in any business or activity or (b) own any assets or have any liabilities (other than liabilities reasonably incurred in connection with its maintenance of its existence).

10.2.ix.Canadian Pension Plans. Without the prior written consent of Agent, no Obligor shall establish, or otherwise incur any obligations or liabilities under or in connection with any Canadian Pension Plan that provides benefits on a defined benefit basis.

10.2.x.Equity Interests of the German Borrower. Create, incur, assume or suffer to exist any Lien over the Equity Interests in (a) the German Borrower or (b) in each direct or indirect holder of such Equity Interests, in each case, other than such Liens in favor of the Agent.

10.c Financial Covenants. As long as any Commitments or Obligations are outstanding, Borrowers shall:

(99) At any time the Term Loans are outstanding as of the last day of any Fiscal Quarter, maintain a Fixed Charge Coverage Ratio, measured at the end of the Fiscal Quarter most recently completed for which financial statements have been delivered pursuant to Section 10.1.1 and at the end of each subsequent Fiscal Quarter while the Term Loans are outstanding, of at least 1.1 to 1.0; and

(100) At any time there are no Term Loans outstanding, maintain a Fixed Charge Coverage Ratio, measured on a Fiscal Quarter-end basis, of at least 1.0 to 1.0 as of (a) the end of the last Fiscal Quarter immediately preceding the occurrence of any Covenant Trigger Period for which financial statements have most recently been delivered pursuant to Section

10.1.1, and (b) the end of each Fiscal Quarter for which financial statements are delivered pursuant to Section 10.1.1 during any Covenant Trigger Period.

10.a Company Trademark. The Obligors shall maintain, defend and preserve the Company Trademark and its value, usefulness, merchantability and marketability in a manner consistent with past practices, and shall not sell, assign, transfer, encumber or license the Company Trademark to any Person (other than Liens created pursuant to the Loan Documents) to the extent that doing so would cause the amount specified in clause (a) of the definition of “U.S. Trademark Formula Amount” to be less than the amount specified in clause (b) of the definition of “U.S. Trademark Formula Amount” without the prior written consent of the U.S. Required Lenders.

Section 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

11.a Events of Default. Each of the following shall be an “Event of Default” hereunder, if the same shall occur for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(1) An Obligor fails to pay (i) when due (whether at stated maturity, on demand, upon acceleration or otherwise) any amount of principal of any Loan or any reimbursement obligation in respect of any LC Obligation, or (ii) any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a)(i) above), when and as the same shall become due and payable hereunder or under any other Loan Document (whether at stated maturity, on demand, upon acceleration or otherwise), and such failure shall continue unremedied for a period of three Business Days;

(2) Any representation, warranty or other written statement of an Obligor made in connection with any Loan Documents or transactions contemplated thereby is incorrect or misleading in any material respect when given;

(3) An Obligor breaches or fail to perform any covenant contained in **Section 7.2, 7.4, 7.6, 8.1, 8.2.4, 8.2.5, 8.6.2, 10.1.1, 10.1.2, 10.1.10, 10.2** or **10.3**;

(4) An Obligor breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 30 days after a Senior Officer of such Obligor has knowledge thereof or receives notice thereof from Agent, whichever is sooner; provided, however, that such notice and opportunity to cure shall not apply if the breach or failure to perform is not capable of being cured within such period;

(5) (i) A Guarantor repudiates, revokes or attempts to revoke its Guarantee; (ii) an Obligor or third party denies or contests the validity or enforceability of any Loan Documents or Obligations, or the perfection or priority of any Lien granted to Agent; or (iii) any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by Agent and Lenders);

(6) Any breach or default of an Obligor occurs under any Hedging Agreement, or any document, instrument or agreement to which it is a party or by which it or any of its Properties is bound, relating to any Debt (other than the Obligations) in excess of the Dollar Equivalent of \$10,000,000, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach;

(7) Any judgment or order for the payment of money is entered against an Obligor and is unsatisfied for a period of more than 30 days in an amount that exceeds, individually or cumulatively with all other unsatisfied judgments or orders against all Obligors,

the Dollar Equivalent of \$5,000,000 (net of any insurance coverage therefor acknowledged in writing by the insurer), unless a stay of enforcement of such judgment or order is in effect, by reason of a pending appeal or otherwise;

(8) A loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance (either individually or in the aggregate) exceeds the Dollar Equivalent of \$2,500,000;

(9) (i) An Obligor is enjoined, restrained or in any way prevented by any Governmental Authority from conducting any material part of its business and such enjoinder, restraint or prevention could reasonably be expected to have a Material Adverse Effect; (ii) an Obligor suffers the loss, revocation or termination of any material license, permit, lease or agreement necessary to its business and such loss, revocation or termination could reasonably be expected to have a Material Adverse Effect; (iii) there is a cessation of any material part of an Obligor's business for a material period of time and such cessation could reasonably be expected to have a Material Adverse Effect; (iv) any material Collateral or Property of an Obligor is taken or impaired through condemnation and such taking or impairment could reasonably be expected to have a Material Adverse Effect; (v) a Borrower agrees to or commences any liquidation, dissolution or winding up of its affairs; or (vi) a Borrower is not Solvent;

(10) (i) Any Obligor generally fails to pay, or admits in writing its inability or refusal to pay, its debts as they become due; (ii) an Insolvency Proceeding is commenced by any Obligor; (iii) any Obligor agrees to, commences or is subject to a liquidation, dissolution or winding up of its affairs; (iv) any Obligor makes an offer of settlement, extension, proposal (or files a notice of intention to make a proposal), plan of arrangement or composition to its unsecured creditors generally; (v) a Creditor Representative is appointed to take possession of any substantial Property of or to operate or sell any of the business of any Obligor; or (vi) an Insolvency Proceeding is commenced against any Obligor and (A) such Obligor consents to the institution of the proceeding against it, (B) such petition commencing the proceeding is not timely contested by such Obligor, (C) (1) in the case of an Obligor (other than a U.K. Domiciled Obligor) such petition is not dismissed within 30 days after its filing or (2) in the case of a U.K. Domiciled Obligor, such petition is a winding-up petition which is not frivolous or vexatious and is not discharged, stayed or dismissed within 14 days of commencement, or (D) an order for relief is entered in the proceeding;

(11) (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC in an aggregate amount in excess of \$10,000,000, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; (ii) an Obligor or ERISA Affiliate fails to pay when due 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 \$10,000,000; or (iii) any event similar to the foregoing occurs or exists with respect to a Foreign Plan;

(12) (A) a Termination Event shall occur or any Canadian Multi-Employer Plan shall be terminated, in each case, in circumstances which would result or could reasonably be expected to result in a Canadian Facility Obligor required to make a contribution to or in respect of a Canadian Pension Plan or a Canadian Multi-Employer Plan in an aggregate amount in excess of \$2,500,000 or results in the appointment, by FSCO, of an administrator to wind up a Canadian Pension Plan; (B) any Canadian Domiciled Obligor is in default with respect to any required contributions to a Canadian Pension Plan or fails to eliminate a solvency deficiency or keep such plan fully funded; or (C) any Lien arises (save for contribution amounts not yet due) in connection with any Canadian Pension Plan; or

(13) A Change of Control occurs.

11.a Remedies upon Default. If an Event of Default described in **Section 11.1(j)** occurs with respect to any Obligor, then to the extent permitted by Applicable Law, all Obligations (other than Secured Bank Product Obligations) shall become automatically due and payable and all Commitments shall terminate, without any action by Agent or notice of any kind. In addition, if any other Event of Default exists, Agent may in its discretion (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:

(14) declare any Obligations (other than Secured Bank Product Obligations) immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrowers to the fullest extent permitted by law;

(15) terminate, reduce or condition any Commitment, or make any adjustment to the Borrowing Base;

(16) require Obligors to Cash Collateralize LC Obligations, Secured Bank Product Obligations and other Obligations that are contingent or not yet due and payable, and, if Obligors fail promptly to deposit such Cash Collateral, Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Revolver Loans (whether or not an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied); and

(17) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC and the PPSA. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Obligors to assemble Collateral, at Obligors' expense, and make it available to Agent at a place designated by Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by an Obligor, Obligors agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent, in its discretion, deems advisable. Each Obligor agrees that 10 days' notice of any proposed sale or other disposition of Collateral by Agent shall be reasonable. Agent shall have the right to conduct such sales on any Obligor's premises, without charge, and such sales may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

11.b License. Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person), exercisable at any time following the occurrence and during the continuation of an Event of Default, any or all Intellectual Property of Obligors, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. Each Obligor's rights and interests under Intellectual Property shall inure to Agent's benefit.

11.c Setoff. At any time during an Event of Default, Agent, Issuing Banks, Lenders, and any of their Affiliates are authorized, 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 Agent, such Issuing Bank, such Lender or such Affiliate to or for the credit or the account of an Obligor against any Obligations, irrespective of whether or not Agent, such Issuing Bank, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, such Issuing Bank, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, each Issuing Bank, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

11.d Remedies Cumulative; No Waiver.

11.5.i. Cumulative Rights. All agreements, warranties, guaranties, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent and Lenders are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations.

11.5.ii. Waivers. No waiver or course of dealing shall be established by (a) the failure or delay of Agent or any Lender to require strict performance by Obligors with any terms of the Loan Documents, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. It is expressly acknowledged by Obligors that any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

11.e Judgment Currency. If, for purposes of obtaining judgment in any court, it is necessary to convert a sum from the currency provided under a Loan Document ("Agreement Currency") into another currency, the Spot Rate shall be used as the rate of exchange. Notwithstanding any judgment in a currency ("Judgment Currency") other than the Agreement Currency, an Obligor shall discharge its obligation in respect of any sum due under a Loan Document only if, on the Business Day following receipt by Agent or any Secured Party of payment in the Judgment Currency, Agent or such Secured Party can use the amount paid to purchase the sum originally due in the Agreement Currency. If the purchased amount is less than the sum originally due, such Obligor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Agent and Secured Parties against such loss. If the purchased amount is greater than the sum originally due, Agent or such Secured Party shall return the excess amount to such Obligor (or to the Person legally entitled thereto).

Section 12. AGENT

12.a Appointment, Authority and Duties of Agent.

12.1.i. Appointment and Authority.

(1) Each Secured Party appoints and designates Bank of America as Agent under all Loan Documents. Agent may, and each Secured Party authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents, for the benefit of Secured Parties. Each Secured Party agrees that any action taken by Agent, Required Lenders, U.S. Required Lenders, German Required Lenders, U.K. Required Lenders, or Canadian Required Lenders in accordance with the provisions of the Loan Documents, and the exercise by Agent or Required Lenders of any rights or remedies set forth therein, together with

all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from any Obligor or other Person; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law or otherwise. The duties of Agent shall be ministerial and administrative in nature, and Agent shall not have a fiduciary relationship with any Secured Party, Participant or other Person, by reason of any Loan Document or any transaction relating thereto. Agent alone shall be authorized to determine whether any Accounts or Inventory constitute Eligible Accounts, Eligible Inventory or Eligible In-Transit Inventory, whether to impose or release any reserve, or whether any conditions to funding or to issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Agent from liability to any Lender or other Person for any error in judgment.

(2) For the purposes of creating a solidarité active in accordance with Article 1541 of the Civil Code of Quebec between each Secured Party, taken individually, on the one hand, and the Agent, on the other hand, each Obligor and each such Secured Party acknowledge and agree with the Agent that such Secured Party and the Agent are hereby conferred the legal status of solidary creditors of each such Obligor in respect of all Obligations owed by each such Obligor to the Agent and such Secured Party hereunder and under the other Loan Documents (collectively, the “Solidary Claim”) and that, accordingly, but subject (for the avoidance of doubt) to Article 1542 of the Civil Code of Quebec, each such Obligor is irrevocably bound towards the Agent and each Secured Party in respect of the entire Solidary Claim of the Agent and such Secured Party. As a result of the foregoing, the parties hereto acknowledge that the Agent and each Secured Party shall at all times have a valid and effective right of action for the entire Solidary Claim of the Agent and such Secured Party and the right to give full acquittance for it. Accordingly, and without limiting the generality of the foregoing, the Agent, as solidary creditor with each Secured Party, shall at all times have a valid and effective right of action in respect of the Solidary Claim and the right to give a full acquittance for same. By its execution of the Loan Documents to which it is a party, each such Obligor not a party hereto shall also be deemed to have accepted the stipulations hereinabove provided. The parties further agree and acknowledge that such Liens (hypothecs) under the Security Documents and the other Loan Documents shall be granted to the Agent, for its own benefit and for the benefit of the Secured Parties, as solidary creditor as hereinabove set forth.

(3) Without limiting the foregoing or any powers of Agent, for the purposes of holding any hypothec granted to the Attorney (as defined below) pursuant to the laws of the Province of Québec to secure the prompt payment and performance of any and all Obligations by any Obligor, each of the Secured Parties hereby irrevocably appoints and authorizes Agent and, to the extent necessary, ratifies the appointment and authorization of Agent, to act as the hypothecary representative of the present and future creditors as contemplated under Article 2692 of the Civil Code (in such capacity, the “Attorney”), and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Attorney under any related deed of hypothec. The Attorney shall: (i) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Attorney pursuant to any such deed of hypothec and applicable law, and (ii) benefit from and be subject to all provisions hereof with respect to Agent mutatis mutandis, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Secured Parties and

Obligors. Any person who becomes a Secured Party shall, by its execution of an Assignment and Acceptance, be deemed to have consented to and confirmed the Attorney as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Secured Party, all actions taken by the Attorney in such capacity. The substitution of Agent pursuant to the provisions of this Section 12 also constitutes the substitution of the Attorney.

12.1.ii. Duties. Agent shall not have any duties except those expressly set forth in the Loan Documents. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.

12.1.iii. Agent Professionals. Agent may perform its duties through agents and employees. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

12.1.iv. Instructions of Required Lenders. The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against all Claims that could be incurred by Agent in connection with any act. Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and Agent shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting in accordance with the instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 14.1.1**. In no event shall Agent be required to take any action that, in its opinion, is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to personal liability.

12.1.v. Agent as Security Trustee. In this Agreement and the U.K. Security Agreements, any rights and remedies exercisable by, any documents to be delivered to, or any other indemnities or obligations in favor of Agent shall be, as the case may be, exercisable by, delivered to, or be indemnities or other obligations in favor of, Agent (or any other Person acting in such capacity) in its capacity as security trustee of Secured Parties to the extent that the rights, deliveries, indemnities or other obligations relate to the U.K. Security Agreements or the security thereby created. Any obligations of Agent (or any other Person acting in such capacity) in this Agreement and U.K. Security Agreements shall be obligations of Agent in its capacity as security trustee of Secured Parties to the extent that the obligations relate to the U.K. Security Agreements or the security thereby created. Additionally, in its capacity as security trustee of Secured Parties Agent (or any other Person acting in such capacity) shall have (i) all the rights, remedies and benefits in favor of Agent contained in the provisions of the whole of this **Section 12**; (ii) all the powers of an absolute owner of the security constituted by the U.K. Security Agreements and (iii) all the rights, remedies and powers granted to it and be subject to all the obligations and duties owed by it under the U.K. Security Agreements and/or any of the Loan Documents.

12.1.vi. Appointment of Agent as Security Trustee. Each Secured Party hereby appoints Agent to act as its trustee under and in relation to the U.K. Security Agreements and to hold the assets subject to the security thereby created as trustee for Secured Parties on the trusts and other terms contained in the U.K. Security Agreements and each Secured Party hereby irrevocably

authorizes Agent in its capacity as security trustee of Secured Parties to exercise such rights, remedies, powers and discretions as are specifically delegated to Agent as security trustee of Secured Parties by the terms of the U.K. Security Agreements together with all such rights, remedies, powers and discretions as are reasonably incidental thereto.

12.1.vii.Liens. Any reference in this Agreement to Liens stated to be in favor of Agent shall be construed so as to include a reference to Liens granted in favor of Agent in its capacity as security trustee of Secured Parties.

12.1.viii.Successors. Secured Parties agree that, if at any time that the Person acting as security trustee of Secured Parties in respect of the U.K. Security Agreements shall be a Person other than Agent, such other Person shall have the rights, remedies, benefits and powers granted to Agent in its capacity as security trustee of Secured Parties under this Agreement and the U.K. Security Agreements.

12.1.ix.Capacity. Nothing in **Sections 12.1.5 to 12.1.8** shall require Agent in its capacity as security trustee of Secured Parties under the U.K. Security Agreements to act as a trustee at common law or to be holding any property on trust, in any jurisdiction outside the U.K. which may not operate under principles of trust or where such trust would not be recognized or its effects would not be enforceable.

12.b Agreements Regarding Collateral and Field Examination Reports.

12.2.i.Lien Releases; Care of Collateral. Secured Parties authorize Agent to release any Lien with respect to any Collateral (a) upon Full Payment of the Obligations; (b) that is the subject of an Asset Disposition which Borrowers certify in writing to Agent is a disposition permitted hereunder or a Lien which Borrowers certify is a Permitted Lien entitled to priority over Agent's Liens (and Agent may rely conclusively on any such certificate without further inquiry); (c) that does not have, when aggregated with all other released Collateral under this clause (c) in any calendar year, a book value greater than \$5,000,000; or (d) with the written consent of all Lenders. Secured Parties authorize Agent to release or subordinate its Liens to any Lien permitted under **Section 10.2.1(j)** or **Section 10.2.1(p)**. Agent shall have no obligation to assure that any Collateral exists or is owned by a Borrower, or is cared for, protected, insured or encumbered, nor to assure that Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

12.2.ii.Possession of Collateral. Agent and Secured Parties appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control. If any Lender obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent's instructions.

12.2.iii.Reports. Agent shall promptly forward to each Lender, when complete, copies of any field audit, examination or appraisal report prepared by or for Agent with respect to any Obligor or Collateral ("Report"). Each Lender agrees (a) that neither Bank of America nor Agent makes any representation or warranty as to the accuracy or completeness of any Report, and shall not be liable for any information contained in or omitted from any Report; (b) that the Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing any audit or examination will inspect only specific information regarding Obligations or the Collateral and will rely significantly upon the applicable Obligors' books and records as well as upon representations of the applicable Obligors' officers and employees; and (c) to keep all Reports confidential and strictly for such Lender's internal use,

and not to distribute any Report (or the contents thereof) to any Person (except: (i) to such Lender's Participants, attorneys and accountants, (ii) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates, or (iii) to the extent required by Applicable Law or by any subpoena or other legal process) or use any Report in any manner other than administration of the Loans and other Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Report, as well as from any Claims arising as a direct or indirect result of Agent furnishing a Report to such Lender.

12.c Reliance By Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy or e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and upon the advice and statements of Agent Professionals. Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.

12.d Action Upon Default. Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in **Section 6**, unless it has received written notice from a Borrower or Required Lenders specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations (other than Secured Bank Product Obligations), or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC or PPSA sales or other similar dispositions of Collateral or to assert any rights relating to any Collateral.

12.e Ratable Sharing. No Lender shall set off against any Dominion Account without the prior consent of Agent. If any Lender shall obtain any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its share of such Obligation, determined on a Pro Rata basis or in accordance with **Section 5.6.1**, as applicable, such Lender shall forthwith purchase from Agent, the U.S. Issuing Bank (if such Obligation is a U.S. Facility Obligation), the Canadian Issuing Bank (if such Obligation is a Canadian Facility Obligation), the German Issuing Bank (if such Obligation is a German Facility Obligation), the U.K. Issuing Bank (if such Obligation is a U.K. Facility Obligation), and the other Lenders such participations in the affected Obligation as are necessary to cause the purchasing Lender to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.6.1**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the amount thereof to Agent for application under **Section 4.2.2** and it shall provide a written statement to Agent describing the Obligation affected by such payment or reduction. No Lender shall set off against any Dominion Account without the prior consent of the Agent

12.f Indemnification. EACH LENDER SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES AND ISSUING BANK INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE (OTHER THAN CLAIMS THAT ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE), PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES

FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT). In Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee or Issuing Bank Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any Creditor Representative, debtor-in-possession or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Lender to the extent of its Pro Rata share.

12.g Limitation on Responsibilities of Agent. Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

12.h Successor Agent and Co-Agents.

12.8.i Resignation; Successor Agent. Subject to the appointment and acceptance of a successor Agent as provided below, Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and Borrower Agent. Upon receipt of such notice, Required Lenders shall have the right to appoint a successor Agent which shall be (a) a U.S. Lender or an Affiliate of a U.S. Lender; or (b) a commercial bank that is organized under the laws of the United States or any state or district thereof, has a combined capital surplus of at least \$200,000,000 and (provided no Default or Event of Default exists) is reasonably acceptable to Borrower Agent. If no successor agent is appointed prior to the effective date of the resignation of Agent, then Agent may appoint a successor agent from among Lenders or, if no Lender accepts such role, Agent may appoint Required Lenders as successor Agent. Upon acceptance by a successor Agent of an appointment to serve as Agent hereunder, or upon appointment of Required Lenders as successor Agent, such successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent (including as security trustee of Secured Parties under the U.K. Security Agreements) without further act, and the retiring Agent shall be discharged from its duties and obligations hereunder but shall continue to have the benefits of the indemnification set forth in **Sections 12.6 and 14.2**. Notwithstanding any Agent's resignation, the provisions of this **Section 12** shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while Agent. Any successor to Bank of America by merger or acquisition of stock or this loan shall continue to be Agent (including as security trustee of Secured Parties under the U.K. Security Agreements) hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above.

12.8.ii Separate Collateral Agent. It is the intent of the parties that there shall be no violation of any Applicable Law denying or restricting the right of financial institutions to

transact business in any jurisdiction. If Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any Applicable Law, Agent may appoint an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to Agent under the Loan Documents shall also be vested in such separate agent. Secured Parties shall execute and deliver such documents as Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

12.i Due Diligence and Non-Reliance. Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Loans and participate in LC Obligations hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans and participating in LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates.

12.j Remittance of Payments and Collections.

12.10.i. Remittances Generally. All payments by any Lender to Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by Agent and request for payment is made by Agent by 11:00 a.m. (Applicable Time Zone) on a Business Day, payment shall be made by Lender not later than 2:00 p.m. (Applicable Time Zone) on such day, and if request is made after 11:00 a.m. (Applicable Time Zone), then payment shall be made by 11:00 a.m. (Applicable Time Zone) on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.

12.10.ii. Failure to Pay. If any Secured Party fails to pay any amount when due by it to Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate determined by Agent as customary in the banking industry for interbank compensation. In no event shall Obligors be entitled to receive credit for any interest paid by a Secured Party to Agent, nor shall any Defaulting Lender be entitled to interest on any amounts held by Agent pursuant to **Section 4.2**.

12.10.iii. Recovery of Payments. If Agent pays any amount to a Secured Party in the expectation that a related payment will be received by Agent from an Obligor and such related payment is not received, then Agent may recover such amount from each Secured Party that received it. If Agent determines at any time that an amount received under any Loan Document

must be returned to an Obligor or paid to any other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Agent shall not be required to distribute such amount to any Lender. If any amounts received and applied by Agent to any Obligations are later required to be returned by Agent pursuant to Applicable Law, each Lender shall pay to Agent, **on demand**, such Lender's Pro Rata share of the amounts required to be returned.

12.k Agent in its Individual Capacity. As a Lender, Bank of America shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders," "U.S. Required Lenders," "German Required Lenders," "U.K. Required Lenders," "Canadian Required Lenders" or any similar term shall include Bank of America, if applicable, in its capacity as a Lender. Bank of America and its Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if Bank of America were not Agent hereunder, without any duty to account therefor to Lenders. In their individual capacities, Bank of America and its Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Secured Party agrees that Bank of America and its Affiliates shall be under no obligation to provide such information to any Secured Party, if acquired in such individual capacity.

12.l Agent Titles. Each Lender, other than Bank of America, that is designated (on the cover page of this Agreement or otherwise) by Bank of America as an "Agent" or "Arranger" of any type shall not have any right, power, responsibility or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event be deemed to have any fiduciary relationship with any other Lender.

12.m Bank Product Providers. Each Secured Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by **Section 5.6** and this **Section 12**. Each Secured Bank Product Provider shall indemnify and hold harmless Agent Indemnitees, to the extent not reimbursed by Obligors, against all Claims that may be incurred by or asserted against any Agent Indemnitee in connection with such provider's Secured Bank Product Obligations, unless such Claim is caused by the gross negligence or willful misconduct of such Agent Indemnitee.

12.n No Third Party Beneficiaries. This **Section 12** is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations. This **Section 12** does not confer any rights or benefits upon Obligors or any other Person. As between Obligors and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

Section 13. BENEFIT OF AGREEMENT; ASSIGNMENTS

13.a Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Obligors, Agent, Lenders, Secured Parties, and their respective successors and assigns, except that (a) no Obligor shall have the right to assign its rights or delegate its obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with **Section 13.3**. Agent may treat the Person which made any Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 13.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

13.b Participations.

13.2.i. Permitted Participants; Effect. Any Lender may, in the Ordinary Course of Business and in accordance with Applicable Law, at any time sell to a financial institution (“Participant”) a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of participating interests to a Participant, such Lender’s obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for performance of such obligations, such Lender shall remain the holder of its Loans and Commitments for all purposes, all amounts payable by Obligors shall be determined as if such Lender had not sold such participating interests, and Obligors and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of **Section 5.9** unless Borrower Agent agrees otherwise in writing.

13.2.ii. Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of any Loan Documents other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Loan or Commitment in which such Participant has an interest, postpones the Canadian Revolver Commitment Termination Date (if such Participant has an interest in the Canadian Revolver Commitments), U.K. Revolver Commitment Termination Date (if such Participant has an interest in the U.K. Revolver Commitments), German Revolver Commitment Termination Date (if such Participant has an interest in the German Revolver Commitments), or U.S. Revolver Commitment Termination Date (if such Participant has an interest in the U.S. Revolver Commitments), or any date fixed for any regularly scheduled payment of principal, interest or fees on such Loan or Commitment, or releases any Borrower, Guarantor or substantial portion of the Collateral.

13.2.iii. Benefit of Set-Off. Obligors agree that each Participant shall have a right of set-off in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.5** as if such Participant were a Lender.

13.c Assignments.

13.3.i. Permitted Assignments.

(1) A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (i) each assignment is of a constant, and not a varying, percentage of the transferor Lender’s rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of \$10,000,000 (unless otherwise agreed by Agent in its discretion) and integral multiples of \$1,000,000 in excess of that amount; (ii) except in the case of an assignment in whole of a Lender’s rights and obligations, the aggregate amount of the Commitments retained by the transferor Lender is at least \$10,000,000 (unless otherwise agreed by Agent in its discretion); and (iii) the parties to each such assignment shall execute and deliver to Agent, for its acceptance and recording, an Assignment and Acceptance. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to (x) any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors and any Operating Circular issued by such Federal Reserve Bank, or (y) counterparties to swap

agreements relating to any Loans; provided, however, that any payment by Obligors to the assigning Lender in respect of any Obligations assigned as described in this sentence shall satisfy Obligors' obligations hereunder to the extent of such payment, and no such assignment shall release the assigning Lender from its obligations hereunder.

(2) Notwithstanding anything contained herein to the contrary, no assignment may be made unless after giving effect thereto:

(6) the percentage of each U.S. Lender's U.S. Revolver Commitment to the aggregate amount of all U.S. Revolver Commitments equals the percentage of such Lender's and such Lender's Affiliates': (1) Canadian Revolver Commitment to the aggregate amount of all Canadian Revolver Commitments, (2) U.K. Revolver Commitment to the aggregate amount of all U.K. Revolver Commitments, and (3) German Revolver Commitment to the aggregate amount of all German Revolver Commitments;

(7) the percentage of each Canadian Lender's Canadian Revolver Commitment to the aggregate amount of all Canadian Revolver Commitments equals the percentage of such Lender's and such Lender's Affiliates': (1) U.S. Revolver Commitment to the aggregate amount of all U.S. Revolver Commitments, (2) U.K. Revolver Commitment to the aggregate amount of all U.K. Revolver Commitments, and (3) German Revolver Commitment to the aggregate amount of all German Revolver Commitments;

(8) the percentage of each German Lender's German Revolver Commitment to the aggregate amount of all German Revolver Commitments equals the percentage of such Lender's and such Lender's Affiliates': (1) U.S. Revolver Commitment to the aggregate amount of all U.S. Revolver Commitments, (2) U.K. Revolver Commitment to the aggregate amount of all U.K. Revolver Commitments, and (3) Canadian Revolver Commitment to the aggregate amount of all Canadian Revolver Commitments; and

(9) the percentage of each U.K. Lender's U.K. Revolver Commitment to the aggregate amount of all U.K. Revolver Commitments equals the percentage of such Lender's and such Lender's Affiliates': (1) U.S. Revolver Commitment to the aggregate amount of all U.S. Revolver Commitments, (2) Canadian Revolver Commitment to the aggregate amount of all Canadian Revolver Commitments, and (3) German Revolver Commitment to the aggregate amount of all German Revolver Commitments.

13.3.ii. Effect; Effective Date. Upon delivery to Agent of an assignment notice in the form of **Exhibit C** and a processing fee of \$3,500 (unless otherwise agreed by Agent in its discretion), the assignment shall become effective as specified in the notice, if it complies with this **Section 13.3**. From such effective date, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder. Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new Notes, as applicable. The transferee Lender shall comply with **Section 5.10** and deliver, upon request, an administrative questionnaire satisfactory to Agent.

13.3.iii. Certain Assignees. No assignment or participation may be made to an Obligor, Affiliate of an Obligor, Defaulting Lender or natural person. In connection with any assignment by a Defaulting Lender, such assignment shall be effective only upon payment by the Eligible Assignee or Defaulting Lender to Agent of an aggregate amount sufficient, upon distribution (through direct payment, purchases of participations or other compensating actions as Agent

deems appropriate), (a) to satisfy all funding and payment liabilities then owing by the Defaulting Lender hereunder, and (b) to acquire its Pro Rata share of all Loans and LC Obligations. If an assignment by a Defaulting Lender shall become effective under Applicable Law for any reason without compliance with the foregoing sentence, then the assignee shall be deemed a Defaulting Lender for all purposes until such compliance occurs.

13.d Replacement of Certain Lenders. If a Lender (a) fails to give its consent to any amendment, waiver or action for which consent of all Lenders was required and Required Lenders consented, or (b) is a Defaulting Lender, then, in addition to any other rights and remedies that any Person may have, Agent or Borrower Agent may, by notice to such Lender within 120 days after such event, require such Lender to assign all of its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment and Acceptance(s), within 20 days after the notice. Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment and Acceptance if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents, including all principal, interest and fees through the date of assignment (but excluding any prepayment charge).

Section 14. MISCELLANEOUS

14.a Consents, Amendments and Waivers.

14.1.i. Amendment. No modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of the Required Lenders or of Agent (with the consent of Required Lenders) and each Obligor party to such Loan Document; provided, however, that

(1) without the prior written consent of Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties or discretion of Agent;

(2) without the prior written consent of each affected Issuing Bank, no modification shall be effective with respect to any LC Obligations, **Section 2.2, Section 2.3, Section 2.4**, or any other provision in a Loan Document that relates to any rights, duties or discretion of such affected Issuing Bank;

(3) without the prior written consent of each affected Lender, including a Defaulting Lender, no modification shall be effective that would (i) increase the Commitment of such Lender; (ii) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2**); (iii) extend the Commitment of such Lender, or (iv) amend this clause (c);

(4) without the prior written consent of all Lenders (except any Defaulting Lender), no modification shall be effective that would (i) extend the U.S. Revolver Commitment Termination Date, the U.K. Revolver Commitment Termination Date, the Canadian Revolver Commitment Termination Date, the German Revolver Commitment Termination Date, the Term Loan Maturity Date, or the Facility Termination Date, (ii) alter **Section 5.6, 7.1** (except to add Collateral), **12.5** or **14.1.1**; (iii) amend the definition of Pro Rata, Supermajority Lenders, or Required Lenders; (iv) increase any advance rate; (v) release Collateral with a book value greater than \$5,000,000 during any calendar year, except as currently contemplated by the Loan Documents; or (vi) release any Obligor from liability for any Obligations;

(5) without the prior written consent of the Supermajority Lenders, no modification shall be effective that would amend (i) the definition of U.S. Borrowing Base (or any defined term used in such definition, including any defined term used therein) to the extent that any such amendment results in more credit being made available to U.S. Borrowers, (ii) the Canadian Borrowing Base (or any defined term used in such definition, including any defined term used therein) to the extent that any such amendment results in more credit being made available to the Canadian Borrower, (iii) the German Borrowing Base (or any defined term used in such definition, including any defined term used therein) to the extent that any such amendment results in more credit being made available to the German Borrower, or (iv) the U.K. Borrowing Base (or any defined term used in such definition, including any defined term used therein) to the extent that any such amendment results in more credit being made available to the U.K. Borrower;

(6) without the prior written consent of a Secured Bank Product Provider, no modification shall be effective that affects its relative payment priority under **Section 5.6**;

(7) without the prior written consent of all Lenders, (i) the Obligations shall not be subordinated to any other obligations, and (ii) Agent shall not agree to subordinate its Liens in the Collateral to any other Liens except to the extent contemplated by **Section 12.2.1**;

(8) without the prior written consent of all: (i) U.S. Lenders, amend the definition of U.S. Required Lenders, (ii) Canadian Lenders, amend the definition of Canadian Required Lenders, (iii) U.K. Lenders, amend the definition of U.K. Required Lenders, (iv) German Lenders, amend the definition of German Required Lenders, and (v) U.S. Lenders having Term Loan Commitments, amend the definition of U.S. Required Term Lenders; and

(9) if Real Estate secures any Obligations, no modification of a Loan Document shall add, increase, renew or extend any credit line hereunder until the completion of flood diligence and documentation as required by all Flood Laws.

14.1.ii. **Limitations.** The agreement of Obligor shall not be necessary to the effectiveness of any modification of a Loan Document that deals solely with the rights and duties of Lenders, Agent and/or Issuing Banks as among themselves. Only the consent of the parties to the Fee Letters or any agreement relating to a Bank Product shall be required for any modification of such agreement, and any non-Lender that is party to a Bank Product agreement shall have no right to participate in any manner in modification of any other Loan Document. Any waiver or consent granted by Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified.

14.1.iii. **Payment for Consents.** No Obligor will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

14.b Indemnity. EACH OBLIGOR SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE. In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnatee with respect to a Claim that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnatee.

14.c Notices and Communications.

14.3.i. Notice Address. Subject to **Section 4.1.4**, all notices and other communications by or to a party hereto shall be in writing and shall be given to any Obligor, at Borrower Agent's address shown on the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment and Acceptance), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. Each such notice or other communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the mail, with first-class postage pre-paid, addressed to the applicable address; or (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged. Notwithstanding the foregoing, no notice to Agent pursuant to **Section 2.1.4, 2.2, 2.3, 2.4, 3.1.2, or 4.1.1** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any written notice or other communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by Borrower Agent shall be deemed received by all Obligors.

14.3.ii. Electronic Communications; Voice Mail. Electronic mail and internet websites may be used only for routine communications, such as financial statements, Borrowing Base Certificates and other information required by **Section 10.1.2**, administrative matters, distribution of Loan Documents, and matters permitted under **Section 4.1.4**. Agent and Lenders make no assurances as to the privacy and security of electronic communications. Electronic and voice mail may not be used as effective notice under the Loan Documents.

14.3.iii. Non-Conforming Communications. Agent and Lenders may rely upon any notices purportedly given by or on behalf of any Obligor even if such notices were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Obligor shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any telephonic communication purportedly given by or on behalf of an Obligor.

14.d Performance of Obligors' Obligations. Agent may, in its discretion at any time and from time to time, at the applicable Borrowers' expense, pay any amount or do any act required of an Obligor under any Loan Documents or otherwise lawfully requested by Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All payments, costs and expenses (including Extraordinary Expenses) of Agent under this Section shall be reimbursed to Agent by Borrowers, **on demand**, with interest from the date incurred to the date of payment thereof at the Default Rate applicable to U.S. Base Rate Revolver Loans. Any payment made or action taken by Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

14.e Credit Inquiries. Each Obligor hereby authorizes Agent and Lenders (but they shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.

14.f Severability. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be

invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

14.g Cumulative Effect; Conflict of Terms. The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations, tests or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

14.h Counterparts. Any Loan Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Agent has received counterparts bearing the signatures of all parties hereto. Delivery of a signature page of any Loan Document by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of such agreement.

14.i Entire Agreement. Time is of the essence of the Loan Documents. The Loan Documents constitute the entire contract among the parties relating to the subject matter hereof, and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

14.j Relationship with Lenders. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, association, joint venture or any other kind of entity, nor to constitute control of any Obligor.

14.k Lender Loss Sharing Agreement.

(10) **Definitions.** As used in this **Section 14.11**, the following terms shall have the following meanings:

(10) **CAM:** the mechanism for the allocation and exchange of interests in the Loans, participations in Letters of Credit and collections thereunder established under **Section 14.11(b)**.

(11) **CAM Exchange:** the exchange of the U.S. Lenders' interests, the U.K. Lenders' interests, the German Lenders' interests and the Canadian Lenders' interests provided for in **Section 14.11(b)**.

(12) **CAM Exchange Date:** the first date after the Closing Date on which there shall occur (a) any event described in **Section 11.1(j)** with respect to any Borrower, or (b) an acceleration of Loans and termination of the Commitments pursuant to **Section 11.2**.

(13) **CAM Percentage:** as to each Lender, a fraction, (a) the numerator of which shall be the aggregate amount of such Lender's Revolver Commitments immediately prior to the CAM Exchange Date and the termination of the Revolver Commitments, and (b) the denominator of which shall be the amount of the Revolver

Commitments of all the Lenders immediately prior to the CAM Exchange Date and the termination of the Revolver Commitments.

(14) Designated Obligations: all Obligations of the Borrowers with respect to (a) principal and interest under the U.S. Revolver Loans, U.K. Revolver Loans, Canadian Revolver Loans, German Revolver Loans, Overadvance Loans and Protective Advances, (b) unreimbursed drawings under Letters of Credit and interest thereon, and (c) fees under **Sections 3.2.1, 3.2.2(a), 3.2.3(a), and 3.2.4(a)**.

(15) Revolver Facilities: the facility established under the U.S. Revolver Commitments, the U.K. Revolver Commitments, the German Revolver Commitments, and the Canadian Revolver Commitments, and Revolver Facility means any one of such Revolver Facilities.

(11) CAM Exchange.

19. On the CAM Exchange Date,

(1) the U.S. Revolver Commitments, the U.K. Revolver Commitments, the German Revolver Commitments, and the Canadian Revolver Commitments shall have terminated in accordance with **Section 11.2**,

(2) each U.S. Lender shall fund its participation in any outstanding Protective Advances in accordance with **Section 2.1.6**, each U.K. Lender shall fund its participation in any outstanding Protective Advances in accordance with **Section 2.1.6**, each German Lender shall fund its participation in any outstanding Protective Advances in accordance with **Section 2.1.6**, and each Canadian Lender shall fund its participation in any outstanding Protective Advances in accordance with **Section 2.1.6**,

(3) each U.S. Lender shall fund its participation in any unreimbursed drawings made under the applicable Letters of Credit pursuant to **Section 2.3.2(b)**, each Canadian Lender shall fund its participation in any unreimbursed drawings made under the applicable Letters of Credit pursuant to **Section 2.4.2(b)**, each German Lender shall fund its participation in any unreimbursed drawings made under the applicable Letters of Credit pursuant to **Section 2.5.2(b)**, and each U.K. Lender shall fund its participation in any unreimbursed drawings made under the applicable Letters of Credit pursuant to **Section 2.2.2(b)**, and

(4) the Lenders shall purchase at par interests (in Dollars) in the Designated Obligations under each Revolver Facility (and shall make payments to Agent for reallocation to other Lenders to the extent necessary to give effect to such purchases) and shall assume the obligations to reimburse the applicable Issuing Bank for unreimbursed drawings under outstanding Letters of Credit under such Revolver Facility such that, in lieu of the interests of each Lender in the Designated Obligations under the U.S. Revolver Commitments, the U.K. Revolver Commitments, the German Revolver Commitments, and the Canadian Revolver Commitments in which it shall participate immediately prior to the CAM Exchange Date, such Lender shall own an interest equal to such Lender's CAM Percentage in each component of the Designated Obligations immediately following the CAM Exchange.

(1) Each Lender and each Person acquiring a participation from any Lender as contemplated by **Section 13.2** hereby consents and agrees to the CAM Exchange. Each Borrower agrees from time to time to execute and deliver to Lenders all such promissory notes and other instruments and documents as Agent shall reasonably request to evidence and confirm the respective interests and obligations of Lenders after giving effect to the CAM Exchange, and each Lender agrees to surrender any promissory notes originally received by it in connection with its Loans under this Agreement to Agent against delivery of any promissory notes so executed and delivered; provided that the failure of any Lender to deliver or accept any such promissory note, instrument or document shall not affect the validity or effectiveness of the CAM Exchange.

(2) As a result of the CAM Exchange, from and after the CAM Exchange Date, each payment received by Agent pursuant to any Loan Document in respect of any of the Designated Obligations shall be distributed to Lenders, pro rata in accordance with their respective CAM Percentages.

(3) In the event that on or after the CAM Exchange Date, the aggregate amount of the Designated Obligations shall change as a result of the making of a disbursement under a Letter of Credit by any Issuing Bank that is not reimbursed by the applicable Borrowers, then each Lender shall promptly reimburse such Issuing Bank for its CAM Percentage of such unreimbursed payment.

(3) Notwithstanding any other provision of this **Section 14.11**, Agent and each Lender agree that if Agent or a Lender is required under Applicable Law to withhold or deduct any taxes or other amounts from payments made by it hereunder or as a result hereof, such Person shall be entitled to withhold or deduct such amounts and pay over such taxes or other amounts to the applicable Governmental Authority imposing such tax without any obligation to indemnify Agent or any Lender with respect to such amounts and without any other obligation of gross up or offset with respect thereto and there shall be no recourse whatsoever by Agent or any Lender subject to such withholding to Agent or any other Lender making such withholding and paying over such amounts, but without diminution of the rights of Agent or such Lender subject to such withholding as against Borrowers and the other Obligor to the extent (if any) provided in this Agreement and the other Loan Documents. Any amounts so withheld or deducted shall be treated as, for the purpose of this **Section 14.11**, having been paid to Agent or such Lender with respect to which such withholding or deduction was made.

14.a No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated by any Loan Document, Obligors acknowledge and agree that (a)(i) this credit facility and any related arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Obligors and such Person; (ii) Obligors have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Obligors are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger 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 Obligors, any of their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Obligors and their Affiliates, and have no obligation to disclose any of such interests to Obligors or their Affiliates. To the fullest extent permitted by Applicable Law, each Obligor hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

14.b Confidentiality. Each of Agent, Lenders and Issuing Banks shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, advisors and representatives (provided such Persons are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto; (e) in connection with any action or proceeding, or other exercise of rights or remedies, relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or any actual or prospective party (or its advisors) to any Bank Product; (g) with the consent of Borrower Agent; or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) is available to Agent, any Lender, any Issuing Bank or any of their Affiliates on a nonconfidential basis from a source other than Obligors. Notwithstanding the foregoing, Agent and Lenders may publish or disseminate general information describing this credit facility, including the names and addresses of Obligors and a general description of Obligors' businesses, and may use Obligors' logos, trademarks or product photographs in advertising materials. As used herein, "Information" means all information received from an Obligor, Subsidiary or Excluded Subsidiary relating to it or its business that is identified as confidential when delivered. Any Person required to maintain the confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises the same degree of care that it accords its own confidential information. Each of Agent, Lenders and Issuing Banks acknowledges that (i) Information may include material non-public information concerning an Obligor, Subsidiary or Excluded Subsidiary; (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 federal, state, provincial and territorial securities laws.

14.c GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS OTHERWISE SPECIFIED, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES (BUT GIVING EFFECT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATION LAW AND FEDERAL LAWS RELATING TO NATIONAL BANKS).

14.d Consent to Forum; Judicial Reference; Bail-In of Affected Financial Institutions.

14.15.i Forum. EACH OBLIGOR HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURT SITTING IN OR WITH JURISDICTION OVER NEW YORK, NEW YORK, IN ANY PROCEEDING OR DISPUTE RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY SUCH PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH OBLIGOR IRREVOCABLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1. Nothing herein shall limit the right of Agent or any Lender to bring proceedings against any Obligor in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.

14.15.ii. **Judicial Reference.** If any controversy or claim among the parties relating in any way to any Obligations or Loan Documents, including any alleged tort, shall be pending before any court sitting in or with jurisdiction over California or applying California law, then at the request of any party such proceeding shall be referred by the court to a referee (who shall be an active or retired judge) to hear and determine all issues in such proceeding (whether of fact or law) and to report a statement of decision for adoption by the court. Nothing in this Section shall limit any right of Agent or any other Secured Party to exercise self-help remedies, such as setoff, foreclosure or sale of any Collateral, or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, during or after any judicial reference. The exercise of a remedy does not waive the right of any party to resort to judicial reference. At Agent's option, foreclosure under a mortgage or deed of trust may be accomplished either by exercise of power of sale thereunder or by judicial foreclosure.

14.15.iii. **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 the parties, each party hereto (including each Secured Party) acknowledges that, with respect to any Secured Party that is an Affected Financial Institution, any unsecured liability of such Secured Party arising under a Loan Document may be subject to the write-down and conversion powers of the applicable Resolution Authority, and each party hereto agrees and consents to, and acknowledges and agrees to be bound by, (a) the application of any Write-Down and Conversion Powers by an the applicable Resolution Authority to any such liability which may be payable to it by such Secured Party; and (b) the effects of any Bail-in Action on any such liability, including (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, or a bridge institution that may be issued to the party 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 any Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of any Write-Down and Conversion Powers.

14.1 Waivers by Obligors. To the fullest extent permitted by Applicable Law, each Obligor waives (a) the right to trial by jury (which Agent and each Lender hereby also waives) in any proceeding or dispute of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Agent on which an Obligor may in any way be liable, and hereby ratifies anything Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisal and exemption laws; (f) any claim against Agent, any Issuing Bank or any Lender, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Obligor acknowledges that the foregoing waivers are a material inducement to Agent, Issuing Banks and Lenders entering into this Agreement and that they are relying upon the foregoing in their dealings with Obligors. Each Obligor has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

14.m Patriot Act and AML Legislation Notice. Agent and Lenders hereby notify Obligors that pursuant to the requirements of the Patriot Act, the Proceeds of Crime Act and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know

your client” policies, regulations, laws or rules (the Proceeds of Crime Act and such other applicable policies, regulations, laws or rules, collectively, including any guidelines or orders thereunder, “AML Legislation”), Agent and Lenders are required to obtain, verify and record information that identifies each Obligor, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act and the AML Legislation. Agent and Lenders will also require information regarding each personal guarantor, if any, and may require information regarding Obligors’ management and owners, such as legal name, address, social security number and date of birth. Each Obligor shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by Agent, Issuing Bank, any Lender or any prospective assignee or participant of a Lender, in order to comply with any “know your customer,” anti-money laundering rules and regulations, or other requirements of Applicable Law, including the Patriot Act, the Beneficial Ownership Regulation and/or the applicable AML Legislation, whether now or hereafter in existence.

14.n Canadian Anti-Money Laundering Legislation. If the Agent has ascertained the identity of any Canadian Facility Obligor or any authorized signatories of any Canadian Facility Obligor for the purposes of applicable AML Legislation, then the Agent: (a) shall be deemed to have done so as an agent for each Canadian Lender, and this Agreement shall constitute a “written agreement” in such regard between each Canadian Lender and the Agent within the meaning of the applicable AML Legislation; and (b) shall provide to each Canadian Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness. Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Canadian Lenders agrees that Agent has no obligation to ascertain the identity of the Canadian Facility Obligors or any authorized signatories of the Canadian Facility Obligors on behalf of any Canadian Lender, or to confirm the completeness or accuracy of any information it obtains from any Canadian Facility Obligor or any such authorized signatory in doing so.

14.o Parallel Debt Undertaking.

14.19.i. The parallel debt undertaking created hereunder (“Parallel Debt Undertaking”) (*abstraktes Schuldanerkenntnis*) is constituted in order to secure the prompt and complete satisfaction of any of the respective German Borrower’s German Facility Obligations. The Parallel Debt Undertaking shall also cover any future extension, prolongation, increase or novation of the German Facility Obligations.

14.19.ii. For the purposes of taking and ensuring the continuing validity of security under those security documents subject to the laws of (or to the extent affecting assets situated in) Germany and such other jurisdictions as the Secured Parties and the Obligors (each acting reasonably) agree, notwithstanding any contrary provision in this Agreement:

(12) each Obligor undertakes (such undertakings, the “Parallel Obligations”) to pay to the Agent amounts equal to all present and future amounts owing by it to the Secured Parties under the Loan Documents (“Original Obligations”);

(13) the Agent shall have its own independent right to demand and receive payment under the Parallel Obligations;

(14) the Parallel Obligations shall, subject to clause (d) below, not limit or affect the existence of the Original Obligations for which the Secured Parties shall have an independent right to demand payment;

(15) notwithstanding clauses (b) and (c) above, payment by the Obligor of its Parallel Obligations shall to the same extent decrease and be a good discharge of the corresponding Original Obligations owing to the relevant Secured Parties and payment by an Obligor of its Original Obligations to the relevant Secured Parties shall to the same extent decrease and be a good discharge of the Parallel Obligations owing by it to the Agent;

(16) the Parallel Obligations are owed to the Agent in its own name on behalf of itself and not as agent or representative of any other person nor as trustee;

(17) without limiting or affecting the Agent's right to protect, preserve or enforce its rights under any Loan Document, the Agent undertakes to each of the Secured Parties not to exercise its rights in respect of the Parallel Obligations without the consent of the relevant Secured Parties; and

(18) the Agent shall distribute any amount so received to the Secured Parties in accordance with the terms of this Agreement as if such amounts had been received in respect of the Original Obligations.

14.19.iii. Upon complete and irrevocable satisfaction of the German Facility Obligations, the Agent shall without undue delay at the cost and expense of the Obligors release the Parallel Debt Undertaking.

14.p Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Obligor for liquidation or reorganization, should any Obligor become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of such Obligor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to Applicable Law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference", "fraudulent conveyance" or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

14.q Nonliability of Lenders. Neither the Agent, any Issuing Bank nor any Lender undertakes any responsibility to any Obligor to review or inform any Obligor of any matter in connection with any phase of any Obligor's business or operations. Each Obligor agrees, on behalf of itself and each other Obligor, that neither the Agent, any Issuing Bank nor any Lender shall have liability to any Obligor (whether sounding in tort, contract or otherwise) for losses suffered by any Obligor in connection with, arising out of or in any way related to any of the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless it is determined in a final, non-appealable judgment by a court of competent jurisdiction that such losses resulted from the gross negligence or willful misconduct of the party from which recovery is sought or a breach of obligations under this Agreement by the party from which recovery is sought. **NEITHER THE AGENT NOR ANY LENDER SHALL BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE BY OTHERS OF ANY INFORMATION OR OTHER MATERIALS OBTAINED THROUGH INTRALINKS OR OTHER SIMILAR INFORMATION TRANSMISSION SYSTEMS IN CONNECTION WITH THIS AGREEMENT.**

14.r Know Your Customer. Nothing in this Agreement shall oblige the Agent to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it

is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent.

14.s Amendment and Restatement.

14.23.i. This Agreement amends and restates in its entirety the Third Amended and Restated Loan Agreement and, upon the effectiveness of this Agreement, the terms and provisions of the Third Amended and Restated Loan Agreement shall, subject to **Section 14.23.3**, be superseded hereby.

14.23.ii. Notwithstanding the amendment and restatement of the Third Amended and Restated Loan Agreement by this Agreement, all of the Obligations under the Third Amended and Restated Loan Agreement which remain outstanding as of the date hereof, shall constitute Obligations owing hereunder. This Agreement is given in substitution for the Third Amended and Restated Loan Agreement, and not as payment of the Obligations of the Borrowers thereunder, and is in no way intended to constitute a novation of the Third Amended and Restated Loan Agreement.

14.23.iii. Upon the effectiveness of this Agreement, unless the context otherwise requires, each reference to the Third Amended and Restated Loan Agreement in any of the Loan Documents and in each document, instrument or agreement executed and/or delivered in connection therewith shall mean and be a reference to this Agreement. Except as expressly modified as of the Closing Date, all of the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed. Without limiting the generality of the foregoing, all security interests, pledges, assignments and other Liens and Guarantees previously granted by any Obligor pursuant to the Loan Documents executed and delivered in connection with the Original Loan Agreement, the Original Amended and Restated Loan Agreement, the Second Amended and Restated Loan Agreement or the Third Amended and Restated Loan Agreement are hereby reaffirmed, ratified, renewed and continued, and all such security interests, pledges, assignments and other Liens and Guarantees shall remain in full force and effect as security for the Obligations on and after the Closing Date.

14.t Intercreditor Agreement. Notwithstanding anything herein to the contrary, the priority of the Lien and security interest granted to the Agent pursuant to any Loan Document and the exercise of any right or remedy in respect of the Collateral by the Agent (or any Secured Party) hereunder or under any other Loan Document are subject to the provisions of the Intercreditor Agreement and in the event of any conflict between the terms of the Intercreditor Agreement and any Loan Document, the terms of the Intercreditor Agreement shall govern and control. Notwithstanding anything herein to the contrary, prior to the Discharge of Term Loan Obligations (as defined in the Intercreditor Agreement), (i) the delivery or granting of "control" (as defined in the UCC) to the extent only one Person can be granted "control" therein under applicable law of any Term Loan Collateral (as defined in the Intercreditor Agreement) by the Term Loan Collateral Agent pursuant to the terms of the Term Loan Collateral Documents (as defined in the Intercreditor Agreement) shall satisfy any such "control" requirement hereunder or under any other Loan Document with respect to any Term Loan Collateral to the extent that such "control" is consistent with the terms of the Intercreditor Agreement and (ii) the possession of any Term Loan Collateral by the Term Loan Collateral Agent pursuant to the terms of the Term Loan Collateral Documents shall satisfy any such possession requirement hereunder or under any other Loan Document with respect to Term Loan Collateral to the extent that such possession is consistent with the terms of the Intercreditor Agreement.

14.u Acknowledgement Regarding Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap 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).

14.25.i.Covered Party. If 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, 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 Regimes 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. If a Covered Party or 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 Regimes if the Supported QFC and 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.

14.25.ii.Definitions. As used in this Section, (a) "BHC Act Affiliate" means an "affiliate," as defined in and interpreted in accordance with 12 U.S.C. §1841(k); (b) "Default Right" has the meaning assigned in and interpreted in accordance with 12 C.F.R. §§252.81, 47.2 or 382.1, as applicable; and (c) "QFC" means a "qualified financial contract," as defined in and interpreted in accordance with 12 U.S.C. §5390(c)(8)(D).

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first above written.

OBLIGORS:

CALLAWAY GOLF COMPANY,
a Delaware corporation

By: _____
Name: Brian P. Lynch
Title: Executive Vice President and Chief
Financial Officer
Address for Borrower Agent:

Callaway Golf Company
2180 Rutherford Road
Carlsbad, CA 92008
Attention: Brian P. Lynch
Telephone: (760) 804-4056
Email:
Brian.Lynch@callawaygolf.com

With a copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166-0193
Attention: Aaron F. Adams
Facsimile: (212) 351-2494
Email: AFAdams@gibsondunn.com

CALLAWAY GOLF SALES COMPANY,
a California corporation

By:

Name: Jennifer L. Thomas
Title: Chief Financial Officer and Treasurer
**CALLAWAY GOLF BALL
OPERATIONS, INC.,**
a Delaware corporation

By:

Name: Jennifer L. Thomas
Title: Treasurer

OGIO INTERNATIONAL, INC.,
a Utah corporation

By: __
Name: Patrick S. Burke
Title: Vice President and Treasurer
TRAVISMATHEW, LLC,
a California limited liability company

By: __
Name: Patrick S. Burke
Title: Treasurer
**CALLAWAY GOLF INTERACTIVE,
INC.**
a Texas corporation

By: __
Name: Jennifer L. Thomas
Title: Chief Financial Officer
**CALLAWAY GOLF INTERNATIONAL
SALES COMPANY,**
a California corporation

By: __
Name: Patrick S. Burke
Title: President
CALLAWAY GOLF CANADA LTD.,
a Canada corporation

By: __
Name: Patrick S. Burke
Title: Director
CALLAWAY GOLF EUROPE LTD.,
a company organized under the laws of
England and Wales

By: __
Name: Patrick S. Burke
Title: Director

By: __
Name: Neil Howie
Title: Director

**CALLAWAY GOLF EUROPEAN
HOLDING COMPANY LIMITED,**
a company limited by shares incorporated
under the laws of England and Wales

By: __
Name: Neil Howie
Title: Director

By: __
Name: Steven Gluyas
Title: Director

**CALLAWAY GERMANY HOLDCO
GMBH,**
a limited liability company (*Gesellschaft mit
beschränkter Haftung*) under the laws of the
Federal Republic of Germany

By:

Name:

Title:

By:

Name:

Title:

JW STARGAZER HOLDING GMBH,
a limited liability company (*Gesellschaft mit
beschränkter Haftung*) under the laws of the
Federal Republic of Germany

By:

Name:

Title:

By:

Name:

Title:

SKYRAGER GMBH,
a limited liability company (*Gesellschaft mit beschränkter Haftung*) under the laws of the Federal Republic of Germany

By:

Name:

Title:

By:

Name:

Title:

JACK WOLFSKIN AUSRÜSTUNG FÜR DRAUSSEN GMBH & CO. KGAA,
a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) under the laws of the Federal Republic of Germany, acting through its managing partner,
SKYRAGER GMBH

By: _____

Name: Melody Harris Jensbach

Title: Managing Director

By: _____

Name: Jörg Wahlers

Title: Managing Director

JACK WOLFSKIN RETAIL GMBH,
a limited liability company (*Gesellschaft mit beschränkter Haftung*) under the laws of the Federal Republic of Germany

By:

Name:

Title:

By:

Name:

Title:

AGENT AND LENDERS

BANK OF AMERICA, N.A., as Agent and as a U.S.
Lender

By: _____
Name: _____
Title: _____

Address:

Bank of America, N.A.
520 Newport Center Drive, Ste. 900
Newport Beach, CA 92660
Attn: ~~James Fallahay~~ Jennifer Tang
E-Mail:
~~james.fallahay@baml~~ jennifer.tang@bofa.com
Telecopy: (415) 228-5278

With a copy to:

Morgan, Lewis & Bockius LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, California 90071-3132
Attn: Marshall Stoddard, Jr., Esq.
E-Mail: mstoddard@morganlewis.com
Telecopy: (213) 612-2501

[Signature Page to Fourth Amended and Restated Loan and Security Agreement]

BANK OF AMERICA, N.A.
(acting through its London branch), as a U.K. Lender
and a German Lender

By: _____
Name: _____
Title: _____

Address:

Attention: _____
E-Mail: _____
Telecopier No.: _____

BANK OF AMERICA, N.A.
(acting through its Canada branch), as a Canadian
Lender

By: _____
Name: _____
Title: _____

Address:

Bank of America, N.A.
520 Newport Center Drive, Ste. 900
Newport Beach, CA 92660
Attn: ~~James Fallahay~~Jennifer Tang
E-Mail:
~~james.fallahay@baml~~jennifer.tang@bofa.com
Telecopy: (415) 228-5278

[Additional Lender sig pages to be provided]

[Signature Page to Fourth Amended and Restated Loan and Security Agreement]

CERTIFICATION

I, Oliver G. Brewer III, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Topgolf Callaway Brands Corp.;
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.

/s/ OLIVER G. BREWER III

Oliver G. Brewer III
President and Chief Executive Officer

Dated: November 4, 2022

CERTIFICATION

I, Brian P. Lynch, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Topgolf Callaway Brands Corp.;
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.

/s/ BRIAN P. LYNCH

Brian P. Lynch
Executive Vice President and Chief Financial Officer

Dated: November 4, 2022

**CERTIFICATION PURSUANT
TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, each of the undersigned officers of Topgolf Callaway Brands Corp., a Delaware corporation (the “Company”), does hereby certify with respect to the Quarterly Report of the Company on Form 10-Q for the quarterly period ended September 30, 2022, as filed with the Securities and Exchange Commission (the “10-Q Report”), that:

- (1) the 10-Q Report fully complies with the requirements of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the 10-Q Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

The undersigned have executed this Certification effective as of November 4, 2022.

/s/ OLIVER G. BREWER III

Oliver G. Brewer III
President and Chief Executive Officer

/s/ BRIAN P. LYNCH

Brian P. Lynch
Executive Vice President and Chief Financial Officer