

**THIRD AMENDED AND RESTATED TERM LOAN CREDIT AGREEMENT**

dated as of July 31, 2024,

among

HIGH LINER FOODS INCORPORATED,  
as the Canadian Borrower,

HIGH LINER FOODS (USA), INCORPORATED,  
as the U.S. Borrower,

and

EACH OF THE BORROWERS' RESPECTIVE SUBSIDIARIES  
FROM TIME TO TIME PARTY HERETO,  
as Guarantors,

THE FINANCIAL INSTITUTIONS NAMED HEREIN  
as Lenders,

BANK OF MONTREAL,  
as Administrative Agent and Collateral Agent,

ROYAL BANK OF CANADA,  
as Resigning Agent

and

BMO CAPITAL MARKETS CORP.,  
RBC CAPITAL MARKETS<sup>1</sup>,  
JPMORGAN CHASE BANK, N.A.,  
CIBC WORLD MARKETS CORP.

and

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH,  
as Joint Lead Arrangers and Joint Bookrunners

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<sup>1</sup> RBC Capital Markets is a marketing name for the capital markets activities of Royal Bank of Canada and its affiliates.

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### THIRD AMENDED AND RESTATED TERM LOAN CREDIT AGREEMENT

This **Third Amended and Restated Term Loan Credit Agreement**, dated as of July 31, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “**Agreement**”), among the financial institutions from time to time parties hereto (such financial institutions, together with their respective successors and assigns, are referred to hereinafter each individually as a “**Lender**” and collectively as the “**Lenders**”), Royal Bank of Canada, as resigning administrative agent and collateral agent (the “**Resigning Agent**”), Bank of Montreal, as administrative agent for the Lenders (in its capacity as administrative agent, together with any successor administrative agent, the “**Administrative Agent**”) and collateral agent for the Lenders (in its capacity as collateral agent, together with any successor collateral agent, the “**Collateral Agent**” and, the Collateral Agent together with the Administrative Agent, collectively, the “**Agent**”), High Liner Foods Incorporated, a body corporate incorporated under the laws of the Province of Nova Scotia, as a borrower (the “**Canadian Borrower**”), High Liner Foods (USA), Incorporated, a Delaware corporation (the “**U.S. Borrower**” and, together with the Canadian Borrower, collectively, the “**Borrowers**” and each, a “**Borrower**”), and each of the Borrowers’ respective Subsidiaries from time to time party hereto as guarantors (the “**Guarantors**”).

#### WITNESSETH:

**WHEREAS**, the Canadian Borrower, the Canadian Borrower’s Subsidiaries party thereto, the lenders party thereto (the “**Original Lenders**”), the other parties named therein and Royal Bank of Canada, as administrative agent and collateral agent, were parties to that certain Term Loan Credit Agreement, dated as of December 19, 2011 (the “**Original Effective Date**”) (as amended, supplemented or otherwise modified from time to time prior to the First Restatement Effective Date, the “**Original Term Loan Credit Agreement**”), pursuant to which the Original Lenders extended credit to the Canadian Borrower consisting of a term loan facility in an initial aggregate principal amount of \$250,000,000 (the “**Original Term Loans**”);

**WHEREAS**, the Canadian Borrower, the Canadian Borrower’s Subsidiaries party thereto, the lenders party thereto (the “**First Restatement Lenders**”), the other parties named therein and Royal Bank of Canada, as administrative agent and collateral agent, were parties to that certain Amended and Restated Term Loan Credit Agreement, dated as of February 8, 2013 (the “**First Restatement Effective Date**”) (as amended, supplemented or otherwise modified from time to time prior to the Second Restatement Effective Date, the “**First Restatement Term Loan Credit Agreement**”), which amended and restated the Original Term Loan Credit Agreement in its entirety and pursuant to which the First Restatement Lenders extended credit to the Canadian Borrower consisting of a term loan facility in an initial aggregate principal amount of \$300,000,000;

**WHEREAS**, the Canadian Borrower, the Canadian Borrower’s Subsidiaries party thereto, the lenders party thereto (the “**Second Restatement Lenders**”), the other parties named therein and Royal Bank of Canada, as administrative agent and collateral agent, were parties to that certain Second Amended and Restated Term Loan Credit Agreement, dated as of the Second Restatement Effective Date (as amended by Amendment No. 1 to Second Amended and Restated Term Loan Credit Agreement, dated as of June 6, 2017, as amended by Amendment No. 2 to Second Amended and Restated Term Loan Credit Agreement, dated as of October 16, 2019, as amended by Amendment No. 3 to Second Amended and Restated Term Loan Credit Agreement, dated as of March 10, 2021, as amended by Amendment No. 4 to Second Amended and Restated Term Loan Credit Agreement, dated as of October 6, 2022, and as further amended, supplemented or otherwise modified from time to time prior to the date hereof, the “**Second Restatement Term Loan Credit Agreement**”), which amended and restated the First Restatement Term Loan Credit Agreement in its entirety and pursuant to which the Second Restatement Lenders extended credit to the

Canadian Borrower consisting of a term loan facility in an aggregate principal amount of \$238,880,000 outstanding as of the Effective Date (the “**Second Restatement Term Loans**”);

**WHEREAS**, Royal Bank of Canada desires to resign as Administrative Agent and Collateral Agent effective as of the Effective Date and the Lenders party hereto desire to appoint Bank of Montreal as successor Administrative Agent and Collateral Agent under this Agreement and the other Loan Documents effective as of the Effective Date (the “**Agency Replacement**”);

**WHEREAS**, the Borrowers and the Lenders desire to amend and restate the Second Restatement Term Loan Credit Agreement in its entirety on the terms and conditions set forth herein;

**WHEREAS**, in connection with the amendment and restatement of the Second Restatement Term Loan Credit Agreement, the Loan Parties have agreed to continue, confirm and reaffirm the grant to the Agent, for the benefit of the Secured Parties, of the security interest in the Collateral to secure the Obligations and the Guaranteed Obligations (as such terms are hereinafter defined) and the Loan Parties have agreed to continue to grant to the Agent, for the benefit of the Secured Parties, a security interest in the Collateral to secure the Obligations and the Guaranteed Obligations, as the case may be; and

**WHEREAS**, it is the intent of the parties hereto that this Agreement not constitute a novation of all or any portion of the obligations and liabilities existing under the Second Restatement Term Loan Credit Agreement or evidence a payment of all or any of such obligations and liabilities, and that this Agreement amend and restate the Second Restatement Term Loan Credit Agreement in its entirety.

**NOW, THEREFORE**, in consideration of the mutual conditions and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, hereby agree as follows:

## **ARTICLE 1 – DEFINED TERMS AND LOANS**

### **1.1 Defined Terms.**

(a) **Definitions.** Capitalized terms used in the Loan Documents shall have the following respective meanings, and all section references in the following definitions shall refer to sections of this Agreement:

“**Acceptable Intercreditor Agreement**” means (a) the Intercreditor Agreement, (b) in the case of Debt intended to be secured by Liens that are pari passu with the Liens securing the Obligations, (i) a pari passu intercreditor agreement substantially in the form of Exhibit I hereto or such other substantially similar form that is reasonably acceptable to the Agent, or (ii) such other customary form reasonably acceptable to the Agent, Required Lenders and the Borrower Representative and (c) in the case of Debt intended to be secured by Liens that are junior to the Liens securing the Obligations, (i) a junior lien intercreditor agreement substantially in the form of Exhibit J hereto or such other substantially similar form that is reasonably acceptable to the Agent, or (ii) such other customary form reasonably acceptable to the Agent, Required Lenders and the Borrower Representative, in each case of the foregoing, as such document may be amended, restated, supplemented or otherwise modified from time to time.

“**Accounting Changes**” has the meaning specified in Section 14.24.

“**Acquisition**” means any acquisition after the Effective Date by any Borrower or any of its Subsidiaries, by any means, of all or substantially all of the assets or capital stock, or of an operating division or a business unit, of any Person.

“**Additional Agreement**” has the meaning specified in Section 12.1(a).

“**Additional Lender**” has the meaning specified in Section 1.5(d).

“**Administrative Agent**” has the meaning specified in the preamble hereto.

“**Administrative Questionnaire**” means an Administrative Questionnaire in such form as may be requested by the Agent (acting reasonably).

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

“**Affiliate**” means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether through ownership of securities, by contract or otherwise.

“**Agency Assignment Agreement**” has the meaning specified in Section 14.29(c).

“**Agency Replacement**” has the meaning specified in the recitals hereto.

“**Agent**” has the meaning specified in the preamble hereto.

“**Agent-Related Persons**” means the Agent, together with its Affiliates, and the officers, directors, employees, counsel, representatives, agents and attorneys in fact of the Agent and such Affiliates.

“**Agent’s Liens**” means the Liens in the Collateral granted to the Agent, for the benefit of the Secured Parties, pursuant to this Agreement and the other Loan Documents.

“**Agreement**” has the meaning specified in the preamble hereto.

“**Allocable Amount**” has the meaning specified in Section 13.6(b)(i).

“**AML Legislation**” has the meaning specified in Section 6.28(a).

“**Ancillary Document**” has the meaning assigned to such term in Section 14.14.

“**Anti-Terrorism Laws**” means any applicable laws relating to terrorism or money laundering, including the *Proceeds of Crime Act*, the *USA PATRIOT Act* (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), Executive Order No. 13224, the laws administered by the OFAC, the *Criminal Code* (Canada), the *United Nations Act* (Canada) and the *Special Economic Measures Act* (Canada).

“**Applicable Margin**” means, for purposes of calculating the applicable interest rate for any day for any Term Loan (i) 2.25% per annum, in the case of Base Rate Loans and (ii) 3.25% per annum, in the case of SOFR Loans.

“**Approved Fund**” means any Person (other than a natural Person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Arrangers**” means BMO Capital Markets Corp., RBC Capital Markets, JPMorgan Chase Bank, N.A., CIBC World Markets Corp. and Coöperatieve Rabobank U.A., New York Branch, in their capacities as joint lead arrangers and joint bookrunners in respect of the Term Facility.

“**Asset Sale**” means the sale, lease, transfer or other disposition by any Borrower or any Subsidiary of any asset or property, including any disposition of property pursuant to a division described under Section 1.1(f).

“**Assignee**” has the meaning specified in Section 11.2(a).

“**Assignment and Acceptance**” has the meaning specified in Section 11.2(a).

“**Attorney Costs**” means and includes all reasonable fees, expenses and disbursements of a single primary firm of counsel to the Agent, and, if necessary, of a single firm of local counsel to the Agent in each appropriate jurisdiction.

“**Attributable Debt**” in respect of a Sale/Leaseback Transaction means, at the time of determination, the present value (discounted at the rate set forth in the lease included in the Sale/Leaseback Transaction) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended).

“**Available Amount**” means, at any time, an amount equal to, without duplication:

(a) the greater of (x) for any Fiscal Year, the greater of (A) \$32,500,000 and (B) 32.5% of EBITDA for the most recently ended Test Period and (y) the sum of (A) the amount of Excess Cash Flow for each Fiscal Year ending on or after December 28, 2013 that is not required prior to such date to be applied as a mandatory prepayment under Section 3.3 (without giving effect to clause (y) of Section 3.3(c)) *less* (B) amounts utilized pursuant to the foregoing clause (a)(x) at or prior to such time; *plus*

(b) the amount of any Net Cash Proceeds received by the Canadian Borrower from capital contributions to, or issuances of Capital Stock (other than Disqualified Stock) of, the Canadian Borrower, in each case, during the period from and including the Business Day immediately following the Second Restatement Effective Date through and including such time; *plus*

(c) to the extent not (A) included in calculating Excess Cash Flow or (B) required to be applied to prepay the Term Loans in accordance with Section 3.3(b), the aggregate amount received by any Borrower or any Subsidiary in cash from dividends, returns, interest, profits and distributions received from any Subsidiary of any Borrower and Net Cash Proceeds in connection with any sale of the Capital Stock of a Subsidiary of any Borrower, in each case, during the period from and including the Business Day immediately following the Second Restatement Effective Date through and including such time, the aggregate amount of which shall not exceed the amount by which the Available Amount was reduced when making investments in such Subsidiaries; *minus*

(d) the sum of (i) the aggregate amounts used to make investments pursuant to Section 8.3(b) after the Second Restatement Effective Date and through and including such time, (ii) the aggregate amounts used to make Distributions pursuant to Section 8.3(a) after the Second Restatement Effective Date and through and including such time and (iii) the aggregate amounts used to make payments, purchases and redemptions in respect of Restricted Debt pursuant to

Section 8.6 after the Second Restatement Effective Date and through and including such time, in each case of the foregoing clauses (i), (ii) and (iii), to the extent made in reliance on the Available Amount; *minus*

(e) the sum of (i) the aggregate amount of investments made pursuant to clause (n) of the definition of “Permitted Investments” after the Second Restatement Effective Date and through and including such time, (ii) the aggregate amount of Distributions made pursuant to Section 8.3(a)(v) after the Second Restatement Effective Date and through and including such time and (iii) the aggregate amount of payments, purchases and redemptions in respect of Restricted Debt made pursuant to Section 8.6(a)(iii) after the Second Restatement Effective Date and through and including such time.

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

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

“**Bankruptcy Code**” means Title 11 of the United States Code (11 U.S.C. § 101 et seq.).

“**Bankruptcy Laws**” has the meaning specified in Section 13.8(a).

“**Base Rate**” means, for any day, the rate of interest per annum equal to the greatest of (i) the Prime Rate, (ii) ½ of 1.00% per annum above the Federal Funds Rate, (iii) the then-current rate applicable to one-month SOFR Loans (determined after giving effect to any floor applicable pursuant to the definition thereof) plus 1.00% per annum and (iv) 1.50% per annum. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate or Term SOFR shall be effective on the opening of business on the day specified in the public announcement of such change in the Prime Rate, the Federal Funds Rate or Term SOFR, respectively.

“**Base Rate Loan**” means a Term Loan during any period in which it bears interest based on the Base Rate.

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

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada) (or any successor statute), as amended from time to time, and includes all regulations thereunder.

“**Bona Fide Debt Fund**” means, with respect to any Person, any debt fund Affiliate of such Person that is primarily engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, notes, bonds and similar extensions of credit or securities in the ordinary course of its business.

“**Borrower**” has the meaning specified in the preamble hereto.

“**Borrower Materials**” has the meaning specified in Section 12.20.

“**Borrower Representative**” has the meaning specified in Section 14.20(a).

“**Borrowing**” means a borrowing hereunder consisting of Term Loans made on the same day by the Lenders to or for the benefit of the Borrowers.

“**Business Day**” means any day other than a Saturday or a Sunday or a legal holiday on which commercial banks are authorized or required by law to be closed for business in New York, New York; provided, that, when used in connection with a SOFR Loan, or any other calculation or determination involving SOFR, the term “Business Day” means any day that is only a U.S. Government Securities Business Day.

“**Canadian Borrower**” has the meaning specified in the preamble hereto.

“**Canadian Defined Benefit Pension Plan**” means a pension plan for the purposes of any applicable pension benefits standards, statute or regulation in Canada, which contains a “defined benefit provision,” as defined in subsection 147.1(1) of the *Income Tax Act* (Canada).

“**Canadian Dollars**” and “**CDN\$**” means lawful money of Canada.

“**Canadian Security Agreement**” means the general security agreements, dated as of the Original Effective Date and as reaffirmed by the Loan Parties on the First Restatement Effective Date, on the Second Restatement Effective Date and on the Effective Date, among the Canadian Borrower, the Guarantors that are Canadian Subsidiaries and the Agent for the benefit of the Agent and the Lenders.

“**Canadian Subsidiary**” means any direct or indirect Subsidiary of any Borrower which is organized or amalgamated under the laws of Canada or any province or territory thereof.

“**Capital Adequacy Regulation**” means any guideline, request or directive of any central bank or other Governmental Authority or any other law, rule or regulation, whether or not having the force of law, in each case, regarding capital adequacy or liquidity of any bank or of any corporation controlling a bank.

“**Capital Expenditures**” means, for any Person, any expenditures or costs made by such Person for the acquisition, maintenance or repair of fixed or capital assets that are required to be capitalized on the balance sheet of such Person in accordance with GAAP, including, without limitation, the incurrence or assumption of any Debt (including, without limitation, Debt under Capital Leases) in respect of such fixed or capital asset, and, without double counting, any principal payment made in respect of such incurrence or assumption; provided that Capital Expenditures shall not include (x) capital expenditures made to restore, replace or rebuild assets to the condition of such assets immediately prior to any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, such assets to the extent such expenditures are made with insurance proceeds, condemnation awards or damage recovery proceeds relating to any such casualty, damage, taking, condemnation or similar proceeding or (y) a Permitted Investment (but shall, for the avoidance of doubt, include any Capital Expenditure made with the proceeds of such Permitted Investment by a Loan Party that is the recipient thereof).

“**Capital Lease**” means any lease of property which, in accordance with GAAP, should be reflected as a finance lease on the balance sheet of a Person.

“**Capital Stock**” of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, contingent share issuances, participations or other equivalents of or interests in (however designated) equity (including partnership interests) of such Person, including any Preferred Stock, but excluding any debt securities convertible into or exchangeable for such equity.

“**Cash Equivalents**” means:

(a) direct obligations of Canada or the United States of America or any agency thereof or obligations guaranteed by Canada or the United States of America, provided that such obligations mature within one year from the date of acquisition thereof;

(b) certificates of deposit maturing within one year from the date of acquisition, bankers’ acceptances, Eurodollar bank deposits or overnight bank deposits, in each case issued by, created by or with any Lender or any bank or trust company organized under the laws of Canada or the United States of America or any state thereof having capital and surplus aggregating at least \$500,000,000;

(c) acquisitions of commercial paper given a rating of “A-1” or better by Standard & Poor’s Corporation or “P-1” or better by Moody’s Investors Service, Inc. and maturing not more than 12 months from the date of creation thereof;

(d) shares of money market mutual or similar funds which invest at least 95% of their assets in assets satisfying the requirements of clauses (a) through (c) of this definition; and

(e) instruments equivalent to those referred to in clauses (a) through (d) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States or Canada to the extent reasonably required in connection with any business conducted by any Borrower or any Subsidiary in such jurisdiction.

“**Cash Management Agreement**” means any agreement to provide to the Borrowers or any other Loan Party cash management services including collections, treasury management services (including controlled disbursement, overdraft, automated clearing house fund transfer services, return items, electronic funds transfer services and interstate depository network services), foreign exchange facilities, credit card processing services, demand deposits, payroll, trust or operating account relationships, commercial credit cards, merchant cards or lines of credit, purchase or debit cards, non-card e-payables services, supply chain finance services (including trade payable services and supplier accounts receivable and drafts/bills of exchange purchases) and other cash management services, including electronic funds transfer services, lockbox services, stop payment services and wire transfer services.

“**Cash Management Bank**” means any person that, at the time it enters into a Cash Management Agreement (or on the Effective Date), is the Agent, an Arranger, a Lender or an Affiliate of any such person, in each case, in its capacity as a party to such Cash Management Agreement. For the avoidance of doubt, any Cash Management Bank shall continue to be a Cash Management Bank with respect to the applicable Cash Management Agreement even if it ceases to be the Agent, an Arranger, a Lender or an Affiliate thereof after the Effective Date or the date it entered into a Cash Management Agreement, as applicable.

“**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada), (or any successor statute), as amended from time to time, and includes all regulations thereunder.

“**Change of Control**” shall be deemed to have occurred if (a) any “person” or “group” (within the meaning of Rule 13d-5 of the Securities Exchange Act of 1934, as in effect on the Effective Date) (other than Thornridge Holdings Limited) owns, beneficially or of record, directly or indirectly, 50% or more of the Voting Stock of the Canadian Borrower; (b) a change in the majority of directors of the Canadian Borrower, unless nominated, appointed or approved for consideration by shareholders for election, by the then majority of directors shall have occurred; (c) all or substantially all of the Canadian Borrower’s consolidated assets are sold or transferred; (d) the Canadian Borrower shall cease to directly or indirectly own 100% of the Capital Stock of the U.S. Borrower; provided that if the U.S. Borrower ceases to be a direct wholly-owned Subsidiary of Canadian Borrower then each Subsidiary of Canadian Borrower that has direct or indirect ownership interest in U.S. Borrower shall be a Loan Party and pledge its assets to the Agent pursuant to the Security Documents and become subject to Section 7.8; or (e) any “change of control” (or comparable term) in any document pertaining to the Revolving Credit Agreement, Incremental Equivalent Debt or Refinancing Debt in respect of the Term Loans, in each case, shall have occurred.

“**Class**” means (a) when used with respect to Commitments, refers to whether such Commitments are in respect of any Initial Term Loans, Incremental Term Loans, Extended Term Loans or Specified Refinancing Debt and (b) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Initial Term Loans, Incremental Term Loans, Extended Term Loans or Specified Refinancing Debt. Incremental Term Loans, Extended Term Loans and Specified Refinancing Debt that have different terms and conditions (together with the Commitments in respect thereof) shall be construed to be in different Classes. Incremental Term Loans in the form of increases to any Class of Term Loans shall be construed as part of the same Class as such increased Term Loans.

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

“**Collateral**” means the “Collateral” as defined in any Security Document and all other property or assets that are required under the terms of the Loan Documents to be subject to Liens in favor of the Agent for the benefit of the Secured Parties and shall include the Mortgaged Properties, if any.

“**Collateral Agent**” has the meaning specified in the preamble hereto.

“**Commitment**” means, at any time with respect to a Lender, the Term Commitment of such Lender, and “**Commitments**” means, at any time, the sum of the aggregate Term Commitments of all Lenders at such time.

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

“**Consolidated Net Income**” means, for any period, the net income (loss) of the Canadian Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding, without duplication:

(a) accruals and reserves that are established or adjusted as a result of any Permitted Acquisition or similar investment in accordance with GAAP (including any adjustment of estimated payouts on existing earn-outs);

(b) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income;

(c) fees, costs and expenses incurred in connection with the Transactions;

(d) any fees, costs and expenses incurred during such period, or any amortization thereof for such period, in connection with any Permitted Acquisition or similar investment, non-ordinary course 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 Effective Date and any such transaction undertaken but not completed);

(e) any income (loss) for such period attributable to the early extinguishment of Debt, hedging agreements or other derivative instruments;

(f) non-cash stock-based award compensation expenses;

(g) any income (loss) attributable to deferred compensation plans or trusts;

(h) any income (loss) for such period of any Person if such Person is not a Subsidiary, except that Consolidated Net Income shall include the aggregate amount of cash or Cash Equivalents actually distributed by such Person during such period to the any Borrower or any Subsidiary as a dividend or other distribution;

(i) any income (loss) from investments recorded using the equity method, but including any cash distributions of earnings received by any Subsidiary from investments recorded using the equity method;

(j) solely for purposes of determining the Available Amount, any income (loss) of any Subsidiary of any Borrower (other than a Loan Party) to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary; and

(k) except as required hereunder in connection with pro forma determinations, the net income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Canadian Borrower or is merged into or consolidated with the Canadian Borrower or any of its Subsidiaries or that such Person's assets are acquired by the Canadian Borrower or any of its Subsidiaries.

There shall be included in Consolidated Net Income, without duplication, the amount of any cash tax benefits related to the tax amortization of intangible assets in such period. There shall be excluded from Consolidated Net Income for any period the effects from applying acquisition method accounting, including, but not limited to, applying acquisition method accounting to inventory, property and equipment, leases, software and other intangible assets and deferred revenue (including deferred costs related thereto and deferred rent) required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to the Borrowers and their respective Subsidiaries), as a result of any Acquisition (including if consummated prior to the Effective Date) and any Permitted Acquisitions or similar investments and the amortization or write-off of any amounts thereof.

**“Consolidated Total Assets”** means, the consolidated total assets of the Canadian Borrower and its Subsidiaries as set forth on the consolidated balance sheet of the Canadian Borrower as of the most recent period for which financial statements were required to have been delivered pursuant to Sections 5.2(a) and (b).

“**Contaminant**” means any pollutant, hazardous substance, toxic substance, hazardous waste, special waste or words of similar import, including petroleum or petroleum derived substance or waste, asbestos in any form or condition, per- or polyfluoroalkyl substances or polychlorinated biphenyls.

“**Continuation/Conversion Date**” means the date on which a Term Loan is converted into or continued as a SOFR Loan.

“**Covered Party**” has the meaning specified in Section 14.27(a).

“**Debt**” means, with respect to any Person, without duplication, all liabilities, obligations and indebtedness of such Person to any other Person, of any kind or nature, now or hereafter owing, arising, due or payable, howsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, in each case consisting of indebtedness for borrowed money or the deferred purchase price of property, excluding (x) trade payables not overdue by more than ninety days and (y) earn-out and similar obligations until such obligations are or are required to be reflected as a liability on the balance sheet of the Canadian Borrower, but including in any event (a) all Obligations; (b) all obligations and liabilities of any Person secured by any Lien on the property of any Loan Party; (c) all obligations or liabilities created or arising under any Capital Lease or conditional sale or other title retention agreement with respect to property used or acquired by any Loan Party, even if the rights and remedies of the lessor, seller or lender thereunder are limited to repossession of such property; provided, however, that all such obligations and liabilities which are limited in recourse to such property shall be included in Debt only to the extent of the book value of such property as would be shown on a balance sheet of such Loan Party, as the case may be, prepared in accordance with GAAP; (d) all obligations and liabilities under Guarantees; (e) the present value of lease payments due under any synthetic leases under which any Loan Party is treated as the owner of the property leased for tax purposes but which is treated as an operating lease under GAAP; (f) net obligations of such Person under Hedge Agreements (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time); (g) Disqualified Stock; and (e) all net payments that such person would have to make in the event of an early termination, on the date Debt of such person is being determined, in respect of outstanding Hedge Agreements.

“**Declined Proceeds**” has the meaning specified in Section 3.3(i).

“**Default**” means any event or circumstance which, with the giving of notice, the lapse of time or both, would (if not cured, waived or otherwise remedied during such time) constitute an Event of Default.

“**Default Rate**” means a fluctuating per annum interest rate at all times equal to the sum of (a) the otherwise applicable Interest Rate plus two percentage points per annum, in the case of the then-outstanding principal amount of the Term Loans that are Term SOFR Loans, and (b) the Interest Rate then-applicable to Base Rate Loans plus two percentage points per annum, in the case of any other amounts. Each Default Rate shall be adjusted simultaneously with any change in the applicable Interest Rate.

“**Defaulting Lender**” means, subject to Section 1.6(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within one (1) Business Day of the date such Loans were required to be funded hereunder unless such Lender notifies the Agent and the Borrower Representative in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Agent or any other Lender any other amount required to be paid by it hereunder within one (1) Business Day of the date when due; (b) has notified the Borrower Representative or the Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to

such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied); (c) has failed, within one (1) Business Day after written request by the Agent or the Borrower Representative, to confirm in writing to the Agent and the Borrower Representative that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agent and the Borrower Representative); (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Bankruptcy Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the FDIC or any other state or federal regulatory authority acting in such a capacity (in each case, other than an Undisclosed Administration); or (e) a Lender has, or has a direct or indirect parent company that has, become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 1.6(b)) upon delivery of written notice of such determination to the Borrower Representative and each Lender.

**“Designated Account”** has the meaning specified in Section 1.2(e).

**“Designated Non-Cash Consideration”** means the fair market value of non-cash consideration received by a Loan Party or a Subsidiary in connection with a Transfer that is so designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower Representative, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of, collection on, or other disposition of such Designated Non-Cash Consideration.

**“Disqualified Lender”** means those Persons that are (i) the banks, financial institutions and other institutional lenders that have been identified in writing by the Borrower Representative to the Agent on or prior to the Effective Date, (ii) competitors of the Canadian Borrower or its Subsidiaries that are separately identified in writing by the Borrower Representative to the Agent from time to time or (iii) Affiliates of any Persons described in the foregoing clauses (i) or (ii) that are clearly identifiable as such on the basis of such Affiliate's name or that are separately identified in writing by the Borrower Representative to the Agent from time to time, in each case other than Bona Fide Debt Funds; provided that (x) any such additional Disqualified Lenders shall not apply retroactively to disqualify any parties that have previously acquired an assignment or participation interest in the Loans and (y) any party that becomes an Affiliate of a Disqualified Lender after the date such party acquired an assignment or participation interest in the Loans shall not be retroactively disqualified from holding such assignment or participation interest in the Loans.

**“Disqualified Stock”** means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of such Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of such Capital Stock, in whole or in part, on or prior to the date that is 91 days after the Term Loan Maturity Date. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of such Capital Stock have the right to require any Borrower or any of their respective Subsidiaries

to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that such Borrower or such Subsidiary may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption is permitted under Section 8.3.

“**Distribution**” means, in respect of any Person: (a) the payment or making of any dividend or other distribution of property in respect of Capital Stock or other equity or partnership interests (or any options or warrants for or other rights with respect to, such stock or other equity or partnership interests) of such Person, other than distributions in Capital Stock or other equity or partnership interests (or any options or warrants for such stock or other equity or partnership interests) of the same class; (b) the redemption or other acquisition by such Person or any of its Subsidiaries of any Capital Stock or other equity or partnership interests (or any options or warrants for such stock or other equity or partnership interests) of such Person.

“**EBITDA**” means, for any period, the Canadian Borrower’s Consolidated Net Income for such period, *plus*:

(a) without duplication and to the extent deducted (and not added back or, in the case of clause (ix) below, not included) in the determination of such Consolidated Net Income, the sum of the following amounts for such period:

(i) total interest expense and (A) to the extent not reflected in such total interest expense, including any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, unused line fees and letter of credit fees and facing fees and bank and letter of credit fees and costs of surety bonds in connection with financing activities; and (B) net of interest income and gains on such hedging obligations or such derivative instruments;

(ii) provision for taxes based on income, profits or capital and sales taxes, including federal, foreign, state, provincial, franchise, excise, value added and similar taxes paid or accrued during such period (including in respect of repatriated funds and any future taxes or other levies which replace or are intended to be in lieu of such taxes and any penalties and interest related to such taxes or arising from tax examinations);

(iii) depreciation and amortization (including amortization of deferred financing fees or costs);

(iv) all non-cash losses, charges and expenses (provided, in each case, that if any non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA to such extent, and excluding amortization of any prepaid cash item that was paid in a prior period), including any non-cash impairment charge or asset write-off or write-down related to intangible assets (including goodwill), long-lived assets, and investments in debt and equity securities pursuant to GAAP, all non-cash losses from investments recorded using the equity method and all non-cash charges resulting from purchase accounting adjustments, all non-cash compensation expenses, the non-cash impact of acquisition method accounting and the non-cash impact of accounting changes or restatements;

(v) extraordinary losses, expenses or charges and unusual or non-recurring losses, expenses or charges;

(vi) restructuring charges, accruals and reserves and losses, charges and expenses relating to business optimization (including consolidation initiatives), relocation or integrations, exiting lines of business, Acquisitions and divestitures, and initiatives aimed at profitability improvement (including restructuring costs related to Acquisitions and divestitures and adjustments to existing reserves and including any operating expenses directly attributable to the implementation of cost savings initiatives, severance, store opening expenses, relocation costs, office upgrades, integration and facilities' opening costs and other business optimization expenses, signing costs, retention or completion bonuses, transition costs, costs related to opening of facilities, costs related to closure/consolidation of facilities and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities));

(vii) losses, charges and expenses relating to asset dispositions or the sale or other disposition of any Capital Stock other than in the ordinary course of business;

(viii) losses, charges and expenses attributable to disposed or discontinued operations and losses, charges and expenses related to the disposal of disposed, abandoned or discontinued operations; and

(ix) the amount of "run rate" cost savings, operating expense reductions and synergies projected by the Borrower Representative in good faith to be realized in connection with (A) any restructuring of any Borrower or any of the Subsidiaries or any business optimization or cost-savings initiatives or other transaction of the type described in clause (vi) above, or (B) any Permitted Acquisition or other similar investment or disposition of all or substantially all Capital Stock in any Subsidiary or any division, product line or facility used for operations of any Borrower or any of the Subsidiaries, in each case that is reasonably identifiable and factually supportable and are projected by the Borrower Representative in good faith to be realized no later than 18 full months after the consummation of such transaction or initiative (which cost savings, operating expense reductions and synergies projected to result from any such action shall be added to EBITDA for any test period ending not more than 18 full months after such action is taken as though such cost savings, operating expense reductions and synergies had been realized on the first day of the relevant test period), net of the amount of actual benefits realized from such actions; *minus*:

(b) without duplication and to the extent included in the determination of such Consolidated Net Income, the sum of the following amounts for such period: (i) extraordinary gains and unusual or non-recurring gains; (ii) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or EBITDA in any prior period); and (iii) gains on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

provided that the aggregate amount of add-backs and adjustments made pursuant to clauses (a)(vi) and (a)(ix) above (excluding for this purpose, add-backs and adjustments made pursuant to clause (a)(vi) in connection with Permitted Acquisitions or other similar investments) shall not, in the aggregate, exceed 25.0% of EBITDA for any period of four consecutive Fiscal Quarters (as determined prior to giving effect to such add-backs and adjustments) (the "**EBITDA Addback Cap**").

"**EBITDA Addback Cap**" has the meaning specified in the definition of "EBITDA."

“**ECF Percentage**” means, for any Fiscal Year of the Canadian Borrower, (a) 50%, if the Total Leverage Ratio as of the last day of such Fiscal Year is greater than 3.50:1.00, (b) 25%, if the Total Leverage Ratio as of the last day of such Fiscal Year is greater than 3.00:1.00, but less than or equal to 3.50:1.00, and (c) 0%, if the Total Leverage Ratio as of the last day of such Fiscal Year is less than or equal to 3.00:1.00.

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

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

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

“**Effective Date**” means the date on which each of the conditions precedent set forth in Section 9.1 shall have been satisfied (i.e., July 31, 2024).

“**Effective Yield**” means, with respect to any Debt, the then “effective yield” on such Debt consistent with generally accepted financial practice, taking into account the applicable interest rate margins, interest rate floors (provided, that if any Debt contains an interest rate floor higher than that applicable to the existing applicable Term Loans, the differential between interest rate floors shall be equated to the applicable interest rate margin for purposes of such determination and, in the case of Section 1.5 to the extent an adjustment is required thereunder, the interest rate floor (but not the interest rate margin) applicable to the existing applicable Term Loans shall be increased to the extent of such differential between interest rate floors), upfront or similar fees and original issue discount (with original issue discount being equated to interest based on the shorter of (x) the original stated life of such Debt and (y) an assumed four year life to maturity without any present value discount) paid by the Borrowers in connection with the primary syndication and/or closing of the applicable Debt, but excluding arrangement, structuring, underwriting, commitment, amendment or other fees not paid generally to all holders of such Debt.

“**Electronic Signature**” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“**Eligible Assignee**” means any Person other than (a) a natural person, (b) except in accordance with the provisions of Section 11.2(h), the Borrowers or any of their respective Affiliates, (c) a Disqualified Lender or (d) a Defaulting Lender.

“**Environmental Laws**” means all federal, provincial, state, municipal, local or foreign laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all binding and enforceable administrative orders, directives, decisions, policies, guidelines, directed duties, licenses, authorizations, decrees, orders and permits of, and agreements with, any Governmental Authority, in each case relating to pollution or protection of the environment or of human health and safety (to the extent related to exposure to Contaminants), including those relating to the manufacture, generation, handling, transport, storage, treatment, Release or threat of Release of Contaminants.

“**Environmental Lien**” means a Lien in favour of any Governmental Authority or any other Person for (a) any liability under Environmental Laws or (b) damages arising from, or costs incurred by such Governmental Authority or other Person in response to, a Release or threatened Release of a Contaminant into the environment.

“**Equivalent Amount**” means, on any date, the amount of Dollars into which an amount of any other currency may be converted or the amount of such other currency into which an amount of Dollars may be converted, in either case, at the Agent’s spot buying rate in New York, New York as at approximately 12:00 noon (New York City time) on such date; provided that, for the purpose of determining compliance with covenant and default limitations set forth in this Agreement, the Bank of Canada noon day average exchange rate for each month will be used for converting the results of operations of the Canadian operations of the Canadian Borrower to U.S. Dollars for each month in the Test Period, and the Bank of Canada noon day exchange on the last Business Day of the Test Period will be used to convert the balance sheet items of the Canadian operations of the Canadian Borrower to U.S. Dollars.

“**ERISA**” means the *Employee Retirement Income Security Act* of 1974, as amended, and the rules and regulations promulgated thereunder.

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

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan, (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan 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 which is treated as such a withdrawal under Section 4062(e) of ERISA, (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multi-employer Plan or other Pension Plan regulated or governed by other applicable legislation or notification that a Multi-employer Plan or Pension Plan regulated or governed by other applicable legislation is insolvent or is in critical, endangered or at risk status, (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan or Multi-employer Plan amendment as a termination under Section 4041 or 4041A of ERISA or other law, or the commencement of proceedings by the PBGC pursuant to Section 4042 of ERISA or other applicable Governmental Authority to terminate a Pension Plan or to appoint a trustee to administer any Pension Plan or Multi-employer Plan, or (e) the imposition of any liability under Title IV of ERISA (other than for PBGC premiums due but not delinquent under Section 4007 of ERISA or other similar legislation) upon any Loan Party or any ERISA Affiliate.

“**Erroneous Payment**” has the meaning specified in Section 12.21(a).

“**Erroneous Payment Subrogation Rights**” has the meaning specified in Section 12.21(d).

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

“**Event of Default**” has the meaning specified in Section 10.1.

“**Excess Cash Flow**” means for any Fiscal Year of the Canadian Borrower, the excess, if any, of (a) the sum, without duplication (taking all numbers as a positive), of (i) Consolidated Net Income of the Canadian Borrower and its Subsidiaries for such Fiscal Year, (ii) the amount of all non-cash charges (including depreciation, amortization, inventory gross up and deferred financing charges) deducted in arriving at such Consolidated Net Income, (iii) Working Capital Decreases for such Fiscal Year, (iv) the aggregate net amount of non-cash loss on the disposition of property by the Canadian Borrower and its

Subsidiaries during such Fiscal Year (other than sales of inventory in the ordinary course of business), to the extent deducted in arriving at such Consolidated Net Income, and (v) cash receipts in respect of Hedge Agreements during such Fiscal Year to the extent not reflected in the computation of Consolidated Net Income of the Canadian Borrower and its Subsidiaries for such Fiscal Year over (b) the sum, without duplication (taking all numbers as a negative), of (i) the amount of all non-cash credits (income or gain) included in arriving at such Consolidated Net Income, (ii) the aggregate amount of all regularly scheduled principal payments of Debt (including the Term Loans) of the Canadian Borrower and its Subsidiaries made during such Fiscal Year (other than in respect of any revolving credit facility to the extent there is not an equivalent permanent reduction in commitments thereunder), (iii) Working Capital Increases for such Fiscal Year, (iv) the aggregate net amount of non-cash gain on the disposition of property by the Canadian Borrower and its Subsidiaries during such Fiscal Year, to the extent included in arriving at such Consolidated Net Income, (v) fees and expenses in connection with the Loan Documents and the Transactions to the extent not deducted in arriving at Consolidated Net Income, (vi) the aggregate amount of all cash payments to reduce non-current liabilities other than Debt (excluding any such expenditures financed with the proceeds of any Debt or any Net Cash Proceeds not applied to prepay Term Loans as a result of a reinvestment pursuant to Section 3.3(b)(ii)) incurred or accrued after the Effective Date, including in respect of taxes, interest expense and mandatory contributions to any Pension Plans of the Loan Parties in accordance with applicable law, (vii) cash amounts paid for costs of the type described in clause (vi) of the definition of “EBITDA” to the extent expensed through net income in a previous period following the Effective Date and added back to Excess Cash Flow in a previous period as a non-cash item under the foregoing clause (a)(ii), (viii) cash Distributions paid, in an aggregate amount not to exceed the amount permitted pursuant to clause (a)(x) of the definition of “Available Amount” or Section 8.3(a)(vii) for such Fiscal Year and (ix) cash expenditures made in respect of Hedge Agreements during such Fiscal Year to the extent not reflected in the computation of Consolidated Net Income of the Canadian Borrower and its Subsidiaries for such Fiscal Year.

“**Exchange Act**” means the *Securities Exchange Act* of 1934, and regulations promulgated thereunder.

“**Excluded Subsidiary**” means (a) any Subsidiary that is prohibited or restricted by applicable Requirement of Law from providing a Guarantee or if such Guarantee would require governmental (including regulatory) consent, approval, license or authorization, (b) any other Subsidiary with respect to which the cost, difficulty, burden or consequences (including any adverse tax consequences) of providing the Guarantee is excessive in relation to the value afforded thereby, as reasonably determined by the Agent and the Borrower Representative, (c) any Immaterial Subsidiary and (d) any non-Wholly-Owned Subsidiary, other than a Subsidiary that becomes a non-Wholly-Owned Subsidiary that is not permitted to be released as a Guarantor pursuant to Section 12.11.

“**Excluded Swap Obligations**” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 13.9 and any other “keepwell, support or other agreement” for the benefit of such Guarantor and any and all guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guarantee of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

**“Excluded Taxes”** means, in relation to any Lender, (a) Taxes imposed on or measured by net income of such Lender and franchise Taxes imposed or levied by any jurisdiction on such Lender or any of its applicable lending offices as a result of such Lender (i) carrying on a trade or business therein or having a permanent establishment therein, (ii) being organized under the laws of such jurisdiction or any political subdivision thereof, (iii) being or being deemed to be resident in such jurisdiction for income tax purposes, or (iv) having any other present or former connection with such jurisdiction (other than a connection arising solely from such Lender or its applicable lending office having executed, delivered or performed its obligations under the Loan Documents or received a payment under a Loan Document or enforced its rights under a Loan Document), or that would not have been imposed had such Lender satisfied a relevant authority that such Lender was not a person mentioned in clause (i), (ii), (iii) or (iv) above, (b) any U.S. federal or Canadian federal or provincial withholding Tax to the extent that the obligation to withhold amounts existed on the date that such Person became a Lender under this Agreement (other than pursuant to an assignment request by any Loan Party), except to the extent that amounts with respect to such Taxes were payable to such Lender’s Assignor pursuant to Section 4.1 immediately before such Lender became a party hereto, (c) Taxes that are attributable to the failure (other than such failure resulting from a change in Requirements of Law) by Lender to deliver the documentation required to be delivered pursuant to Section 12.10 and (d) any U. S. federal withholding Taxes imposed on amounts payable to an entity as a result of such entity’s failure to comply with FATCA to establish a complete exemption from withholding thereunder.

**“Executive Order”** has the meaning specified in Section 6.27.

**“Existing DB Plans”** means the Canadian Defined Benefit Pension Plans listed in and described as such in Schedule 6.18.

**“Existing Hypothecs”** means, collectively (i) the deed of movable hypothec dated December 15, 2011 between the Canadian Borrower and the Resigning Agent, registered at the RPMRR on December 16, 2011 under number 1109668310001; and (ii) the deed of movable hypothec dated June 1, 2022 between the Canadian Borrower and the Resigning Agent, registered at the RPMRR on June 9, 2022 under number 2206338240002.

**“Extended Term Loans”** has the meaning specified in Section 1.3(a).

**“Extending Term Lender”** has the meaning specified in Section 1.3(c).

**“Extension”** has the meaning specified in Section 1.3(a).

**“Extension Amendment”** means an amendment to this Agreement (which may, at the option of the Agent and the Borrower Representative, be in the form of an amendment and restatement of this Agreement) in form and substance reasonably satisfactory to the Agent, among the Loan Parties, the applicable extending Lenders, and the Agent.

**“Extension Offer”** has the meaning specified in Section 1.3(a).

**“Facility”** or **“Term Facility”** means any of the credit facilities established from time to time under this Agreement (e.g., the Initial Term Facility, any Incremental Facility and any Class of Extended Term Loans or Specified Refinancing Debt).

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

entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreements pursuant to any of the foregoing.

“**FDIC**” means the Federal Deposit Insurance Corporation, and any Governmental Authority succeeding any of its principal functions.

“**Federal Funds Rate**” means, for any day, the rate per annum (not less than zero) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to the Agent on such day on such transactions as determined by the Agent.

“**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System or any successor thereto.

“**Fee Letter**” has the meaning specified in Section 2.4.

“**Financial Statements**” means the consolidated financial statements of the Canadian Borrower and its Subsidiaries, prepared in accordance with GAAP, and any other financial statements required to be given to the Agent and Lenders pursuant to this Agreement. Any such financial statements which this Agreement requires be audited, shall be so audited by an independent registered public accounting firm of recognized national standing (or that is otherwise reasonably acceptable to the Agent).

“**First Restatement Effective Date**” has the meaning specified in the recitals hereto.

“**First Restatement Lenders**” has the meaning specified in the recitals hereto.

“**First Restatement Term Loan Credit Agreement**” has the meaning specified in the recitals hereto.

“**Fiscal Year**” means each of the Loan Party’s fiscal year for financial accounting purposes, which will end on the Saturday closest to December 31, if December 31 is not a Saturday.

“**Fixed Amounts**” has the meaning specified in Section 1.1(e)(vi).

“**Fixed Assets**” means, with respect to any Loan Party, the equipment and Real Estate of such Loan Party.

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

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to Term SOFR. For the avoidance of doubt, the initial Floor for Term SOFR shall be 0.50%.

**“Foreign Assets Control Regulations”** has the meaning specified in Section 6.27.

**“Foreign Subsidiary”** means a Subsidiary that is organized under the laws of a jurisdiction other than a jurisdiction in which any Loan Party is organized.

**“Funding Date”** means, with respect to a Borrowing, the date on which such Borrowing occurs.

**“GAAP”** means at any particular time with respect to any Loan Party, international financial reporting standards generally accepted in Canada and recommended or approved by the Canadian Institute of Chartered Accountants and in effect at such time, consistently applied; provided, however, that, if employment of more than one principle shall be permissible at such time in respect of a particular accounting matter, “GAAP” shall refer to the principle which is then employed by the applicable Loan Party with the concurrence of its independent public or chartered accountants, who are reasonably acceptable to the Agent.

**“Governmental Authority”** means any nation or government, any state, province, municipality or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing and any department, agency, board, commission, tribunal, committee or instrumentality of any of the foregoing.

**“Guarantee”** or **“Guaranteed”** or **“Guaranty”** means, with respect to any Person, all obligations of such Person which in any manner directly or indirectly guarantee or assure, or in effect guarantee or assure, the payment or performance of any Debt of any other Person (the “guaranteed obligations”), or assure or in effect assure the holder of the guaranteed obligations against loss in respect thereof, including any such obligations incurred through an agreement, contingent or otherwise: (a) to purchase the guaranteed obligations or any property constituting security therefor; (b) to advance or supply funds for the purchase or payment of the guaranteed obligations or to maintain a working capital or other balance sheet condition; or (c) to lease property or to purchase any debt or equity securities or other property or services.

**“Guaranteed Obligations”** has the meaning specified in Section 13.1.

**“Guarantor Payment”** has the meaning specified in Section 13.6(b).

**“Guarantors”** has the meaning specified in the preamble.

**“Hedge Agreement”** means any and all transactions (whether under an ISDA or otherwise), agreements or documents (including ISDAs), which provide for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, derivative, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging a Person’s exposure to fluctuations in interest or exchange rates, loan, credit exchange, security or currency valuations or commodity prices.

**“Hedge Bank”** means any person that is (or an Affiliate thereof is) the Agent, an Arranger or a Lender on the Effective Date (or any person that is the Agent, an Arranger or a Lender or Affiliate thereof at the time it enters into a Hedge Agreement) and that enters into a Hedge Agreement with any Borrower or any other Loan Party, in each case, in its capacity as a party to such Hedge Agreement. For the avoidance of doubt, any Hedge Bank shall continue to be a Hedge Bank with respect to the applicable Hedge Agreement even if it ceases to be the Agent, an Arranger, a Lender or Affiliate thereof after the Effective Date or the date it entered into a Hedge Agreement, as applicable.

“**Hypothec**” means (i) the deed of movable hypothec, dated on or around the Effective Date, among the Canadian Borrower, as debtor, and the Agent, as Hypothecary Representative, for the benefit of the Agent and the Lenders, and (ii) any other deed of hypothec granted by a Loan Party in favor of the Agent, as Hypothecary Representative, for the benefit of the Agent and the Lenders, in each case, as amended, restated, amended and restated, replaced, supplemented or otherwise modified from time to time.

“**Hypothecary Representative**” has the meaning specified in Section 1.1(d)(iii).

“**Immaterial Subsidiary**” means on any date, any Subsidiary of a Borrower that had less than 5.0% of consolidated assets and 5.0% of EBITDA of the Canadian Borrower and its Subsidiaries as reflected on the most recent financial statements delivered pursuant to Section 5.2 prior to such date; provided that at no time shall all Immaterial Subsidiaries have in the aggregate consolidated assets or EBITDA (as reflected on the most recent financial statements delivered pursuant to Section 5.2 prior to such time) in excess of 5.0% of consolidated assets or EBITDA, respectively, of the Canadian Borrower and its Subsidiaries.

“**Incremental Equivalent Debt**” means Debt in the form of secured or unsecured notes or loans or commitments in respect of any of the foregoing, in each case issued, incurred or implemented under credit agreements, indentures or other similar agreements or instruments and in lieu of loans which would otherwise be permitted to be incurred under an Incremental Facility; provided that:

(a) the aggregate principal amount thereof shall not exceed the Maximum Incremental Amount;

(b) no Event of Default has occurred and is continuing or would result therefrom; provided that if such Incremental Equivalent Debt is being incurred in connection with a Limited Condition Transaction, then (1) no Event of Default shall exist at the time the definitive documentation in respect of such Limited Condition Transaction is executed and delivered or would be caused thereby after giving effect thereto and (2) no Event of Default under Sections 10.1(a), (e), (f) or (g) shall exist at the time of such Limited Condition Transaction and the incurrence of such Debt or would be caused thereby after giving effect thereto;

(c) after giving *pro forma* effect to the incurrence of Incremental Equivalent Debt (treating any such Debt as fully drawn) and related transactions, no Default or Event of Default under Section 8.11 shall exist or would result therefrom;

(d) the Borrower Representative shall have delivered a certificate of a Responsible Officer to the effect set forth in clauses (a), (b) and (c) above, together with reasonably detailed calculations demonstrating compliance with the financial tests described therein;

(e) in the case of Debt incurred by any Loan Party, the Weighted Average Life to Maturity applicable to any such Debt is no shorter than the Weighted Average Life to Maturity of the then-existing Term Loans (for the avoidance of doubt, determined as of the date of incurrence of such then-existing Term Loans and, in the case of multiple Classes of Term Loans, based on the Class of the Term Loans with the longest Weighted Average Life to Maturity);

(f) in the case of Debt incurred by any Loan Party, (i) the final maturity date applicable to any such Debt is no earlier than the latest maturity date of the then-existing Term Loans; provided that this clause (i) shall not apply to the extent such Debt constitutes a customary bridge facility, so long as the long-term Debt into which any such customary bridge facility is to be converted or exchanged, as applicable, otherwise satisfies the requirements of this clause (i) and such conversion or exchange is subject only to conditions customary for similar conversions or exchanges, and (ii)

with respect to Debt that is secured by Liens on a junior basis to the Liens securing the Obligations or is unsecured, the terms of such Debt do not provide for any scheduled repayment, mandatory redemption or sinking fund obligations prior to the date that is ninety one (91) days after the latest maturity date of the then-existing Term Loans, other than customary offers to repurchase upon a change of control, asset sale or event of loss, customary “excess cash flow” prepayment requirements and customary acceleration rights after an event of default, in each case subject to the prior repayment in full of the Obligations (except to the extent attributable to corresponding prepayment amounts declined by the Lenders);

(g) in the case of any such Debt incurred in the form of term loans that are secured by Liens that are *pari passu* with the Liens securing the Obligations and are broadly syndicated U.S. Dollar-denominated floating rate term loans (other than customary term “A” loans), the MFN Adjustment shall apply as if such Debt were Incremental Term Loans;

(h) in the case of Debt incurred by any Loan Party, (i) any such Debt must rank *pari passu* with or junior to the Obligations in right of payment and may rank *pari passu* with or junior to the Obligations with respect to security or may be unsecured, (ii) to the extent that any such Debt is secured by Liens that are *pari passu* with or junior to the Liens securing the Obligations, such Debt and Liens shall be subject to an Acceptable Intercreditor Agreement and (iii) if any such Debt is subordinated, such Debt shall be subordinated to the prior payment in full in cash of the Obligations on terms and conditions reasonably satisfactory to the Agent (other than contingent obligations for which no claim has been asserted);

(i) in the case of Debt incurred by any Loan Party, no such Debt may be (x) Guaranteed by any Person that is not a Loan Party or (y) secured by any assets other than Collateral;

(j) the terms and conditions of any such Debt (excluding pricing, interest, closing payments, fees, rate floors, premiums, maturity and amortization and optional prepayment or redemption terms) shall be (x) substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by the Borrower Representative) to the lenders or investors providing such Debt than those applicable to the Loans (other than covenants or other provisions applicable only to periods after the latest maturity date of the then-existing Term Loans) or (y) solely in the case of debt securities or Debt incurred by Subsidiaries that are not Loan Parties, on then-prevailing market terms (as reasonably determined by the Borrower Representative); provided that a certificate of a Responsible Officer of the Borrower Representative delivered to the Agent at least five Business Days (or such shorter period as may be agreed by the Agent) prior to the incurrence of such Debt, together with a reasonably detailed description of the material terms and conditions of such Debt or drafts of the documentation relating thereto, stating that the Borrower Representative has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (j), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Agent provides notice to the Borrower Representative of its objection during such five Business Day period; and

(k) the aggregate principal amount of Incremental Equivalent Debt issued or incurred by Subsidiaries that are not Loan Parties (or are not required to become Loan Parties pursuant to Section 7.8(c)) shall not, together with any Debt incurred or assumed by Subsidiaries that are not Loan Parties (or are not required to become Loan Parties pursuant to Section 7.8(c)) pursuant to Section 8.5(e)(ii), exceed at any time the greater of (x) \$20,000,000 and (y) 20.0% of EBITDA for the most recently ended Test Period.

“**Incremental Facility**” has the meaning specified in Section 1.5(a).

“**Incremental Facility Amendment**” has the meaning specified in Section 1.5(d).

“**Incremental Facility Effective Date**” has the meaning specified in Section 1.5(d).

“**Incremental Term Loans**” has the meaning specified in Section 1.5(a).

“**Incurrence-Based Amounts**” has the meaning specified in Section 1.1(e)(vi).

“**Indemnified Liabilities**” has the meaning specified in Section 14.11(a).

“**Indemnified Person**” has the meaning specified in Section 14.11(a).

“**Indemnified Taxes**” means Taxes other than Excluded Taxes and Other Taxes.

“**Initial Term Facility**” has the meaning specified in Section 1.2(a).

“**Initial Term Loans**” has the meaning specified in Section 1.2(a).

“**Intellectual Property**” means, with respect to a Loan Party, all of such Loan Party’s now owned and hereafter arising or acquired: patents, patent rights, copyrights, works which are the subject matter of copyrights, trademarks, service marks, trade names, trade styles, patent, trademark and service mark applications, and all licenses (to the extent sublicenseable) and rights related to any of the foregoing, including those patents, trademarks, service marks, trade names and copyrights set forth on Schedule 6.11 hereto, all other rights under any of the foregoing, and all extensions, renewals, reissues, divisions, continuations, and continuations in part of any of the foregoing.

“**Intercreditor Agreement**” means the Amended and Restated Intercreditor Agreement, dated as of the Effective Date, among the Revolving Credit Facility Collateral Agent and the Agent, and acknowledged by each Borrower and each Guarantor, as amended, supplemented, modified, replaced or restated from time to time in accordance therewith.

“**Interest Act**” means the *Interest Act* (Canada) (or any successor statute), as amended from time to time, and includes all regulations thereunder.

“**Interest Payment Date**” means (a) with respect to any Base Rate Loan, the first day of each January, April, July and October and the Term Loan Maturity Date and (b) with respect to any SOFR Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a SOFR Loan with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period, and the Term Loan Maturity Date.

“**Interest Period**” means, in respect of each SOFR Loan, a period of one, three or six months, or, to the extent consented to by all applicable Lenders (including with respect to the determination of Term SOFR for such period and any related credit spread adjustment), twelve months or such shorter period (in each case, subject to the availability thereof), with respect to such SOFR Loan; provided that (i) the Interest Period shall commence on the date of an advance of or a conversion to a SOFR Loan and, in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the date on which the next preceding Interest Period expires; (ii) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided, that if any Interest Period with respect to a SOFR Loan would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such

Interest Period shall expire on the next preceding Business Day; (iii) any Interest Period with respect to a SOFR Loan that begins on the last Business Day of a calendar month (or on a day for which there is not numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such Interest Period; (iv) no Interest Period shall extend beyond the Term Loan Maturity Date for such Class of Loans; and (v) no tenor that has been removed from this definition pursuant to the Benchmark Replacement (as defined in Schedule 4.5) provisions set forth in Schedule 4.5 shall be available for specification in such Notice of Borrowing or Notice of Continuation/Conversion.

**“Interest Rate”** means each or any of the interest rates, including the Default Rate, set forth in Section 2.1.

**“IRS”** means the Internal Revenue Service and any Governmental Authority succeeding to any of its principal functions under the Code.

**“Joinder Agreement”** means an agreement, substantially in the form attached hereto as Exhibit G, pursuant to which a Person becomes a Guarantor hereunder.

**“Latest Projections”** means the projections most recently received by the Agent pursuant to Section 5.2(d).

**“LCA Election”** has the meaning specified in Section 1.1(e)(viii)(B).

**“LCA Test Date”** has the meaning specified in Section 1.1(e)(viii).

**“Lender”** and **“Lenders”** have the meanings specified in the preamble hereto.

**“Lien”** means: (a) any interest in property securing an obligation owed to, or a claim by, a Person, whether such interest is based on the common law, statute or contract, and including without limitation, a security interest, hypothec, prior claim, charge, claim or Lien arising from a mortgage, deed of trust, encumbrance, pledge, hypothecation, assignment, deposit arrangement, agreement, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes; (b) to the extent not included under clause (a), (i) any rights of repossession or similar rights of unpaid suppliers, (ii) any reservation, exception, encroachment, easement, servitude, right of way, covenant, condition, restriction, lease or other title exception or encumbrance affecting property and (iii) any other Lien, charge, privilege, secured claim, title retention, garnishment right, deemed trust, encumbrance or other right affecting property, choate or inchoate, whether or not crystallized or fixed, whether or not for amounts due or accruing due, arising by any statute, act of law of any jurisdiction at common law or in equity or by agreement; and (c) any contingent or other agreement to provide any of the foregoing.

**“Limited Condition Transaction”** means (a) a Permitted Acquisition or any other similar investment permitted hereunder (other than investments among the Canadian Borrower and its Subsidiaries) by the Canadian Borrower or one or more of its Subsidiaries, the consummation of which is not conditioned on the availability of, or on obtaining, third party financing and (b) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Debt (other than Debt among the Canadian Borrower and its Subsidiaries) requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment.

**“Loan”** means any Term Loan made from time to time under this Agreement.

“**Loan Documents**” means this Agreement, the Security Documents, the Fee Letter, the Intercreditor Agreement and any other agreements, instruments, and documents heretofore, now or hereafter designated by the Agent and the Borrower Representative as a “Loan Document”.

“**Loan Parties**” means a collective reference to the Borrowers and the Guarantors, and “Loan Party” means any one of them.

“**Margin Stock**” means “margin stock” as such term is defined in Regulation T, U or X of the Federal Reserve Board.

“**Material Adverse Effect**” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Loan Parties taken as a whole or the Collateral; (b) a material legal impairment of the ability of any Loan Party to perform under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“**Maximum Incremental Amount**” means, on any date of determination on a *pro forma* basis, without duplication:

(a) (x) the greater of (1) \$100,000,000 and (2) 100.0% of EBITDA for the most recently ended Test Period *less* (y) the aggregate principal amount of Debt issued or incurred in reliance on this clause (a) on or prior to such date, *plus*

(b) the aggregate principal amount all voluntary prepayments of the Initial Term Loans incurred on the Effective Date or Debt issued or incurred in reliance on the foregoing clause (a), in each case on or prior to such date and so long as such prepayment was not funded or financed with the proceeds of any long-term Debt, *plus*

(c) an unlimited amount so long as, in the case of this clause (c), in each case calculated on a *pro forma* basis for the most recently ended Test Period (including the application of the proceeds thereof (without “netting” the cash proceeds of the applicable Debt) and assuming that such Debt is fully drawn (subject, in the case of delayed draw term loan commitments, to Section 1.01(c)(xix)(B))), (A) if the relevant Debt is secured by any Liens that are *pari passu* with the Liens securing the Obligations, the Secured Leverage Ratio shall not exceed (x) 4.00:1.00 or (y) if the relevant Debt is incurred in connection with any Permitted Acquisition or similar investment, the Secured Leverage Ratio for the Test Period ending immediately prior to such Permitted Acquisition or investment, (B) if the relevant Debt is secured solely by Liens that are junior to the Liens securing the Obligations, the Total Leverage Ratio shall not exceed (x) 5.00:1.00 or (y) if the relevant Debt is incurred in connection with any Permitted Acquisition or similar investment, the Total Leverage Ratio for the Test Period ending immediately prior to such Permitted Acquisition or investment and (C) if the relevant Debt is unsecured or secured solely by Liens on assets that are not Collateral, the Total Leverage Ratio shall not exceed (x) 5.00:1.00 or (y) if the relevant Debt is incurred in connection with any Permitted Acquisition or similar investment, the Total Leverage Ratio immediately prior to such Permitted Acquisition or investment;

provided that (i) that in the case of any single or concurrent incurrence under any Incremental Facility or Incremental Equivalent Debt, any amounts incurred pursuant to clause (a) or clause (b) above shall be disregarded in determining compliance with the Secured Leverage Ratio and the Total Leverage Ratio calculation, as applicable, set forth in clause (c) and (ii) the Borrower

Representative may elect to use clause (c) of the available Incremental Facility or Incremental Equivalent Debt capacity (in whole or in part) prior to using all or a portion of clause (a) or clause (b) thereof, or combine the use of clauses (a), (b) and (c), and, if more than one clause is available at the time of incurrence and if the Borrower Representative does not make an election, the Borrowers will be deemed to have elected to use clause (c) first up to the maximum amount permitted thereunder, clause (b) second and clause (c) third.

“**Maximum Rate**” has the meaning specified in Section 2.3(a).

“**MFN Adjustment**” has the meaning set forth in Section 1.5(c)(v).

“**Minimum Extension Condition**” has the meaning specified in Section 1.3(d).

“**Mortgage**” has the meaning specified in Section 7.8(d).

“**Mortgaged Properties**” means the properties listed on Schedule 7.8 and any property covered by a Mortgage pursuant to Section 7.8.

“**Multi-employer Plan**” means a “multi employer plan” as defined in Section 4001(a)(3) of ERISA which is or was at any time during the current year or the immediately preceding six (6) years contributed to by any Loan Party or any ERISA Affiliate.

“**Net Cash Proceeds**” means (a) with respect to any Asset Sale or Recovery Event, the gross cash proceeds resulting therefrom net of (i) expenses of sale or recovery, including, without limitation, reasonable and documented attorneys’, accountants’, other advisors’ and banking and investment banking fees, environmental and solvency related fees, all legal, title and recording tax expenses, commissions and other fees and expenses incurred, all Federal, state, provincial, foreign and local taxes paid or reasonably estimated to be payable by the Canadian Borrower or its Subsidiaries and in each case, not by its respective members, as a consequence of such Asset Sale or Recovery Event, (ii) the payment of principal, premium and interest of Debt (other than Debt secured by Liens on the Collateral) secured by the asset which is the subject of the Asset Sale or Recovery Event and required to be, and which is, repaid under the terms thereof as a result of such Asset Sale or Recovery Event, and incremental income taxes paid or payable, (iii) any deduction of appropriate amounts to be provided by the Canadian Borrower as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Canadian Borrower after such sale or other disposition thereof, including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction and (iv) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such Asset Sale or Recovery Event and (b) in connection with any issuance or sale of Capital Stock or any incurrence of Debt, the gross cash proceeds received from such issuance or incurrence, net of attorneys’, advisors’ and consultants’ fees, banking and investment banking fees, accountants’ fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith. For purposes of this definition, in the event any reserve established with respect to any event as described in clause (a)(iii) above shall be reduced, to the extent such amounts are released to a Loan Party, such amounts shall be deemed to be received on such release date.

“**Non-Consenting Lender**” has the meaning specified in Section 11.1(c).

“**Non-Extending Lender**” has the meaning specified in Section 11.1(c).

“**Non-Loan Party Investment Amount**” means, at any time, the greater of (x) \$32,500,000 and (y) 32.5% of EBITDA for the most recently ended Test Period.

“**Note**” has the meaning specified in Section 3.8.

“**Notice of Borrowing**” has the meaning specified in Section 1.2(d)(i).

“**Notice of Continuation/Conversion**” has the meaning specified in Section 2.2(a)(ii).

“**Notice of Prepayment**” has the meaning specified in Section 3.2(a).

“**Obligations**” means (i) all present and future loans, advances, liabilities, obligations, covenants, duties and debts owing by the Loan Parties to the Agent and/or any Lender, arising under or pursuant to this Agreement, any of the other Loan Documents, whether or not evidenced by any note or other instrument or document, whether arising from an extension of credit, opening of a letter of credit, acceptance, loan, guaranty, guarantee, indemnification or otherwise, whether direct or indirect, absolute, matured or contingent, due or to become due, now existing or hereafter arising, created or incurred, primary or secondary, as principal or guarantor and including without limitation all principal, interest (including all interest that accrues after the commencement of any case or proceeding by or against a Loan Party under any federal, provincial or state bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case proceeding), charges, expenses, fees, attorneys’ fees, filing fees and any other sums, in each case, chargeable to any of the Loan Parties hereunder or under any of the other Loan Documents, (ii) obligations in respect of any Secured Cash Management Agreement and (iii) obligations in respect of any Secured Hedge Agreement; provided that “Obligations” shall exclude all Excluded Swap Obligations. “Obligations” includes, without limitation the Guaranteed Obligations.

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

“**Original Currency**” has the meaning specified in Section 14.19.

“**Original Effective Date**” has the meaning specified in the recitals hereto.

“**Original Lenders**” has the meaning specified in the recitals hereto.

“**Original Term Loan Credit Agreement**” has the meaning specified in the recitals hereto.

“**Original Term Loans**” has the meaning specified in the recitals hereto.

“**originating Lender**” has the meaning specified in Section 11.2(d).

“**Other Applicable Debt**” has the meaning specified in Section 3.3(g).

“**Other Taxes**” means any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or under any other Loan Document or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Loan Documents, excluding Excluded Taxes.

“**PACA**” means the Perishable Agriculture Commodities Act, 1930 and all regulations promulgated thereunder, as amended from time to time.

“**Participant**” means any Person who shall have been granted the right by any Lender to participate in the financing provided by such Lender under this Agreement, and who shall have entered into a participation agreement in form and substance satisfactory to such Lender, as specified in Section 11.2(d).

“**Participant Register**” has the meaning specified in Section 11.2(f).

“**Payment Recipient**” has the meaning specified in Section 12.21(a).

“**PBA**” means the *Pension Benefits Act* (Nova Scotia) and all regulations thereunder as amended from time to time and any successor legislation.

“**PBGC**” means the Pension Benefit Guaranty Corporation or any Governmental Authority succeeding to the functions thereof.

“**Pension Plan**” means any pension plan (including any Canadian Defined Benefit Pension Plan) that is subject to, or registered under, the PBA, or covered by other Canadian or provincial pension legislation including the *Income Tax Act* (Canada), or a pension plan (as defined in Section 3(2) of ERISA) that is subject to Title IV of ERISA, Section 302 of ERISA, Section 412 of the Code or pension plan maintained in any non-Canadian or U.S. jurisdiction which any Loan Party or, with respect to any Pension Plan subject to ERISA, any ERISA Affiliate, sponsors, maintains or to which it makes, is making or is obligated to make contributions, or has made contributions at any time during the immediately preceding six (6) plan years.

“**Permitted Acquisition**” means any Acquisition after the Original Effective Date, so long as each of the following conditions has been satisfied:

(a) (i) no Event of Default is in existence at the time the definitive documentation in respect of such Acquisition is executed and delivered or would be caused thereby after giving effect thereto and (ii) no Event of Default under Sections 10.1(a), (e), (f) or (g) is in existence at the time of such Acquisition or would be caused thereby after giving effect thereto;

(b) substantially all of such business, assets and operations so acquired, or of the Person so acquired, consists of a line of business that is related, ancillary or complementary to the lines of business the Borrowers and their respective Subsidiaries were engaged in prior to such acquisition; and

(c) the applicable Loan Parties and any such new Subsidiary shall have complied with the provisions of Section 7.8 to the extent applicable thereto and made the deliveries required thereunder;

provided, however, that, the aggregate amount of such Acquisitions made by Loan Parties after the Effective Date in Subsidiaries that are not (or are required to become) Loan Parties (or of assets that shall not be owned by Loan Parties) shall not exceed, together with the aggregate amount of investments made pursuant to clause (i)(iii) of the definition of “Permitted Investments”, the Non-Loan Party Investment Amount.

“**Permitted Investments**” means:

(a) acquisitions of Fixed Assets to be used in the business of a Loan Party or any of its Subsidiaries;

(b) acquisitions of inventory, supplies, other current assets and expenditures or investments in the ordinary course of business that would be accounted for as expenses and not required to be capitalized under GAAP;

(c) investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and supplies, in each case in the ordinary course of business;

(d) extensions of trade credit in the ordinary course of business;

(e) investments made as a result of the receipt of non-cash consideration from a disposition made in compliance with Section 8.2;

(f) investments made by any Person that becomes a Subsidiary after the Original Effective Date; provided that such investment exists at the time such Person becomes a Subsidiary and are not made in contemplation of or in connection with such Person becoming a Subsidiary;

(g) loans and advances made in the ordinary course of business to their respective employees so long as the aggregate principal amount thereof at any time outstanding (excluding employee credit cards for expenses relating to the business of the Loan Parties and their Subsidiaries, temporary advances for payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and which are made in the ordinary course of business) shall not exceed \$1,000,000;

(h) investments existing on the Second Restatement Effective Date and identified on Schedule 8.3;

(i) investments (i) by any Loan Party in any other Loan Party, (ii) by any Subsidiary that is not a Loan Party in any Loan Party or any other Subsidiary and (iii) by any Loan Party in any Subsidiary that is not a Loan Party; provided that the aggregate amount of investments made pursuant to this clause (i)(iii), together with the amount of Acquisitions made by Loan Parties after the Effective Date in Subsidiaries that are not (or are required to become), or in assets that are not owned by, Loan Parties, shall not exceed the Non-Loan Party Investment Amount;

(j) Hedge Agreements entered into in the ordinary course of business and not for speculative purposes;

(k) investments in cash and Cash Equivalents:

(l) any Person to the extent such investments consist of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits, in each case made in the ordinary course of business by a Person;

(m) investments in and/or otherwise constituting Permitted Acquisitions;

(n) so long as no Event of Default is continuing or would result therefrom, investments by any Borrower or any of their respective Subsidiaries in an aggregate amount not to exceed the portion of the Available Amount on the date of such investment that the Canadian Borrower elects to apply to this clause (n);

(o) investments made solely with the proceeds from capital contributions made in cash or Cash Equivalents to the Canadian Borrower or Net Cash Proceeds from the issuance or sale of Capital Stock (other than Disqualified Stock) of the Canadian Borrower (in each case other than any amount increasing the Available Amount), in each case received by the Canadian Borrower during the twelve-month period immediately preceding the date of such investment;

(p) prepayments to sellers of inventory in the ordinary course of business;

(q) so long as no Event of Default exists and is continuing or would result therefrom, investments by any Borrower or any of their respective Subsidiaries in an aggregate amount not to exceed at any time the greater of (x) \$32,500,000 and (y) 32.5% of EBITDA for the most recently ended Test Period;

(r) other investments by any Borrower or any of their respective Subsidiaries so long as after giving *pro forma* effect to such investments and related transactions, the Total Leverage Ratio shall not exceed 3.50:1.00; and

(s) an investment acquired by a Loan Party in order to secure an obligation of such Loan Party with respect to any supplemental executive retirement plan existing as of the Effective Date for any current or former employee of such Loan Party.

For purposes of determining compliance with this definition, the amount, as of any date of determination, of (i) any investment in the form of a loan or an advance shall be the principal amount thereof outstanding on such date, but without any adjustment for write-downs or write-offs (including as a result of forgiveness of any portion thereof) with respect to such loan or advance after the date thereof, (ii) any investment in the form of a Guarantee shall be equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof, as determined in good faith by the Borrower Representative, (iii) any investment in the form of a transfer of Capital Stock or other non-cash property by the investor to the investee, including any such transfer in the form of a capital contribution, shall be the fair market value (as determined in good faith by the Borrower Representative) of such Capital Stock or other property as of the time of the transfer, minus any payments actually received by such investor representing a return of capital of, or dividends or other distributions in respect of, such investment (to the extent such payments do not exceed, in the aggregate, the original amount of such investment), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such investment after the date of such investment, and (iv) any investment by a specified Person in the form of a purchase or other acquisition for value of any Capital Stock, evidences of Debt or other securities of any other Person shall be the original cost of such investment (including any Debt assumed in connection therewith), plus (A) the cost of all additions thereto and minus (B) the amount of any portion of such investment that has been returned or repaid to the investor in cash as a repayment of principal or a return of capital and of any cash payments actually received by such investor representing interest, dividends or other distributions in respect of such investment (to the extent the amounts referred to in clause (B) do not, in the aggregate, exceed the original cost of such investment plus the costs of additions thereto), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such investment after the date of such investment.

**“Permitted Liens”** means:

(a) Liens for taxes, assessments, charges or other governmental levies not delinquent or statutory Liens for taxes, assessments, charges or other governmental levies not delinquent; provided that the payment of such taxes, assessments, charges or other governmental levies under

this clause (a) that are due and payable is being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves have been established on the applicable Loan Party's or Subsidiary's books and records and a stay of enforcement of any such Lien is in effect;

(b) Liens granted under the Loan Documents (including Liens created under the Security Documents securing obligations in respect of Secured Hedge Agreements and Secured Cash Management Agreements);

(c) Liens consisting of deposits made in the ordinary course of business in connection with, or to secure payment of, obligations under worker's compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of Debt) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of Debt) or to secure statutory obligations (other than (x) Liens arising under ERISA or Canadian federal or provincial statutes in relation to pension plans or any other applicable employee benefit plan law or (y) Environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds;

(d) Liens securing the claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like Persons incurred in the ordinary course of business and not delinquent;

(e) Liens constituting encumbrances in the nature of reservations, exceptions, zoning restrictions, encroachments, easements, rights of way, covenants running with the land and other similar title exceptions or encumbrances affecting any Real Estate;

(f) Liens arising from judgments and attachments in connection with court proceedings provided that the attachment or enforcement of such Liens would not result in an Event of Default hereunder and such Liens are being contested in good faith by appropriate proceedings, adequate reserves have been set aside and no material assets or property of any Borrower or any other Loan Party or Subsidiary is subject to a material risk of loss or forfeiture and the claims in respect of such Liens are fully covered by insurance (subject to ordinary and customary deductibles) and a stay of execution pending appeal or proceeding for review is in effect;

(g) Liens in effect as of the Effective Date described in Schedule 8.1 securing Debt described in Schedule 8.1;

(h) Liens on Fixed Assets securing Capital Leases and purchase money Debt, in each instance, permitted in Section 8.5;

(i) Liens in respect of the Obligations under and as defined in the Revolving Credit Agreement, subject to the Intercreditor Agreement;

(j) the extension or renewal of any Lien permitted by clause (g) of this definition; provided, that (x) such Lien shall at no time be extended or renewed to cover any assets or property other than such assets or property subject to the Lien being extended or renewed and (y) the Debt secured by such Lien is permitted under this Agreement;

(k) Liens on amounts deposited in connection with obtaining worker's compensation or other unemployment insurance or to secure obligations to a utility when required by such utility in connection with the operations of the Borrowers and their respective Subsidiaries;

(l) Liens on amounts deposited in connection with the making or entering into of bids, tenders, or leases in the ordinary course of business;

(m) Liens arising as of a matter of law, such as bankers and other similar statutory Liens and other rights of offset, in connection with deposit, securities, or commodities accounts in the ordinary course of business;

(n) Liens consisting of reclamation rights and similar statutory rights arising as a matter of applicable law in favour of the seller of goods to any Loan Party or any Subsidiary thereof so long as such Liens secure only the purchase price of and apply only to the goods or other property sold;

(o) Liens on amounts deposited as security for surety or appeal bonds in connection with obtaining such bonds in the ordinary course of business;

(p) Liens existing on property or assets prior to the acquisition thereof by any Loan Party or any Subsidiary thereof in a Permitted Acquisition if such Lien was not incurred in contemplation of the acquisition of such asset and does not extend to any other assets or property of any Loan Party or any Subsidiary thereof and Liens on funds on deposit or escrow in connection with a Permitted Acquisition or similar investment;

(q) Liens consisting of claims under PACA;

(r) Liens on assets of Subsidiaries that are not Loan Parties securing Debt of such Subsidiaries permitted to be incurred hereunder;

(s) Liens securing Debt in an aggregate principal amount not to exceed an amount outstanding at any time equal to the greater of (x) \$50,000,000 and (y) 50.0% of EBITDA for the most recently ended Test Period;

(t) Liens on the Collateral securing Refinancing Debt (including any successive Refinancing Debt in respect thereof) in respect of any Term Loans, subject to the Intercreditor Agreement and/or an Acceptable Intercreditor Agreement;

(u) Liens on assets subject to a Sale/Leaseback Transaction securing Attributable Debt to the extent permitted by Section 8.5(t); and

(v) Liens securing Debt permitted under Sections 8.5(e) and 8.5(g); provided that the administrative agent, collateral agent, trustee and/or any similar representative acting on behalf of the holders of such Debt shall have become a party to the Intercreditor Agreement and/or an Acceptable Intercreditor Agreement.

**“Permitted Refinancing”** means, with respect to any Person, any modification, amendment, restatement, amendment and restatement, refinancing, refunding, renewal or extension of any Debt of such Person (in each such case, including any Refinancing Debt incurred in respect thereof, **“Refinancing Debt”**); provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Debt so modified, amended, restated, amended

and restated, refinanced, refunded, renewed or extended except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such modification, amendment, restatement, amendment and restatement, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder (to the extent such commitments could be drawn at the time of such refinancing in compliance with this Agreement) or as otherwise permitted pursuant to Section 8.5, (b) with respect to any unsecured or subordinated Debt or Debt secured by Liens on a junior basis in the Collateral, in each case incurred by a Loan Party, such Refinancing Debt, (A) has a final maturity date that is equal to or later than the final maturity date of the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended, (B) has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended; provided that the foregoing clauses (A) and (B) shall not apply to the extent such Debt constitutes a customary bridge facility, so long as the long-term Debt into which any such customary bridge facility is to be converted or exchanged, as applicable, otherwise satisfies the requirements of the foregoing clauses (A) and (B) and such conversion or exchange is subject only to conditions customary for similar conversions or exchanges and (C) has no scheduled amortization or payments of principal prior to 91 days after the latest maturity date of any Facility then outstanding or, if the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended is subject to scheduled amortization or payments of principal, prior to any such scheduled amortization or payments of principal, (c) with respect to a Permitted Refinancing of all or any portion of any Class of Term Loans, such Refinancing Debt, (A) has a final maturity date that is equal to or later than the final maturity date of the Term Loans being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended and (B) has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the Term Loans being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended; provided that this clause (c) shall not apply to the extent such Refinancing Debt constitutes a customary bridge facility, so long as the long-term Debt into which any such customary bridge facility is to be converted or exchanged, as applicable, otherwise satisfies the requirements of this clause (c) and such conversion or exchange is subject only to conditions customary for similar conversions or exchanges, (d) (i) if the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended is subordinated in right of payment to the Obligations, such Refinancing Debt is subordinated in right of payment to the Obligations on terms at least as favorable, taken as a whole, to the Lenders as those contained in the documentation governing the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended, (ii) if the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended is secured by Liens that are junior to the Liens securing the Obligations, such Refinancing Debt shall be secured by junior Liens on terms at least as favorable, taken as a whole, to the Lenders as those contained in the documentation governing the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended, or shall be unsecured and (iii) if the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended is unsecured, such Refinancing Debt may not be secured by Liens that are *pari passu* with the Liens securing the Obligations, (e) except in the case of a Permitted Refinancing with respect to all or any portion of any Class of Term Loans, the terms and conditions (including, if applicable, as to collateral) of any such Refinancing Debt are not materially, taken as a whole, less favorable to the Loan Parties than the terms and conditions of the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended or are on market terms for similar issuances at the time of such modification, amendment, restatement, amendment and restatement, refinancing, refunding, renewal or extension (as determined in the Borrower Representative's reasonable discretion), (f) except in the case of a Permitted Refinancing with respect to all or any portion of any Class of Term Loans, such Refinancing Debt is incurred and/or guaranteed by only the Persons who are the obligors in respect of the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended or are Loan Parties, unless otherwise permitted pursuant to Section 8.5; and (g) in the case of a Permitted Refinancing with respect to all or any portion of any Class of Term Loans, (i)

any such Refinancing Debt must rank *pari passu* with or junior to the Obligations in right of payment and may rank *pari passu* with or junior to the Obligations with respect to security or may be unsecured; provided that any such Debt that is secured shall be subject to the Intercreditor Agreement and an Acceptable Intercreditor Agreement, (ii) such Refinancing Debt shall not be secured by any assets other than the Collateral, (iii) such Refinancing Debt shall not be Guaranteed by any Person that is not a Loan Party, (iv) such Debt is incurred under (and pursuant to) documentation other than this Agreement and is incurred by the Borrowers, (v) any such Debt that is *pari passu* with the Term Loans hereunder in right of payment and secured by Liens in the Collateral on a *pari passu* basis with respect to the Liens securing the Obligations may participate on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any voluntary or mandatory prepayment in respect of the Term Loans, in each case as the Borrower Representative and the relevant lenders or investors may agree, (vi) the terms and conditions of any such Debt (excluding pricing, interest, closing payments, fees, rate floors, premiums, maturity and amortization and optional prepayment or redemption terms) shall be (x) substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by the Borrower Representative) to the lenders or investors providing such Refinancing Debt than those applicable to the Term Loans (other than covenants or other provisions applicable only to periods after the latest maturity date of the then-existing Term Loans) or (y) solely in the case of debt securities, on then-prevailing market terms (as reasonably determined by the Borrower Representative); provided that a certificate of a Responsible Officer of the Borrower Representative delivered to the Agent at least five Business Days (or such shorter period as may be agreed by the Agent) prior to the incurrence of such Debt, together with a reasonably detailed description of the material terms and conditions of such Debt or drafts of the documentation relating thereto, stating that the Borrower Representative has determined in good faith that such terms and conditions satisfy the requirement set out in this clause (vi), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Agent provides notice to the Borrower Representative of its objection during such five Business Day period and (vii) the Debt being refinanced, refunded or replaced shall be repaid, defeased or satisfied and discharged, and all accrued interest, fees and premiums (if any) in connection therewith, shall be paid substantially concurrently with the issuance of such Refinancing Debt.

“**Person**” means any individual, sole proprietorship, partnership, limited partnership, limited liability company, unlimited liability company, joint venture, trust, unincorporated organization, association, corporation, Governmental Authority or any other entity.

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

“**Platform**” has the meaning specified in Section 12.20.

“**Post Petition Interest**” has the meaning specified in Section 13.8(b).

“**PPSA**” means the *Personal Property Security Act* (Nova Scotia) (or any successor statute) or similar legislation of any other jurisdiction the laws of which are required by such legislation to be applied in connection with the issue, perfection, enforcement, validity or effect of security interests and includes all regulations thereunder.

“**Preferred Stock**”, as applied to the Capital Stock of any corporation, shall mean Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

“**Prime Rate**” means the rate of interest per annum determined by Bank of Montreal from time to time as its prime commercial lending published rate for U.S. Dollar loans in the United States for such day. The Prime Rate is not necessarily the lowest rate that Bank of Montreal is charging any corporate customer.

“**Pro Rata Share**” means, with respect to a Lender at any time, a fraction (expressed as a percentage), the numerator of which is the amount of such Lender’s Term Commitment at such time and the denominator of which is the sum of the amounts of all of the Lenders’ Term Commitments at such time, or if no Term Commitments of any Class are outstanding at such time, a fraction (expressed as a percentage), the numerator of which is the amount of Term Loans under such Class owed to such Lender at such time and the denominator of which is the aggregate amount of the Term Loans under such Class owed to all Lenders at such time.

“**Proceeds of Crime Act**” means *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.

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

“**Public Lender**” has the meaning specified in Section 12.20.

“**Public Side Information**” has the meaning specified in Section 12.20.

“**QFC Credit Support**” has the meaning specified in Section 14.27.

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

“**Real Estate**” means all of each Loan Party’s now or hereafter owned or leased estates in real property, including, without limitation, all fees, leaseholds and future interests, together with all of each Loan Party’s now or hereafter owned or leased interests in the improvements thereon, the fixtures attached thereto and the easements appurtenant thereto.

“**Recovery Event**” means any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Canadian Borrower or its Subsidiaries.

“**Refinancing**” has the meaning specified in the definition of “Transactions”.

“**Refinancing Amendment**” means an amendment to this Agreement (which may, at the option of the Agent and the Borrower Representative, be in the form of an amendment and restatement of this Agreement), in form and substance reasonably satisfactory to the Agent, among the Borrowers, the Agent and the Lenders providing Specified Refinancing Debt, effecting the incurrence of such Specified Refinancing Debt in accordance with Section 1.4.

“**Refinancing Debt**” has the meaning specified in the definition of “Permitted Refinancing.”

“**Register**” has the meaning specified in Section 11.2(b).

“**Release**” means a release, spill, emission, leaking, pumping, pouring, emptying, injection, disposal, discharge, escaping, dumping, leaching, migrating or placing of a Contaminant into the environment.

“**Removal Effective Date**” has the meaning specified in Section 12.9.

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA or the regulations thereunder, other than any such event for which the 30 day notice requirement under ERISA has been waived in regulations issued by the PBGC.

“**Repricing Transaction**” means each of (a) the prepayment, repayment, refinancing, substitution or replacement of all or a portion of the Initial Term Loans, the primary purpose of which is to reduce the Effective Yield applicable to the Initial Term Loans, substantially concurrently with the incurrence by any Loan Party of any secured term loans (including any Specified Refinancing Debt or Refinancing Debt in respect of the Initial Term Loans) having an Effective Yield that is less than the Effective Yield applicable to the Initial Term Loans so prepaid, repaid, refinanced, substituted or replaced and (b) any amendment or other modification to this Agreement (including any mandatory assignment by a Non-Consenting Lender pursuant to Section 11.3(a)) that would have the effect of reducing the Effective Yield of the Initial Term Loans where the primary purpose of such amendment or other modification is to reduce the Effective Yield of the Initial Term Loans; provided, that in no event shall any such prepayment, repayment, refinancing, substitution, replacement, amendment, waiver or other modification in connection with a Change of Control or Transformational Event constitute a Repricing Transaction.

“**Required Lenders**” means at any time Lenders whose Pro Rata Shares in respect of the Term Loans aggregate more than 50.0%; provided that, the Pro Rata Share of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“**Requirement of Law**” means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator, court of law or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

“**Resignation Effective Date**” has the meaning specified in Section 12.9.

“**Resigning Agent**” has the meaning specified in the preamble hereto.

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

“**Responsible Officer**” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer, a vice president of finance, corporate comptroller of a Loan Party or any other authorized officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants, the chief financial officer, the treasurer, assistant treasurer or a vice president of finance of such Loan Party or any other officer having substantially the same authority and responsibility.

“**Restricted Amount**” has the meaning specified in Section 3.3(h).

“**Restricted Debt**” has the meaning set forth in Section 8.6.

“**Revolving Credit Agreement**” means the Fourth Amended and Restated Credit Agreement, dated as of October 16, 2019, among the Canadian Borrower, as Canadian borrower, High Liner Foods

(USA), Incorporated, as U.S. borrower, the other borrowers party thereto, the guarantors party thereto, Royal Bank of Canada, as administrative agent and collateral agent for the lenders party thereto, and as may be further amended, restated, supplemented or otherwise modified from time to time in accordance with the Intercreditor Agreement (including, for the avoidance of doubt, as amended by the Revolving Credit Agreement Amendment).

“**Revolving Credit Agreement Amendment**” has the meaning specified in the definition of “Transactions”.

“**Revolving Credit Facility Collateral Agent**” means Royal Bank of Canada in its capacity as collateral agent under the Revolving Credit Agreement.

“**Revolving Credit Facility Obligations**” has the meaning specified in Section 14.26(b).

“**Revolving Loans**” means “Revolving Loans” as defined in the Revolving Credit Agreement.

“**RPMRR**” means the Register of Personal and Movable Real Rights (Quebec).

“**Sale/Leaseback Transaction**” means an arrangement relating to property now owned or hereafter acquired whereby the Canadian Borrower or any of its Subsidiaries transfers such property to a Person (other than the Canadian Borrower or any of its Subsidiaries) and the Canadian Borrower or any of its Subsidiaries leases it from such Person.

“**Sanctions**” means any applicable economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, (c) the Government of Canada, (d) His Majesty’s Treasury, (e) the European Union or (f) any other Governmental Authority with jurisdiction over any Lender or any Loan Party or any of their respective Subsidiaries or Affiliates.

“**Second Currency**” has the meaning specified in Section 14.19.

“**Second Restatement Effective Date**” means April 24, 2014.

“**Second Restatement Lenders**” has the meaning specified in the recitals hereto.

“**Second Restatement Term Loan Credit Agreement**” has the meaning specified in the recitals hereto.

“**Second Restatement Term Loans**” has the meaning specified in the recitals hereto.

“**Secured Cash Management Agreement**” means any Cash Management Agreement that is (a) entered into by and between any Loan Party and any Cash Management Bank; provided that in the event the obligations under same Cash Management Agreement are secured under both the Loan Documents and the security documents entered pursuant to the Revolving Credit Agreement, they shall be deemed to be secured solely pursuant to the Revolving Credit Agreement, unless the Cash Management Bank party to such agreement and the Borrowers agree that they shall secured solely under the Loan Documents.

“**Secured Hedge Agreement**” means any Hedge Agreement that is entered into by and between any Loan Party and any Hedge Bank; provided that in the event the obligations under the same Hedge Agreement are secured under both the Loan Documents and the security documents entered pursuant to the Revolving Credit Agreement, they shall be deemed to be secured solely pursuant to the Revolving Credit

Agreement, unless the Hedge Bank party to such agreement and the Borrowers agree that they shall secured solely under the Loan Documents.

“**Secured Leverage Ratio**” means, as of any date of determination, the ratio of (a) Total Net Debt secured by a Lien (including, for the avoidance of doubt, Capital Leases) as of the last day of the most recently ended Test Period to (b) EBITDA for the most recently ended Test Period.

“**Secured Parties**” or “**Secured Party**” means the Agent, each Lender, each Hedge Bank that is party to any Secured Hedge Agreement, each Cash Management Bank that is party to any Secured Cash Management Agreement and each other “Secured Party” as defined in the Security Documents.

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

“**Security Agreements**” means the U.S. Security Agreement and the Canadian Security Agreement.

“**Security Documents**” means the U.S. Security Agreement, the Canadian Security Agreement, the Hypothec, the Mortgages and any other agreement entered into by any Borrower or any Guarantor pursuant to which the Agent has been granted a Lien to secure any or all of the Obligations of any Borrower or of any Guarantor or pursuant to which any Loan Party reaffirms its grant of security interests under any then-existing Security Documents.

“**SOFR**” means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

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

“**SOFR Loan**” means a Loan that bears interest at a rate based on Term SOFR, other than pursuant to clause (iii) of the definition of “Base Rate”.

“**Solidary Claim**” has the meaning specified in Section 12.1(b).

“**Solvent**” means, when used with respect to any Person, that at the time of determination:

- (a) the assets of such Person, at a fair valuation, are in excess of the total amount of its debts (including contingent liabilities);
- (b) the present fair saleable value of its assets is greater than its probable liability on its existing debts as such debts become absolute and matured;
- (c) it is then able and expects to be able to pay its debts (including contingent debts and other commitments) as they mature; and
- (d) it has capital sufficient to carry on its business as conducted and as proposed to be conducted.

For purposes of determining whether a Person is Solvent, the amount of any contingent liability shall be computed as the amount that, in light of all the facts and circumstances existing at such time,

represents the amount that can reasonably be expected to become an actual or matured liability of such Person.

“**Specified Loan Party**” means any Loan Party that is not an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 13.9).

“**Specified Refinancing Debt**” has the meaning specified in Section 1.4(a).

“**Specified Representations**” means the representations and warranties set forth in Sections 6.1, 6.2, 6.3, 6.8, 6.20, 6.21, 6.27 and 6.28.

“**Specified Transaction**” means (a) any Asset Sale of all or substantially all the assets of or Capital Stock of any of any Borrower’s Subsidiaries or of any business unit, line of business or division of any Borrower or any of their respective Subsidiaries, (b) any Permitted Acquisition or investment that results in a Person becoming a Subsidiary of any Borrower or any Borrower or any of their respective Subsidiaries acquiring all or substantially all of a business unit, line of business or division of a Person, (c) any incurrence of Debt, making of a Distribution or prepayment, repurchase or redemption of Restricted Debt, (d) any use of Available Amount and (e) other transactions, in each case in respect of which compliance with a financial test is by the terms of this Agreement required to be calculated on a *pro forma* basis.

“**Subordinated Obligations**” has the meaning specified in Section 13.8.

“**Subsequent Transaction**” has the meaning specified in Section 1.1(e)(vii).

“**Subsidiary**” of a Person means any corporation, association, partnership, limited liability company, joint venture or other business entity of which more than fifty percent (50%) of the voting stock or other voting equity interests (in the case of Persons other than corporations), is owned or controlled directly or indirectly, by the Person, or one or more of the Subsidiaries of the Person, or a combination thereof. Unless the context otherwise clearly requires, references herein to a “Subsidiary” refer to a Subsidiary of the Canadian Borrower.

“**Supported QFC**” has the meaning specified in Section 14.27.

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

“**Taxes**” means any and all present or future taxes, levies, imposts, deductions, charges or withholdings (including backup withholding), and all liabilities with respect thereto including penalties and interest, imposed by a Governmental Authority.

“**Term Commitment**” means, as to any Lender, the obligation of such Lender, if any, to make Term Loans to the Borrowers in an aggregate original principal amount not to exceed the amount set forth under the heading “Term Commitment” opposite such Lender’s name on Schedule 1.2(a) or as otherwise set forth in the applicable Incremental Facility Amendment, Extension Amendment or Refinancing Amendment, as applicable. The amount of each Lender’s Term Commitment is set forth on Schedule 1.2(a) or as otherwise set forth in the applicable Incremental Facility Amendment, Extension Amendment or Refinancing Amendment, as applicable, or in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The aggregate Term Commitment of all Lenders on the Effective Date is \$240,000,000.

“**Term Loan Maturity Date**” means the seventh anniversary of the Effective Date (or, if such date is not a Business Day, the immediately preceding Business Day).

“**Term Loans**” means (a) the Initial Term Loans and (b) any term loan added pursuant to Sections 1.3, 1.4 or 1.5.

“**Term SOFR**” means, for any Interest Period for a SOFR Loan, the greater of (i) the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (the “**Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator and (ii) the Floor; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date (as defined in Schedule 4.5) with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

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

“**Term SOFR Determination Day**” has the meaning assigned to it under the definition of “Term SOFR.”

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

“**Termination Date**” means the earliest to occur of (i) the Term Loan Maturity Date and (ii) the date the Term Loans are accelerated pursuant to Section 10.2.

“**Termination Event**” means (a) the whole or partial withdrawal of any Borrower or any Guarantor from a Pension Plan during a plan year; or (b) the filing of a notice of interest to terminate in whole or in part a Pension Plan or the treatment of a 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 Pension Plan; or (d) any other event or condition which might constitute grounds for the termination of, winding up of, or partial termination or winding up of, or the appointment of a trustee to administer, any Pension Plan.

“**Test Period**” means, for any date of determination, the four consecutive fiscal quarters of the Canadian Borrower (taken as one accounting period) then last ended and for which financial statements have been, or were required to be, delivered pursuant to Section 5.2(a) or Section 5.2(b).

“**Title Policies**” has the meaning specified in Section 7.8(d).

“**Total Debt**” means, as at any date of determination, the aggregate amount of all Debt on the balance sheet of the Canadian Borrower and its Subsidiaries as of the last day of the most recently ended Test Period, determined on a consolidated basis in accordance with GAAP (without giving effect to, for the avoidance of doubt, any deductions thereto relating to embedded derivatives, deferred financing charges, mark-to-market valuation of swaps and other derivatives and other like deductions), consisting only of Debt

for borrowed money, unreimbursed obligations under drawn letters of credit, obligations in respect of Capital Leases and debt obligations evidenced by bonds, debentures, notes or similar instruments.

“**Total Leverage Ratio**” means, as of any date of determination, the ratio of (a) Total Net Debt as of the last day of the most recently ended Test Period to (b) EBITDA for the most recently ended Test Period.

“**Total Net Debt**” means, as at any date of determination, (a) Total Debt as of the last day of the most recently ended Test Period *minus* (b) the aggregate amount of cash and Cash Equivalents of the Canadian Borrower and its Subsidiaries (in each case, free and clear of all Liens, other than Permitted Liens), excluding cash and Cash Equivalents that are listed as “restricted” (or classified in a similar manner) on the consolidated balance sheet of the Canadian Borrower and its Subsidiaries as of the last day of the most recently ended Test Period.

“**Trading with the Enemy Act**” has the meaning specified in Section 6.27.

“**Transactions**” means: (i) the repayment in full of the aggregate principal amount of the Second Restatement Term Loans outstanding on the Effective Date, plus accrued and unpaid interest and premiums (if any) (the “**Refinancing**”), (ii) the execution and delivery of the Loan Documents to be entered into on the Effective Date and the funding of the Initial Term Loans on the Effective Date, (iii) the execution and delivery of an amendment to the Revolving Credit Agreement to be entered into on the Effective Date to, among other things, permit the incurrence of the Initial Terms Loans and the effectiveness of this Agreement (the “**Revolving Credit Agreement Amendment**”) and (iv) the payment of all fees, costs and expenses incurred in connection with each of the foregoing.

“**Transfer**” has the meaning specified in Section 8.2(b).

“**Transformational Event**” means any acquisition or investment by the Canadian Borrower or any Subsidiary that either (a) is not permitted by the terms of this Agreement immediately prior to the consummation of such acquisition or investment or (b) if permitted by the terms of this Agreement immediately prior to the consummation of such acquisition or investment, would not provide the Canadian Borrower and its Subsidiaries with adequate flexibility under this Agreement for the continuation and/or expansion of their combined operations following such consummation, as determined by the Borrower Representative acting in good faith.

“**Treasury Regulations**” means the regulations under the Code, as amended from time to time (including corresponding provisions of succeeding regulations).

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

“**UCC**” means the Uniform Commercial Code, as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the issue of perfection or nonperfection or priority of security interests, provided, that to the extent that the UCC is used to define any term herein or in any other documents and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 of the applicable UCC shall govern.

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation

Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

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

“**Undisclosed Administration**” means, in relation to a Lender or its direct or indirect parent company, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or such parent company is subject to home jurisdiction, if applicable law requires that such appointment not be disclosed.

“**Unfunded Pension Liability**” means the excess of a Pension Plan’s projected benefit obligation, as defined in Accounting Standards Codification No. 715, over the market value of that Pension Plan’s assets and also includes any unfunded liability or solvency deficiency as determined for the purposes of the PBA or other applicable laws.

“**United States**” means the United States of America.

“**U.S. Borrower**” has the meaning specified in the preamble hereto.

“**U.S. Dollar**” or “**U.S.\$**” or “**\$**” or “**Dollars**” mean dollars in the lawful currency of the United States.

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

“**U.S. Security Agreement**” means the Amended and Restated Security Agreement, dated as of the Effective Date, among the Guarantors that are U.S. Subsidiaries and the Agent for the benefit of the Agent and the Lenders.

“**U.S. Special Resolution Regimes**” has the meaning specified in Section 14.27.

“**U.S. Subsidiary**” means any direct or indirect Subsidiary of any Borrower which is organized or amalgamated under the laws of the United States or any state thereof or the District of Columbia.

“**Voting Stock**” of a corporation shall mean all classes of Capital Stock of such corporation then outstanding and normally entitled to vote in the election of directors.

“**Weighted Average Life to Maturity**” means, when applied to any Debt, at any date, the quotient obtained by dividing (1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Debt multiplied by the amount of such payment, by (2) the sum of all such payments.

“**Wholly-Owned Subsidiary**” means a wholly owned direct or indirect Subsidiary of the Canadian Borrower.

**“Working Capital Decreases”** means, for any period, all positive amounts that would, in conformity with GAAP, be set forth opposite the caption “net change in non-cash working capital balances” (or any like caption) on a consolidated statement of cash flows of the Canadian Borrower and its Subsidiaries for such period.

**“Working Capital Increases”** means, for any period, all negative amounts that would, in conformity with GAAP, be set forth opposite the caption “net change in non-cash working capital balances” (or any like caption) on a consolidated statement of cash flows of the Canadian Borrower and its Subsidiaries for such period.

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

**(b) Accounting Terms.**

(i) Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with GAAP, and all financial computations in this Agreement shall be computed, unless otherwise specifically provided therein, in accordance with GAAP as consistently applied and using the same method for inventory valuation as used in the preparation of the Financial Statements.

(ii) Anything to the contrary herein notwithstanding, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other applicable accounting standard having a similar result or effect) to value any Debt or other liabilities of the Canadian Borrower or any of its Subsidiaries at “fair value,” as defined therein.

**(c) Interpretive Provisions.**

(i) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(ii) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and Subsection, Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(iii) The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(iv) The term “including” is not limiting and means “including without limitation.”

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

(vi) Any reference made in this Agreement to “Agent” or “Lender” shall so be construed as to include its successors and permitted assigns.

(vii) Any reference made in this Agreement to a time of day is, unless otherwise stated, a reference to New York time.

(viii) Any reference made in this Agreement to Sections, Articles, Exhibits or Schedules is, unless otherwise indicated, a reference to Sections and Articles of this Agreement and to Exhibits and Schedules to this Agreement, as the case may be. The provisions of each Exhibit and Schedule shall constitute provisions of this Agreement as though repeated at length herein.

(ix) Any reference made in this Agreement to a “fiscal quarter” means, in relation to a Loan Party, one of the four (4) consecutive periods in each Fiscal Year each of thirteen weeks in duration (as adjusted for leap years).

(x) In this Agreement, (A) the singular includes the plural and vice versa, (B) “in writing” or “written” includes printing, typewriting, or any electronic means of communication capable of being visibly reproduced at the point of reception, including telex, telecopy and telegraph, (C) the headings, the table of contents, the Articles and the Sections are inserted for convenience only and are to be ignored in construing this Agreement, (D) a document, notice, note, bill of exchange or other instrument shall be deemed to have been validly signed and executed if it has been signed by either an original signature or a facsimile signature or stamp, and (E) all references to amounts of money shall, unless otherwise indicated, be references to Dollars.

(xi) All references to parties herein shall unless otherwise expressly provided, include each such party’s successors and permitted assigns.

(xii) For the purpose of determining compliance with covenant and default limitations set forth in the Agreement, amounts expressed in Dollars shall be measured by aggregating the applicable items denominated in Dollars with the Equivalent Amounts expressed in Dollars of such items denominated in Canadian Dollars.

(xiii) Unless otherwise expressly provided herein, (A) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement, and (B) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation. In addition, (x) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173), all laws in respect thereto, all interpretations and applications thereof and any compliance by a Lender with any request or directive relating thereto 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, for the purposes of this Agreement, be deemed to be adopted subsequent to the Effective Date.

(xiv) The captions and headings of this Agreement and other Loan Documents are for convenience of reference only and shall not affect the interpretation of this Agreement.

(xv) This Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to the Agent, the Loan Parties and the other parties hereto, and are the products of all parties. Accordingly, they shall not be construed against the Lenders or the Agent merely because of the Agent's or Lenders' involvement in their preparation.

(xvi) Unless otherwise expressly stated herein, wherever in this Agreement reference is made to a rate of interest or fee "per annum" or a similar expression is used, such interest or fee will be calculated on the basis of a calendar year of three hundred and sixty (360) days; provided, however, that interest on Base Rate Loans, when based on the Prime Rate, will be calculated on the basis of a calendar year of three hundred sixty-five (365) day year (or a three hundred sixty-six (366) day year in a leap year). All payments of interest to be made hereunder will be paid both before and after maturity and before and after default and/or judgment, if any, until payment thereof, and interest will accrue on overdue interest, if any.

(xvii) All Term Loans shall be made and denominated in U.S. Dollars. For purposes of determining compliance with covenant and default limitations, all fees and amounts payable hereunder and all calculations hereunder, including, without limitation, each Lender's Commitment as of any date and computations of the Total Leverage Ratio, the Secured Leverage Ratio, Consolidated Total Assets and EBITDA, shall all be calculated and stated in U.S. Dollars, in each case determined with respect to the Equivalent Amount of any currency other than U.S. Dollars.

(xviii) This Agreement shall not constitute a novation of any loan or accrued interest or fee or other Obligation outstanding under the Second Restatement Term Loan Credit Agreement, all of which shall remain outstanding under this Agreement until paid in accordance with the terms hereof.

(xix) Notwithstanding anything contained herein to the contrary, (A) where compliance with any provision herein or the other Loan Documents is determined by reference to the proceeds of any issuances of Capital Stock or capital contributions, such proceeds shall be deemed to be limited to such amount as was not previously (and is not concurrently being) applied in connection with another transaction, (B) with respect to determining the permissibility of the establishment of any commitments in respect of Debt, all such commitments established at or prior to such time shall be deemed to be fully drawn; provided that notwithstanding the foregoing, any Debt consisting of a delayed draw term loan commitment may be calculated either, at the Borrowers' election (i) assuming such delayed draw commitments are fully drawn at the time of establishment thereof, in which case (x) any subsequent utilization of such delayed draw term commitments shall not require compliance with any incremental test and (y) such delayed draw term commitments shall be deemed to be fully drawn for all purposes of testing baskets and/or ratios under this Agreement and the other Loan Documents or (ii) upon the actual utilization under such delayed draw commitments (provided that any such delayed draw commitments that are not tested until actual utilization shall be excluded from any calculation of "Required Lenders" until so utilized) and (C) with respect to determining the permissibility of the incurrence of any Debt, the proceeds thereof shall not be counted as cash or Cash Equivalents in any "net debt" determinations relating to the incurrence thereof.

(xx) For the avoidance of doubt, (A) references herein to Liens that are *pari passu* with the Liens securing the Obligations (or equivalent) shall mean that such Liens rank in priority in respect of the Collateral to the same extent as applicable to the "Term Secured Parties" under and

as defined in the Intercreditor Agreement and (B) references herein to Liens that are junior to the Liens securing the Obligations (or equivalent) shall mean that such Liens rank junior in priority to Liens securing both the “ABL Obligations” and the “Term Obligations”, each under and as defined in the Intercreditor Agreement.

(d) **Solidary Interests/Civil Code of Quebec/Hypothecary Representative.**

(i) The Loan Parties confirm and agree that:

(A) subject to Article 10, the rights of the Agent and each Lender, from time to time a party to this Agreement by way of assignment or otherwise are solidary and as regards the Obligations owing from time to time to each Lender, each of the Agent and the Agent and such Lender is entitled, when permitted pursuant to Article 10, to: (i) demand payment of the amounts of all Term Loans outstanding from time to time in respect of such Obligations; (ii) exact the whole performance of such Obligations from the Loan Parties; (iii) benefit from the Agent’s Liens and the Collateral in respect of such Obligations; (iv) give a full acquittance of such Obligations (each Lender hereby agreeing to be bound by any such acquittance); and (v) exercise all rights and recourses under the Loan Documents with respect to those Obligations. The Obligations of the Borrowers with respect to any Term Loans, advanced or arranged by or under this Agreement, as the case may be, will form part of the Obligations, will be secured by the Agent’s Liens and the Collateral and the Agent and the Lenders, will have a solidary interest therein; and

(B) the obligations to make Term Loans are several, and not joint and several or solidary and, accordingly, the Borrowers’ recourse against any Lender with respect thereto, will be limited to the amount of such Lender’s commitment in the applicable Facility.

(ii) 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, (q) “personal property” shall be deemed to include “movable property”, (r) “real property” shall be deemed to include “immovable property”, (s) “tangible property” shall be deemed to include “corporeal property”, (t) “intangible property” shall be deemed to include “incorporeal property”, (u) “security interest” and “mortgage” shall be deemed to include a “hypothec”, (v) 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, (w) all references to “perfection” of or “perfected” Liens shall be deemed to include a reference to the “opposability” of such Liens to third parties, (x) any “right of offset”, “right of setoff” or similar expression shall be deemed to include a “right of compensation”, (y) “goods” shall be deemed to include “corporeal movable property” other than chattel paper, documents of title, instruments, money and securities, and (z) an “agent” shall be deemed to include a “mandatary”.

(iii) For greater certainty and without limiting the power of the Agent hereunder or under any other Loan Document, the Agent and each Lender hereby appoints and authorizes Bank of Montreal to act as hypothecary representative within the meaning of Article 2692 of the Civil Code of Quebec (in such capacity, the “**Hypothecary Representative**”) of the Agent and the Lenders for the purposes of holding any security granted by any Loan Party pursuant to the laws of the Province of Quebec and to exercise such rights and duties as are conferred upon the Hypothecary Representative thereunder and under applicable laws (with the power to delegate any

such rights and duties as appropriate). Bank of Montreal, the Agent and each of the Lenders hereby confirms and agrees to such appointment and each Person who is or becomes the Agent or a Lender hereunder (including by its execution of an assignment and assumption agreement) shall be deemed to have consented to and ratified the foregoing appointment of the Hypothecary Representative and to have ratified all actions taken by the Hypothecary Representative prior to such date. For greater certainty, the Hypothecary Representative shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favour of the Agent in this Agreement, which shall apply *mutatis mutandis*. In the event of the resignation and appointment of a successor Agent (which shall include its resignation as Hypothecary Representative), such successor Agent shall also act as the Hypothecary Representative unless and until a successor hypothecary representative is otherwise appointed.

(e) **Pro Forma Basis; Limited Condition Transactions; Reclassification; Stacking Provisions.** Notwithstanding anything to the contrary contained herein, financial ratios and tests (including the Total Leverage Ratio, the Secured Leverage Ratio, Consolidated Total Assets and EBITDA) pursuant to this Agreement shall be calculated in the manner prescribed by this Section.

(i) In the event that the any Borrower or any of their respective Subsidiaries incurs, assumes, guarantees, redeems, repays, repurchases, retires or extinguishes any Debt (other than Debt incurred or repaid under any revolving credit facility unless such Debt has been permanently repaid and has not been replaced) during the applicable Test Period or subsequent to the end of the Test Period for which such financial ratio or test is being calculated but prior to or simultaneously with the event for which such calculation is being made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, redemption, repayment, repurchase, retirement or extinguishment of Debt, as if the same had occurred on the first day of the applicable Test Period.

(ii) For purposes of calculating any financial ratio or test, including for the avoidance of doubt, on a *pro forma* basis, (i) Specified Transactions and Transactions that have been made by the any Borrower or any of its Subsidiaries during the applicable Test Period or subsequent to such Test Period and prior to or simultaneously with the event for which such calculation is being made shall be given *pro forma* effect assuming that all such Specified Transactions and Transactions (and the change in EBITDA resulting therefrom) had occurred on the first day of the applicable Test Period and (ii) to the extent permitted by the definition of “EBITDA”, “run-rate” cost savings and synergies that have been or are expected to be realized during the 18-month period following the consummation of such transactions shall be given *pro forma* effect, subject to the EBITDA Addback Cap. If since the beginning of any such Test Period any Person that subsequently became a Subsidiary of any Borrower or was merged, amalgamated or consolidated with or into any Borrower or any of its Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction or Transaction that would have required adjustment pursuant to this Section, then any applicable financial ratio or test shall be calculated giving *pro forma* effect thereto for such period as if such Specified Transaction or Transaction occurred at the beginning of the applicable Test Period. For the avoidance of doubt, solely for purposes of calculating quarterly compliance with Section 8.11, the date of the required calculation shall be the last day of the Test Period, and no Specified Transaction or other transaction occurring thereafter shall be taken into account or given *pro forma* effect.

(iii) Whenever *pro forma* effect is to be given to a Specified Transaction or the Transactions, the *pro forma* calculations shall be made in good faith by the Chief Financial Officer of the Borrower Representative (including the “run-rate” cost savings and synergies resulting from such Specified Transactions or Transactions that have been or are expected to be realized (“run-

rate” means the full recurring benefit for a period that is associated with any action taken (including any savings expected to result from the elimination of a public target’s compliance costs with public company requirements)), net of the amount of actual benefits realized during such period from such actions); provided that such pro forma adjustments for any period shall be subject to the applicable limitations set forth in the definition of “EBITDA”.

(iv) If any Debt bears a floating rate of interest and is being given *pro forma* effect, the interest on such Debt shall be calculated as if the rate in effect on the date of the event for which the applicable calculation is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Debt). Interest on Debt that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower Representative may designate.

(v) Notwithstanding the foregoing, (A) when calculating the Total Leverage Ratio for purposes of calculating actual quarterly compliance with Section 8.11 the events described in this Section 1.1(e) that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect for the applicable Test Period and (B) the determination of the Total Leverage Ratio for purposes of clause (a)(x) of the definition of “Available Amount” shall be made as of the time of delivery of the applicable financial statements under Section 5.2(a) and the related compliance certificate under Section 5.2(c).

(vi) With respect to any Debt or Liens incurred in reliance on a provision of this Agreement that does not require compliance with a financial ratio (including, without limitation, baskets based on fixed Dollar amounts and/or percentages of Consolidated Total Assets or EBITDA) (any such amounts, the “**Fixed Amounts**”) substantially concurrently with any Debt or Liens incurred in reliance on a provision of this Agreement that requires compliance with a financial ratio or test (including, without limitation, any Secured Leverage Ratio test and/or any Total Leverage Ratio test) (any such amounts, the “**Incurrence-Based Amounts**”), in each case under the same covenant, it is understood and agreed that the Fixed Amounts shall be disregarded in the calculation of the financial ratio or test applicable to the Incurrence-Based Amounts.

(vii) With respect to whether any Permitted Investments, Distributions, Debt or Liens (or any portion thereof) meets the criteria of one or more of the categories of Permitted Investments, Distributions, Debt or Liens permitted under Section 8.1, 8.3 or 8.5, as applicable, or by reference to one or more of the categories of the definition of “Maximum Incremental Amount”, the Borrower Representative may, in its sole discretion, classify such item of Permitted Investments, Distributions, Debt or Liens (or such portion thereof) in one of the applicable clauses under Section 8.1, Section 8.3, Section 8.5 or the definition of “Maximum Incremental Amount”, as applicable, and such item of Permitted Investments, Distributions, Debt or Liens (or such portion thereof) shall be treated as having been incurred or existing pursuant to only such clause or clauses (or such portion thereof), and the Borrower Representative may, in its sole discretion, make any such determination or redetermination or classification or reclassification at such time and from time to time as it may determine in its sole discretion.

(viii) In connection with any action being taken in connection with a Limited Condition Transaction, for purposes of:

(A) determining compliance with any provision of Sections 1.3, 1.4, 1.5 or Article 8 (other than actual quarterly compliance with Section 8.11) of this Agreement

which requires the calculation of any financial ratio or test, including the Secured Leverage Ratio, the Total Leverage Ratio, Consolidated Total Assets and EBITDA; and

(B) testing availability under baskets set forth in Article 8 (including any financial ratio, test or basket under Sections 1.3, 1.4 or 1.5) of this Agreement, in each case, at the option of the Borrower Representative (the Borrower Representative's election to exercise such option in connection with any Limited Condition Transaction, an "**LCA Election**"),

then the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into (the "**LCA Test Date**"), and if, after giving *pro forma* effect to the Limited Condition Transaction (and the other transactions to be entered into in connection therewith), the Canadian Borrower and its Subsidiaries would have been permitted to take such action on the relevant LCA Test Date in compliance with such ratio, test or basket, such ratio, test or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Borrower Representative has made an LCA Election and any of the ratios, tests or baskets for which compliance was determined or tested as of the LCA Test Date would have failed to have been complied with as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in EBITDA of the Canadian Borrower or the Person subject to such Limited Condition Transaction, at or prior to the consummation of the relevant transaction or action, such baskets, tests or ratios will not be deemed to have failed to have been complied with as a result of such fluctuations. If the Borrower Representative has made an LCA Election for any Limited Condition Transaction, then in connection with any calculation of any ratio, test or basket availability with respect to the incurrence of Debt or Liens, the making of any investment, mergers, Distributions or Transfers or the prepayment, redemption, purchase, defeasance or other satisfaction of Debt (each, a "**Subsequent Transaction**") following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or irrevocable notice for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, for purposes of determining whether such Subsequent Transaction is permitted under this Agreement, any such ratio, test or basket shall be required to be satisfied on a *pro forma* basis (i) assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Debt and the use of proceeds thereof) have been consummated and (ii) in the case of Distributions, assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Debt and the use of proceeds thereof) have not been consummated.

(f) **Divisions.** For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Capital Stock at such time.

(g) **Cashless Rollovers.** Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, to the extent that any Lender extends the maturity date of, or replaces, renews or refinances, any of its then-existing Loans with Incremental Term Loans, Extended Term Loans, Specified Refinancing Debt or loans incurred under a new credit facility, in each case, to the extent such extension, replacement, renewal or refinancing is effected by means of a "cashless roll" by such Lender, such extension, replacement, renewal or refinancing shall be deemed to comply with any

requirement hereunder or any other Loan Document that such payment be made “in Dollars” (or other currency), “in immediately available funds”, “in cash” or any other similar requirement.

(h) **Permitted Liens.** The inclusion of reference to Permitted Liens in any Loan Document is not intended to subordinate and shall not subordinate, and shall not be interpreted as subordinating, any Lien created by any of the Security Documents to any Permitted Lien.

## 1.2 Term Loans.

(a) Subject to the terms and conditions set forth herein, each Lender severally agrees to make to the Borrowers on the Effective Date, term loans (the “**Initial Term Loans**”) denominated in Dollars in an aggregate amount not in excess of the amount of such Lender’s Term Commitment (the “**Initial Term Facility**”).

Amounts borrowed under this Section 1.2(a) and repaid or prepaid may not be reborrowed. Initial Term Loans (i) shall be made in a single drawing on the Effective Date and each Lender’s Term Commitment shall terminate upon such drawing, (ii) except as hereinafter provided, may, at the option of the Borrower Representative, be incurred and maintained as, and/or converted into, Base Rate Loans or SOFR Loans and (iii) shall not exceed for any Lender at the time of incurrence thereof such Lender’s Term Commitment.

(b) The Borrowers shall repay to the Administrative Agent for the ratable account of the Lenders (i) on the last Business Day of each March, June, September and December, commencing on September 30, 2024, an aggregate principal amount equal to 0.625% of the original aggregate principal amount of the Initial Term Loans outstanding as of the Effective Date and (ii) on the Term Loan Maturity Date, the aggregate principal amount of all Initial Term Loans outstanding on such date; provided that payments required pursuant to clause (i) above (x) shall be reduced as a result of the application of prepayments in accordance with the order of prior set forth in Section 3.2(a) and/or (y) may be amended in connection with the Borrowing of any Incremental Facility, including by increasing the amortization thereof, if and to the extent necessary so that such Incremental Facility and the applicable existing Initial Term Loans form the same Class of Initial Term Loans and to the extent possible, a “fungible” tranche, without the consent of any party hereto (provided that such amendments shall not decrease any amortization payment to any Lender that would have otherwise been payable to such Lender prior thereto).

(c) Amortization of the Incremental Term Loans, Extended Term Loans and Specified Refinancing Debt shall be subject to the terms and conditions set forth in Sections 1.3, 1.4 and 1.5 hereof, as applicable, and in the applicable Incremental Facility Amendment, Extension Amendment or Refinancing Amendment, as applicable.

### (d) **Procedure for Borrowing.**

(i) Each Borrowing by the Borrowers shall be made upon the Borrower Representative’s irrevocable written notice delivered to the Agent in the form of a notice of borrowing (“**Notice of Borrowing**”) in the form of Exhibit C attached hereto and made a part hereof, which must be received by the Agent prior to (i) 2:00 p.m. (New York time) three (3) Business Days prior to the requested Funding Date (or one (1) Business Day in the case of Base Rate Loans). Each Notice of Borrowing shall specify:

(A) the amount of the Borrowing, which, subject to Sections 1.4 and 1.5, must equal or exceed \$5,000,000 (and increments of \$1,000,000 in excess of such amount);

(B) the requested Funding Date, which must be a Business Day;

(C) whether the Loans requested are to be Base Rate Loans or SOFR Loans (and if not specified, it shall be deemed a request for a Base Rate Loan); and

(D) the duration of the Interest Period for SOFR Loans (and if not specified, it shall be deemed a request for an Interest Period of one month);

(ii) After giving effect to any Borrowing, there may not be more than five (5) (or such other amount as may be agreed by the Agent) different Interest Periods in effect for SOFR Loans to the Borrowers.

(iii) The Borrower Representative may give the Agent telephonic or electronic notice of such request for advances to the Designated Account for the Borrowers on or before the deadline set forth above, such notice shall be confirmed in writing on the same day, by delivery to Agent of a Notice of Borrowing confirming the same. The Agent at all times shall be entitled to rely on such telephonic or electronic notice in making such Term Loans, regardless of whether any written confirmation is received.

(e) **Reliance upon Authority.** Prior to the Effective Date, the Borrower Representative shall deliver to the Agent a notice setting forth the accounts for the Borrowers (each, a “**Designated Account**”) to which the Agent is authorized to transfer the proceeds of the Term Loans requested hereunder by the Borrowers. The Borrower Representative may designate a replacement account from time to time by written notice to the Agent. All such Designated Accounts must be reasonably satisfactory to the Agent. The Agent is entitled to rely conclusively on any Person’s request for Term Loans on behalf of the Borrowers, so long as the proceeds thereof are to be transferred to a Designated Account. The Agent has no duty to verify the identity of any individual representing himself or herself as a Person authorized by the any Borrower to make such requests on its behalf.

(f) **No Liability.** The Agent shall not incur any liability to any Borrower as a result of acting upon any notice referred to in Sections 1.2(d) and 1.2(e), which the Agent believes in good faith to have been given by an officer or other Person duly authorized by any Borrower to request Term Loans on its behalf. The crediting of Term Loans to a Designated Account conclusively establishes the obligation of the Borrowers to repay such Term Loans as provided herein.

(g) **Notice Irrevocable.** Except with the consent of the Agent, any Notice of Borrowing (or telephonic or electronic notice in lieu thereof) made pursuant to Section 1.2(d) shall be irrevocable. The Borrowers shall be bound to borrow the funds requested therein in accordance therewith.

(h) **Making of Term Loans.** Promptly after receipt of a Notice of Borrowing or telephonic or electronic notice in lieu thereof, the Agent shall notify the Lenders by telecopy, telephone or e-mail of the requested Borrowing. Each Lender shall transfer its Pro Rata Share of the requested Borrowing to the Agent in immediately available funds, to the account from time to time designated by the Agent, not later than 2:00 p.m. (New York time) on the applicable Funding Date. After the Agent’s receipt of all proceeds of such Term Loans, the Agent shall make the proceeds of such Term Loans available to the Borrowers on the applicable Funding Date by, not later than 4:00 p.m. (New York time) transferring same day funds to the Designated Account designated by the Borrower Representative; provided, however, that the amount of Term Loans so made on any date shall not exceed the Term Commitment on such date.

### 1.3 Extension Offer.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an “**Extension Offer**”) made from time to time by the Borrower Representative to all Lenders of any Class of Term Loans on a pro rata basis (based on the aggregate outstanding principal amount of the respective Term Loans) and on the same terms to each such Lender, the Borrowers may from time to time request an extension of the maturity date of any Class of Term Loans and otherwise modify the terms of such Term Loans pursuant to the terms of the relevant Extension Offer (including, without limitation, by increasing the interest rate or fees payable in respect of such Term Loans (and related outstandings) and/or modifying the amortization schedule in respect of such Lender’s Term Loans) (each, an “**Extension**”, and each group of Term Loans as so extended (the “**Extended Term Loans**”), as well as the original Term Loans (in each case not so extended), being a “Class”; any Extended Term Loans shall constitute a separate Class of Term Loans from the Class of Term Loans from which they were converted). Each such Extension Offer shall (A) set forth the amount of the applicable Class of Term Loans that will be subject to the Extension (which shall be in minimum increments of \$500,000 and a minimum amount of \$1,000,000), (B) set forth the date on which such Extension is requested to become effective (which shall be not less than ten (10) Business Days nor more than sixty (60) days after the date of such Extension notice (or such longer or shorter periods as the Agent shall agree in its sole discretion)), (C) identify the relevant Class of Term Loans to which such Extension shall apply and (D) shall contain such procedures as may be established by, or acceptable to, the Agent, in each case acting reasonably to accomplish the purposes of this Section 1.3.

(b) Subject to clause (f) below, the conditions precedent to the effectiveness of any Extension shall be as agreed among the Borrowers and the applicable Extending Term Lenders.

(c) The terms of each Extension shall be determined by the Borrower Representative and the applicable extending Lenders (each, an “**Extending Term Lender**”) and set forth in an Extension Amendment; provided that:

(i) except as to interest rates, fees, amortization, final maturity date, premium, required prepayment dates and participation in prepayments (which shall, subject to the immediately succeeding clauses (ii), (iii) and (v), be determined by the Borrower Representative and set forth in the relevant Extension Offer), the Extended Term Loans shall have the same terms as the Class of Term Loans subject to such Extension Offer; provided that the Extended Term Loans may be subject to other covenants and terms that apply solely to any period after the latest maturity date that is in effect on the effective date of the Extension (immediately prior to the establishment of such Extended Term Loans),

(ii) the final maturity date of any Extended Term Loans shall be no earlier than the latest maturity date of the applicable Term Loans extended,

(iii) the Weighted Average Life to Maturity of any Extended Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans extended thereby,

(iv) the Extended Term Loans will rank *pari passu* in right of payment and with respect to security with the existing Term Loans and the borrower and guarantors of the Extended Term Loans shall be the same as the Borrowers and Guarantors with respect to the existing Term Loans,

(v) (i) any Extended Term Loans may participate on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any mandatory repayments or prepayments with the other Term Loans, in each case as specified in the respective Extension Offer and (ii) any Extended Term Loans may participate on a pro rata basis, less than a pro rata basis, or on greater

than a pro rata basis in any voluntary prepayments with other Term Loans; provided that no Extended Term Loans may be optionally prepaid prior to the date on which all Term Loans with an earlier final stated maturity are repaid in full, unless such optional prepayment is accompanied by at least a pro rata optional prepayment of such other Term Loans,

(vi) if the aggregate principal amount of Term Loans (calculated on the face amount thereof), in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans offered to be extended by the Borrower Representative pursuant to such Extension Offer, then the Term Loans of such Lenders of the applicable Class shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer,

(vii) all documentation in respect of such Extension shall be consistent with the foregoing, and

(viii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower Representative.

For the avoidance of doubt, no Lender shall be required to participate in any Extension.

(d) With respect to all Extensions consummated by the Borrowers pursuant to this Section 1.3, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Sections 3.2 and 3.3 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment; provided that the Borrowers may, at the election of the Borrower Representative, specify as a condition (a “**Minimum Extension Condition**”) to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower Representative’s sole discretion and may be waived by the Borrower Representative) of Term Loans (as applicable) of any or all applicable Classes to be tendered. The Agent and the Lenders hereby consent to the Extensions and the other transactions contemplated by this Section 1.3 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on the such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 1.3.

(e) In connection with each Extension, the Borrowers, the Agent and each applicable Extending Term Lender shall execute and deliver to the Agent an Extension Amendment and such other documentation as the Agent shall reasonably specify to evidence the Extension. The Lenders hereby irrevocably authorize the Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrowers as may be necessary or appropriate, in the reasonable opinion of the Agent, to implement the terms of any such Extension, including any amendments necessary to establish Extended Term Loans as a new Class of Term Loans, as applicable, and such other amendments as may be necessary or appropriate in the reasonable opinion of the Agent in connection with the establishment of such new Class (including to preserve the pro rata treatment of the extended and non-extended Classes), in each case on terms consistent with this Section 1.3.

(f) The effectiveness of any Extension shall be subject, to the extent reasonably requested by the Agent, to receipt by the Agent of legal opinions, board resolutions, officers’ certificates and/or reaffirmation agreements consistent with those delivered on the Effective Date (or otherwise reasonably satisfactory to the Agent).

#### 1.4 Specified Refinancing Debt.

(a) The Borrowers may, from time to time, add one or more new term loan facilities to the Facilities (“**Specified Refinancing Debt**”) pursuant to procedures specified by the Agent, to refinance all or any portion of any Class of Term Loans then outstanding under this Agreement, in each case pursuant to a Refinancing Amendment; provided that such Specified Refinancing Debt: (i) will rank pari passu in right of payment and of security with the other Term Loans hereunder; (ii) subject to the last sentence of this clause (a), will have such pricing, fees, premium and optional prepayment terms as may be agreed by the Borrower Representative and the applicable Lenders thereof; (iii) will have a maturity date that is not prior to the maturity date of, and will have a Weighted Average Life to Maturity that is not shorter than, the Term Loans being refinanced; provided that this clause (iii) shall not apply to the extent such Specified Refinancing Debt constitutes a customary bridge facility, so long as the long-term Debt into which any such customary bridge facility is to be converted or exchanged, as applicable, otherwise satisfies the requirements of this clause (iii) and such conversion or exchange is subject only to conditions customary for similar conversions or exchanges; (iv) (x) may participate on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any mandatory repayments or prepayments with the other Term Loans, in each case as specified in the respective Refinancing Amendment and (y) may participate on a pro rata basis, less than a pro rata basis, or on greater than a pro rata basis in any voluntary prepayments with the other Term Loans; (v) subject to clauses (ii), (iii) and (iv) above, will have terms and conditions (taken as a whole) that are substantially identical to, or less favorable to the lenders providing such Specified Refinancing Debt than, the Facilities and Term Loans being refinanced; and (vi) the proceeds of which shall be applied, substantially concurrently with the incurrence thereof, to the prepayment of outstanding Term Loans, in each case pursuant to Sections 3.2 or 3.3, as applicable; provided, further, that the terms and conditions applicable to such Specified Refinancing Debt may provide for any additional or different covenants or other provisions that are agreed between the Borrower Representative and the Lenders thereof and applicable only during periods after the latest maturity date in respect of the Facilities that is in effect on the date such Specified Refinancing Debt is issued, incurred or obtained or the date on which all non-refinanced Obligations are paid in full.

(b) The Borrower Representative shall make each request for Specified Refinancing Debt pursuant to a written notice to the Agent specifying in reasonable detail the proposed terms thereof. Any proposed Specified Refinancing Debt may be requested from one or more existing Lenders or other Persons in the Borrower Representative’s discretion. Any Lender approached to provide all or a portion of any Specified Refinancing Debt may elect or decline, in its sole discretion, to provide such Specified Refinancing Debt. In connection with any Specified Refinancing debt, the Borrowers have the right to require the applicable Lenders to assign their Term Loans to the providers of any such Specified Refinancing Debt.

(c) The effectiveness of any Refinancing Amendment shall be subject, to the extent reasonably requested by the Agent, to receipt by the Agent of legal opinions, board resolutions, officers’ certificates and/or reaffirmation agreements consistent with those delivered on the Effective Date (or otherwise reasonably satisfactory to the Agent).

(d) Except as otherwise permitted by the Agent, each class of Specified Refinancing Debt incurred under this Section 1.4 shall be in an aggregate principal amount that is (x) not less than \$15,000,000 and (y) an integral multiple of \$1,000,000 in excess thereof. The Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to reflect the existence and terms of the Specified Refinancing Debt incurred pursuant thereto and other conforming modifications as may be agreed by the Agent (including the addition of such Specified Refinancing Debt as separate “Facilities” hereunder and treated in a manner consistent with the Facilities being refinanced,

including, without limitation, for purposes of prepayments and voting). Any Refinancing Amendment may, without the consent of any Person other than the Borrowers, the Agent and the Lenders providing such Specified Refinancing Debt, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Agent, to effect the provisions of this Section 1.4.

### 1.5 Incremental Facility.

(a) At any time and from time to time, subject to the terms and conditions set forth herein, the Borrower Representative may, by notice to the Agent, request to add one or more additional Classes of Term Loans or increase the aggregate principal amount of any existing Class of Term Loans (collectively, the “**Incremental Facility**,” and the term loans made available thereunder, collectively, the “**Incremental Term Loans**”); provided that the aggregate principal amount of all Incremental Facilities and Incremental Equivalent Debt incurred or issued shall not exceed the Maximum Incremental Amount.

(b) Upon the effectiveness of each Incremental Facility Amendment, (i) no Default or Event of Default has occurred and is continuing or would result therefrom; provided that if such Incremental Term Loans are being incurred in connection with a Limited Condition Transaction, then (1) no Event of Default shall exist at the time the definitive documentation in respect of such Limited Condition Transaction is executed and delivered or would be caused thereby after giving effect thereto and (2) no Event of Default under Sections 10.1(a), (e), (f) or (g) shall exist at the time of such Limited Condition Transaction or would be caused thereby after giving effect thereto, (ii) all representations and warranties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects (or, in the case of any Incremental Term Loans incurred in connection with a Limited Condition Transaction, the Specified Representations shall be true and correct in all material respects) immediately prior to, and after giving effect to, the incurrence of such Incremental Term Loans, (iii) after giving *pro forma* effect to the incurrence of the applicable Incremental Term Loans (treating any such Debt as fully drawn) and related transactions, no Default or Event of Default under Section 8.11 shall exist or would result therefrom and (iv) the Borrower Representative shall have delivered a certificate of a Responsible Officer to the effect set forth in clauses (i), (ii) and (iii) above, together with reasonably detailed calculations demonstrating compliance with the Maximum Incremental Amount and clause (iii) above. Each Class of Incremental Term Loans shall be in an integral multiple of \$5,000,000 and be in an aggregate principal amount that is not less than \$10,000,000; provided that such amount may be less than the applicable minimum amount if such amount represents all the remaining availability under the Maximum Incremental Amount or as otherwise agreed by the Agent.

(c) With respect to each Incremental Facility,

(i) the terms and conditions of any Incremental Facility (excluding, subject to the other provisions of this Section 1.5, pricing, interest, closing payments, fees, rate floors, premiums, maturity and amortization and optional prepayment or redemption terms) shall be (x) substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by the Borrower Representative) to the Lenders providing such Incremental Facility than those applicable to the Term Loans (other than covenants or other provisions applicable only to periods after the latest maturity date of the then-existing Term Loans) or (y) reasonably acceptable to the Agent;

(ii) (A) the final maturity date with respect to any Incremental Term Loans shall be no earlier than the latest maturity date of any then-existing Class of Term Loans and (B) the Weighted Average Life to Maturity applicable to any Incremental Term Loans shall be no shorter than the Weighted Average Life to Maturity of the then-existing Term Loans (for the avoidance of doubt, determined as of the date of incurrence of such then-existing Term Loans and, in the case of

multiple Classes of Term Loans, based on the Class of the Term Loans with the longest Weighted Average Life to Maturity); provided that this clause (ii) shall not apply to the extent such Incremental Facility constitutes a customary bridge facility, so long as the long-term Debt into which any such customary bridge facility is to be converted or exchanged, as applicable, otherwise satisfies the requirements of this clause (ii) and such conversion or exchange is subject only to conditions customary for similar conversions or exchanges;

(iii) (A) each Incremental Facility must rank *pari passu* with or junior to the Initial Term Loans in right of payment and may rank *pari passu* with or junior to the Initial Term Loans with respect to security or may be unsecured (and to the extent the relevant Incremental Facility is subordinated to the Initial Term Loans in right of payment or security and documented in a separate agreement (it being agreed that any Incremental Facility that is subordinated to any Term Loans in right of payment or security shall be documented in a separate agreement, unless such Incremental Facility is a *pari passu* “last out” facility), it shall be subject to the Intercreditor Agreement and an Acceptable Intercreditor Agreement) and (B) no Incremental Facility may be (x) Guaranteed by any Person that is not a Loan Party or (y) secured by any assets other than Collateral;

(iv) (A) any prepayment (other than any scheduled amortization payment) of Incremental Term Loans that are *pari passu* in right of payment and security with any then-existing Term Loans shall be made on a pro rata basis with such existing Term Loans, except, that the Borrowers and the Lenders providing the relevant Incremental Term Loans shall be permitted, in their sole discretion, to elect to prepay or receive, as applicable, any such prepayment on a less than pro rata basis (but not on a greater than pro rata basis) (and, for the avoidance of doubt, any Incremental Term Loans that are not *pari passu* in right of payment and security shall not be entitled to share in any such prepayment) and (B) the Agent and Lenders shall be entitled to receive all fees (if any) required to be paid in respect of such Incremental Facility;

(v) if the Effective Yield payable by the Borrowers for the account of the Lenders with respect to any Incremental Term Loans that are (i) incurred on or prior to the date that is 12 months following the Effective Date, (ii) secured by Liens that are *pari passu* with the Liens securing the Obligations and (iii) are broadly syndicated U.S. Dollar-denominated floating rate term loans (other than customary term “A” loans), shall be more than 50 basis points higher than the corresponding Effective Yield payable by the Borrowers for the account of the Lenders with respect to the Initial Term Loans, then the Applicable Margins and/or interest rate floors in respect of the Initial Term Loans shall be adjusted such that the Effective Yield of the Initial Term Loans shall be equal to the Effective Yield relating to such Incremental Term Loans *minus* 50 basis points (any such adjustments, “**MFN Adjustment**”); and

(vi) on the date of the Borrowing of any Incremental Term Loans that will be of the same Class as any then-existing Class of Term Loans, and notwithstanding anything to the contrary set forth in Sections 2.1 or 2.2 or otherwise in this Agreement, such Incremental Term Loans shall be added to (and constitute a part of, be of the same Type as and, at the election of the Borrower Representative, have the same Interest Period as) each Borrowing of outstanding Term Loans of such Class on a pro rata basis (based on the relative sizes of such Borrowings), so that each Lender providing such Incremental Term Loans will participate proportionately in each then-outstanding Borrowing of Term Loans of such Class; it being acknowledged that the application of this clause (vi) may result in new Incremental Term Loans having Interest Periods (the duration of which may be less than one month) that begin during an Interest Period then applicable to outstanding SOFR Loans of the relevant Class and which end on the last day of such Interest Period.

(d) Each notice from the Borrower Representative pursuant to this Section shall set forth the requested amount and proposed terms of the relevant Incremental Term Loans. Any additional bank, financial institution, existing Lender or other Person that elects to extend Incremental Term Loans shall be reasonably satisfactory to the Borrower Representative and, to the extent that such consent would be required under Section 11.2 for an assignment of Term Loans to such Additional Lender, the Agent (any such bank, financial institution, existing Lender or other Person being called an “**Additional Lender**”) and, if not already a Lender, shall become a Lender under this Agreement pursuant to an amendment (an “**Incremental Facility Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrowers, each such Additional Lender and the Agent. Each Lender or Additional Lender providing a portion of any Incremental Facility shall execute and deliver to the Agent and the Borrower Representative all such documentation as may be reasonably required by the Agent and consistent with Section 11.2. No Incremental Facility Amendment shall require the consent of any Lenders other than the Additional Lenders with respect to such Incremental Facility Amendment. No Lender shall be obligated to provide any Incremental Term Loans, unless it so agrees. Commitments in respect of any Incremental Term Loans shall become Commitments under this Agreement. An Incremental Facility Amendment may, without the consent of any other Lenders, effect such amendments to any Loan Documents as may be necessary or appropriate, in the opinion of the Agent, to effect the provisions of this Section. The effectiveness of any Incremental Facility Amendment shall, unless otherwise agreed to by the Agent and the Additional Lenders, be subject to the satisfaction on the date thereof (each, an “**Incremental Facility Effective Date**”) of each of the conditions set forth herein and, to the extent reasonably requested by the Agent, the Agent shall have received legal opinions, Board of Director (or equivalent governing body, as applicable) resolutions, officers’ certificates and/or reaffirmation agreements consistent with those delivered on the Effective Date, together with such supplements and/or amendments to the Security Documents as the Agent shall reasonably request (including, in the case of the Mortgages, mortgage amendments and date down endorsements with respect to the title insurance policies). The proceeds of any Incremental Term Loans may be used for working capital and other general corporate purposes and any other use not prohibited by this Agreement.

## 1.6 Defaulting Lenders.

(a) **Defaulting Lender Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) **Waivers and Amendments.** Such Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of “Required Lenders” and Section 11.1.

(ii) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 10.1 or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 14.16 shall be applied at such time or times as may be determined by the Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; *second*, as the Borrower Representative may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; *third*, if so determined by the Agent and the Borrower Representative, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender’s potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender’s breach of its

obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 1.6 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Defaulting Lender Cure.** If the Borrower Representative and the Agent agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the applicable Class of Term Loans, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

#### **1.7 Interest Rates; Benchmark Notification.**

The interest rate on a Loan denominated in Dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event (as defined in Schedule 4.5), the Benchmark Replacement provisions set forth in Schedule 4.5 provide a mechanism for determining an alternative rate of interest. The Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, the administration of, submission of, calculation of, performance of or any other matter related to any interest rate used in this Agreement (including, without limitation, the Base Rate, SOFR, the Term SOFR Reference Rate or Term SOFR) or any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative or successor rate thereto, or replacement rate thereof (including any Benchmark Replacement), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, or have the same value or economic equivalence of as the existing interest rate (or any component thereof) being replaced or have the same volume or liquidity as did any existing interest rate (or any component thereof) prior to its discontinuance or unavailability. The Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate (or component thereof) used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

## ARTICLE 2 – INTEREST AND FEES

### 2.1 Interest.

(a) **Interest Rates.** All outstanding Obligations of the Borrowers shall bear interest on the unpaid principal amount thereof (including, to the extent permitted by law, on interest thereon not paid when due) from the date made or incurred until paid in full in cash at a rate determined by reference to the Base Rate or the Term SOFR plus the Applicable Margin, but not to exceed the Maximum Rate. Except as otherwise provided herein, the outstanding Obligations shall bear interest as follows:

(i) For all Base Rate Loans and other Obligations of the Borrowers (other than SOFR Loans) at a fluctuating per annum rate equal to the Base Rate plus the Applicable Margin; and

(ii) For all SOFR Loans at a per annum rate equal to the Term SOFR plus the Applicable Margin.

Each change in the Base Rate shall be reflected in the interest rate applicable to Base Rate Loans and other Obligations bearing interest based on the Base Rate as of the effective date of such change. All interest charges shall be computed on the basis of a year of 360 days and actual days elapsed; provided, however, that interest on Base Rate Loans, when based on the Prime Rate, shall be calculated on the basis of a year of 365 days (or 366 days in the case of any leap year) and actual days elapsed. The Borrowers shall pay to the Agent, for the ratable benefit of the Lenders, unpaid interest accrued on all Base Rate Loans made to the Borrowers in arrears on each Interest Payment Date, upon the date of any prepayment hereunder and on the Termination Date. The Borrowers shall pay to the Agent, for the ratable benefit of the Lenders, unpaid interest on all SOFR Loans made to the Borrowers in arrears on each Interest Payment Date, upon the date of any prepayment hereunder and on the Termination Date.

(b) **Default Rate.** If (i) any Event of Default under Section 10.1(a), 10.1(e), 10.1(f), or 10.1(g) occurs and is continuing, or (ii) any other Event of Default occurs and is continuing and the Agent or the Required Lenders in their discretion so elect, then, while any such Event of Default is continuing, and, in the case of the foregoing clause (ii), after notification to the Borrower Representative, all of the Obligations shall bear interest at the Default Rate applicable thereto. Interest at the Default Rate shall be payable from time to time on demand.

### 2.2 Continuation and Conversion Elections.

#### (a) Term Loans.

(i) The Borrowers may:

(A) elect, as of any Business Day, in the case of Base Rate Loans made to the Borrowers to convert any such Base Rate Loans (or any part thereof in an amount not less than \$1,000,000 or that is in an integral multiple of \$500,000 in excess thereof) into SOFR Loans;

(B) elect, as of the last day of the applicable Interest Period, to continue any SOFR Loans made to the Borrowers having Interest Periods expiring on such day (or any part thereof in an amount not less than \$1,000,000 or that is in an integral multiple of \$500,000 in excess thereof);

provided, that if at any time the aggregate amount of SOFR Loans in respect of any Borrowing made to the Borrowers is reduced, by payment or prepayment of part thereof, to be less than \$1,000,000, such SOFR Loans shall automatically convert into Base Rate Loans; provided, further, that if the notice shall fail to specify the duration of the Interest Period, such Interest Period shall be one month.

(ii) The Borrower Representative shall deliver a notice of continuation/conversion (“**Notice of Continuation/Conversion**”) in the form of Exhibit D attached hereto and made a part hereof to the Agent not later than 2:00 p.m. (New York time) at least three (3) Business Days in advance of the Continuation/Conversion Date (or such shorter notice time of which the Agent has notified the Borrower Representative), if the Term Loans of the Borrowers are to be converted into or continued as SOFR Loans and specifying:

(A) the proposed Continuation/Conversion Date;

(B) the aggregate amount of Term Loans of the Borrowers to be converted or renewed, which shall be in minimum amounts of \$1,000,000 and increments of \$500,000 in excess thereof;

(C) the type of Term Loans resulting from the proposed conversion or continuation; and

(D) the duration of the requested Interest Period; provided, however, the Borrowers may not select an Interest Period that ends after the Term Loan Maturity Date.

(iii) If upon the expiration of any Interest Period applicable to a SOFR Loan of the Borrowers, the Borrower Representative has failed to select timely a new Interest Period to be applicable to such SOFR Loan, the Borrowers shall be deemed to have elected to continue such SOFR Loan as a SOFR Loan with an Interest Period of one month effective as of the expiration date of such expiring Interest Period; provided, however, if any Event of Default then exists and is continuing, the Borrowers shall be deemed to have elected to convert such SOFR Loan into a Base Rate Loan effective as of the expiration date of such Interest Period.

(iv) The Agent will promptly notify the applicable Lenders of its receipt of a Notice of Continuation/Conversion. All conversions and continuations shall be made ratably according to the respective outstanding principal amounts of the Term Loans with respect to which the notice was given held by each applicable Lender.

### **2.3 Maximum Interest Rate.**

(a) In no event shall any interest rate provided for hereunder exceed the maximum rate legally chargeable by any Lender under applicable law for such Lender with respect to loans of the type provided for hereunder by such Lender (the “**Maximum Rate**”). If, in any month, any interest rate for any Obligations, absent such limitation, would have exceeded the Maximum Rate for such Obligations, then the interest rate for such Obligations for that month shall be the Maximum Rate.

(b) If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (i) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (ii)

exclude voluntary prepayments and the effects thereof, and (iii) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### **2.4 Certain Fees.**

The Borrowers agree to pay the Agent when due the fees set forth in the fee letter, dated July 31, 2024, among the Agent and the Borrowers (the “**Fee Letter**”).

#### **2.5 Interest Act (Canada).**

For purposes of the Interest Act (Canada), whenever any interest or fee payable by the Borrowers under this Agreement is calculated using a rate based on a year of 360 days or any other period of time that is less than a calendar year, such rate used pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate based on a year of 360 days or such other period of time, (y) multiplied by the actual number of days in the calendar year in which the period for which such interest or fee is payable (or compounded) ends, and (z) divided by 360 or such other period of time. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement with respect to the Borrowers, and the rates of interest stipulated in this Agreement payable by the Borrowers are intended to be nominal rates and not effective rates or yields.

#### **2.6 Conforming Changes.**

In connection with the use or administration of SOFR or Term SOFR, the Agent will have the right to make Conforming Changes (as defined in Schedule 4.5) from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Agent will promptly notify the Borrower Representative and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of SOFR or Term SOFR, as applicable.

### **ARTICLE 3 – PAYMENTS AND PREPAYMENTS**

#### **3.1 Term Loans.**

The Borrowers shall repay the outstanding principal balance of the Term Loans made to it, plus all accrued but unpaid interest thereon, on the Termination Date, and shall make instalments in respect thereof in accordance with Section 1.2(b) hereof. The Borrowers may prepay Term Loans made to it at any time, subject to the terms of this Agreement; provided, however, that any Term Loans so repaid or prepaid may not be reborrowed.

#### **3.2 Voluntary Prepayments.**

(a) The Borrowers shall have the right to prepay Term Loans, in whole or in part, without premium or penalty (except as set forth in Sections 3.2(b), 3.4 and 4.4), from time to time on the following terms and conditions: (i) the Borrower Representative shall give the Agent written notice of prepayment (“**Notice of Prepayment**”) in the form of Exhibit H attached hereto (or telephonic notice promptly confirmed in writing by a Notice of Prepayment) of its intent to prepay such Term Loans, the amount of such prepayment and (in the case of SOFR Loans) the specific Borrowing(s) (and the applicable Interest Periods) pursuant to which such prepayment is made, which notice shall be (x) received by the Agent by 2:00 p.m. (New York time) at least three Business Days prior to the date of such prepayment, in the case of

the prepayment of SOFR Loans or at least one Business Day prior to the date of such prepayment, in the case of the prepayment of Base Rate Loans and (y) promptly transmitted by the Agent to the applicable Lenders. The Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's ratable share of the relevant Class of Term Loans); (ii) if such notice is given by the Borrower Representative, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that a Notice of Prepayment delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other transactions, in which case such notice may be revoked by the Borrower Representative (by notice to the Agent on or prior to the specified effective date) if such condition is not satisfied; (iii) each partial prepayment of any Borrowing shall be in an aggregate principal amount of at least \$1,000,000 in the case of SOFR Loans, \$500,000 in the case of Base Rate Loans; provided that no partial prepayment of SOFR Loans made pursuant to a Borrowing shall reduce the aggregate principal amount of the Loans outstanding pursuant to such Borrowing to an amount less than the minimum borrowing amounts permitted hereunder with respect thereto; (iv) each prepayment in respect of any Class of Term Loans made pursuant to a Borrowing shall be applied pro rata among such Term Loans; and (v) prepayments of Term Loans shall be applied among the Classes of Term Loans and within an applicable Class to the then-remaining amortization payments thereof in each case in the manner directed by the Borrower Representative; provided that any such prepayment with respect to Extended Term Loans, Incremental Term Loans or Specified Refinancing Debt shall be accompanied by at least a *pro rata* prepayment of the Initial Term Loans.

(b) In the event that, on or prior to the sixth month anniversary of the Effective Date, the Borrowers (i) repay, prepay, refinance, substitute or replace any Initial Term Loans in connection with any Repricing Transaction or (ii) effects any amendment of this Agreement resulting in a Repricing Transaction (including any mandatory assignment by a Non-Consenting Lender pursuant to Section 11.3(a)), the Borrowers shall pay to the Agent, for the ratable account of each of the applicable Lenders, (A) in the case of clause (i), a prepayment premium of 1.00% of the aggregate principal amount of the Initial Term Loans so prepaid, refinanced, substituted or replaced and (B) in the case of clause (ii) above, a fee equal to 1.00% of the aggregate principal amount of the applicable Initial Term Loans outstanding immediately prior to such amendment that are the subject of such Repricing Transaction. For the avoidance of doubt, if, on or prior to the sixth month anniversary of the Effective Date, all or any portion of the Initial Term Loans of any Lender are prepaid, repaid, refinanced, substituted or replaced or assigned pursuant to Section 11.1(c) as a result of, or in connection with, such Lender not agreeing or otherwise consenting to any waiver, consent, modification or amendment referred to in clause (ii) above (or otherwise in connection with a Repricing Transaction), such prepayment, repayment, refinancing, substitution or replacement or assignment shall be accompanied by a fee equal to 1.00% of the principal amount so prepaid, repaid, refinanced, substituted or replaced or assigned. Such amounts shall be due and payable on the date of effectiveness of the applicable Repricing Transaction.

### **3.3 Mandatory Prepayments of the Term Loans.**

(a) If (x) any Specified Refinancing Debt or Refinancing Debt in respect of any Term Loans or (y) any other Debt shall be issued or incurred by the Borrowers or any of their respective Subsidiaries (excluding in the case of this clause (y), any Debt incurred in accordance with Section 8.5), an amount equal to 100% of the Net Cash Proceeds thereof shall be applied on the date of receipt of such Net Cash Proceeds to the prepayment of the Term Loans as set forth in clause (f) below.

(b) If on any date the Borrowers or any of their respective Subsidiaries shall receive Net Cash Proceeds from (x) any Asset Sale (other than any Asset Sale permitted by Section 8.2 (except for any Asset Sale permitted by Section 8.2(b)(vii)) or (y) any Recovery Event then, such Borrower or such Subsidiary shall apply an amount equal to 100% of such Net Cash Proceeds within three Business Days of such date

to the prepayment of the Term Loans as set forth in Section 3.3(f) (subject to Section 3.3(g)); provided that (i) no such prepayment shall be required to be made (but, in the sole discretion of the Borrower Representative, may be made) unless and until the aggregate Net Cash Proceeds required to be applied pursuant to this Section 3.3(b) and not yet so applied equals \$7,500,000 (and, then only to the extent such Net Cash Proceeds are in excess of \$7,500,000) and (ii) with respect to any Net Cash Proceeds received from any Asset Sale or Recovery Event, at the option of the Borrower Representative, the Borrowers and their respective Subsidiaries may reinvest all or any portion of such Net Cash Proceeds in assets used or useful in the business of the Borrowers and their respective Subsidiaries (including to consummate a Permitted Acquisition) within 365 days following receipt of such Net Cash Proceeds (or, if such Borrower or Subsidiary, as applicable, has contractually committed within 365 days following receipt of such Net Cash Proceeds to reinvest such Net Cash Proceeds, then the later of (x) 365 days following receipt of such Net Cash Proceeds and (y) 180 days after such contractual commitment); provided, however, that if any of such Net Cash Proceeds are no longer intended to be so reinvested at any time after the occurrence of such Asset Sale or Recovery Event (or are not reinvested within such time period for reinvestment), an amount equal to 100% of any such Net Cash Proceeds shall be promptly applied to the prepayment of the Term Loans as set forth in Section 3.3(f) (subject to Section 3.3(g)).

(c) If, for any Fiscal Year of the Canadian Borrower, there shall be Excess Cash Flow in excess of \$7,500,000, the Borrowers shall, on or prior to the date falling five Business Days after the date on which the financial statements of the Canadian Borrower referred to in Section 5.2(a) for such Fiscal Year are required to be delivered to the Lenders, prepay the Term Loans (subject to Section 3.3(g)) in an amount equal to (x) the ECF Percentage of such Excess Cash Flow in excess of \$7,500,000 for such Fiscal Year, *minus* (y) the sum of (i) the aggregate amount of all voluntary prepayments of Term Loans made during such Fiscal Year or after such Fiscal Year and prior to such prepayment date (without duplication of any deduction of such amount made in respect of Excess Cash Flow for any other period), other than to the extent that any such voluntary prepayment is funded with the proceeds of long-term Debt, or the proceeds of any sale or other disposition of assets to the extent that the applicable Loan Party would otherwise be required to apply or reinvest the Net Cash Proceeds of such sale or other disposition pursuant to Section 3.3(b), above *plus* (ii) the aggregate amount of cash from operations used for Permitted Acquisitions and Permitted Investments during such Fiscal Year or after such Fiscal Year and prior to such prepayment date (without duplication of any deduction of such amount made in respect of this Section 3.3(c) for any other period), except to the extent attributable to costs, charges or expenses eliminated in consolidation of the Canadian Borrower and its Subsidiaries *plus* (iii) the aggregate amount actually paid by the Canadian Borrower and its Subsidiaries in cash during such Fiscal Year on account of Capital Expenditures (excluding any such expenditures financed with the proceeds of any Debt or any Net Cash Proceeds not applied to prepay Term Loans as a result of a reinvestment pursuant to Section 3.3(b)(ii)) or investments constituting Specified Transactions, *plus* (iv) Capital Expenditures or investments constituting Specified Transactions that the Canadian Borrower or any Subsidiary thereof shall, during such Fiscal Year, become obligated to make in cash, but that are not made during such Fiscal Year; provided that (A) on or prior to the date on which the Borrower Representative is required to deliver a compliance certificate pursuant to Section 5.2(c) in respect of such Fiscal Year, the Borrower Representative shall deliver a certificate to the Agent, signed by a Responsible Officer of the Borrower Representative, certifying that such Capital Expenditures or investments have been made in cash or will be made in cash during the first four fiscal quarters immediately following such Fiscal Year and (B) any amount so deducted shall not be deducted again in respect of this Section 3.3(c) for any other Fiscal Year.

(d) At the time of each prepayment required under this Section 3.3, the Borrower Representative shall deliver to the Agent a certificate signed by a Responsible Officer of the Borrower Representative setting forth in reasonable detail the calculation of the amount of such prepayment. Each such certificate shall specify the Borrowings being prepaid and the principal amount of each Borrowing (or portion thereof) to be prepaid. Prepayments shall be accompanied by accrued interest as required by Section

2.1. All prepayments of Borrowings under this Section 3.3 shall be subject to Section 4.4 and, in the case of prepayments made on or prior to the date that is six months after the Effective Date under Section 3.3(a) above as part of a Repricing Transaction, Section 3.2(b), but shall otherwise be without premium or penalty.

(e) Term Loans that are mandatorily prepaid may not be reborrowed.

(f) All mandatory prepayments made pursuant to this Section 3.3 shall be applied (i) among the Classes of Term Loans in the manner directed by the Borrower Representative; provided that (A) any such prepayment with respect to Extended Term Loans, Incremental Term Loans or Specified Refinancing Debt shall be accompanied by at least a *pro rata* prepayment of the Initial Term Loans and (B) mandatory prepayments made pursuant to Section 3.3(a)(x) shall be applied to prepay the Term Loans subject to the applicable refinancing, (ii) within an applicable Class to the then-remaining amortization installments thereof (A) in the direct order of maturity of the remaining amortization installments of such Class for the twenty-four (24) months following the relevant mandatory prepayment event, and (B) thereafter, ratably to the remaining installments under such Class and (iii) first to Base Rate Loans to the full extent thereof before application to any SOFR Loans in a manner that minimizes the amount of any payments required to be made by the Borrowers pursuant to Section 4.4.

(g) With respect to Sections 3.3(b) and (c), if, at the time that any such prepayment would be required hereunder, any Loan Party is required to offer to repay or repurchase any other Debt permitted hereunder to be secured on a *pari passu* basis with the Obligations pursuant to the terms of the documentation governing such Debt with the applicable proceeds or Excess Cash Flow (such Debt required to be offered to be so repaid or repurchased, the “**Other Applicable Debt**”), then the relevant Person may apply the applicable proceeds and/or Excess Cash Flow on a *pro rata* basis to the prepayment of the Term Loans and to the repurchase or repayment of the Other Applicable Debt (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Debt (or accreted amount if such Other Applicable Debt is issued with original issue discount) at such time; provided that the portion of the applicable proceeds and/or Excess Cash Flow allocated to the Other Applicable Debt shall not exceed the amount of such proceeds and/or Excess Cash Flow required to be allocated to the Other Applicable Debt pursuant to the terms thereof, and the remaining amount, if any, of the applicable proceeds and/or Excess Cash Flow shall be allocated to the Term Loans in accordance with the terms hereof), and the amount of the prepayment of the Term Loans that would have otherwise been required pursuant to this Section 3.3 shall be reduced accordingly; provided, that to the extent the holders of the Other Applicable Debt decline to have such Debt prepaid or repurchased, the declined amount shall promptly (and in any event within ten Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof.

(h) Notwithstanding anything in this Section 3.3 to the contrary, (A) the Borrowers shall not be required to prepay any amount that would otherwise be required to be paid pursuant to Sections 3.3(b) and (c) above to the extent that the relevant Excess Cash Flow is generated by any Foreign Subsidiary or the relevant Asset Sale or Recovery Event is consummated by any Foreign Subsidiary, for so long as the repatriation to the Borrowers of any such amount would be prohibited under any Requirement of Law or conflict with the fiduciary duties of such Foreign Subsidiary’s directors, or result in, or could reasonably be expected to result in, a material risk of personal or criminal liability for any officer, director, employee, manager, member of management or consultant of such Foreign Subsidiary (the Borrowers hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all commercially reasonable actions required by Requirements of Law to permit such repatriation); it being understood that once the repatriation of the relevant affected proceeds or Excess Cash Flow, as the case may be, is permitted under the Requirements of Law and, to the extent applicable, would no longer conflict with the fiduciary duties of such director, or result in, or could reasonably be expected to result in, a material risk of personal or criminal liability for the Persons described above, the relevant Foreign Subsidiary will promptly repatriate the relevant proceeds or

Excess Cash Flow, as the case may be, and the repatriated proceeds or Excess Cash Flow, as the case may be, will be promptly (and in any event not later than two Business Days after such repatriation) applied (net of additional Taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this Section 3.3 to the extent required herein (without regard to this clause (h)) and (B) if the Borrower Representative determines in good faith that the repatriation to the Borrowers of any amounts required to mandatorily prepay the Term Loans pursuant to Sections 3.3(b) and (c) above would result in material and adverse tax consequences, taking into account any foreign tax credit or benefit actually realized in connection with such repatriation (such amount, a “**Restricted Amount**”), as reasonably determined by the Borrower Representative, the amount the Borrowers shall be required to mandatorily prepay pursuant to Sections 3.3(b) and (c) above, as applicable, shall be reduced by the Restricted Amount until such time as it may repatriate to the Borrowers the Restricted Amount without incurring such material and adverse tax liability (the Borrowers hereby agreeing to promptly take, or cause the applicable Foreign Subsidiary to take, all commercially reasonable actions to eliminate such material and adverse tax consequence); provided that to the extent that the repatriation of any proceeds or Excess Cash Flow from the relevant Foreign Subsidiary would no longer have a material and adverse tax consequence, an amount equal to the applicable proceeds or Excess Cash Flow, as applicable, not previously applied pursuant to preceding clause (B), shall be promptly applied to the repayment of the Term Loans pursuant to Section 3.3 as otherwise required above (without regard to this clause (h)); provided, further, that the Available Amount at any time shall not include any income, gains or other amounts attributable to proceeds or Excess Cash Flow that are restricted pursuant to this clause (h) at such time.

(i) Each Lender may elect, by notice to the Agent at or prior to the time and in the manner specified by the Agent, prior to any prepayment of Term Loans required to be made by the Borrower pursuant to Section 3.3(b) or (c), to decline all (but not a portion) of its pro rata portion of such prepayment (such declined amounts, solely to the extent not applied to any other Debt of the Canadian Borrower or its Subsidiaries as a mandatory prepayment of such Debt, the “**Declined Proceeds**”), in which case such Declined Proceeds may be retained by the Canadian Borrower and its Subsidiaries. If any Lender fails to deliver a notice to the Agent of its election to decline receipt of its pro rata portion of any mandatory prepayment within the time frame specified by the Agent, such failure will be deemed to constitute an acceptance of such Lender’s pro rata portion of the total amount of such mandatory prepayment of Term Loans.

### **3.4 SOFR Loan.**

In connection with any prepayment, if any SOFR Loan is prepaid prior to the expiration date of the Interest Period applicable thereto, the Borrowers shall pay to the applicable Lenders the amounts described in Section 4.4.

### **3.5 Payments by the Borrowers.**

(a) All payments to be made by the Borrowers shall be made without set off, recoupment or counterclaim. Except as otherwise expressly provided herein, all payments by the Borrowers shall be made to the Agent for the account of the applicable Lenders, at the account designated by the Agent and shall be made in U.S. Dollars and in immediately available funds, no later than 2:00 p.m. (New York time) on the date specified herein. Any payment received by the Agent after such time shall be deemed (for purposes of calculating interest only) to have been received on the following Business Day and any applicable interest shall continue to accrue.

(b) Subject to the provisions set forth in the definition of “Interest Period,” whenever any payment is due on a day other than a Business Day, such payment shall be due on the following Business

Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

### **3.6 Apportionment, Application and Reversal of Payments.**

(a) Principal and interest payments in respect of Term Loans of any Class shall be apportioned ratably among the applicable Lenders (according to the unpaid principal balance of the Term Loans of such Class to which such payments relate held by each applicable Lender) and payments of the fees shall, as applicable, be apportioned ratably among the applicable Lenders, except for (i) fees payable by the Borrowers solely to the Agent, and (ii) expense reimbursements and indemnification payments owed to any Lender. All payments by the Borrowers in respect of Obligations shall be remitted to the Agent (except as expressly provided herein otherwise) and all such payments (to the extent not relating to principal or interest of specific Term Loans, or not constituting payment of specific fees or expenses) and all proceeds of Collateral of the Loan Parties received by the Agent, shall be applied, ratably, as follows: first, to pay any fees, indemnities, expense reimbursements and other amounts (other than principal and interest) then due to the Agent or any of their Affiliates from the Borrowers; second, to pay any fees, indemnities, expense reimbursements and other amounts (other than principal and interest) then due to the Lenders from the Borrowers (other than in connection with any Secured Cash Management Agreement or Secured Hedge Agreement); third, to pay all accrued and unpaid interest (including post-petition interest) due in respect of all Term Loans made to the Borrowers; fourth, to pay or prepay principal of the Term Loans and to the payment of all Obligations of the Loan Parties owing under or in respect of any Secured Cash Management Agreement or Secured Hedge Agreement; fifth, to the payment of any other Obligations then due by the Borrowers; and sixth, to the Borrowers or as a court of competent jurisdiction may otherwise direct.

(b) Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative, or unless an Event of Default has occurred and is continuing, neither the Agent nor any Lender shall (i) apply any payments which it receives to Obligations unless such payments received are in the same currency in which such Obligations are denominated; provided that the Agent may, in its sole discretion, nevertheless apply the Equivalent Amount of payments received in one currency to Obligations denominated in another currency, and (ii) apply any payments which it receives to any SOFR Loan of the Borrowers, except (a) on the expiration date of the Interest Period applicable to any such SOFR Loan, or (b) in the event, and only to the extent, that there are no outstanding Base Rate Loans owing by the Borrowers and, in any event, the Borrowers shall pay breakage losses in accordance with Section 4.4. The Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply, in each instance in accordance with this Section 3.6, any and all such proceeds and payments to any portion of the Obligations.

### **3.7 Indemnity for Returned Payments.**

If after receipt of any payment which is applied to the payment of all or any part of the Obligations, the Agent or any Lender (or any Affiliate thereof) is compelled by any Requirement of Law to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Agent or such Lender (or Affiliate thereof), as the case may be, and the Borrowers shall be liable to pay to the Agent, the applicable Lenders, and the applicable Affiliates, and hereby does indemnify the Agent, the applicable Lenders and the Affiliates thereof and hold the Agent, the applicable Lenders and the Affiliates thereof harmless for the amount of such actual payment or proceeds surrendered. The provisions of this Section 3.7 shall be and remain effective notwithstanding any contrary action which may have been taken by the Agent, any applicable Lender, and any Affiliate thereof in reliance

upon such payment or application of proceeds, and any such contrary action so taken shall be without prejudice to the Agent's, the applicable Lenders', and the applicable Affiliates' rights under this Agreement and shall be deemed to have been conditioned upon such payment or application of proceeds having become final and irrevocable. The provisions of this Section 3.7 shall survive the termination of this Agreement.

### **3.8 Promissory Notes.**

The Borrowers agree that, upon the request to the Agent by any Lender, each Borrower will execute and deliver, without duplication, to such Lender a promissory note of the Borrowers evidencing any Term Loans of such Lender, substantially in the form of Exhibit B with appropriate insertions as to date and principal amount (each, a "Note"); provided that the Borrowers agree that the Agent's and Lender's books and records showing the Obligations and the transactions pursuant to this Agreement and the other Loan Documents shall be admissible in any action or proceeding arising therefrom, and shall constitute rebuttably presumptive proof thereof, irrespective of whether any Obligation is also evidenced by a promissory note or other instrument.

### **3.9 Currency.**

All Obligations of each Loan Party shall be payable by such Loan Party to the Agent and the applicable Lenders in the currency in which such Obligations are denominated.

## **ARTICLE 4 – TAXES, YIELD PROTECTION AND ILLEGALITY**

### **4.1 Taxes.**

(a) Any and all payments by each Loan Party to each applicable Lender or the Agent under this Agreement and any other Loan Document shall be made free and clear of, and without deduction or withholding for any Taxes, except as required by law. In addition, the Loan Parties shall promptly pay any and all Other Taxes.

(b) If a Loan Party or other applicable withholding agent shall be required by law to deduct or withhold any Indemnified Taxes or Other Taxes from or in respect of any sum payable hereunder or under any other Loan Document to any Lender or the Agent, then:

(i) in the case of Taxes that are Indemnified Taxes or Other Taxes the sum payable by the relevant Loan Party shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section) such Lender or the Agent, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made;

(ii) the applicable withholding agent shall make such deductions and withholdings as are legally required;

(iii) in the case of Taxes that are Indemnified Taxes or Other Taxes, such Loan Party shall pay the full amount deducted or withheld to the relevant taxing authority or other authority in accordance with applicable law; and

(iv) such withholding agent shall also pay to each applicable Lender or the Agent for the account of such Lender or, if applicable, each of the Agent for their own account, at the time interest or fees are paid, all additional amounts that the respective Lender or the Agent, as the case may be, reasonably specifies as necessary to preserve the actual after-tax yield such Lender or the

applicable Agent, as the case may be, would have received if such Indemnified Taxes or Other Taxes had not been imposed.

(c) The Loan Parties agree, jointly and severally, to indemnify and hold harmless each Lender and the Agent for the full amount of Indemnified Taxes or Other Taxes (including any Indemnified Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section) paid by any Lender or any Agent and any liability (including penalties, interest, additions to tax and reasonable expenses) arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted.

(d) Payment under the indemnification provided in Section 4.1(c) shall be made within 30 days after the date the applicable Lender or Agent makes written demand therefor. Such written demand shall show in reasonable detail the amount payable and the calculations used to determine such amount and shall include reasonable supporting documentation authenticating the claim.

(e) Each of the Lenders and the Agent agrees that, to the extent that such Lender or the Agent is entitled to claim an exemption in respect of all or a portion of any Indemnified Taxes or Other Taxes that are otherwise required to be paid or deducted or withheld pursuant to this Section 4.1 in respect of any payments under this Agreement, such Lender or Agent, as the case may be, shall take all commercially reasonable actions necessary to obtain the benefits of such exemption, but only so long as doing so is not materially disadvantageous to such Lender or Agent (as determined by such Person) and only at the sole cost and expense of the Loan Parties.

(f) At the Agent's written request, within 30 days after the date of any payment by a Loan Party of Indemnified Taxes or Other Taxes, such Loan Party shall furnish the Agent the original or a certified copy of a receipt evidencing payment thereof or other evidence of payment reasonably satisfactory to the Agent.

(g) If the Agent or any Lender receives a refund, which in the good faith judgment of the Agent or such Lender is allocable to Indemnified Taxes or Other Taxes paid by any Loan Party hereunder, it shall promptly pay such allocated amount of such refund to such Loan Party, net of all reasonable out of pocket expenses of the Agent or such Lender, as the case may be, incurred in obtaining such refund, and without interest (other than interest paid by the relevant Governmental Authority with respect to such refund) provided, however, that such Loan Party agrees to promptly return such refund (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or the applicable Lender, as applicable, if it receives notice from the Agent or applicable Lender that such Agent or Lender is required to repay such refund. Notwithstanding anything to the contrary in this paragraph (g), in no event will the Agent or any Lender be required to pay any amount to a Loan Party pursuant to this paragraph (g) the payment of which would place the Agent or any Lender in a less favorable net after-Tax position than the Agent or any Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require the Agent or any Lender to make available any of its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(h) If a Loan Party is required to pay additional amounts to any Lender pursuant to this Section 4.1, then such Lender shall use reasonable efforts (consistent with legal and regulatory restrictions) to change the jurisdiction of its lending office so as to eliminate any such additional payment by such Loan Party that may thereafter accrue, if such change in the sole judgment of such Lender is not otherwise disadvantageous to such Lender and is made at the sole cost and expense of such Loan Party.

(i) Notwithstanding any provision contained in this Agreement, any indemnity with respect to any portion of any claim by a Lender that consists of Indemnified Taxes or Other Taxes shall be governed solely by this Section 4.1.

#### **4.2 Illegality.**

If any Lender reasonably determines that, due to changes in Requirements of Law, or in the interpretation or administration of any Requirement of Law by any Governmental Authority, in any case after the Effective Date, it is unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund SOFR Loans, or to determine or charge interest based upon SOFR or Term SOFR, then, on prompt notice thereof by that Lender to the Borrower Representative through the Agent, (a) any obligation of that Lender to make SOFR Loans shall be suspended and (b) if the notice asserts that the illegality of such Lender making Base Rate Loans the interest rate on which is determined by referenced to Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Term SOFR component of the Base Rate, in each case, until that Lender notifies the Agent and the Borrower Representative that the circumstances giving rise to such determination no longer exist (which such Lender agrees to do promptly). If any Lender has determined to provide a notice under this Section 4.2, then such Lender shall use reasonable efforts (consistent with legal and regulatory restrictions) to change the jurisdiction of its lending office so as to eliminate the need for such notice by such Loan Party which may thereafter accrue, if such change in the good faith judgment of such Lender is not otherwise materially disadvantageous to such Lender. The Borrowers shall, upon the Borrower Representative's receipt of notice of such fact and demand from such Lender (with a copy to the Agent), prepay in full such SOFR Loans or, if applicable, convert all SOFR Loans of that Lender owing by the Borrowers then outstanding, together with interest accrued thereon (the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Term SOFR component of the Base Rate) and amounts required under Section 4.4, either on the last day of the Interest Period thereof, if that Lender may lawfully continue to maintain such SOFR Loans to such day, or promptly, if that Lender may not lawfully continue to maintain such SOFR Loans, in each case, until the Agent is advised in writing by each affected Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR or Term SOFR. If the Borrowers are required to so prepay any SOFR Loans, then concurrently with such prepayment, the Borrowers shall borrow from the affected Lender, in the amount of such repayment, a Base Rate Loan.

#### **4.3 Increased Costs and Reduction of Return.**

(a) If any Lender reasonably determines that as a result of the introduction of or any change in the interpretation of any law or regulation implemented by a Governmental Authority, or such Lender's compliance therewith, in each case after the Effective Date, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Loan the interest on which is determined by reference to Term SOFR or a reduction in the amount received or receivable by such lender in connection with any of the foregoing (including as a result of Taxes but excluding in each case for purposes of this Section 4.3(a), any such increased costs resulting from Indemnified Taxes imposed on payments or Other Taxes, as to which Section 4.1 shall govern) to such Lender of agreeing to make or making, funding or maintaining any SOFR Loans, then upon demand of such Lender (with a copy of such demand to be sent to the Agent), the Borrowers shall pay to the Agent for the account of such Lender, such additional amounts as are sufficient to compensate such Lender for such increased costs. Payment required under Section 4.3(a) shall be made following receipt by the Borrowers of a certificate of such Lender setting forth the amount or amounts necessary to compensate such Lender as specified in this Section 4.3(a), which certificate must be delivered to the Borrowers within 180 days of the date the Lender, or the Agent, as

applicable, first became aware of such increased costs; provided, however, to the extent any such increase has retroactive effect beyond such 180 days, the Borrowers shall pay increased costs arising therefrom.

(b) If any Lender shall have reasonably determined that (i) the introduction of any Capital Adequacy Regulation, (ii) any change in any Capital Adequacy Regulation, (iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof, or (iv) compliance by such Lender or any corporation or other entity controlling such Lender with any Capital Adequacy Regulation, affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation or other entity controlling such Lender and (taking into consideration such Lender's or such corporation's or other entity's policies with respect to capital adequacy or liquidity and such Lender's previously expected return on capital) determines that the amount of such capital or liquidity is increased as a consequence of its Term Commitment, loans, credits or obligations under this Agreement, then, from time to time, upon demand of such Lender to the Borrowers through the Agent, the Borrowers shall pay to such Lender such additional amounts sufficient to compensate such Lender for such increase, in each case, except to the extent that such increased capital and liquidity requirements have already been taken into account in the interest rates applicable under this Agreement. Payment required under Section 4.3(b) shall be made following receipt by the Borrowers of a certificate of such Lender setting forth the amount or amounts necessary to compensate such Lender as specified in this Section 4.3(b).

(c) If it becomes illegal for any Lender to hold or benefit from a Lien over real property pursuant to any law of the United States, such Lender shall notify the Agent and disclaim any benefit of such security interest to the extent of such illegality, but such illegality shall not invalidate or render unenforceable such Lien for the benefit of each of the other Lenders.

(d) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender, as specified in paragraph (a) or (b) of this Section 4.3 and delivered to the Borrowers, shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

#### **4.4 Funding Losses.**

The Borrowers shall reimburse each Lender, upon such Lender's written request (which request shall set forth the basis for requesting such amounts) from any loss or expense which such Lender sustains or incurs as a consequence of:

(i) the failure of the Borrowers to make on a timely basis any payment of principal of any SOFR Loan made to the Borrowers required hereunder;

(ii) the failure of the Borrowers (for a reason other than the failure of such Lender to make a Term Loan, in breach of its obligations under this Agreement) to prepay, borrow, continue or convert a Term Loan requested by or made to the Borrowers after the Borrower Representative has given a Notice of Borrowing or a Notice of Continuation/Conversion, subject to the conditions set forth therein; or

(iii) the prepayment or other payment (including after acceleration thereof) of any SOFR Loan made to the Borrowers on a day that is not the last day of the relevant Interest Period;

including any such loss of actual profit for the period from the date of such failure or prepayment through the end of the applicable Interest Period (calculated by comparing the interest rate in effect at the commencement of the applicable Interest Period with the interest rate available on the date

of such failure or prepayment for the remaining portion of such Interest Period), and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its SOFR Loans requested by or made to the Borrowers or from fees payable to terminate the deposits from which such funds were obtained.

#### **4.5 Inability to Determine Rates.**

(a) Subject in all respects to Section 4.5(b), if the Agent determines in good faith that for any reason in connection with any request for a SOFR Loan or a conversion to or continuation thereof that:

(i) U.S. Dollar deposits are not being offered to banks in the interbank SOFR market for the applicable amount and Interest Period of such SOFR Loan;

(ii) by reason of any changes arising on or after the Effective Date affecting the interbank SOFR market, adequate and reasonable means do not exist for determining SOFR for any requested Interest Period with respect to a proposed SOFR Loan or in connection with an existing or proposed Base Rate Loan, the Agent will promptly so notify the Borrower Representative and each Lender; or

(iii) the Agent determines in good faith and in its reasonable discretion or is advised in writing by the Required Lenders that Term SOFR for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period,

then, (x) the obligation of the Lenders to make or maintain SOFR Loans shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the Base Rate shall be suspended, in each case until the Agent revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of SOFR Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Benchmark Replacement. Notwithstanding anything to the contrary in this Agreement or any of the other Loan Documents, the Benchmark Replacement provisions set forth in Schedule 4.5 shall apply to the Loans hereunder. Notwithstanding anything to the contrary in Section 11.1, the Agent and the Borrowers may, without the consent of any Lender, enter into amendments or modifications to this Agreement or any of the other Loan Documents or to enter into additional Loan Documents as the Agent deems appropriate in order to implement any Benchmark Replacement or any Conforming Change or otherwise effectuate the terms of the Benchmark Replacement provisions set forth in Schedule 4.5 in accordance with the terms thereof.

#### **4.6 Certificates of Agent.**

If any Lender or the Agent claims reimbursement or compensation under this Article 4 (excluding claims relating covered by Section 4.1, which shall be governed by such Section), the Agent or Lender shall determine the amount thereof and the Agent shall deliver to the Borrower Representative (with a copy to the affected Lender, if applicable) a certificate setting forth in reasonable detail the amount payable to the affected Lender or the Agent, as the case may be, and such certificate shall be conclusive and binding on the Borrowers in the absence of manifest error.

#### **4.7 Survival.**

The agreements and obligations of the Borrowers and other Loan Parties in this Article 4 shall survive the payment of all other Obligations.

### **ARTICLE 5 – BOOKS AND RECORDS; FINANCIAL INFORMATION; NOTICES**

#### **5.1 Books and Records.**

Each Loan Party shall maintain, at all times, correct and complete books, records and accounts in which complete, correct and timely entries are made of its transactions in accordance with, to the extent GAAP is applicable, GAAP applied consistently with the audited Financial Statements required to be delivered pursuant to Section 5.2(a). Each Loan Party shall, by means of appropriate entries, reflect in such accounts and in all Financial Statements proper liabilities and reserves for all taxes and proper provision for depreciation and amortization of property and bad debts, all in accordance with GAAP.

#### **5.2 Financial Information.**

The Borrower Representative shall promptly furnish (or cause to be furnished) to the Agent (and the Agent shall then furnish a copy to the Lenders) the following:

(a) As soon as available, but in any event not later than one-hundred and five (105) days after the close of each Fiscal Year, consolidated audited balance sheets, and income statements, cash flow statements and changes in stockholders' equity for the Canadian Borrower and its Subsidiaries for such Fiscal Year, and the accompanying notes thereto, setting forth in each case in comparative form figures for the previous Fiscal Year, all in reasonable detail, fairly presenting the financial position and the results of operations of the Canadian Borrower and its consolidated Subsidiaries as at the date thereof and for the Fiscal Year then ended, and prepared in accordance with GAAP. Such statements shall be examined in accordance with generally accepted auditing standards by and, in the case of such statements performed on a consolidated basis, accompanied by a report thereon unqualified in any respect of independent chartered accountants selected by the Borrower Representative and reasonably satisfactory to the Agent and a management discussion and analysis of the Canadian Borrower's performance for that Fiscal Year (as provided to the Canadian Borrower's shareholders for the relevant period) and a comparison of performance for that Fiscal Year to the prior year. Each Loan Party agrees to request and hereby authorizes its chartered accountants, and at reasonable times and upon reasonable prior notice, to communicate directly with the Agent and, by this provision, authorizes those accountants to disclose to the Agent (with a copy to such Loan Party), any and all financial statements and other supporting financial documents and schedules relating to such Loan Party and to discuss directly with the Agent, the finances and affairs of such Loan Party.

(b) As soon as available and in any event within forty-five (45) days after the close of each of the first three quarterly accounting periods in each Fiscal Year, consolidated unaudited balance sheets of the Canadian Borrower and its consolidated Subsidiaries as at the end of such quarter, and consolidated unaudited income statements and cash flow statements for the Canadian Borrower and its consolidated Subsidiaries for such quarter and for the period from the beginning of the Fiscal Year to the end of such quarter, all in reasonable detail, fairly presenting the financial position and results of operations of the Canadian Borrower and its consolidated Subsidiaries as at the date thereof and for such periods, and prepared in accordance with GAAP applied consistently with the audited Financial Statements required to be delivered pursuant to Section 5.2(a). Each of the foregoing shall include a comparison to the pro-forma forecasted financial statements submitted for the same period pursuant to Section 5.2(d). Each of the foregoing shall include a comparison to the corresponding fiscal quarter and portion of the previous Fiscal

Year and a management discussion and analysis, as provided to the Canadian Borrowers' shareholders for the relevant period, of the Canadian Borrower's performance for that fiscal quarter and a comparison of performance for that fiscal quarter to the corresponding fiscal quarter of the previous Fiscal Year. The Borrower Representative shall certify by a certificate signed by a Responsible Officer of the Borrower Representative that all such statements have been prepared in accordance with GAAP and present fairly the Canadian Borrower's and its consolidated Subsidiaries' financial position as at the dates thereof and its results of operations for the periods then ended, subject to normal year-end adjustments and the absence of footnotes.

(c) With each of the Financial Statements and reviews delivered pursuant to Section 5.2(a) and Section 5.2(b) above, a compliance certificate of the Responsible Officer of the Borrower Representative in the form attached hereto as Exhibit F.

(d) Not later than sixty (60) days following the beginning of each Fiscal Year, an annual business plan (to include forecasted consolidated balance sheets, income statements, cash flow statements and Capital Expenditures) for the Canadian Borrower and its Subsidiaries as at the end of and for each quarterly accounting period of such Fiscal Year including in reasonable detail, the rationale and assumptions used in determining such forecasts, which annual business plan and consolidated budget shall in each case be accompanied by a certificate of a Responsible Officer of the Borrower Representative, stating that such annual business plan and consolidated budget have been prepared in good faith and are based on estimates, information and assumptions believed at the time to be reasonable, it being recognized by the Lenders that the projections contained therein as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results.

(e) Upon written request by the Agent, a copy of each annual report or other filing filed with the PBGC, the Financial Services Commission of Ontario, the IRS, the Canada Revenue Agency or other Governmental Authority with respect to each Plan of any Loan Party.

(f) No later than three (3) Business Days (or such lesser number of Business Days as agreed to by the Agent) prior to the effectiveness thereof, copies of substantially final drafts of any proposed amendment, supplement, waiver or other modification with respect to the Revolving Credit Agreement and promptly after the execution thereof, and copies of any executed amendment, supplement, waiver or other modification with respect to the Revolving Credit Agreement.

(g) (i) Such additional information as the Agent and/or any Lender (acting through the Agent) may from time to time reasonably request regarding the financial and business affairs of the Canadian Borrower and its Subsidiaries and (ii) such documentation and other information that the Agent (or a Lender acting through the Agent) reasonably requests 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 Beneficial Ownership Regulation.

Documents required to be delivered pursuant to Section 5.2(a), (b), (c) or (d) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Canadian Borrower posts such documents, or provides a link thereto on the Canadian Borrower's website on the Internet at the website address listed in Section 14.8 (or otherwise notified pursuant to Section 14.8); or (ii) on which such documents are posted on the Canadian Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that: (i) the Borrower Representative shall deliver paper copies of such documents to the Agent upon its reasonable request until a written notice to cease delivering paper copies is given by the Agent and (ii) the Borrower Representative shall notify the Agent

(by telecopier or electronic mail) of the posting of any such documents and upon its reasonable request, provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery of or maintain paper copies of the documents referred to above, and each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

### **5.3 Notices to the Agent.**

The Borrower Representative shall notify the Agent in writing (and the Agent will distribute such information to the Lenders) of the following matters at the following times:

(a) Promptly after a Responsible Officer of any Borrower becomes aware of any Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Borrowers propose to take with respect thereto;

(b) Promptly after a Responsible Officer of any Borrower becomes aware of any event or circumstance which would reasonably be expected to have a Material Adverse Effect;

(c) Promptly after a Responsible Officer of any Borrower becomes aware of the commencement of or any material development in any litigation or governmental proceedings pending against any Borrower or any of their respective Subsidiaries, which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

(d) Promptly after such change, any change in a Loan Party's name as it appears in the province, state or other jurisdiction of its incorporation or other organization, province, state or other jurisdiction of incorporation or organization, type of entity, organizational identification number, tax identification number (if applicable), or location of chief executive office; and

(e) Promptly after a Responsible Officer of any Borrower becomes aware of the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect.

## **ARTICLE 6 – GENERAL WARRANTIES AND REPRESENTATIONS**

Each Loan Party warrants and represents to the Agent and the Lenders that:

### **6.1 Authorization, Validity, and Enforceability of this Agreement and the Loan Documents.**

Such Loan Party has the power and authority to execute, deliver and perform this Agreement and the other Loan Documents to which it is a party, to incur and/or guaranty, as applicable, the Obligations, and to grant to the Agent Liens upon and security interests in the Collateral in which it has an interest. Such Loan Party has taken all necessary corporate action or other organizational action (including obtaining approval of its stockholders or other equityholders if necessary) to authorize its execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party. This Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by such Loan Party, and constitute the legal, valid and binding obligations of such Loan Party, enforceable against it in accordance with their respective terms (except as such enforceability may be subject to bankruptcy, insolvency, moratorium, reorganization, arrangement, voidable preference, fraudulent conveyance and other similar laws relating to or affecting the rights of creditors generally and the effect of general principles of equity). Such Loan Party's execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby

do not and will not conflict with, or constitute a violation or breach of, or result in the imposition of any Lien upon the property of such Loan Party (other than Liens granted by such Loan Party under any of the Loan Documents (as permitted hereunder and under the Intercreditor Agreement)) by reason of the terms of (a) any contract, mortgage, lease, agreement, indenture or instrument to which such Loan Party is a party or which is binding upon it, (b) any Requirement of Law applicable to such Loan Party, or (c) the certificate or articles of incorporation, by laws or the limited liability company or limited partnership agreement or partnership agreement or other organizational documents of such Loan Party.

## **6.2 Validity and Priority of Security Interest.**

The provisions of this Agreement and the Security Documents to which such Loan Party is a party create legal and valid Liens on all Collateral in which it has an interest in favour of the Agent, for the ratable benefit of the Agent and the other Lenders, and upon the filing by the Agent of PPSA and UCC financing statements, recordation filings under applicable Quebec law and at the United States Patent and Trademark Office and United States Copyright Office, possession by the Agent of Collateral which can be perfected by possession only and “control” by the Agent of any deposit accounts located in the United States as required under the Security Agreements, such Liens shall (to the extent the applicable foregoing required action has been taken with respect to such Liens in the relevant Collateral) constitute perfected and continuing Liens on all such Collateral in which a security interest or hypothec can be created and perfected under the applicable UCC, PPSA and Civil Code of Quebec by the taking of such actions having priority over all other Liens on such Collateral, except for Permitted Liens, securing all the Obligations of such Loan Party and enforceable against such Loan Party and all third parties.

## **6.3 Organization and Qualification.**

Such Loan Party (a) is duly formed, organized, incorporated or amalgamated, as the case may be, and validly existing in good standing under the laws of the province or state of its organization, incorporation or amalgamation, as the case may be, (b) is qualified to do business and is in good standing in the jurisdictions in which qualification is necessary in order for it to own or lease its property and conduct its business except to the extent failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect and (c) has all requisite power and authority to conduct its business and to own its property and to enter and perform its obligations under any partnership agreements and the Loan Documents to which it is a party.

## **6.4 Corporate Name; Prior Transactions.**

Except as otherwise disclosed on Schedule 6.4, such Loan Party has not, during the past five (5) years, been known by or used any other corporate or fictitious name/trade name, or been a party to any merger, consolidation or amalgamation, or acquired all or substantially all of the assets of any Person, or, to the best of its knowledge, acquired any of its property outside of the ordinary course of business.

## **6.5 Subsidiaries.**

Schedule 6.5 is a correct and complete list, as of the Effective Date, of the name and jurisdiction of organization of, and the percentage of each class of equity interests owned by any Borrower or Guarantor or Subsidiary in, each Subsidiary.

## **6.6 Financial Statements and Projections.**

(a) The Borrower Representative has delivered to the Agent and the Lenders (i) the audited balance sheet and related statements of income, retained earnings, cash flows, and changes in stockholders

equity for the Canadian Borrower and its consolidated Subsidiaries as of December 30, 2023, for the Fiscal Year then ended, accompanied by the report thereon of the Borrowers' chartered accountants, Ernst & Young LLP and (ii) unaudited condensed interim consolidated financial statements for the Canadian Borrower and its consolidated Subsidiaries as at and for the thirteen and twenty-six week periods ending March 31, 2024. All such financial statements have been prepared in accordance with GAAP and present accurately and fairly in all material respects the financial position of the Canadian Borrower and its consolidated Subsidiaries as at the dates thereof and their results of operations for the periods then ended (subject to normal year-end adjustments and the absence of footnotes).

(b) The Latest Projections when submitted to the Agent as required herein represent the Loan Parties' reasonable good faith estimate at the time delivered of the future financial performance of the Canadian Borrower and its consolidated Subsidiaries for the periods set forth therein and have been prepared on the basis of the assumptions set forth therein, which the Borrower Representative believes at the time submitted to the Agent are fair and reasonable in light of current and reasonably foreseeable business conditions.

**6.7 [Reserved].**

**6.8 Solvency.**

Each Borrower (together with its respective Subsidiaries on a consolidated basis) is Solvent.

**6.9 Real Property; Leases.**

(a) Schedule 6.9 hereto is a correct and complete list, as of the Effective Date, of all material Real Estate owned by each Loan Party, all material leases and subleases of Real Estate or movable or personal property by any Loan Party, as lessee or sublessee, and all material leases and subleases of Real Estate or movable or personal property by any Loan Party, as lessor or sublessor. To the knowledge of such Loan Party, each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists, except, in each case, to the extent that such default or invalidity would not reasonably be expected to have a Material Adverse Effect.

(b) Schedule 7.8 hereto is a correct and complete list, as of the Effective Date, of all Real Estate owned by each Loan Party with a fair market value of at least \$5,000,000.00 as of the Effective Date.

**6.10 Governmental and Third Party Authorization.**

Except for any filings required under the Security Documents, no approval, consent, exemption, authorization, license, validation or other action by, or notice to, or filing, recording or registration with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, such Loan Party of this Agreement, or any other Loan Document, except for those which have been obtained and are in full force and effect (all as set forth on Schedule 6.10). No approval, consent, exemption, authorization, license, validation or other action by, or notice to, or filing, recording or registration with, any Person other than a Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, such Loan Party of this Agreement or any other Loan Document.

### **6.11 Intellectual Property.**

The Loan Parties own, or possess the right to use all Intellectual Property that is reasonably necessary for the operation of their respective businesses free from all Liens (except for Liens permitted hereunder) except for those the failure to own or use which would not reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 6.11 is a complete and accurate description in all material respects of all material registered patents, trademarks and copyrights owned by the Loan Parties as of the Effective Date.

### **6.12 Bank Accounts.**

Schedule 6.12 contains as of the Effective Date a complete and accurate list in all material respects of all material bank accounts and lock box accounts maintained by such Loan Party with any bank or other financial institution.

### **6.13 Litigation.**

Except as set forth on Schedule 6.13, there is no pending, or to the best of such Loan Party's knowledge threatened in writing, action, suit, proceeding or counterclaim by any Person, or to the best of such Loan Party's knowledge, investigation by any Governmental Authority, which, in each case, would reasonably be expected to have a Material Adverse Effect.

### **6.14 Labor Disputes.**

Except as set forth on Schedule 6.14, (a) there is no collective bargaining agreement covering employees of such Loan Party, (b) no such collective bargaining agreement is scheduled to expire during the term of this Agreement, (c) no union or other labor organization is seeking to organize, or to be recognized as, a collective bargaining unit of employees of such Loan Party or for any similar purpose, and (d) there is no pending or (to the best of such Loan Party's knowledge) threatened, strike, work stoppage, material unfair labor practice claim, or other material labor dispute against or affecting such Loan Party or its employees, which, in any case, would reasonably be expected to have a Material Adverse Effect.

### **6.15 Environmental Laws.**

Except as otherwise disclosed in Schedule 6.15:

(a) The Loan Parties and their Subsidiaries have complied in all material respects with all applicable Environmental Laws and no Loan Party and no Subsidiary of a Loan Party nor any of its or their owned or operated Real Estate or conducted operations, is subject to any material enforcement order from or material liability agreement with any Governmental Authority or private Person respecting (i) compliance with any Environmental Law or (ii) any potential liabilities and costs or remedial action arising from any Release or threatened Release, except, in each case, to the extent that such non-compliance would not reasonably be expected to have a Material Adverse Effect.

(b) No Loan Party nor Subsidiary of a Loan Party has received any material summons, complaint, order or similar written notice indicating that it is not currently in compliance with, or that any Governmental Authority is investigating its compliance with, any Environmental Laws or that it is or may be liable to any other Person as a result of a Release or threatened Release, which, in each case, would reasonably be expected to have a Material Adverse Effect.

(c) There are no Environmental Liens affecting the Real Estate or the Collateral of any of the Loan Parties and their Subsidiaries other than Permitted Liens.

**6.16 No Violation of Law.**

Such Loan Party is not in violation of any Requirement of Law applicable to it, which violation would reasonably be expected to have a Material Adverse Effect.

**6.17 No Default.**

Such Loan Party is not in default with respect to any note, indenture, loan agreement, mortgage, lease, deed, or other agreement to which such Loan Party is a party or by which it or any of its properties or assets is bound, which default would reasonably be expected to have a Material Adverse Effect.

**6.18 Plans.**

Except as specifically disclosed in Schedule 6.18:

(a) Each Plan which is subject to or governed by ERISA or the Code is in compliance with the applicable provisions of ERISA, the Code and other federal or state law, except as would not reasonably be expected to have a Material Adverse Effect. Each Pension Plan in Canada is in compliance with the applicable provisions of the PBA and other federal or provincial law, except as would not reasonably be expected to have a Material Adverse Effect. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favourable determination letter from the IRS or may rely on an opinion letter issued by the IRS with respect to a prototype plan adopted in accordance with the requirements for such reliance and to the knowledge of such Loan Party, nothing has occurred which would cause the loss of such qualification. Each Borrower, each Loan Party and each ERISA Affiliate has made all required contributions to any Plan when due, and no application for a funding waiver or an extension of any amortization period has been made with respect to any Plan, except as would not reasonably be expected to have a Material Adverse Effect.

(b) There are no pending or, to the knowledge of such Loan Party, threatened in writing claims, actions or lawsuits or action by any Governmental Authority with respect to any Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect.

(c) Except as set forth on Schedule 6.18, (i) no Termination Event or ERISA Event has occurred within the past six (6) years, or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability in excess of \$10,000,000; (iii) none of the Loan Parties or any ERISA Affiliate has incurred within the past six (6) years, or reasonably expects to incur, any liability under the *Income Tax Act* (Canada) or the applicable federal, provincial or state laws with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA) in amounts in excess of \$10,000,000; (iv) none of the Loan Parties or any ERISA Affiliate has incurred within the past six (6) years, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multi-employer Plan in amounts in excess of \$10,000,000; (v) none of the Loan Parties or any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA and that would reasonably be expected to have a Material Adverse Effect; (vi) no Lien has arisen in respect of any Loan Party or its property in connection with any Plan (save for contribution amounts not yet due); and (vii) no Loan Party maintains, administers, contributes to or has any liability in respect of a Canadian Defined

Benefit Pension Plan. Where any Pension Plan has been partially or fully wound-up, all assets, including any surplus, attributable to such wind-up have been fully distributed in accordance with all applicable laws and any unfunded liability arising on such wind-up has been fully funded such that that no Loan Party has any outstanding liabilities with respect to such wound-up or partially wound-up Pension Plan. No Pension Plan has an ongoing deficiency or solvency deficiency greater than \$5,000,000 as evidenced by the most recent actuarial report prepared for such Pension Plan and provided to Agent. No Loan Party has any material liability with respect to any pension plan of a non-Loan Party.

#### **6.19 Taxes.**

Such Loan Party has (a) filed or caused to be filed all federal, provincial, state, local and other material Tax returns (including Canadian federal, U.S. federal, and material non-Canadian Tax returns) required to be filed (or extensions permitted under applicable law have been timely obtained with respect thereto), and (b) has paid or caused to be paid all federal, provincial, state and other material Taxes (including Canadian federal, U.S. federal and material non-Canadian Taxes), assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except for non-payment of any such Taxes, assessments, fees and other governmental charges permitted by Section 7.1.

#### **6.20 Regulated Entities.**

None of the Loan Parties or any Person controlling any of the Loan Parties is an “Investment Company” within the meaning of the *Investment Company Act of 1940*, as amended.

#### **6.21 Margin Regulations.**

Such Loan Party is not engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock.

#### **6.22 No Material Adverse Effect.**

There has not occurred since December 30, 2023 any event or circumstance that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

#### **6.23 Full Disclosure; No Undisclosed Liabilities.**

None of the representations or warranties made by such Loan Party in any of the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of such Loan Party in connection with any of the Loan Documents taken as a whole, contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

As of the Effective Date, the Borrowers and their respective Subsidiaries have no material obligations or liabilities, matured or unmatured, fixed or contingent, other than (i) those set forth or adequately provided for in the financial statements delivered to the Agent pursuant to this Agreement, (ii) those incurred in the ordinary course of business and not required to be set forth in the financial statements under GAAP, (iii) those incurred in the ordinary course of business since the date of the most recently delivered balance sheet and consistent with past practice, and (iv) those incurred in connection with the execution of this Agreement.

#### **6.24 Title to Property.**

Each Borrower and its respective Subsidiaries have good and valid title to all material properties owned by them, including the property reflected in the most recent consolidated balance sheet of the Canadian Borrower and its Subsidiaries as referred to in Section 5.2(a), except (i) for defects in title that do not materially interfere with their ability to conduct their business as currently conducted or to utilize such properties and assets for their intended purposes or (ii) where the failure to have such title would not reasonably be expected to have a Material Adverse Effect. All such properties free and clear of all Liens, other than Permitted Liens.

#### **6.25 Use of Proceeds.**

All proceeds of the Term Loans shall be used as provided in Section 8.8.

#### **6.26 Insurance.**

Each Loan Party maintains, with financially sound and reputable insurance companies not Affiliates of any Loan Party, insurance with respect to its properties and business against loss, damage and hazards of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons. Schedule 6.26 sets forth the material insurance policies in place on and as of the Effective Date held by each of the Loan Parties.

#### **6.27 Sanctions; Foreign Asset Control Regulations, Etc.**

To the extent applicable, each Loan Party is in compliance, in all material respects, with (i) the Trading with the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the “**Trading With the Enemy Act**”), and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the “**Foreign Assets Control Regulations**”) and any other enabling legislation or executive order relating thereto and (ii) the PATRIOT Act, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) or other applicable laws relating to terrorism, corruption or money laundering.

None of the Loan Parties nor any of their Subsidiaries, any director, officer, employee or controlled Affiliate of any Loan Party or any of its Subsidiaries is the subject of any Sanctions; and no Loan Party will use the proceeds of the facilities made available hereunder or otherwise knowingly make available such proceeds to any Person, directly or indirectly, for the purpose of financing any activities or business of or with any Person in violation of any Sanctions.

Neither of the advance of the Term Loans nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act, the Foreign Assets Control Regulations or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the “**Executive Order**”) and (b) the USA PATRIOT Act). Furthermore, none of the Borrowers or their Affiliates (a) is or will become a “blocked person” as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) knowingly engages or will knowingly engage in any dealings or transactions, with any such “blocked person” or in any other manner, in each case in violation of any such order. No part of the proceeds of the Term Loans will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to

obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, or the *Corruption of Foreign Public Officials Act (Canada)*, as amended.

#### **6.28 Anti-Money Laundering Legislation.**

(a) None of the Borrowers nor any of their Subsidiaries is an individual or entity currently the subject of any action, suit or proceeding under any federal, state or provincial racketeering or similar statute (including the Racketeer Influenced and Corrupt Organization Act of 1970 and the Proceeds of Crime Act). To the extent applicable, the operations of any Borrower and its Subsidiaries are and have been conducted at all times in compliance, in all respects, with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering and anti-corruption and bribery statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any Governmental Authority with jurisdiction over any Borrower or its Subsidiaries (collectively, the “**AML Legislation**”) and no action, suit or proceeding by or before any Governmental Authority involving any Borrower or any of its Subsidiaries with respect to the AML Legislation is pending or, to the knowledge of any Borrower or any other Loan Party, threatened.

(b) Each Loan Party acknowledges that, pursuant to the AML Legislation, the Lenders may be required to obtain, verify and record information regarding the Loan Parties and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Loan Parties, and the transactions contemplated hereby. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of a Lender or any Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(c) If the Agent has ascertained the identity of any Loan Party or any authorized signatories of the Loan Parties for the purposes of applicable AML Legislation, then the Agent:

(i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a “written agreement” in such regard between each Lender and the Agent within the meaning of the applicable AML Legislation; and

(ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that the Agent does not have any obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any Loan Party or any such authorized signatory in doing so.

## ARTICLE 7 – AFFIRMATIVE COVENANTS

Each Loan Party covenants to the Agent and each Lender that so long as any of the Obligations (other than contingent obligations for which no claim has been asserted) remain outstanding:

### 7.1 Taxes.

Such Loan Party shall pay and discharge as the same shall become due and payable (a) all federal, provincial, state, local and other material Taxes (including Canadian federal, U.S. federal and material non-Canadian Taxes), assessments, fees and other governmental charges imposed upon it or its properties or assets unless (i) the same are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by such Loan Party or (ii) failure to pay or discharge the same would not reasonably be expected to result in a Material Adverse Effect; and (b) all lawful claims that, if unpaid, would by law become a Lien (other than a Permitted Lien) upon the Collateral.

### 7.2 Legal Existence and Good Standing.

Such Loan Party shall maintain its legal existence and its qualification and good standing in all jurisdictions in which the failure to maintain such existence and qualification or good standing would reasonably be expected to have a Material Adverse Effect.

### 7.3 Compliance with Law and Agreements; Maintenance of Licenses; Material Rights and Privileges.

Such Loan Party shall comply with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including, to the extent applicable, the *Federal Fair Labor Standards Act* and Anti-Terrorism Laws), except where the failure to do so (other than Anti-Terrorism Laws) could not reasonably be expected to have a Material Adverse Effect. Such Loan Party shall obtain and maintain all licenses, permits, franchises and governmental authorizations necessary to own its property and to conduct its business as conducted on the Effective Date, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

### 7.4 Maintenance of Property; Inspection of Property; Books and Records.

(a) Such Loan Party shall maintain all of its material property necessary and useful in the conduct of its business, in good operating condition and repair, ordinary wear and tear and casualty excepted.

(b) Such Loan Party shall permit representatives and independent contractors of the Agent to visit and inspect any of its properties and the Collateral, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers and independent chartered accountants, at such reasonable times during normal business hours, upon reasonable advance notice to such Loan Party; provided, that visits in any 12-month period may at Agent's discretion be up to one (1) time per year unless an Event of Default has occurred and is continuing, in which case the Agent may do any of the foregoing at any time and as many times in any year during normal business hours and without advance notice. The Loan Parties shall be responsible for the costs and expenses of all such visits.

## **7.5 Insurance.**

(a) Such Loan Party shall maintain, with financially sound and reputable insurance companies not Affiliates of any Loan Party, insurance with respect to its properties and business against loss, damage and hazards of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

(b) Such Loan Party shall cause the Agent, for the ratable benefit of the Agent and the Lenders, to be named as secured party and lender's first loss payee (as its or their interests may appear) and first mortgagee with respect to material insurance covering the Collateral, or additional insured as to liability and umbrella insurance, in a manner reasonably acceptable to the Agent. Certificates of insurance and, if requested by the Agent or any Lender, photocopies of the policies, shall be delivered to the Agent.

(c) If any portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws such Loan Party shall maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and deliver to the Agent evidence of such compliance, in form and substance reasonably acceptable to the Agent, including, without limitation, evidence of annual renewals of such insurance.

## **7.6 Environmental Laws.**

Such Loan Party shall conduct, and shall cause each of its and their Subsidiaries to conduct, its and their business in compliance in all material respects with all Environmental Laws applicable to it or them, including, without limitation, those relating to the Loan Parties' or such Subsidiary's generation, handling, use, storage and disposal of Contaminants, except, in each case, to the extent that such non-compliance would not reasonably be expected to have a Material Adverse Effect. The Loan Parties shall take, and shall cause its and their Subsidiaries to take, prompt and appropriate action to respond to any non-compliance or alleged non-compliance with Environmental Laws, except, in each case, to the extent that such non-compliance would not reasonably be expected to have a Material Adverse Effect.

## **7.7 Compliance with ERISA, Etc.**

Such Loan Party shall and shall cause its ERISA Affiliates and Subsidiaries to:

(a) maintain each Plan and Pension Plan which is subject to or governed by ERISA, the Code, the *Income Tax Act* (Canada), the PBA or other federal, provincial or state law in compliance in all material respects with the applicable provisions of ERISA, the Code, the *Income Tax Act* (Canada), the PBA, and other federal, provincial or state law, except where noncompliance would not be reasonably likely to have a Material Adverse Effect;

(b) have no unfunded, solvency, or deficiency on windup liability and no failure to satisfy the minimum funding standards (whether or not waived) of Code Section 412 or ERISA Section 302 or any amount of unfunded benefit liabilities (including as defined in Section 4001(a)(18) of ERISA) in respect of any Pension Plan, including any Pension Plan to be established and administered by it or them;

(c) not cause or permit to arise or exist any liability upon it or them or Lien on any of its or their property in respect of any Plan;

- (d) cause each Plan which is qualified under Section 401(a) of the Code to satisfy the requirements for such qualification in all material respects;
- (e) comply with all Plan contribution requirements in all material respects;
- (f) not knowingly engage in a prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that could reasonably be expected to result in material liability;
- (g) not knowingly engage in a transaction that could be reasonably expected to result in material liability under Section 4069 or 4212(c) of ERISA;
- (h) except in respect of the Existing DB Plans that have already been wound-up, not permit the wind-up and/or termination of any Pension Plan during the term of this Agreement without the prior written consent of the Agent; and
- (i) except for the Existing DB Plans and except in connection with a Permitted Acquisition or similar investment or with the prior consent of the Agent, not maintain, administer, contribute or have any liability in respect of any Canadian Defined Benefit Pension Plan or acquire an interest in any Person if such Person sponsors, maintains, administers or contributes to, or has any liability in respect of, any Canadian Defined Benefit Pension Plan.

#### **7.8 Covenants to Give Security and Guarantee Obligations.**

(a) With respect to any Collateral acquired after the Effective Date by any Loan Party (other than (x) a fee interest in real property or (y) any property described in paragraph (b) or (c) below) as to which the Agent, for the benefit of the Secured Parties, does not have a perfected Lien and that is required to be pledged under the applicable Security Agreement or hypothecated under the applicable Hypothec, each Borrower shall and shall cause each Borrower's Subsidiaries, other than Excluded Subsidiaries, to promptly (i) execute and deliver to the Agent such amendments to the Security Documents as the Agent reasonably requests in order to grant to the Agent, for the benefit of the Lenders, a security interest in such property and (ii) take all actions reasonably requested by the Agent to grant to the Agent, for the benefit of the Secured Parties, a perfected security interest in, or hypothec on, as the case may be, such property having the priority required by the Security Documents, including the filing of UCC and PPSA financing statements and publication pursuant to the Civil Code of Quebec in such jurisdictions as may be required by the Security Documents or by law or as may be reasonably requested by the Agent.

(b) With respect to any fee interest in any real property or any immovable property located in the United States or the Province of Quebec in each case having a fair market value (as reasonably determined by the Borrower in good faith) (together with improvements thereof) of at least \$5,000,000 acquired after the Effective Date by any Loan Party or owned by a Subsidiary (other than an Excluded Subsidiary) created or acquired after the Original Effective Date, each Borrower shall and shall cause each Borrower's Subsidiaries, to, within ninety (90) days of such acquisition or the date such Subsidiary is created or acquired (or such longer period as the Agent may agree) (i) cause each Loan Party which is the fee owner of such real property or the owner of such immovable property to execute and deliver a Mortgage (as defined below) in favor of the Agent, for the benefit of the Secured Parties, covering such real property, (ii) provide the Agent, on behalf of the Secured Parties, with (x) a Title Policy (as defined below) as well as a current ALTA survey thereof or, in the case of those properties sited in Canada, a survey certificate provided by a surveyor duly licensed in the jurisdiction where such property is located, together with a surveyor's certificate, or, for property located in the Province of Quebec, a certificate of location, in each case, sufficient for the title company issuing the Title Policy to remove the standard survey exception and issue customary survey-related endorsement, (y) any consents or estoppels reasonably deemed necessary

or advisable by the Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Agent and (z) to the extent applicable, a “life-of-loan” Federal Emergency Management Agency standard flood hazard determination and, if any improvements on such Mortgaged Property are located in a special flood hazard area, a notice about special flood hazard area status duly executed by the applicable Borrower and Loan Party relating thereto and evidence of flood insurance in accordance with Section 7.5(c) hereof and (iii) deliver to the Agent customary legal opinions relating to the matters described above (other than with respect to any Loan Party’s title in any such real property), which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Agent.

(c) With respect to any new Subsidiary (other than an Excluded Subsidiary) created or acquired after the Original Effective Date by any Loan Party (including any Subsidiary that ceases to constitute an Excluded Subsidiary), each Borrower agrees, and agrees to cause each Borrower’s Subsidiaries, to promptly (and, in any event, within 60 days after the date that such Subsidiary is created or acquired or ceases to be an Excluded Subsidiary, as applicable) (i) execute and deliver to the Agent such amendments to the Security Documents or new Security Documents as the Agent reasonably deems necessary or advisable to grant to the Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Subsidiary that is owned by any Loan Party, (ii) deliver to the Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, (iii) cause such new Subsidiary (A) (i) to promptly become a Guarantor hereunder and execute and deliver to the Agent a Joinder Agreement (in the form attached as Exhibit G) and (ii) to execute a Security Agreement and any other applicable Security Documents or Loan Documents required by the Agent and cooperate with the Agent to ensure that the applicable UCC, PPSA and/or Civil Code of Quebec registrations, as applicable, are conducted and registered and (B) to take such actions reasonably deemed necessary or advisable by the Agent to grant to the Agent for the benefit of the Secured Parties a perfected security interest in or hypothec on the Collateral with respect to such new Subsidiary having the priority required by the Security Documents, including the filing of UCC financing statements and PPSA registrations in such jurisdictions and publication pursuant to the Civil Code of Quebec as may be required by the Security Documents or by law or as may be reasonably requested by the Agent and (iv) if reasonably requested by the Agent, deliver to the Agent customary legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Agent.

(d) Within 90 days following the Original Effective Date (or such longer period as the Agent may agree), the Agent shall have received (A) fully executed counterparts (or notarial copies for hypothecs executed before a Quebec notary) of mortgages, deeds of trust, deeds of hypothec, deeds to secure debt and similar documents in each case in form and substance reasonably satisfactory to the Agent and substantially in the form of Exhibit E with such changes as are reasonably required in connection with local law (each a “**Mortgage**” and collectively, the “**Mortgages**”) covering all the properties that were Mortgaged Properties on the Original Effective Date, which Mortgages shall be recorded in all places to the extent necessary or desirable, in the reasonable judgment of the Agent, to create a valid and enforceable first priority Lien, subject only to Permitted Liens, on each Mortgaged Property in favor of the Agent (or such other trustee as may be required or desired under local law) for the benefit of the Secured Parties, (B) a lender’s title insurance policy with respect to each Mortgaged Property paid for by the Borrowers, issued by a nationally recognized title insurance company, together with such affidavits, endorsements, coinsurance, affirmative coverage and reinsurance as may be reasonably requested by the Agent, in form and substance reasonably acceptable to the Agent, insuring each Mortgage as a first Lien on the relevant Mortgaged Property in an amount at least equal to the aggregate of the land value and insurable value of such Mortgaged Property (or such other amount as may reasonably be requested by the Agent) and subject only to Liens permitted hereunder (the “**Title Policies**”), and (C) other documents and legal opinions as shall be reasonably requested by the Agent, including those described in Section 7.8(b).

(e) The Loan Parties agree to promptly, upon reasonable request by the Agent, (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Loan Document or other document or instrument relating to any Collateral, (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Agent may reasonably require from time to time in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the Security Documents, including cooperating as necessary to enable the Agent to make any necessary or reasonably desirable recordations with the United States Copyright Office or the United States Patent and Trademark Office, as appropriate.

#### **7.9 Further Assurances.**

Such Loan Party shall execute and deliver or cause to be executed and delivered to the Agent and/or the Lenders such documents and agreements, and shall take or cause to be taken such actions, as the Agent or any Lender may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents.

#### **7.10 Maintenance of Ratings.**

The Canadian Borrower shall use commercially reasonable efforts to maintain at all times public ratings (but not a specific level) issued by Moody's and S&P with respect to the Canadian Borrower and the Term Loans hereunder.

#### **7.11 Post-Closing Covenants.**

The Loan Parties shall deliver to the Agent each item set forth on Schedule 7.11 in form and substance reasonably satisfactory to Agent within the time periods established for each such item on such Schedule 7.11.

### **ARTICLE 8 – NEGATIVE COVENANTS**

Each Loan Party covenants to the Agent and each Lender that so long as any of the Obligations (other than contingent obligations for which no claim has been asserted) remain outstanding:

#### **8.1 Liens.**

No Loan Party, nor any of its Subsidiaries, shall create, incur, assume or permit to exist any Lien on any Collateral or other property now owned or hereafter acquired by any of them, except Permitted Liens. All Collateral is and will continue to be covered by the Loan Parties free and clear of all Liens, except for Permitted Liens.

#### **8.2 Mergers, Consolidations or Sales.**

(a) Except as set forth on Schedule 8.2, no Loan Party, nor any of its Subsidiaries, shall enter into any transaction of merger, amalgamation, reorganization or consolidation, or transfer, sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of related transactions) all or substantially all of its assets (whether now owned or hereafter acquired), or issue or otherwise sell or, except as permitted by Section 8.2(b), transfer (whether in one transaction or in a series of related transactions) all or substantially all of its equity interests in such Loan Party or Subsidiary, or wind up, liquidate or dissolve, or agree to do any of the foregoing, except (A) the amalgamation, consolidation or merger of any Subsidiary into another Subsidiary; provided that if any such Subsidiary is a Loan Party, then the surviving entity shall

be a Loan Party and if any such Subsidiary is a Borrower, then the surviving entity shall be such Borrower, (B) the amalgamation, consolidation or merger of any Subsidiary into a Borrower, provided that such Borrower is the successor entity thereto, (C) any Subsidiary other than a Borrower may make a disposition of all or substantially all of its assets (upon voluntary liquidation or otherwise) to another Subsidiary; provided that if the transferor in such a transaction is a Loan Party, then the transferee must be a Loan Party, (D) any Subsidiary other than a Borrower may merge, consolidate or amalgamate with any other Person in order to effect Permitted Investment; provided that the continuing or surviving Person shall be a Subsidiary, which together with each of its Subsidiaries, shall have complied with the requirements of Sections 7.8 and 7.9 (or arrangements for the compliance with such requirements within 30 days (or by such later date reasonably satisfactory to the Agent) shall have been made) and if the other party to such transaction is not a Loan Party, no Default exists after giving effect to such transaction and (E) any Subsidiary other than a Borrower may effect a merger, dissolution, liquidation, consolidation or amalgamation to effect a Transfer permitted pursuant to Section 8.2(b); provided that if the other party to such transaction is not a Loan Party, no Default exists after giving effect to the transaction.

(b) No Loan Party, nor any of its Subsidiaries, shall transfer, sell, assign, lease or otherwise dispose of (each, a “**Transfer**”) all or any part of its property, except for:

- (i) sales of inventory and immaterial assets in the ordinary course of its business;
- (ii) sales or other dispositions of property listed on Schedule 8.2;
- (iii) sales or other dispositions of assets in the ordinary course of business that are (a) obsolete, (b) no longer useable in its business or (c) no longer necessary for the conduct or operation of such Person’s business;
- (iv) the lease or sublease, as lessor or sublessor, of any Real Estate of such Person, or the Transfer of Real Estate to a Loan Party;
- (v) Transfers of property to any Borrower or any of their respective Subsidiaries; provided that (A) if the transferor in such a transaction is a Loan Party, then the transferee must be a Loan Party or to the extent constituting an investment, such investment must be a Permitted Investment, (B) if any such Subsidiary is a Borrower, then the transferee must be a Borrower or to the extent constituting an investment, such investment must be a Permitted Investment and (C) to the extent constituting a Transfer to a Subsidiary that is not a Loan Party, such Transfer is for fair value and any promissory note or other non-cash consideration received in respect thereof is a Permitted Investment in a Subsidiary that is not a Loan Party;
- (vi) a disposition made as a part of a Permitted Investment;
- (vii) other dispositions; provided that
  - (A) such Loan Party or such Subsidiary, as the case may be, receives consideration at least equal to the fair market value (as determined reasonably and in good faith by a Responsible Officer of the Borrower Representative) (including as to the value of all non-cash consideration) of the shares and assets subject to such disposition;
  - (B) no Default or Event of Default exists or would result from such disposition;

(C) at least 75.0% of the consideration for such dispositions received by such Loan Party or such Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided, that each of the following shall be deemed to be Cash Equivalents for the purposes of this clause (C):

(1) any liabilities (as shown on such Loan Party's or such Subsidiary's most recent balance sheet or in the notes thereto for which internal financial statements are available immediately preceding such date or, if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on such Loan Party's or such Subsidiary's balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet in the good faith determination of the Borrowers) of such Loan Party or such Subsidiary (other than liabilities that are by their terms subordinated to the Obligations) that are extinguished in connection with the transactions relating to such Transfer, or that are assumed by the transferee of any such assets or equity interests and, in each case, pursuant to an agreement that releases or indemnifies the Borrowers and all such Loan Parties or Subsidiaries, as the case may be, from further liability;

(2) any notes or other obligations or other securities or assets received by such Loan Party or such Subsidiary from such transferee that are converted by any Borrower into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received), in each case, within 180 days of the receipt thereof; and

(3) any Designated Non-Cash Consideration received by such Loan Party or such Subsidiary in such Transfer having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this subclause (3) that is at that time outstanding, not to exceed the greater of (x) \$10,000,000 and (y) 10.0% of EBITDA for the most recently ended Test Period, calculated at the time of the receipt of such Designated Non-Cash Consideration (with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value);

(viii) Transfers of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Transfer are promptly applied to the purchase price of such replacement property;

(ix) dispositions of cash and Cash Equivalents;

(x) dispositions of accounts receivable in connection with the collection or compromise thereof (other than in connection with financing transactions);

(xi) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business and that do not materially interfere with the business of the Borrowers and their respective Subsidiaries, taken as a whole;

(xii) transfers of property subject to Recovery Events upon receipt of the Net Cash Proceeds of such Recovery Event;

(xiii) dispositions of investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(xiv) any Transfer of any asset between or among the Canadian Borrower and its Subsidiaries as a substantially concurrent interim Transfer in connection with a Transfer otherwise permitted pursuant to this Section 8.2(b); and

(xv) the sale of any property built or acquired by the Canadian Borrower or any of its Subsidiaries after the Effective Date in a Sale/Leaseback Transaction within twelve (12) months of the construction or acquisition of such property; provided that, with respect to any such Sale/Leaseback Transaction pursuant to this Section 8.2(b)(xv) for a purchase price in excess of \$1,000,000, the Canadian Borrower or one of its Subsidiaries shall receive not less than 75.0% of such consideration in the form of cash and Cash Equivalents; and

(xvi) dispositions of assets or issuance or sale of Capital Stock of any Subsidiary in any single transaction or series of related transactions with a fair market value (as determined reasonably and in good faith by a Responsible Officer of the Borrower Representative) of less than \$5,000,000 and up to an aggregate fair market value (as determined reasonably and in good faith by a Responsible Officer of the Borrower Representative) of less than \$10,000,000 for all such excluded transactions in any fiscal year.

(c) Any Loan Party may engage in a Permitted Acquisition.

### **8.3 Distributions; Capital Change; Restricted Investments.**

(a) No Loan Party, nor any of its Subsidiaries, shall directly or indirectly declare or make, or incur any liability to make, any Distribution, except:

(i) each Subsidiary may make Distributions to the Canadian Borrower or any other Subsidiary; provided that in the case of any such Distribution by a Subsidiary that is not a Wholly-Owned Subsidiary, such Distribution is made to the Canadian Borrower, any Subsidiary and to each other owner of Capital Stock of such Subsidiary based on their relative ownership interests of the relevant class of Capital Stock;

(ii) the Borrowers and each of their respective Subsidiaries may declare and make dividend payments or other distributions payable solely in the Capital Stock (other than Disqualified Stock) of such Person;

(iii) any Borrower or any of its respective Subsidiaries may (i) pay cash in lieu of fractional shares in connection with any dividend, split or combination thereof or any Permitted Acquisition and (ii) honor any non-cash conversion request by a holder of convertible Debt and make cash payments in lieu of fractional shares in connection with any such conversion;

(iv) so long as no Event of Default exists and is continuing or would result therefrom, redemptions, acquisitions, retirements, repurchases or settlements by the Canadian Borrower of its Capital Stock (or any options or warrants or stock appreciation rights issued respect thereto) (x) held by current or former officers, managers, consultants, directors and employees (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) of the Canadian Borrower and its Subsidiaries or (y) in connection with normal course issuer bids made by the Canadian Borrower, in an aggregate amount for the foregoing clauses (x)

and (y) not to exceed \$10,000,000 in any Fiscal Year, with unused amounts in any calendar year being carried over to the next succeeding calendar year (provided that the amount of such redemptions, retirements, acquisitions or repurchases of Capital Stock shall not exceed \$20,000,000 in any Fiscal Year);

(v) so long as no Default or Event of Default exists and is continuing or would result therefrom, Distributions by the Canadian Borrower in an aggregate amount at any time not to exceed the portion of the Available Amount on the date of such Distribution that the Borrower Representative elects to apply to this Section 8.3(a); provided that, for Distributions made with the portion of the Available Amount described under clause (a)(y) of the definition thereof, after giving *pro forma* effect to such Distribution, the Total Leverage Ratio shall not exceed 4.00:1.00;

(vi) so long as no Event of Default exists and is continuing or would result therefrom, other Distributions by the Canadian Borrower so long as after giving *pro forma* effect to such Distribution, the Total Leverage Ratio shall not exceed 3.00:1.00; and

(vii) so long as no Default or Event of Default exists and is continuing or would result therefrom, other Distributions by the Canadian Borrower in an amount not to exceed the greater of (A) \$20,000,000 and (B) 20.0% of EBITDA for the most recently ended Test Period at the time of making such Distribution.

(b) Such Loan Party shall not make any investment, including any Acquisitions, other than Permitted Investments; provided, however, that the Canadian Borrower may repurchase its Capital Stock to the extent permitted by Section 8.3(a).

#### **8.4 Guarantees.**

No Loan Party, nor any of its Subsidiaries, shall make, issue or become liable on any Guarantee, except (i) Guarantees of the Obligations in favour of the Agent, (ii) Guarantees in favour of the lenders and the agent under the Revolving Credit Agreement in respect of the obligations of the borrowers thereunder, all subject to the Intercreditor Agreement, (iii) endorsements of instruments for deposit in the ordinary course of business and (iv) Guarantees by Loan Parties of Debt of the Loan Parties, Guarantees by Subsidiaries that are not Loan Parties of Debt of the Loan Parties and, to the extent constituting a Permitted Investment, Guarantees by Loan Parties of Debt of Subsidiaries that are not Loan Parties, in each case, to the extent that such Debt is permitted under Section 8.5.

#### **8.5 Debt.**

No Loan Party, nor any of its Subsidiaries, shall incur or maintain any Debt, other than:

- (a) the Obligations and any Permitted Refinancing thereof;
- (b) Specified Refinancing Debt and any Permitted Refinancing thereof;
- (c) Debt existing on the Effective Date and described on Schedule 8.1 and any Permitted Refinancing thereof;
- (d) Capital Leases of Fixed Assets and purchase money Debt incurred to purchase Fixed Assets and any Permitted Refinancing thereof; provided that (i) Liens securing the same attach only to the Fixed Assets acquired by the incurrence of such Debt, and (ii) the aggregate principal amount of such Debt

outstanding does not exceed at any time an amount equal to the greater of (x) \$60,000,000 and (y) 60.0% of EBITDA for the most recently ended Test Period;

(e) Debt incurred or assumed in connection with a Permitted Acquisition or similar investment (i) solely in the case of Debt assumed (but not incurred) in connection with a Permitted Acquisition or similar investment, in an aggregate principal amount not to exceed at any time the greater of (x) \$40,000,000 and (y) 40.0% of EBITDA for the most recently ended Test Period and (ii) in an unlimited amount so long as, solely with respect to this clause (ii) and in each case calculated on a *pro forma* basis for the most recently ended Test Period (including the application of the proceeds thereof (without “netting” the cash proceeds of the applicable Debt) and assuming that such Debt is fully drawn (subject, in the case of delayed draw term loan commitments, to Section 1.01(c)(xix)(B))), (A) if the relevant Debt is secured by any Liens that are *pari passu* with the Liens securing the Obligations, the Secured Leverage Ratio shall not exceed (x) 4.00:1.00 or (y) the Secured Leverage Ratio for the Test Period ending immediately prior to such Permitted Acquisition or investment, (B) if the relevant Debt is secured solely by Liens that are junior to the Liens securing the Obligations, the Total Leverage Ratio shall not exceed (x) 5.00:1.00 or (y) the Total Leverage Ratio for the Test Period ending immediately prior to such Permitted Acquisition or investment and (C) if the relevant Debt is unsecured or secured solely by Liens on assets that are not Collateral, the Total Leverage Ratio shall not exceed (x) 5.00:1.00 or (y) the Total Leverage Ratio immediately prior to such Permitted Acquisition or investment; provided that (i) any such Debt incurred (but not assumed) pursuant to this Section 8.5(e)(ii) shall be subject to clauses (e), (f), (g), (h), (i) and (j) of the definition of “Incremental Equivalent Debt” as if such Debt was Incremental Equivalent Debt and (ii) the aggregate principal amount of such Debt incurred or assumed by Subsidiaries that are not Loan Parties (or are not required to become Loan Parties pursuant to Section 7.8(c)) shall not, together with the aggregate principal amount of Incremental Equivalent Debt incurred by Subsidiaries that are not Loan Parties (or are not required to become Loan Parties pursuant to Section 7.8(c)), exceed at any time the greater of (x) \$20,000,000 and (y) 20.0% of EBITDA for the most recently ended Test Period;

(f) intercompany Debt among the Canadian Borrower and its Subsidiaries permitted under the definition of “Permitted Investments”; provided that any such Debt incurred by a Loan Party from a Subsidiary that is not a Loan Party shall be subordinated to the Obligations in a manner reasonably acceptable to the Agent;

(g) Incremental Equivalent Debt and, in the case of Incremental Equivalent Debt incurred in reliance on clause (c) of the Maximum Incremental Amount, any Permitted Refinancing thereof;

(h) subject to the Intercreditor Agreement, Debt under the Revolving Credit Agreement in an aggregate principal amount not to exceed, together with any Permitted Refinancing thereof, the greater of (x) \$200,000,000 and (y) the Borrowing Base (as defined in the Revolving Credit Agreement as in effect on the Effective Date);

(i) Guarantees permitted by Section 8.4;

(j) Debt under, or reimbursement obligations in respect of, letters of credit and bankers acceptances issued for performance, surety, appeal or indemnity bonds or with respect to workers’ compensation claims or other statutory obligations;

(k) Debt arising from netting services, overdraft protection, cash management services and otherwise in connection with deposit, securities and commodities accounts in the ordinary course of business;

(l) trade payables and other liabilities accrued or incurred in the ordinary course of business other than through the borrowing of money;

(m) Debt under Hedge Agreements entered into to hedge actual amounts and not for speculative purposes;

(n) Debt (other than intercompany Debt) constituting a Permitted Investment;

(o) Debt representing deferred compensation or stock-based compensation to employees, consultants or independent contractors of the Canadian Borrower and its Subsidiaries incurred in the ordinary course of business;

(p) Debt constituting indemnification obligations or obligations in respect of purchase price or other similar adjustments incurred in a Permitted Acquisition, any other similar investment or any Transfer, in each case permitted under this Agreement;

(q) Debt incurred in the ordinary course of business in connection with incentive or other economic development programs provided or offered by any Governmental Authority, including, without limitation, tax credit programs, tax-exempt bonds and notes and forgivable loan programs incurred in the ordinary course of business; provided that the aggregate principal amount of Debt incurred pursuant to this clause (q) shall not exceed the greater of (x) \$25,000,000 and (y) 25% EBITDA for the most recently ended Test Period, at any time outstanding;

(r) Debt consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply or manufacturing arrangements, in each case in the ordinary course of business;

(s) other Debt at any time outstanding in an aggregate amount not to exceed the greater of (x) \$50,000,000 and (y) 50.0% of EBITDA for the most recently ended Test Period;

(t) Attributable Debt arising out of Sale/Leaseback Transactions permitted by Section 8.2 and any Permitted Refinancing of such Attributable Debt, in each case, in an aggregate amount not to exceed the greater of (x) \$10,000,000 and (y) 10.0% EBITDA for the most recently ended Test Period, at any time outstanding; and

(u) obligations in respect of Cash Management Agreements.

## **8.6 Prepayment; Repurchase and Redemption of Restricted Debt; Amendments of Restricted Debt.**

No Loan Party, nor any of its Subsidiaries, shall (a) voluntarily prepay, repurchase or redeem, or otherwise satisfy prior to the maturity thereof in any manner, any unsecured Debt incurred by a Loan Party pursuant to Section 8.5(g), any Debt subordinated to the Obligations, any Debt secured by a Lien ranking junior to any Facility or any unsecured Incremental Equivalent Debt or unsecured Refinancing Debt in respect of the Term Loans (collectively, the “**Restricted Debt**”), except (i) pursuant to any refinancing permitted under Section 8.5 (unless an Event of Default under Section 10.1(a) shall have occurred and be continuing or such payment is blocked under an intercreditor agreement relating thereto), (ii) the conversion of any Restricted Debt to Capital Stock (other than Disqualified Stock) of the Canadian Borrower, (iii) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, in an amount at any time not to exceed the portion of the Available Amount on the date of such payment, purchase or redemption that the Borrower Representative elects to apply to this Section 8.6; provided that, for any such payments, purchases or redemptions made with the portion of the Available Amount described under

clause (a)(y) of the definition thereof, after giving *pro forma* effect to such payments, purchases and redemptions, the Total Leverage Ratio shall not exceed 4.00:1.00, (iv) so long as no Default or Event of Default exists and is continuing or would result therefrom, other payments, purchases and redemptions by the Canadian Borrower and its Subsidiaries so long as after giving *pro forma* effect to such payment, purchase or redemption, the Total Leverage Ratio shall not exceed 3.00:1.00 and (v) intercompany Debt among the Canadian Borrower and its Subsidiaries, or (b) amend, modify, waive or otherwise change or consent or agree to any amendment, modification, waiver or other change to, any of the terms of (i) any Debt under the Revolving Credit Agreement in a manner that would violate the terms of the Intercreditor Agreement or (ii) any Restricted Debt in a manner materially adverse to the Lenders or in violation of any applicable subordination agreement or intercreditor agreement (including any Acceptable Intercreditor Agreement).

#### **8.7 Transactions with Affiliates.**

No Loan Party, nor any of its Subsidiaries, shall enter into, or be a party to, any transaction with any Affiliate of such Loan Party or Subsidiary, including without limitation any management, consulting or similar arrangement, except (a) transactions on terms substantially as favorable to such Loan Party or such Subsidiary as would be obtainable by such Loan Party or such Subsidiary at the time in a comparable arm's length transactions with a Person other than an Affiliate, (b) transactions among the Canadian Borrower and its Subsidiaries (or an entity that becomes a Subsidiary as a result of the transaction), (c) transactions set forth on Schedule 8.7 and (d) transactions specifically permitted pursuant to the other provisions of this Agreement, including without limitation Permitted Investments.

#### **8.8 Use of Proceeds.**

(a) No Loan Party, nor any of its Subsidiaries, shall use any portion of the Term Loan proceeds, directly or indirectly, (i) to purchase or carry Margin Stock, (ii) to repay or otherwise refinance indebtedness of a Loan Party or other Persons incurred to purchase or carry Margin Stock, (iii) to extend credit for the purpose of purchasing or carrying any Margin Stock or (iv) to acquire any security in any transaction that is subject to Section 13 or 14 of the *Exchange Act*.

(b) The proceeds of the Initial Term Loans shall be used to finance the Transactions on the Effective Date.

(c) The proceeds of Incremental Term Loans and Specified Refinancing Debt shall be used in accordance with Sections 1.3 and 1.5, as applicable.

#### **8.9 Business Conducted.**

No Loan Party, nor any of its Subsidiaries, shall engage, directly or indirectly, in any material line of business substantially different from those lines of business in which the Canadian Borrower and its Subsidiaries are engaged on the Effective Date and reasonable extensions, developments and expansions thereof and any others ancillary or reasonably related thereto.

#### **8.10 Fiscal Year.**

No Loan Party shall change its Fiscal Year.

### **8.11 Financial Covenant.**

The Total Leverage Ratio as of the last day of any Test Period, commencing with the fiscal quarter ending December 31, 2024, shall not be greater than 6.50:1.00.

### **8.12 Corporate Documents.**

No Loan Party, nor any of its Subsidiaries, shall amend or permit to be amended in any manner that would reasonably be expected to be materially adverse to the Agent or the Lenders, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, memorandum of association, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Loan Party or such Subsidiary.

### **8.13 Restrictive Agreements.**

No Loan Party, nor any of its Subsidiaries, shall become a party to any agreement that conditions or restricts the right of such Loan Party or any Subsidiary thereof to incur or repay Debt, to grant Liens on its assets, to declare or make Distributions, to modify, extend or renew any agreement evidencing Debt or to repay intercompany Debt, except (a) the Loan Documents, (b) the ABL Documents (as defined in the Intercreditor Agreement), (c) such an agreement related to secured Debt permitted hereunder, if such restrictions apply only to the collateral for such Debt, (d) customary provisions in leases and other contracts restricting assignment thereof, (e) restrictions that are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as such restrictions were not entered into solely in contemplation of such Person becoming a Subsidiary, (f) restrictions arising under Debt of a Subsidiary that is not a Loan Party that is permitted by Section 8.5; provided that such restrictions will not materially affect the Borrowers' ability to pay the Obligations as they become due, (g) customary restrictions that arise in connection with any Transfer permitted by Section 8.2 and are applicable pending such Transfer and solely to the assets subject to such Transfer, (h) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted hereunder, (i) restrictions imposed by Requirements of Law, (j) customary restrictions contained in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto, (k) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrowers or any of their Subsidiaries, (l) restrictions on cash (or Cash Equivalents) or deposits imposed by customers under contracts entered into in the ordinary course of business (or otherwise constituting Permitted Liens on such cash or Cash Equivalents or deposits), (m) customary net worth provisions contained in real property leases or licenses of intellectual property entered into by the Borrowers or any of their Subsidiaries, so long as the Borrowers have determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Loan Parties and their subsidiaries to meet their ongoing obligations or (n) restrictions arising under Incremental Equivalent Debt or Debt in respect of Permitted Refinancing.

## **ARTICLE 9 – CONDITIONS OF LENDING**

### **9.1 Conditions Precedent to Borrowing on the Effective Date.**

The effectiveness of this Agreement and the obligation of the Lenders to make Term Loans are subject to the following conditions precedent having been satisfied:

(a) The Agent shall have received (i) executed counterparts of this Agreement from each of the Loan Parties, the Resigning Agent and each of the Lenders, (ii) executed counterparts of the Intercreditor

Agreement from each of the Loan Parties and the Revolving Credit Facility Collateral Agent, (iii) executed counterparts of the U.S. Security Agreement from each of the Loan Parties party thereto, (iv) executed counterparts from each Loan Party of a reaffirmation agreement in form and substance reasonably satisfactory to the Agent, confirming that such Loan Party's obligations under the Loan Documents remain in full force and effect after giving effect to this Agreement on the Effective Date, (v) executed counterparts of the Agency Assignment Agreement from each of the Loan Parties and the Resigning Agent and (vi) a duly executed notarial copy of the Hypothec and satisfactory evidence, including Lien searches and evidence of filings and registrations, that the Hypothec is valid and effective, and has been duly perfected and rendered opposable to third parties.

(b) (i) The representations and warranties of each Loan Party set forth herein and in each other Loan Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as so qualified) on and as of the date of the Effective Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, (ii) no Default or Event of Default shall exist or would result from the execution and delivery of this Agreement and the consummation of the other Transactions on the Effective Date and (iii) the Agent shall have received a signed certificate of a Responsible Officer certifying as to the matters in the foregoing clauses (i) and (ii).

(c) Prior to or substantially concurrently with the initial funding of the Initial Term Loans on the Effective Date, the Refinancing shall have been or shall be consummated.

(d) The Agent shall have received good standing certificates or certificates of status, as applicable, as of a date reasonably proximate to the Effective Date, from the applicable Governmental Authority of each Loan Party's jurisdiction of incorporation, organization or formation.

(e) The Agent shall have received a certificate of a Responsible Officer of each of the Loan Parties, dated the Effective Date and certifying (A) that attached thereto is a true and complete copy of the certificate or articles of incorporation or other constitutive or organizational documents, in each case amended to date, of such Loan Party, (B) that attached thereto is a true and complete copy of such Loan Party's by-laws or limited liability company agreement, as the case may be, as in effect on the date of such certificate and at all times since a date prior to the date of the resolution described in item (C) below, (C) that attached thereto is a true and complete copy of a resolution adopted by such Loan Party's Board of Directors (or in the case of a Loan Party that is not a corporation, the equivalent governing body) authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party, and that such resolution has not been modified, rescinded or amended and is in full force and effect, (D) that such Loan Party's certificate or articles of incorporation or other constitutive documents have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished hereinabove, and (E) as to the incumbency and specimen signature of each of such Loan Party's officers executing this Agreement or any other Loan Document delivered in connection herewith or therewith, as applicable; and a certificate of another of such Loan Party's officers as to the incumbency and signature of its Secretary or Assistant Secretary, as the case may be.

(f) The Agent shall have received the executed counterparts of the Revolving Credit Agreement Amendment.

(g) Prior to or substantially concurrently with the initial funding of the Initial Term Loans on the Effective Date, the Agent shall have received all fees and expenses required to be paid to the Agent, the Arrangers and the Lenders on the Effective Date and (in the case of expenses) invoiced a reasonable period of time prior to the Effective Date (except as otherwise reasonably agreed by the Borrowers).

(h) The Agent shall have received a certificate, in form and substance reasonably satisfactory to the Agent, from the chief financial officer of the Canadian Borrower certifying that the Canadian Borrower and its Subsidiaries, on a consolidated basis, immediately after giving effect to the effectiveness of this Agreement and the making (or deemed making) of the Initial Term Loans on the Effective Date and the other transactions contemplated hereby, are Solvent.

(i) The Agent shall have received:

(i) subject to Section 7.11, each document (including, without limitation, any PPSA or Uniform Commercial Code financing statement or similar recordation pursuant to the Civil Code of Quebec) required by the Security Documents or any other Loan Document or reasonably requested by the Agent to be filed, registered or recorded in order to create in favour of the Agent, for the benefit of the Agent and the Lenders, a perfected Lien on the Collateral, prior and superior in right to any other Person (other than Permitted Liens), and in proper form for filing, registration or recordation;

(ii) estoppel documentation, PPSA, UCC-3 or Civil Code (Quebec) termination statements (and similar termination statements or releases under other applicable laws) authorized for filing by the appropriate Person and such other instruments, in form and substance reasonably satisfactory to the Agent, as shall be necessary to terminate and satisfy all Liens on the assets and property of the Loan Parties and their respective Subsidiaries (including, without limitation, discharges of the registrations with the RPMRR related to the Existing Hypothecs) except Permitted Liens; and

(iii) the results of a search of tax and other Liens, and judgments and of the PPSA filings, Uniform Commercial Code filings, filings made with the RPMRR, United States Patent and Trademark Office filings and filings made pursuant to other applicable laws or statutes to perfect a security interest in Collateral of a Loan Party made with respect to each of the Loan Parties in the jurisdictions in which each Loan Party is organized and/or in which Collateral is located and in which PPSA filings, Uniform Commercial Code filings or filings made pursuant to other applicable laws or statutes to perfect a security interest in Collateral of a Loan Party have been made against an Loan Party in (i) hereinabove.

(j) Subject to Section 7.11, all actions shall have been taken as the Agent shall have reasonably requested to ensure that the Secured Parties shall have a perfected security interest in the Collateral of the type and priority described in each applicable Security Document.

(k) The Agent shall have received a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property located in the United States and, if any such Mortgaged Property is located in a special flood hazard area, an executed notice to the Borrowers and evidence of flood insurance required under Section 7.5(c) hereof.

(l) The Agent shall have received such executed customary legal opinions of counsel for the Loan Parties as the Agent shall reasonably request, with each such opinion in form and substance reasonably satisfactory to the Agent.

(m) The Agent shall have received evidence, in form, scope, and substance, reasonably satisfactory to the Agent, of all insurance coverage as required by this Agreement (including, without limitation, the certificates of insurance and other documents required by Section 7.5).

(n) Each Borrower and each of the Guarantors shall have provided the documentation and other information to the Lenders that are required by regulatory authorities under the applicable “know your customer” rules and regulations and policies, including the PATRIOT Act and Proceeds of Crime Act, in each case at least three Business Days prior to the Effective Date.

Execution and delivery to the Agent by a Lender of a counterpart of this Agreement shall be deemed confirmation by such Lender that (i) all conditions precedent in this Section 9.1 have been fulfilled to the satisfaction of such Lender, (ii) the decision of such Lender to execute and deliver to the Agent an executed counterpart of this Agreement was made by such Lender independently and without reliance on the Agent or any other Lender as to the satisfaction of any condition precedent set forth in this Section 9.1, and (iii) all documents sent to such Lender for approval, consent or satisfaction were acceptable to such Lender.

The Agent shall notify the Borrowers and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

## ARTICLE 10 – DEFAULT; REMEDIES

### 10.1 Events of Default.

It shall constitute an event of default (“**Event of Default**”) if any one or more of the following shall occur for any reason:

(a) (i) any failure to pay the principal of any of the Term Loans when due, whether upon demand or otherwise; or (ii) any failure to pay the interest or premium on any of the Obligations when due, whether upon demand or otherwise, and such failure shall continue for three or more days; or (iii) any failure to pay any fee, expense or other amount owing hereunder or under any other Loan Document when due, whether upon demand or otherwise, and such failure shall continue for five or more days;

(b) any representation or warranty made or deemed made by any Loan Party in this Agreement or in any of the other Loan Documents, any Financial Statement or any certificate furnished by any Loan Party at any time to the Agent or any Lender shall prove to be untrue in any material respect as of the date on which made, deemed made or furnished;

(c) (i) any default shall occur in the observance or performance of any of the covenants or agreements contained in any of Sections 5.2(a), 5.3(a), 7.2 (with respect to any Borrower) or Article 8; or (ii) any default shall occur in the observance or performance of any of the other covenants or agreements contained in any other Section of this Agreement (other than as specified in Sections 10.1(a), (b) or (c)(i) above) or any other Loan Document or any other material agreement entered into at any time to which any Loan Party and the Agent or any Lender are party and such default shall continue for thirty (30) days or more after the earlier of (A) the date on which such failure shall first become known to any Responsible Officer of any Loan Party or (B) notice thereof is provided to the Borrower Representative by the Agent;

(d) any default shall occur with respect to (x) Debt under the Revolving Credit Agreement or (y) any other Debt (other than the Obligations) of one or more of the Loan Parties or their respective Subsidiaries in an outstanding principal amount which, individually or in the aggregate, exceeds \$20,000,000 in the case of the Loan Parties and their respective Subsidiaries, or under any agreement or instrument under or pursuant to which any such Debt may have been issued, created, assumed or guaranteed by any Loan Party or a Subsidiary thereof, and such default shall continue for more than the period of grace, if any, therein specified, if the effect thereof (with or without the giving of notice or further lapse of time or both) is to accelerate, or to permit the holders of any such Debt to accelerate, the maturity of any such Debt; or any such Debt shall be declared due and payable or be required to be prepaid (other than by a

regularly scheduled required prepayment) prior to the stated maturity thereof or any such Debt shall not be paid in full upon the scheduled maturity thereof; provided that such default or event of default, as defined thereunder, remains unremedied or is not effectively waived thereunder prior to the acceleration of the Term Loans pursuant to Section 10.2;

(e) any Loan Party or any Subsidiary thereof shall (i) file a voluntary petition in bankruptcy or file a voluntary petition or an answer or file any proposal or notice of intent to file a proposal or otherwise commence any action or proceeding seeking reorganization, arrangement or readjustment of its debts or for any other relief under the federal Bankruptcy Code, as amended, the BIA, the CCAA or under any other bankruptcy or insolvency, liquidation, winding-up or similar act or law, state, provincial, federal or foreign, now or hereafter existing, or consent to, approve of or acquiesce in, any such petition, proposal, action or proceeding; (ii) apply for or acquiesce in the appointment of a receiver, assignee, liquidator, sequestrator, custodian, monitor, administrator, trustee or similar officer for it or for all or any part of its property; (iii) make an assignment for the benefit of creditors; or (iv) be unable generally to pay its debts as they become due or shall admit in writing its inability to pay its debts generally as they become due;

(f) an involuntary petition shall be filed or an action or proceeding otherwise commenced seeking reorganization, arrangement, consolidation or readjustment of the debts of any Loan Party or any Subsidiary thereof or for any other relief under the federal Bankruptcy Code, as amended, BIA, the CCAA or under any other bankruptcy or insolvency, liquidation, winding-up or similar act or law, state, provincial, federal or foreign, now or hereafter existing and such petition or proceeding shall not be dismissed within sixty (60) days after the filing or commencement thereof or an order of relief shall be entered with respect thereto;

(g) a receiver, assignee, liquidator, sequestrator, custodian, monitor, administrator, trustee or similar officer for any Loan Party or any Subsidiary thereof or for all or any material part of its property, or any material part of the Collateral, shall be appointed or a warrant of attachment, execution or similar process shall be issued against all or any material part of the property of any Loan Party or any Subsidiary thereof, or any material part of the Collateral, or any distress or analogous process is levied against all or any material part of the property of any Loan Party or any Subsidiary thereof, or any material part of the Collateral;

(h) any Loan Document shall be terminated (other than in accordance with its terms), revoked or declared void or invalid or unenforceable or a complaint or other legal proceeding seeking such relief shall be filed by any Loan Party;

(i) one or more judgments, orders, decrees or arbitration awards is entered against one or more Loan Parties or any of their respective Subsidiaries involving in the aggregate liability (to the extent not covered by independent third-party insurance) as to any one or more single or related or unrelated series of transactions, incidents or conditions, of \$20,000,000 or more (or the equivalent amount in another currency), individually or in the aggregate, and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of thirty (30) days after the entry thereof;

(j) for any reason other than (x) the Agent no longer having possession of certificates actually delivered to it representing securities pledged under the Security Documents or (y) a UCC or PPSA filing having been terminated by the Agent or, in the case of a UCC or PPSA filing, such filing having lapsed because a UCC or PPSA continuation statement was not filed in a timely manner, any Guarantee or security interest ceases to be in full force and effect or any Guarantee or security interest is challenged by any Loan Party or any Lien with respect to any material portion of the Collateral intended to be secured thereby ceases to be, or is not, valid, perfected and prior to all other Liens (other than Permitted Liens) or is terminated (except in accordance with its terms), revoked or declared void;

(k) (i) (A) an ERISA Event shall occur with respect to a Pension Plan or Multi-employer Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect; (B) any Loan Party or any ERISA Affiliate shall fail to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multi-employer Plan which has resulted or would reasonably be expected to result in liability of any Loan Party or any ERISA Affiliate in an aggregate amount that would reasonably be expected to result in a Material Adverse Effect; (C) any Lien arises with respect to such Pension Plan or Multi-employer Plan (save for contribution amounts not yet due); or (D) the institution of any steps by any Loan Party or any applicable regulatory authority to terminate a Pension Plan if, as a result of such termination, any such Loan Party may be required to make an additional contribution to such Pension Plan or to incur an additional liability or obligation to such Pension Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect; or (ii) a Termination Event shall occur which, in Agent's reasonable determination, constitutes grounds for the termination under any applicable law, of any Pension Plan or for the appointment by the appropriate Governmental Authority of a trustee for any Pension Plan, or if any Pension Plan shall be terminated or any such trustee shall be requested or appointed, or if a Loan Party is in default with respect to payments to a Multi-employer Plan or Pension Plan resulting from their complete or partial withdrawal from such Multi-employer Plan or Pension Plan, in each case where such event may reasonably be expected to have a Material Adverse Effect; or

(l) there occurs a Change of Control.

## **10.2 Remedies.**

(a) If an Event of Default exists, the Agent may, or at the direction of the Required Lenders, shall, do one or more of the following, at any time or times and in any order, without notice to or demand on any Loan Party: (A) declare any or all Obligations to be immediately due and payable; provided, however, that upon the occurrence of any Event of Default described in Sections 10.1(e), 10.1(f), or 10.1(g) as to a Loan Party or its property, all Obligations shall automatically become immediately due and payable without notice or demand of any kind; and (B) pursue its other rights and remedies under the Loan Documents and applicable law.

(b) If an Event of Default has occurred and is continuing: (i) subject to the Intercreditor Agreement, the Agent shall have for the benefit of the Agent and the Lenders, in addition to all other rights of the Agent and the Lenders, the rights and remedies of a secured party under the Loan Documents and the UCC, the PPSA, the Civil Code of Quebec and other applicable laws; (ii) the Agent may, at any time, take possession of the Collateral and keep it on any Loan Party's premises, at no cost to the Agent or any Lender, or remove any part of it to such other place or places as the Agent may desire, or the Loan Parties shall, upon the Agent's demand, at the Loan Parties' cost, assemble the Collateral and make it available to the Agent at a place reasonably convenient to the Agent; and (iii) the Agent may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Agent deems advisable, in its sole discretion, and may, if the Agent deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Subject to applicable Requirements of Law, without in any way requiring notice to be given in the following manner, each Loan Party agrees that any notice by the Agent of sale, disposition or other intended action hereunder or in connection herewith, whether required by the UCC, the PPSA, the Civil Code of Quebec or otherwise, shall constitute reasonable notice to such Loan Party if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least ten (10) days prior to such action to such Loan Party's address specified in or pursuant to Section 14.8. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Agent or the Lenders receive payment, and if the buyer defaults in payment, the Agent may resell the Collateral without

further notice to the Loan Parties. In the event the Agent seeks to take possession of all or any portion of the Collateral by judicial process, each Loan Party irrevocably waives: (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Agent retain possession and not dispose of any Collateral until after trial or final judgment. Each Loan Party agrees that the Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The Agent is hereby granted a license or other right to use, without charge, upon the occurrence and during the continuance of an Event of Default each Loan Party's labels, patents, copyrights, name, trade secrets, trade names, trademarks, and advertising matter or any similar property, necessary to the production of, advertising or selling any Collateral (subject in the case of trademarks and any property of similar nature, to sufficient rights to quality control and inspection in favour of the relevant Loan Party required under applicable law to avoid risk of invalidation of said trademarks and property of similar nature), and each Loan Party's rights under all licenses and all franchise agreements shall inure to the Agent's benefit for such purpose to the extent permitted therein. The proceeds of sale shall be applied first to all expenses of sale, including attorneys' fees, and then to the Obligations. The Agent will return any excess to the applicable Loan Party and the applicable Loan Parties (jointly and severally in the case of the Borrowers and the Guarantors) with respect to Obligations owing by any of the Loan Parties shall remain liable for any deficiency.

(c) If an Event of Default occurs, each Loan Party hereby waives all rights to notice and hearing prior to the exercise by the Agent of the Agent's rights to repossess the Collateral without judicial process or to reply, attach or levy upon the Collateral without notice or hearing.

## **ARTICLE 11 – AMENDMENTS; WAIVERS; PARTICIPATIONS; ASSIGNMENTS; SUCCESSORS**

### **11.1 Amendments and Waivers.**

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by the Agent at the direction of the Required Lenders) and the Loan Parties which are parties to such Loan Document and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that, notwithstanding the foregoing:

(i) no such waiver, amendment, consent or other agreement shall, unless in writing and signed by all of the Lenders directly and adversely affected thereby (but not the consent of the Required Lenders) and the Loan Parties which are parties to such Loan Document, do any of the following:

(A) increase or extend the Term Commitment of any Lender (other than with respect to any Incremental Facility pursuant to Section 1.5 in respect of which such Lender has agreed to be an Additional Lender); it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall constitute an increase of any Commitment of such Lender;

(B) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document; it being understood that

the waiver of (or amendment to the terms of) any mandatory prepayment of the Term Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest;

(C) reduce the principal of, or the rate of interest specified herein (other than waivers of the Default Rate) on, any Term Loan or any fees or other amounts payable hereunder or under any other Loan Document; it being understood that any change to the definition of "Total Leverage Ratio" or "Secured Leverage Ratio" or in the component definitions thereof shall not constitute a reduction in the rate of interest or fees; provided that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest at the Default Rate;

(D) amends (i) the "payment waterfall" set forth in Section 3.6 and/or (ii) the "pro rata" sharing or payment provisions set forth in Section 3.2(a) and Section 3.6; or

(E) (x) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Debt or (y) subordinate, or have the effect of subordinating, the Liens securing the Obligations to Liens securing any other Debt, except, in each case, in connection with a "debtor in-possession" facility;

(ii) no such waiver, amendment, consent or other agreement shall, unless in writing and signed by all of the Lenders or, in the case of clause (A) below, all of the Lenders of the applicable Class:

(A) change the percentage of the Term Commitments or the aggregate unpaid principal amount of the Term Loans, in each instance, which is required for the Lenders or any of them to take any action hereunder, or change the definition of "Required Lenders" to reduce any voting percentage required to waive, amend or modify any right thereunder or make any determination or grant any consent thereunder;

(B) amend this Section or any provision of this Agreement providing for consent or other action by all Lenders; or

(C) (i) release all or substantially all of the value of the Guarantees of the Obligations or release all or substantially all of the Collateral (other than as permitted by Section 12.11) in any transaction or series of related transactions, or (ii) subordinate in writing the Liens in all or substantially all of the Collateral or subordinate in writing all or any portion of the Obligations under the Loan Documents, in each case to any other Liens or Debt or other obligations of the Canadian Borrower or any of its Subsidiaries without the written consent of each Lender;

provided, however, that no amendment, waiver, consent or other agreement shall, unless in writing and signed by the Agent, affect the rights or duties of the Agent under this Agreement or any other Loan Document; provided, further, that the Fee Letter may be amended from time to time by the Agent and the Borrowers alone.

(b) Anything to the contrary contained in this Section 11.1 or any other provision of this Agreement or any provision of any other Loan Document notwithstanding, (i) the Borrowers and the Agent may, without the input or consent of any Lender, amend, supplement and/or waive any guaranty, collateral security agreement, pledge agreement and/or related document (if any) executed in connection with this

Agreement to (x) comply with any Requirement of Law or the advice of counsel or (y) cause any such guaranty, collateral security agreement, pledge agreement or other document to be consistent with this Agreement and/or the relevant other Loan Documents, (ii) the Borrowers and the Agent may, without the input or consent of any Lender, enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest of the Secured Parties in any Collateral or additional property to become Collateral for the benefit of the Secured Parties or as required by local law to give effect to, or protect any security interests for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law or this Agreement or in each case to otherwise enhance the rights or benefits of any Lender under any Loan Document, (iii) the Borrowers and the Agent may, without the input or consent of any other Lender (other than the relevant Lenders providing Loans under such Sections), effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Borrowers and the Agent to effect the provisions of Sections 1.3, 1.4 and 1.5, or any other provision specifying that any waiver, amendment or modification may be made with the consent or approval of the Agent; provided that, without limitation of the foregoing, any such amendment may, without the consent of any other Lenders, (x) increase the interest rates (including any interest rate margins or interest rate floors), fees and other amounts payable to or in respect of any Class or Classes of Lenders or Term Loans hereunder, (y) increase, expand and/or extend the call protection provisions and any “most favored nation” provisions benefiting any Class or Classes of Lenders or Term Loans hereunder and/or (z) modify any other provision hereunder or under any other Loan Document in a manner more favorable to the then-existing Lenders or Term Loans or Class or Classes of Lenders or Term Loans, in each case in connection with the implementation of any Debt permitted hereunder, where the terms of any such Debt are more favorable to the lenders thereof than the corresponding terms applicable to the Loans or Commitments then existing hereunder, and it is intended that one or more then-existing Classes of Loans or Commitments under this Agreement share in the benefit of such more favorable terms, (iv) if the Agent and the Borrowers have jointly identified any ambiguity, mistake, defect, inconsistency, obvious error or any error or omission of a technical nature or any necessary or desirable technical change, in each case, in any provision of any Loan Document, then the Agent and the Borrowers shall be permitted to amend such provision solely to address such matter as reasonably determined by them acting jointly, (v) an Acceptable Intercreditor Agreement (other than (i) a pari passu intercreditor agreement in substantially the form of Exhibit I or (ii) a junior lien intercreditor agreement in substantially the form of Exhibit J, which, in each case, shall be deemed acceptable hereunder) shall be deemed acceptable to the Required Lenders and consented to by the Lenders at 5:00 p.m. on the fifth (5<sup>th</sup>) Business Day after the Agent has posted such proposed amendment to the Lenders so long as the Agent has not received, by such time, written notice of objection to such form of Acceptable Intercreditor Agreement from Lenders comprising the Required Lenders and (vi) notwithstanding anything herein to the contrary, only the consent of the Required Lenders shall be necessary to modify or replace Schedule 4.5. The Agent shall make available to the Lenders copies of each such amendment or other modification to this Agreement.

(c) If, in the event that (i) the Borrowers or the Agent have requested that the Lenders (A) consent to a departure or waiver of any provisions of the Loan Documents or (B) agree to any amendment thereto, (ii) the amendment, waiver or consent in question required the agreement of all Lenders or all affected Lenders or all the Lenders with respect to a certain Class of the Loans in accordance with Section 11.1(a) and (iii) in connection with any proposed amendment, waiver or consent requiring the consent of all Lenders or all affected Lenders or all the Lenders with respect to a certain Class of the Loans, in each case, for which the consent of the Required Lenders is obtained, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “**Non-Consenting Lender**”. In the event that the Borrower Representative or the Agent has requested that the Lenders consent to an extension of the Term Loan Maturity Date of any Class of Loans as permitted by Section 1.3, then any Lender who does not agree to such extension shall be deemed a “**Non-Extending Lender**”. At the Borrower Representative’s request, an Eligible Assignee shall have the right (but not the obligation) with the Agent’s approval, to purchase from the Non-Consenting Lenders and Non-Extending Lender, and the Non-Consenting Lenders and the

Non-Extending Lenders agree that they shall sell for a price of par plus all amounts payable under Section 3.2(b), all of such Non-Consenting Lender's Term Loans or such Non-Extending Lender's Term Loans, as applicable, in accordance with the procedures set forth in Section 11.2.

(d) Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then for so long as such Lender is a Defaulting Lender, the Term Commitment of such Defaulting Lender shall not be included in determining whether all Lenders, the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 11.1); provided that any waiver, amendment, consent or other modification of a type described in Sections 11.1(a)(i) and (ii) that would apply to the Commitments or Obligations owing to such Defaulting Lender shall require the consent of such Defaulting Lender with respect to the effectiveness of such waiver, amendment, consent or other modification with respect to the Commitments or Obligations owing to such Defaulting Lender.

## **11.2 Assignments; Participations.**

(a) Any Lender may, with the written consent of the Agent (which consent shall not be unreasonably withheld or delayed) and so long as no Event of Default has occurred and is continuing, with the written consent of the Borrower Representative (which consent shall not be unreasonably withheld or delayed; provided, that the Borrower Representative may not withhold its consent to an assignment solely on the basis that the Eligible Assignee may have a claim under Section 4.1 if that claim is also available to the assigning Lender; provided, further, that for the avoidance of doubt, the Borrower Representative may withhold its consent to an assignment to a competitor of the Canadian Borrower or its Subsidiaries (regardless of whether such competitor has been previously identified)), assign and delegate to one or more Eligible Assignees (provided that (I) no consent of the Borrower Representative or the Agent shall be required in connection with any assignment and delegation, by (i) a Lender to (x) another Lender, (y) an Affiliate of such Lender, or (z) an Approved Fund, or (ii) by Agent in its efforts to complete syndication of the Initial Term Loans; and provided, further, that the Borrower Representative shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agent within ten Business Days after having received notice thereof and (II) no assignment shall be made to a Disqualified Lender without the Borrower Representative's consent in writing (which consent may be withheld in its sole discretion), provided that the list of Disqualified Lenders is permitted to be made available to any Lender or prospective Lender who specifically requests a copy thereof) (each an "Assignee") all, or any ratable part of all, of the Term Loans, the Term Commitment and the other rights and obligations of such Lender hereunder, in a minimum amount of \$1,000,000; provided, however, that the Borrower Representative and the Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses and related information with respect to the Assignee, shall have been given to the Borrower Representative and the Agent by such Lender and the Assignee; (ii) such Lender and its Assignee shall have delivered to the Borrower Representative and the Agent an Assignment and Acceptance in substantially the form of Exhibit A ("**Assignment and Acceptance**"), (iii) each relevant Eligible Assignee, if it is not a Lender, shall deliver on or prior to the effective date of such assignment, to the Agent (1) an Administrative Questionnaire, (2) any Internal Revenue Service form required under Section 4.1 and (3) all documentation and other information with respect to the assignee that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and (iv) except for any replacement of a Non-Consenting Lender by the Borrower Representative, in as such case the Borrowers shall pay, the assignor Lender or Assignee has paid to the Agent a processing fee in the amount of \$3,500; provided that such processing fee may be waived (in the sole discretion of the Agent) for assignments to an Affiliate of a Lender. Without the Borrower Representative's prior written consent, no such assignment shall result in any increased liability of the Borrowers under Section 4.1. No Lender may assign or delegate any or all of its Term Loans, Term

Commitment or other rights and obligations of such Lender hereunder except in connection with an assignment or delegation of the Term Loans and Term Commitment of such Lender in accordance with the terms of this Section 11.2. Notwithstanding anything to the contrary herein, no assignment pursuant to this Section 11.2 shall be made to (i) the Borrowers or any of the Borrowers' Affiliates or Subsidiaries, nor to any natural person, except to the extent expressly set forth in this Section 11.2(a) or (ii) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary thereof.

(b) From and after the date that the Agent notifies the assignor Lender that it has received an executed Assignment and Acceptance and payment of the above-referenced processing fee and receipt of the applicable Assignee information, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assignor Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 4.3, 14.7, 14.11 and 14.12 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. The Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders and their respective successors and assigns, and the commitment of, and principal amount of and interest on the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Failure to make any such recordation, or any error in such recordation, shall not affect the Borrowers' obligations in respect of such Loans. The entries in the Register shall be conclusive, absent manifest error, and the Borrowers, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and each Lender (but only as to its own holdings), at any reasonable time and from time to time upon reasonable prior notice. Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Eligible Assignee, the Eligible Assignee's completed Administrative Questionnaire and other required information and any tax certification required by Section 11.2(a) (unless the assignee is already a Lender hereunder), the processing and recordation fee referred to in Section 11.2(a), if applicable, and any written consent to the relevant assignment required by Section 11.2(a), the Agent shall promptly accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto or the attachment, perfection or priority of any Lien granted by a Loan Party to the Agent or any Lender in the Collateral of such Loan Party; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Loan Parties or the performance or observance by the Loan Parties of any of their obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such Assignee confirms that it has

received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such Assignee will, independently and without reliance upon the Agent, Agent or such assigning Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such Assignee appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Agent and the Agent by the terms hereof, together with such powers, including the discretionary rights and incidental power, as are reasonably incidental thereto; and (vi) such Assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Any Lender (the “**originating Lender**”) may at any time sell to one or more commercial banks, financial institutions or other Persons not Affiliates of any of Loan Parties (a “**Participant**”) participating interests in any Term Loans, the Commitment of that Lender and the other interests of that Lender hereunder and under the other Loan Documents; provided, however, that (i) the originating Lender’s obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) the originating Lender shall remain solely responsible for the performance of such obligations, (iii) the Loan Parties and the Agent shall continue to deal solely and directly with the originating Lender in connection with the originating Lender’s rights and obligations under this Agreement and the other Loan Documents, and (iv) no Lender shall transfer or grant any participating interest under which the Participant has rights to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document (except to the extent that such amendment, waiver or consent both directly affects the Participant and would (w) increase or extend the Term Commitment of the originating Lender, (x) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the originating Lender hereunder or under any other Loan Document, (y) reduce the principal of, or the rate of interest specified herein (other than the waiver of the Default Rate) or (z) release all or substantially all of the Collateral or all or substantially all of the Guarantees or subordinate in writing the Liens in all or substantially all of the Collateral or subordinate in writing all or any portion of the Obligations under the Loan Documents, in each case to any other Liens or Debt or other obligations of the Canadian Borrower or any of its Subsidiaries) on, any Term Loan owing to the originating Lender or any fees or other amounts payable to the originating Lender hereunder or under any other Loan Document, and all amounts payable by the Borrowers hereunder shall be determined as if such Lender had not sold such participation; except that, if amounts outstanding under this Agreement are due and unpaid, or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent and subject to the same limitation as if the amount of its participating interest were owing directly to it as a Lender under this Agreement.

(e) Notwithstanding the foregoing, no Assignee or Participant shall be entitled to receive any greater payment under Section 4.1 hereof than an Assignor or Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in the Requirement of Law that occurs after the Participant acquired the applicable participation. Any Assignee or Participant which is not incorporated under the laws of the United States or a state thereof shall deliver to the Agent and the participating Lender the form of certificate described in Section 12.10 herein relating to U.S. federal income tax withholding.

(f) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any

information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent shall have no responsibility for maintaining a Participant Register.

(g) Notwithstanding any other provision in this Agreement, any Lender may at any time assign as security, create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement, including in favour of any Federal Reserve Bank in accordance with Regulation A of the FRB or U.S. Treasury Regulation 31 CFR §203.14, central banking authority or any other funding source of such Lender, and such Federal Reserve Bank, central bank or funding source may enforce such pledge or security interest in any manner permitted under applicable law; provided, however, that such Lender shall remain a "Lender" under this Agreement and shall continue to be bound by all the terms and conditions set forth in this Agreement and the other Loan Documents.

(h) Notwithstanding anything to the contrary contained herein, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement in respect of its Term Loans to the Borrowers and their respective Subsidiaries on a non-pro rata basis (A) through Dutch Auctions open to all Lenders holding the relevant Term Loans on a pro rata basis in accordance with procedures reasonably acceptable to the Borrower Representative and the Agent, or procedures substantially similar to those set forth on Exhibit K or (B) through open market purchases, in each case with respect to clauses (A) and (B), without the consent of the Agent; provided that:

(i) any Term Loans acquired by the Borrowers or any of their respective Subsidiaries shall be retired and cancelled immediately upon the acquisition thereof and the Borrower Representative shall promptly deliver to the Agent written notice of such cancellation; provided that upon any such retirement and cancellation, the aggregate outstanding principal amount of the Term Loans shall be deemed reduced by the full par value of the aggregate principal amount of the Term Loans so retired and cancelled, and each principal repayment installment with respect to the Term Loans pursuant to Section 1.2(b) shall be reduced on a pro rata basis by the full par value of the aggregate principal amount of Term Loans so cancelled;

(ii) (A) the relevant purchaser shall not use the proceeds of any Revolving Loans to fund such assignment and (B) no Default or Event of Default may exist at the time of acceptance of bids for the Dutch Auction or the confirmation of such open market purchase, as applicable; and

(iii) no Borrower nor any of their respective Subsidiaries shall be required to represent or warrant that it is not in possession of material non-public information with respect to any Borrower or any Subsidiary thereof or their respective securities in connection with any assignment permitted by this Section 11.2(h).

The provisions this Agreement requiring that payments received by the Agent be distributed to the Lenders in accordance with such Lenders' Pro Rata Share shall not apply to purchases and contributions of Term Loans made in accordance with Section 11.2(h).

(i) Notwithstanding anything in this Agreement to the contrary, the Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce,

compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

(j) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower Representative and the Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent and each Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

### **11.3 Replacement of Lenders.**

(a) If at any time (i) any Lender requests reimbursement for amounts owing pursuant to Section 4.1 or Section 4.3 as a result of any condition described in such Sections or any Lender ceases to make SOFR Loans as a result of any condition described in Section 4.2 or Section 4.3, (ii) any Lender becomes a Defaulting Lender, (iii) any Lender becomes a Non-Consenting Lender and/or (iv) any Lender becomes a Non-Extending Lender, then the Borrower Representative may, at its election and sole expense, upon prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall be obligated to) assign pursuant to Section 11.2 (with the assignment fee to be paid by the Borrowers in such instance) all of its rights (other than its existing rights to payments pursuant to Section 4.1 or Section 4.3) and obligations under this Agreement and the other Loan Documents (or, with respect to clauses (iii) or (iv) above, all of its rights (other than its existing rights to payments pursuant to Section 4.1 or Section 4.3) and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver or amendment) to one or more Eligible Assignees that shall assume such obligations; provided that (i) the Borrowers shall have paid to the Agent the assignment fee (if any) specified in Section 11.2; (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 4.4) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts); (iii) in the case of any such assignment resulting from a claim for compensation under Section 4.3 or payments required to be made pursuant to Section 4.1, such assignment will result in a reduction in such compensation or payments thereafter; (iv) such assignment does not conflict with Requirements of Law; and (v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, (x) the applicable Eligible Assignees shall have agreed to the applicable departure, waiver or amendment of the Loan Documents and (y) if such replacement is in connection with a Repricing Transaction prior to the date that is six months after the Effective Date, the Borrowers shall pay the replaced Lender a fee equal to 1.00% of the principal amount of its Term Loans required to be assigned pursuant to this Section 11.3; provided, further, that neither the Agent nor any Lender shall have any obligation to the Borrowers to find a replacement Lender or other such Person; provided, further, that a Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender

or otherwise, the circumstances entitling the Borrower Representative to require such assignment and delegation cease to apply.

(b) Any Lender being replaced pursuant to Section 11.3(a) above shall (i) execute and deliver an Assignment and Acceptance with respect to such Lender's Commitment and outstanding Loans as provided in Section 11.2 and such assignment shall be effectuated in accordance with Section 11.2 and (ii) deliver Notes, if any, evidencing such Loans to the Borrowers or the Agent. Any such replacement shall be effected within 180 days after delivery of the Agent's certificate under Section 4.6. Upon compliance with the provisions for assignment provided in Section 11.2 (provided that if the replaced Lender refuses or otherwise fails to execute the applicable Assignment and Acceptance within two (2) Business Days of a request to do so, it shall be deemed to have executed the Assignment and Acceptance by mere insertion of its name as "Assignor" and such assignment shall be recorded in the Register) and the payment of amounts referred to in Section 11.2(a), (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Commitments and outstanding Loans, (B) all obligations of the Loan Parties owing to the assigning Lender relating to the Loan Documents and participations so assigned shall be paid in full by the assignee Lender or the Loan Parties (as applicable) to such assigning Lender concurrently with such Assignment and Acceptance, any amounts owing to the assigning Lender (other than a Defaulting Lender) under Section 4.4 as a consequence of such assignment shall have been paid by the Borrowers to the assigning Lender and (C) upon such payment and, if so requested by the assignee Lender, the assignor Lender shall deliver to the assignee Lender the appropriate Note or Notes executed by the Borrowers, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender.

(c) Notwithstanding anything to the contrary contained above, the Lender that acts as the Agent may not be replaced hereunder except in accordance with the terms of Section 12.9.

## ARTICLE 12 – THE AGENT, ETC.

### 12.1 Appointment and Authorization.

(a) Each Lender (in its capacities as a Lender and on behalf of itself and its Affiliates as potential counterparties to Secured Cash Management Agreements and Secured Hedge Agreements) hereby irrevocably designates and appoints Bank of Montreal as its administrative agent and its collateral agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto, including, for the avoidance of doubt, such actions taken by Bank of Montreal immediately prior to the Effective Date in reasonable furtherance of the Transactions. The Agent agrees to act as such on the express conditions contained in this Article 12. Except for Section 12.9 and Section 12.10, the provisions of this Article 12 are solely for the benefit of the Agent and the Lenders and the Loan Parties shall have no rights as third party beneficiaries of any of the provisions contained herein. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, the Agent shall not have any duties or responsibilities, except those expressly set forth herein, (and its duties hereunder shall be administrative in nature) nor shall the Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency

doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Except as expressly otherwise provided in this Agreement, the Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions which the Agent is expressly entitled to take or assert under this Agreement and the other Loan Documents, and any action so taken or not taken shall be deemed consented to by the Lenders.

The Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Bankruptcy Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Bankruptcy Law. The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.2 and 11.1), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Agent in writing by the Borrower Representative or the Required Lenders.

Except as expressly set forth herein and in the other Loan Documents, the Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrowers or any of their Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to the Agent by the Borrower Representative or any Lender, and the Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any covenant, agreement or other term or condition set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of any Lien on the Collateral or the existence, value or sufficiency of the Collateral, (vi) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Agent or (vii) any property, book or record of any Loan Party or any Affiliate thereof.

If any Lender acquires knowledge of a Default or Event of Default, it shall promptly notify the Agent and the other Lenders thereof in writing. Each Lender agrees that, except through the Agent, it will not take any enforcement action hereunder or under any other Loan Document. Notwithstanding the foregoing, however, a Lender may take action to preserve or enforce its rights against a Loan Party where a deadline or limitation period is applicable that would, absent such action, bar enforcement of the Obligations held by such Lender, including the filing of a proof of claim in a case under the Bankruptcy Code.

Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, the Borrowers, the Agent and each Secured Party agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty; it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by, the Agent, on behalf of the Secured Parties in accordance with the terms hereof and all powers, rights and remedies under the other Loan Documents may be exercised solely by, the Agent, and (ii) in the event of a foreclosure by the Agent on any of the Collateral pursuant to a public or private sale or in the event of any other Asset Sale (including pursuant to Section 363 of the Bankruptcy Code), (A) the Agent, as agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Agent at such Asset Sale and (B) the Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such Asset Sale.

No holder of any hedging obligation or banking services obligation in its respective capacity as such shall have any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under this Agreement.

Each of the Lenders hereby irrevocably authorizes the Agent, on behalf of all Secured Parties to take any of the following actions upon the instruction of the Required Lenders:

(i) consent to the Asset Sale of all or any portion of the Collateral free and clear of the Liens securing the Obligations in connection with any Asset Sale pursuant to the applicable provisions of the Bankruptcy Code, including Section 363 thereof;

(ii) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Asset Sale of all or any portion of the Collateral pursuant to the applicable provisions of the Bankruptcy Code, including under Section 363 thereof;

(iii) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Asset Sale of all or any portion of the Collateral pursuant to the applicable provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC;

(iv) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any foreclosure or other Asset Sale conducted in accordance with applicable law following the occurrence of an Event of Default, including by power of sale, judicial action or otherwise; and/or

(v) estimate the amount of any contingent or unliquidated Obligations of such Lender or other Secured Party;

it being understood that no Lender shall be required to fund any amount in connection with any purchase of all or any portion of the Collateral by the Agent pursuant to the foregoing clause (ii), (iii) or (iv) without its prior written consent.

Each Secured Party agrees that the Agent is under no obligation to credit bid any part of the Obligations or to purchase or retain or acquire any portion of the Collateral; provided that, in connection with any credit bid or purchase described under clause (ii), (iii) or (iv) of the preceding paragraph, the

Obligations owed to all of the Secured Parties (other than with respect to contingent or unliquidated liabilities as set forth in the next succeeding paragraph) may be, and shall be, credit bid by the Agent on a ratable basis.

With respect to each contingent or unliquidated claim that is an Obligation, the Agent is hereby authorized, but is not required, to estimate the amount thereof for purposes of any credit bid or purchase described in the second preceding paragraph so long as the estimation of the amount or liquidation of such claim would not unduly delay the ability of the Agent to credit bid the Obligations or purchase the Collateral in the relevant Asset Sale. In the event that the Agent, in its sole and absolute discretion, elects not to estimate any such contingent or unliquidated claim or any such claim cannot be estimated without unduly delaying the ability of the Agent to consummate any credit bid or purchase in accordance with the second preceding paragraph, then any contingent or unliquidated claims not so estimated shall be disregarded, shall not be credit bid, and shall not be entitled to any interest in the portion or the entirety of the Collateral purchased by means of such credit bid.

Each Secured Party whose Obligations are credit bid under clause (b), (c) or (d) of the third preceding paragraph shall be entitled to receive interests in the Collateral or any other asset acquired in connection with such credit bid (or in the Capital Stock of the acquisition vehicle or vehicles that are used to consummate such acquisition) on a ratable basis in accordance with the percentage obtained by dividing (x) the amount of the Obligations of such Secured Party that were credit bid in such credit bid or other Asset Sale, by (y) the aggregate amount of all Obligations that were credit bid in such credit bid or other Asset Sale.

In addition, in case of the pendency of any proceeding under any Bankruptcy Law or any other judicial proceeding relative to any Loan Party, each Secured Party agrees that the Agent (irrespective of whether the principal of any Loan is then due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agent and their respective agents and counsel and all other amounts to the extent due to the Lenders and the Agent under Sections 2.4, 14.7 and 14.11) allowed in such judicial proceeding; and

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

Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, in the event that the Agent consents to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amount due to the Agent under Sections 2.4, 14.7 and 14.11.

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

Each of each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Agent-Related Persons and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each of each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their respective Agent-Related Persons and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Agent herein, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of the Agent or any of its Agent-Related Persons.

Notwithstanding anything to the contrary herein, the Arrangers shall not have any right, power, obligation, liability, responsibility or duty under this Agreement, except in their respective capacities as the Agent or a Lender hereunder, as applicable.

The Agent is authorized to enter into any intercreditor, subordination, collateral trust or similar agreement (including any Acceptable Intercreditor Agreement) contemplated hereby with respect to any Debt that is (i) required or permitted to be subordinated hereunder or (ii) secured by Liens and which Debt contemplates an intercreditor, subordination or collateral trust agreement (any such other intercreditor, subordination, collateral trust or similar agreement, an “**Additional Agreement**”), and the Secured Parties party hereto acknowledge that any Additional Agreement is binding upon them. Each Secured Party party hereto hereby (a) agrees that it will be bound by, and will not take any action contrary to, the provisions of any Additional Agreement and (b) authorizes and instructs the Agent to enter into each Additional Agreement and to subject the Liens on the Collateral securing the Obligations to the provisions thereof. The foregoing provisions are intended as an inducement to the Secured Parties to extend credit to the Borrowers, and the Secured Parties are intended third-party beneficiaries of such provisions and the provisions of each Additional Agreement.

(b) Solidarité. Without limiting the generality of paragraph (a) above, for the purposes of creating a solidarité active in accordance with Article 1541 of the Civil Code of Quebec, among the Secured Parties, taken individually, on the one hand, and the Agent, on the other hand, each Loan Party, each such Secured Party and the Agent acknowledge and agree with the Agent that each such Secured Party and the Agent are hereby conferred the legal status of solidary creditors of each Loan Party in respect of all Obligations, present and future, owed by each such Loan Party to the Agent and each such Secured Party hereunder and under the other Loan Documents (collectively, the “**Solidary Claim**”). Each Loan Party which is not a signatory of this Agreement but is or may become a signatory to any other Loan Documents shall be deemed to have accepted the provisions contained in this paragraph by its execution of such other Loan Documents. Accordingly, but subject (for the avoidance of doubt) to Article 1542 of the Civil Code of Quebec, each such Loan Party 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 same. The parties further agree and acknowledge that the Agent’s Liens on the Collateral under the Security 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.

## **12.2 Delegation of Duties.**

The Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents or agents appointed by it, employees or attorneys-in-fact (including for greater certainty, any branch or any Agent-Related Persons). The exculpatory provisions of this Article 12 shall apply to any such sub-agent and to the Agent-Related Persons and any such sub-agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent. The Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or wilful misconduct.

## **12.3 Liability of Agent.**

None of the Agent-Related Persons shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or wilful misconduct), including for the avoidance of doubt, any actions taken by Bank of Montreal immediately prior to the Effective Date reasonably in furtherance of the Transactions or (ii) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by any Loan Party or any Subsidiary or Affiliate of any Loan Party or any officer thereof contained in this Agreement or in any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent -Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect any of the properties, books or records of any Loan Party or any of the Subsidiaries or Affiliates of any Loan Party. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 3.6, any Guarantee or any Collateral by virtue of the provisions hereof or of any Guarantee or any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

## **12.4 Reliance by Agent.**

The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by the Agent. The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this

Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders or, if so required, (or all Lenders if so required by Section 11.1) and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

### **12.5 Notice of Default.**

The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless such Agent shall have received written notice from a Lender or a Loan Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” The Agent will notify the Lenders of its receipt of any such notice. The Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 10.2; provided, however, that unless and until the Agent has received any such request, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

### **12.6 Credit Decision.**

Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by the Agent hereinafter taken, including any review of the affairs of a Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to the Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrowers. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to the Lenders by the Agent, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party which may come into the possession of any of the Agent -Related Persons.

### **12.7 Indemnification.**

Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Agent-Related Persons (to the extent not reimbursed by or on behalf of the Borrowers and without limiting the obligation of the Borrowers to do so), in accordance with their Pro Rata Shares, from and against any and all Indemnified Liabilities as such term is defined in Section 14.11; provided, however, that no Lender shall be liable for the payment to the Agent -Related Persons of any portion of such Indemnified Liabilities to the extent resulting from such Person’s gross negligence or wilful misconduct as determined in a final non-appealable judgment of a court of competent jurisdiction. Without limitation of the foregoing, each Lender shall reimburse the Agent upon demand for its Pro Rata Share of any costs or out of pocket expenses (including fees and expenses of counsel) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document or any document contemplated by or referred to herein, to the extent that the Agent is not reimbursed for such expenses by

or on behalf of the Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of any Agent.

### **12.8 Agent in Individual Capacity.**

Bank of Montreal and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrowers or any of their Subsidiaries or Affiliates as though Bank of Montreal were not an Agent hereunder and without notice to or consent of the Lenders. Bank of Montreal or its Affiliates may receive information regarding any Borrower, its Subsidiaries, its Affiliates and account debtors (including information that may be subject to confidentiality obligations in favour of any Borrower or such Subsidiary or Affiliate) and the Lenders acknowledge that Agent and Bank of Montreal shall be under no obligation to provide such information to them. With respect to its Term Loans, Bank of Montreal and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not an Agent, and the terms “Lender” and “Lenders” include Bank of Montreal in its individual capacity.

### **12.9 Successor Agent.**

The Agent may resign as the Agent upon 30 days’ notice to the Borrower Representative and the Lenders. The Required Lenders shall appoint from among the Lenders a successor Agent for the Lenders subject to, except upon the occurrence and during the continuation of an Event of Default, prior approval by the Borrower Representative (such approval not to be unreasonably withheld), whereupon such successor agent shall succeed to the rights, powers and duties of the Agent, and the term “Agent” shall include such successor agent effective upon its appointment, and the resigning Agent’s rights, powers and duties as the Agent shall be terminated, without any other or further act or deed on the part of such former Agent or any of the parties to this Agreement. After the retiring Agent’s resignation hereunder as the Agent, the provisions of this Article 12 and Article 14 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (such date, the “**Resignation Effective Date**”), then the retiring Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Borrower Representative and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice.

If the Person serving as Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower Representative and such Person remove such Person as Agent and, in consultation with the Borrower Representative, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “**Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (a) the retiring or removed Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (b) except for any indemnity payments owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until

such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Agent (other than any rights to indemnity payments owned to the retiring (or removed) Agent), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring or removed Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article 12 and Article 14 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective related parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Agent was acting as Agent. Notwithstanding anything herein to the contrary, in no event shall any such successor Agent be a Defaulting Lender.

#### **12.10 Withholding Tax.**

(a) Any Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code that is entitled to a complete exemption from or reduction of U. S. federal withholding tax with respect to interest payments made under the Loan Documents shall deliver to the Agent two properly completed and executed copies of IRS Form W-8BEN-E, W-8BEN, W-8IMY (with the necessary attachments), W-8EXP, W-8ECI or any subsequent version thereof or successors thereto and any other documentation necessary to establish a complete exemption from or reduction of U.S. federal withholding tax with respect to all interest payments hereunder prior to the date on which such Lender becomes a party to this Agreement and from time to time as necessary to retain any such exemption (including upon the expiration, obsolescence or invalidity of such form, upon the designation of a new lending office and at such other times as may be necessary in the reasonable determination of the Agent). Such Lender agrees to promptly notify the Agent upon becoming aware of any change in circumstances that would modify or render invalid any claimed exemption or reduction.

(b) Each Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, on or prior to the date on which such Lender becomes a party to this Agreement or any other Loan Document and from time to time thereafter either upon the request of the Agent or its respective agents or upon becoming aware of the expiration or obsolescence of any previously delivered documentation, shall furnish to the Agent any documentation that is required under the Code or applicable Treasury Regulations (including any documentation that is required as a result of a change in law occurring after the date hereof) to enable the Loan Parties or the Agent to comply with its obligations under FATCA including but not limited to any Taxes it may be required to withhold in respect of FATCA.

(c) Each Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall (i) at least five (5) Business Days prior to the date such Lender becomes a Lender, (ii) on or prior to the date on which any such form or certification expires or becomes obsolete, (iii) within a reasonable time after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (c) and (iv) from time to time if reasonably requested by the Agent, provide the Agent with two duly completed copies of IRS Form W-9 (certifying that such person is entitled to an exemption from U.S. backup withholding tax) or any successor form.

(d) If any Lender is entitled to a reduction in the applicable withholding tax, the Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by clause (a) of this Section are not delivered to the Agent (or otherwise), then the Agent may withhold from any interest

payment to such Lender not providing such forms or other documentation an amount equivalent to the applicable withholding tax without reduction.

(e) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that the Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender shall indemnify the Agent fully for all amounts paid, directly or indirectly, by the Agent as tax or otherwise, including penalties and interest, and including any Taxes imposed by any jurisdiction on the amounts payable to the Agent under this Section, together with all reasonable costs and expenses (including Attorney Costs). The obligation of the Lenders under this subsection shall survive the payment of all Obligations and the resignation or replacement of the Agent.

(f) Notwithstanding any other provision of this Section 12.10, a Lender shall not be required to deliver any form pursuant to Section 12.10 that it is not legally eligible to deliver.

(g) Each Lender authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 12.10.

#### **12.11 Collateral and Guaranty Matters.**

(a) Each Secured Party irrevocably authorizes and instructs the Agent to:

(i) release any Lien on any property granted to or held by Agent under any Loan Document (i) upon the payment and performance in full in cash of all Obligations (other than contingent obligations for which no claim has been asserted, Secured Hedge Obligations and Secured Cash Management Obligations) and termination of the Term Commitments, (ii) that is sold or to be sold or transferred as part of or in connection with any Asset Sale permitted under the Loan Documents to a Person that is not a Loan Party, (iii) that does not constitute (or ceases to constitute) Collateral as a result of a transaction permitted under the Loan Documents, (iv) if the property subject to such Lien is owned by a Guarantor, upon the release of such Guarantor from its Guaranty otherwise in accordance with the Loan Documents, (v) as required under clause (a)(iii) below or (vi) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 11.1;

(ii) subordinate any Lien on any property granted to or held by the Agent under any Loan Document to the holder of any Lien on such property that is permitted by clauses (c), (d), (e), (f), (h), (k), (m), (n) and (o) of the definition of "Permitted Liens"; provided that the subordination of any Lien on any property granted to or held by the Agent shall only be required to the extent that the Lien of the Agent with respect to such property is required to be subordinated to the relevant Permitted Lien in accordance with applicable law or the documentation governing the Debt that is secured by such Permitted Lien;

(iii) enter into subordination, intercreditor or similar agreements with respect to Debt that is (i) required or permitted to be subordinated hereunder or (ii) secured by Liens, and with respect to which Debt, this Agreement contemplates an intercreditor, subordination, collateral trust agreement or similar agreement; and

(iv) if any Guarantor shall ceases to constitute a Subsidiary or otherwise becomes an Excluded Subsidiary upon consummation of any transaction not prohibited hereunder, then, in each case, (x) such Subsidiary shall be automatically released from its obligations under the Guaranty and (y) any Liens granted by such Subsidiary shall be automatically released; provided that if any Guarantor becomes an Excluded Subsidiary solely pursuant to clause (d) of the definition of “Excluded Subsidiary”, such Guarantor shall not be released from its Guarantee (and such Liens granted by such Subsidiary shall not be released), unless either (x) such Guarantor is no longer a direct or indirect Subsidiary of a Borrower or (y) such Guarantor becomes a non-Wholly-Owned Subsidiary pursuant to a transaction with an unaffiliated third party for bona fide business purposes (and not for the primary purpose of releasing such Guarantee and related security interests).

(b) Upon the request of the Agent at any time, the Required Lenders will confirm in writing the Agent’s authority to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under the Guaranty or its Lien on any Collateral pursuant to this Article 12. In each case as specified in this Article 12, the Agent will (and each Secured Party hereby authorizes the Agent to), at the Borrowers’ expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest therein, or to release such Loan Party from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Article 12; provided that upon the request of the Agent, the Borrower Representative shall deliver a certificate of a Responsible Officer certifying that the relevant transaction has been consummated in compliance with the terms of this Agreement and the Agent shall be entitled to rely exclusively upon such certificate as to whether such release and/or subordination and any such other Liens are permitted without further inquiry.

(c) The Agent shall have no obligation whatsoever to any of the Lenders to assure that the Collateral exists or is owned by the Borrowers or other Loan Party or is cared for, protected or insured or has been encumbered or that the Agent’s Liens have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral or any act, omission or event related thereto, the Agent may act in any manner it may deem reasonably appropriate, in its sole discretion given the Agent’s own interest in the Collateral in its capacity as one of the Lenders and that the Agent shall have no other duty or liability whatsoever to any Lender as to any of the foregoing. The Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Agent’s Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(d) Obligations of the Loan Parties under any Secured Cash Management Agreement or Secured Hedge Agreement (after giving effect to all netting arrangements relating to such Secured Hedge Agreements) shall be secured and guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed. No person shall have any voting rights under any Loan Document solely as a result of the existence of obligations owed to it under any such Secured Hedge Agreement or Secured Cash Management Agreement. For the avoidance of doubt, no release of Collateral or Guarantors effected in the manner permitted by this Agreement shall require the consent of any holder of obligations under any Secured Hedge Agreements or Secured Cash Management Agreements.

### **12.12 Restrictions on Actions by Lenders; Sharing of Payments.**

(a) Each of the Lenders agrees that it shall not, without the express consent of the Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the request of the Agent, set off against the Obligations, any amounts owing by such Lender to any of the Loan Parties or any accounts of any of the Loan Parties now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so by the Agent, take or cause to be taken any action to enforce its rights under this Agreement or any other Loan Document against any of the Loan Parties, including the commencement of any legal or equitable proceedings, to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If at any time or times any Lender shall receive (i) by payment, foreclosure, setoff or otherwise, any proceeds of Collateral or any payments with respect to the Obligations of a Loan Party to such Lender arising under or relating to, this Agreement or the other Loan Documents, except for any such proceeds or payments received by such Lender from the Agent pursuant to the terms of this Agreement or (ii) payments hereunder in excess of such Lender's ratable portion of all such distributions hereunder with respect to the applicable Obligations, such Lender shall promptly (1) turn the same over to the Agent, in kind, and with such endorsements as may be required to negotiate the same to the Agent or in same day funds, as applicable, for the account of all of the applicable Lenders and for application to the applicable Obligations in accordance with the applicable provisions of this Agreement or (2) excluding the Agent, purchase, without recourse or warranty, an undivided interest and participation in the applicable Obligations owed to the other applicable Lenders so that such excess payment received shall be applied ratably as among the applicable Lenders in accordance with their Pro Rata Shares; provided, however, that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment. For the avoidance of doubt, the provisions of this Section shall not be construed to apply to assignments of Term Loans made in accordance with this Agreement or provisions of this Agreement that expressly provide for a non-ratable sharing of payments (including, without limitation, Specified Refinancing Debt effected in accordance with Section 1.4). Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

### **12.13 Agency for Perfection.**

Each Lender hereby appoints each other Lender as agent for the purpose of perfecting the Lenders' security interest in assets which, in accordance with the PPSA, the Civil Code of Quebec, the UCC or any other applicable law can be perfected only by possession. Should any Lender (other than the Agent) obtain possession of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or in accordance with the Agent's instructions.

### **12.14 Payments by Agent to Lenders.**

All payments to be made by the Agent to the Lenders shall be made by external wire transfer or internal transfer of immediately available funds to each Lender pursuant to wire transfer instructions delivered in writing to the Agent on or prior to the Effective Date (or if such Lender is an Assignee, on the applicable Assignment and Acceptance) or pursuant to such other wire transfer instructions as each party

may designate for itself by written notice to the Agent. Concurrently with each such payment, the Agent shall identify whether such payment (or any portion thereof) represents principal, premium or interest on the Term Loans or otherwise. Unless the Agent receives notice from the Borrower Representative prior to the date on which any payment is due to the applicable Lenders from the Borrowers that the Borrowers will not make such payment in full as and when required, the Agent may assume that the Borrowers have made such payment in full to the Agent on such date in immediately available funds and the Agent may (but shall not be so required), in reliance upon such assumption, distribute to each applicable Lender on such due date an amount equal to the amount then due such Lender from the Borrowers. If and to the extent the Borrowers have not made such payment in full to the Agent, each Lender shall repay to the Agent on demand such amount distributed to such Lender, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Lender until the date repaid.

#### **12.15 Lenders' Failure to Perform.**

All Term Loans shall be made by the Lenders simultaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make available any Term Loans hereunder, nor shall any Term Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligation to make any Term Loans hereunder, (ii) no failure by any Lender to perform its obligation to make any Term Loans hereunder shall excuse any other Lender from its obligation to make any Term Loans hereunder, and (iii) the obligations of each Lender hereunder shall be several, not joint and several.

#### **12.16 Concerning the Collateral and the Related Loan Documents.**

Each Lender (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) authorizes and directs the applicable Agent to enter into, execute and deliver the other Loan Documents, for the ratable benefit of such Agent and the Lenders. Each Lender agrees that any action taken by such Agent, or the Required Lenders, as applicable, in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by such Agent, or the Required Lenders, as applicable, of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders. The Lenders acknowledge that the Term Loans obtained by the Borrowers, the Secured Hedge Agreements, the Secured Cash Management Agreements and all interest, fees and expenses hereunder in respect of Obligations of the Borrowers constitute one Debt, secured *pari passu* by all of the Collateral of the Borrowers directly and indirectly as primary Loan Parties and guarantors. For greater certainty all the Term Loans and the Obligations of each Loan Party are cross-guaranteed and cross-collateralized.

#### **12.17 Relation Among Lenders.**

The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

#### **12.18 Sharing of Information.**

The Agent and the Lenders may share among themselves any information they may have from time to time concerning the Loan Parties whether or not such information is confidential, but shall have no obligation to do so (except for any obligations of the Agent to provide information to the extent required in this Agreement). The Borrower Representative hereby consents to any such sharing of information among the Agent and the Lenders.

### 12.19 Arrangers and Other Agents.

None of the Arrangers nor any Lender or in each case any Affiliate thereof now or hereafter identified as an arranger, bookrunner, documentation agent or similar title hereunder solely in their respective capacities as such shall have any right, power, obligation, liability, responsibility or duty under this Agreement or any other Loan Document.

### 12.20 Electronic Platform, Etc.

The Loan Parties hereby acknowledge that (a) the Agent and/or the Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrowers and the other Loan Parties hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that wish to receive only information that (i) is publicly available, (ii) is not material with respect to the Borrowers or the other Loan Parties or its or their respective securities for purposes of United States federal and state securities laws and Canadian federal and provincial securities laws or (iii) constitutes information of a type that would be publicly available if the Loan Parties were public reporting companies (collectively, the "**Public Side Information**")) and who may be engaged in investment and other market related activities with respect to the Borrowers or the other Loan Parties or its or their respective securities (each, a "**Public Lender**"). Before distribution of any Borrower Materials to Lenders, the Borrower Representative agrees to identify that portion of the Borrower Materials that may be distributed to the Public Lenders as "Public Information," which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof. By marking Borrower Materials as "PUBLIC," the Borrowers shall be deemed to have authorized the Agent, the Arrangers and the Lenders to treat such Borrower Materials as containing only Public Side Information. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Lender." The Agent and the Arrangers shall treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting, and shall only post such Borrower Materials, on a portion of the Platform not designated "Public Lender."

### 12.21 Erroneous Payments.

(a) If the Agent (x) notifies a Lender, Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient, a "**Payment Recipient**") that the Agent has determined in its sole reasonable discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Agent) received by such Payment Recipient from the Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous Payment**") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Agent pending its return or repayment as contemplated below in this Section 12.21 and held in trust for the benefit of the Agent, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than one Business Days thereafter (or such later date as the Agent may, in its sole discretion, specify in writing), return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent in same day funds at the greater of the Federal

Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Secured Party or any Person who has received funds on behalf of a Lender or Secured Party, agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates), or (z) that such Lender, Secured Party or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Agent pursuant to this Section 12.21(b).

For the avoidance of doubt, the failure to deliver a notice to the Agent pursuant to this Section 12.21(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 12.21(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender or Secured Party hereby authorizes the Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Agent to such Lender or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Agent has demanded to be returned under immediately preceding clause (a).

(d) The parties hereto agree that (x) irrespective of whether the Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Secured Party, to the rights and interests of such Lender or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the "**Erroneous Payment Subrogation Rights**") and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrowers; provided that this Section 12.21 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrowers relative to the amount (or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such

Erroneous Payment that is, comprised of funds received by the Agent from, or on behalf of (including through the exercise of remedies under any Loan Document), the Borrowers for the purpose of a payment on the Obligations.

(e) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

(f) Each party’s obligations, agreements and waivers under this Section 12.21 shall survive the resignation or replacement of the Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the applicable Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

(g) Notwithstanding anything to the contrary herein or in any other Loan Document, no Loan Party nor any of their respective Affiliates shall have any additional obligations or liabilities directly or indirectly arising out of this Section 12.21 in respect of any Erroneous Payment (including the repayment or recovery of any amounts) and, for the avoidance of doubt, it is understood and agreed that if a Loan Party has paid principal, interest, fees or any other amounts owed pursuant to a Loan Document, nothing in this Section 12.21 (or Section 12.7 (or any equivalent provision) in connection therewith) shall require any such Loan Party to pay additional amounts that are duplicative of such previously paid amounts.

#### **12.22 Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional as-set managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and

(D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

## ARTICLE 13 – GUARANTEES

### 13.1 The Guarantees.

Each Guarantor, as primary obligor and not merely as a surety, hereby unconditionally and irrevocably, jointly and severally (solidarily), guarantees to the Agent and each of the Secured Parties the punctual payment when due in accordance with the terms hereof of all Obligations, of whatever kind and description, of the Borrowers to the Agent and each of the Secured Parties now or hereafter existing, whether direct or indirect, absolute or contingent, matured or unmatured, secured or unsecured pursuant to or arising out of or under this Agreement (including all interest that accrues after the commencement of any case or proceeding by or against the Borrowers under any federal or state bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding), including, without limitation, all Obligations (all such obligations so guaranteed are referred to herein as the “**Guaranteed Obligations**”); provided that “Guaranteed Obligations” shall exclude all Excluded Swap Obligations.

### 13.2 Guarantee Absolute.

Each Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with their terms regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Agent and/or Secured Parties with respect thereto. The liability of each Guarantor hereunder shall be solidary (joint and several) and absolute and unconditional irrespective of (and each Guarantor hereby waives, to the fullest extent permitted by applicable law, any defense relating to):

(a) Any lack of validity or enforceability of the Obligations or the Guaranteed Obligations or any agreement or instrument relating thereto;

(b) Any change in the time, manner or place of the payment of, or in any other term of, all or any of the Obligations or the Guaranteed Obligations, or any amendment or modification of or any consent to departure from this Agreement or any other Loan Document;

(c) Any exchange, release, unopposability or nonperfection of any Collateral or any release or amendment to, waiver of, or consent to departure from, or any Guarantee for, all or any part of the Obligations or the Guaranteed Obligations;

(d) Any whole or partial termination of this Guarantee as to any other Guarantor; or

(e) Any other circumstance which might otherwise constitute a defence available to, or a discharge of, the Borrowers in respect of the Obligations or the Guaranteed Obligations or a Guarantor in respect of this Guarantee or the Guaranteed Obligations.

This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations or the Guaranteed Obligations are rescinded or must otherwise be returned by the Agent and/or Secured Parties upon the bankruptcy or reorganization of any Guarantor or otherwise under applicable law, all as though such payment had not been made.

### **13.3 Consents, Waivers and Renewals.**

Each Guarantor hereby renounces to the benefits of division and discussion. Each Guarantor hereby waives promptness, diligence, notice of the acceptance hereof, notice of intent to accelerate and notice of acceleration and any other notice with respect to any of the Obligations or the Guaranteed Obligations and this Agreement and any requirement that the Agent and/or Secured Parties protect, secure, perfect, render opposable or insure any Agent's Lien or Lien on any property subject thereto or exhaust any right or take any action against any Borrower, any Guarantor or any other Person or any Collateral before proceeding hereunder. Each Guarantor agrees that the Agent and/or Secured Parties may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of any Borrower or any Guarantor extend the time of payment of, exchange or surrender any Collateral for, or renew any of the Obligations or the Guaranteed Obligations, and may also make any agreements with any Borrower, any Guarantor or with any other party to or Person liable on any of the Obligations, or interested therein, for the extension, renewal, payment, compromise, discharge, or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between the Agent and/or any Secured Parties and the Borrowers or any such other party or Person, without in any way impairing or affecting this Guarantee. Each Guarantor agrees to make payment to the Agent, for the rateable benefit of the Secured Parties, of any of the Obligations and the Guaranteed Obligations whether or not the Agent and/or any Lenders shall have resorted to any collateral security, or shall have proceeded against any other Loan Party principally or secondarily obligated with respect to any of the Obligations or the Guaranteed Obligations.

### **13.4 Subrogation.**

No Guarantor shall exercise any rights which it may acquire by way of subrogation under this Agreement, by any payment made hereunder or otherwise, until all the Obligations and the Guaranteed Obligations shall have been paid in full (other than contingent obligations for which no claim has been asserted). If any amount shall be paid to a Loan Party on account of such subrogation rights in violation of the foregoing restriction, such amount shall be held in trust for the benefit of the Agent (for itself and the other Secured Parties) and shall forthwith be paid to the Agent (for itself and the other Secured Parties) to be credited and applied to the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement.

### **13.5 Protection Clause.**

Whenever herein a representation or warranty is expressed by a Guarantor or, subject to Section 13.1 above, any agreement to do any act or thing is made by a Guarantor, same shall be deemed to be a

representation or warranty as to that Guarantor only and not a representation or warranty of any matter or circumstance of any other Guarantor and an agreement as to its conduct and not the conduct of any other Guarantor. Subject to Section 13.1 above, no Guarantor shall be liable for any obligation of any other Guarantor's Guaranteed Obligations.

### **13.6 Limitation on Guarantee of Obligations.**

(a) In any action or proceeding with respect to any Guarantor involving any state or provincial corporate law, or any state or provincial or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of such Guarantor under Section 13.1 hereof would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under said Section 13.1, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Lender, the Agent or any other Person, be automatically limited and reduced to the highest amount which is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

(b) To the extent that any Guarantor shall make a payment under this Agreement of all or any of the Guaranteed Obligations (a "**Guarantor Payment**") which, taking into account all other Guarantor Payments then previously or concurrently made by the Guarantor, exceeds the amount which the Guarantor would otherwise have paid if the Guarantor had paid the aggregate Obligations satisfied by such Guarantor Payment in the same proportion that such Guarantor's "Allocable Amount" (as defined below) (in effect immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of the Guarantor in effect immediately prior to the making of such Guarantor Payment, then, following payment in full in cash of the Obligations and termination of the Revolving Loans, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, the Guarantors for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

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

(ii) This subsection (b) is intended only to define the relative rights of Guarantors and nothing set forth in this subsection (b) is intended to or shall impair the obligations of Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement.

(iii) The rights of the parties under this subsection (b) shall be exercisable upon the full and indefeasible payment of the Obligations and the termination of this Agreement and the other Loan Documents.

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

### 13.7 Guarantee of Payment.

Each Guarantor further agrees that this Guarantee constitutes a guaranty of payment when due and not of collection, and waives any right to require that any resort be had by the Agent or any Secured Party to any of the Collateral or other security held for payment of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of the Agent or any Secured Party in favour of any other Guarantor or any other Person or to any other guarantor of all or part of the Guaranteed Obligations.

### 13.8 Subordination.

Each Guarantor hereby subordinates any and all debts liabilities and other Obligations owed to such Guarantor by each other Loan Party (the “**Subordinated Obligations**”) to the Guaranteed Obligations to the extent and in the manner hereinafter set forth in this Section 13.8:

(a) **Prohibited Payments, Etc.** Except during the continuance of an Event of Default (including, without limitation, the commencement and continuation of any proceeding under the Bankruptcy Code or any other bankruptcy or insolvency laws of any applicable jurisdiction (collectively, the “**Bankruptcy Laws**”) relating to any Loan Party), each Guarantor may receive payments from any other Loan Party on account of the Subordinated Obligations. After the occurrence and during the continuance of any Event of Default (including, without limitation, the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Loan Party), however, unless the Agent shall otherwise agree, no Guarantor shall demand, accept or take any action to collect any payment on account of the Subordinated Obligations, other than the filing of proofs of claim or other similar requirements to preserve its rights as creditor.

(b) **Prior Payment of Guaranteed Obligations.** In any proceeding under any Bankruptcy Law relating to any other Loan Party, each Guarantor agrees that the Secured Parties shall be entitled to receive payment in full in cash of all Guaranteed Obligations (including all interest and expenses accruing after the commencement of proceeding under any Bankruptcy Law whether or not constituting an allowed claim in such proceeding (“**Post Petition Interest**”)) before such Guarantor receives payment of any Subordinated Obligations.

(c) **Turn-Over.** After the occurrence and during the continuance of any Event of Default (including, without limitation, the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Loan Party), each Guarantor shall, if the Agent so requests, collect, enforce and receive payments on account of the Subordinated Obligations as trustee for the Secured Parties and deliver such payments to the Agent on account of the Guaranteed Obligations (including all Post Petition Interest), together with any necessary endorsements or other instruments of transfer, but without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Agreement.

(d) **Agent Authorization.** After the occurrence and during the continuance of any Event of Default (including, without limitation, the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Loan Party), the Agent is authorized and empowered (but without any obligation to so do), in its discretion, (i) in the name of each Guarantor, to collect and enforce, and to submit claims in respect of, Subordinated Obligations and to apply any amounts received thereon to the Guaranteed Obligations (including any and all Post Petition Interest), and (ii) to require each Guarantor (A) to collect and enforce, and to submit claims in respect of, Subordinated Obligations and (B) to pay any amounts received on such obligations to the Agent for application to and to the extent of the Guaranteed Obligations (including any and all Post Petition Interest).

### **13.9 Keepwell.**

Each Loan Party that is a Qualified ECP Guarantor at the time that this Guarantee or the grant of the security interest under the Security Documents, in each case, by any Specified Loan Party, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under this Guarantee and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article 13 voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 13.9 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this Section 13.9 to constitute, and this Section 13.9 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

## **ARTICLE 14 – MISCELLANEOUS**

### **14.1 No Waivers; Cumulative Remedies.**

No failure by the Agent or any Lender to exercise any right, remedy or option under this Agreement or any present or future supplement thereto or in any other agreement between or among any Loan Party and an Agent and/or any Lender or delay by the Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by the Agent or any Secured Party will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by the Agent or the Secured Parties on any occasion shall affect or diminish the Agent's and each Secured Party's rights thereafter to require strict performance by the Loan Parties of any provision of this Agreement. The Agent and the Secured Parties may proceed directly to collect the Obligations without any prior recourse to the Collateral. The Agent's and each Secured Party's rights under this Agreement will be cumulative and not exclusive of any other right or remedy which the Agent or any Lender may have.

### **14.2 Severability.**

The illegality or unenforceability of any provision of this Agreement or any other Loan Document or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

### **14.3 Governing Law; Choice of Forum; Venue; Service of Process.**

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK. Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York sitting in New York County, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable

Requirements of Law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that any Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(b) Each Loan Party hereby irrevocably appoints the U.S. Borrower as its agent for service of process in respect of any such action or proceeding. Nothing herein shall affect the right of the Agent or any Lender to commence legal proceedings or otherwise proceed against any Loan Party in any other jurisdiction.

(c) Each Loan Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement or any other Loan Document brought in the courts referred to in clause (c) above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

(d) EACH LOAN PARTY HERETO HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO SUCH LOAN PARTY AT ITS ADDRESS SET FORTH IN SECTION 14.8 AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO DEPOSITED IN THE U.S. MAILED OR CANADA POST IN EACH CASE POSTAGE PREPAID. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF THE AGENT OR THE LENDERS TO SERVE LEGAL PROCESS BY ANY OTHER MANNER PERMITTED BY LAW.

#### **14.4 WAIVER OF JURY TRIAL.**

EACH OF THE LOAN PARTIES, THE SECURED PARTIES AND THE AGENT IRREVOCABLY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY AGENT-RELATED PERSON, PARTICIPANT OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE. EACH OF THE LOAN PARTIES, THE LENDERS AND THE AGENT AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

#### **14.5 Survival of Representations and Warranties.**

All of each Loan Party's representations and warranties contained in this Agreement shall survive the execution, delivery and acceptance thereof by the parties, notwithstanding any investigation by the Agent or the Lenders or their respective agents.

#### **14.6 Other Security and Guarantees.**

The Agent may, without notice or demand and without affecting the Loan Parties' obligations hereunder, from time to time: (a) take from any Person and hold collateral (other than the Collateral) for the payment of all or any part of the Obligations and exchange, enforce or release such collateral or any part thereof; and (b) accept and hold any endorsement or guarantee of payment of all or any part of the Obligations and release or substitute any such endorser or guarantor or any Person who has given any Lien in any other collateral as security for the payment of all or any part of the Obligations or any other Person in any way obligated to pay all or any part of the Obligations.

#### **14.7 Fees and Expenses.**

The Borrowers agree, jointly and severally, to pay to each of the Agent and the Arrangers, for its benefit, on demand, all reasonable and documented out-of-pocket costs and expenses (other than any Indemnified Taxes, which are governed by Section 4.1, and any costs or losses governed by Section 4.3 or Section 4.4) that the Agent and such Arranger, respectively, pays or incurs in connection with the negotiation, preparation, syndication, consummation, administration, enforcement and termination of this Agreement or any of the other Loan Documents, including: (a) Attorney Costs; (b) costs and expenses (including Attorney Costs) for any amendment, supplement, waiver, consent or subsequent closing in connection with the Loan Documents and the transactions contemplated thereby; (c) costs and expenses of lien and title searches and title insurance; (d) taxes, fees and other charges for recording the filing financing statements and continuations, and other actions to perfect, protect, and continue the Agent's Liens (including costs and expenses paid or incurred by the Agent in connection with the consummation of this Agreement); and (e) sums paid or incurred to pay any amount or take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take. In addition, the Borrowers agree, jointly and severally, to pay reasonable costs and expenses incurred by each of the Agent and the Arrangers (including Attorney Costs) to the Agent and such Arranger, respectively, for its benefit, on demand, and to the other Lenders for their benefit, on demand, and to pay to the Lenders all reasonable fees, expenses and disbursements incurred by such other Lenders for one law firm retained by such other Lenders, in each case, paid or incurred to obtain payment of the Obligations, enforce the Agent's Liens, sell or otherwise realize upon the Collateral, and otherwise enforce the provisions of the Loan Documents or to defend any claims made or threatened against the Agent or any Lender arising out of the transactions contemplated hereby (including preparations for and consultations concerning any such matters and in connection with restructuring and workouts).

#### **14.8 Notices.**

Except as otherwise provided herein, all notices, demands and requests that any party is required or elects to give to any other shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, but not limited to, delivery by overnight mail and courier service, (b) four (4) days after it shall have been mailed by Canada Post or United States mail, first class, certified or registered, with postage prepaid or (c) in the case of notice by such a telecommunications device, when properly transmitted, in each case addressed to the party to be notified as follows:

If to the Agent: Bank of Montreal  
320 South Canal Street  
Chicago, IL 60606  
Attn: Agency Services  
Email: GFS.AgencyUS@bmo.com

with a copy to:

Cahill Gordon & Reindel LLP  
32 Old Slip  
New York, NY 10005  
Attention: Patrick Gordon  
Email: pgordon@cahill.com

If to a Loan Party: High Liner Foods Incorporated  
100 Battery Point Road  
Lunenburg, Nova Scotia B0J 2C0  
Attention: James Bishop  
Telecopy No.: (902) 634-6228

with a copy to:

Goodwin Procter LLP  
100 Northern Ave.  
Boston, MA 02210  
Attention: Chris Steinroeder  
Email: csteinroeder@goodwinlaw.com

or to such other address as each party may designate for itself by like notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the persons designated above to receive copies shall not adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

#### **14.9 Waiver of Notices.**

Unless such notice is expressly provided for herein, each Loan Party waives presentment, protest and notice of demand or dishonour and protest as to any instrument, notice of intent to accelerate any or all of the Obligations and notice of acceleration of any or all of the Obligations, as well as any and all other notices to which it might otherwise be entitled. No notice to or demand on any Loan Party which the Agent or any Lender may elect to give shall entitle such Loan Party to any or further notice or demand in the same, similar or other circumstances.

#### **14.10 Binding Effect.**

The provisions of this Agreement shall be binding upon and inure to the benefit of the respective representatives, successors, and assigns of the parties hereto; provided, however, that no interest herein may be assigned by any Loan Party without prior written consent of the Agent and each Lender. The rights and benefits of the Agent and the Lenders hereunder shall, if such Persons so agree, inure to any party acquiring any interest in the Obligations or any part thereof.

#### **14.11 Indemnity of the Agent and the Secured Parties by the Loan Parties.**

(a) Each Loan Party agrees, jointly and severally, to defend, indemnify and hold the Agent-Related Persons, the Arrangers and each Secured Party, and each of their respective Affiliates, and the officers, directors, employees, counsel, advisors, representatives, agents and attorneys-in-fact of the foregoing (each, an “**Indemnified Person**”) harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever which may at any time (including at any time following repayment of the Term Loans and the termination, resignation or replacement of the Agent or replacement of any Lender) be imposed on, incurred by or asserted against any such Indemnified Person in any way relating to or arising out of this Agreement, any other Loan Document or any document contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by any such Indemnified Person under or in connection with any of the foregoing, including with respect to any investigation, litigation or proceeding (including any insolvency proceeding or appellate proceeding) related to or arising out of this Agreement, any other Loan Document or the Term Loans or the use of the proceeds thereof (including, for the avoidance of doubt, any actions taken by Bank of Montreal immediately prior to the Effective Date reasonably in furtherance of the Transactions), whether or not any Indemnified Person is a party thereto (all the foregoing, collectively, the “**Indemnified Liabilities**”); provided, that the Loan Parties shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities (i) to the extent they are found by a final decision of a court of competent jurisdiction to have resulted from the wilful misconduct or gross negligence or material breach in bad faith of the Loan Documents of such Indemnified Person, or (ii) to the extent arising from any litigation or proceeding solely between or among Indemnified Person not arising from any act or omission by any Loan Party or any of its Affiliates (except that the Agent and the Arrangers shall remain indemnified to the extent acting in such capacities and otherwise entitled to indemnification hereunder). The agreements in this Section shall survive payment of all other Obligations.

(b) Each Loan Party agrees, jointly and severally, to indemnify, defend and hold harmless each Indemnified Person from any loss or liability related to or arising out of its role as a Lender or Affiliate of a Lender under this Agreement, any other Loan Document or the Term Loans or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto, and directly or indirectly arising out of the use, generation, manufacture, production, storage, Release, threatened Release, discharge, disposal or presence of a Contaminant relating to any Loan Party’s operations, business or property, or any other liability under Environmental Laws related in any way to any Loan Party or any of their Subsidiaries; provided, that the Loan Parties shall have no obligation under this Section 14.11(b) to any Indemnified Person with respect to any loss or liability (i) to the extent such Indemnified Person is found by a final decision of a court of competent jurisdiction to have resulted from the willful misconduct, gross negligence or material breach in bad faith of the Loan Documents of such Indemnified Person, or (ii) to the extent arising from any litigation or proceeding solely between or among Indemnified Person not arising from any act or omission by any Loan Party or any of its Affiliates (except that the Agent and the Arrangers shall remain indemnified to the extent acting in such capacity and otherwise is entitled to indemnification hereunder). This indemnity will apply whether the Contaminant is on, under or about any Loan Party’s property or operations or property leased to any Loan Party. The indemnity includes but is not limited to Attorney Costs. This indemnity will survive repayment of all other Obligations.

#### **14.12 Limitation of Liability.**

NO CLAIM MAY BE MADE BY ANY LOAN PARTY, ANY SECURED PARTY OR OTHER PERSON AGAINST THE AGENT, ANY LENDER OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, COUNSEL, REPRESENTATIVES, AGENT OR ATTORNEYS IN FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN

RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH (INCLUDING, FOR THE AVOIDANCE OF DOUBT, ANY ACTIONS OR OMISSIONS BY BANK OF MONTREAL IMMEDIATELY PRIOR TO THE EFFECTIVE DATE AND THE EFFECTIVENESS OF THE AGENCY ASSIGNMENT AGREEMENT REASONABLY IN FURTHERANCE OF THE TRANSACTIONS), AND EACH LOAN PARTY AND EACH SECURED PARTY HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOUR.

#### **14.13 Final Agreement.**

This Agreement and the other Loan Documents are intended by each Loan Party, the Agent, the Lenders and the other Secured Parties to be the final, complete and exclusive expression of the agreement between them. This Agreement and the other Loan Documents supersede any and all prior oral or written agreements relating to the subject matter hereof.

#### **14.14 Counterparts.**

This Agreement may be executed in any number of counterparts, and by the Agent, each Lender and each Loan Party in separate counterparts, each of which shall be an original, but all of which shall together constitute one and the same agreement; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 14.8), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an “**Ancillary Document**”) that is an Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Agent has agreed to accept any Electronic Signature, the Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrowers or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart.

Upon the effectiveness of this Agreement, the provisions of this Agreement shall supersede the Second Restatement Term Loan Credit Agreement in its entirety; provided that the effectiveness of this Agreement shall not constitute a novation of any amount owing under the Second Restatement Term Loan

Credit Agreement and all amounts owing in respect of principal, interest, fees and other amounts pursuant to the Second Restatement Term Loan Credit Agreement shall, to the extent not paid prior to the Effective Date, shall continue to be owing under this Agreement. From and after the Effective Date, all references to the "Credit Agreement" or "Term Loan Credit Agreement" (or similar term of like import) in the Loan Documents shall, unless the context plainly requires otherwise, refer to this Agreement and all obligations of any Loan Party under this Agreement, the Security Agreements and each other Loan Document shall apply to this Agreement to the same extent as the Second Restatement Term Loan Credit Agreement. Nothing implied in this Agreement or in any other document contemplated hereby shall be construed as a release or other discharge of any of the Loan Parties under any Loan Document from any of its obligations and liabilities as the Borrowers, guarantor or pledgor under any of the Loan Documents.

#### **14.15 Captions.**

The captions contained in this Agreement are for convenience of reference only, are without substantive meaning and should not be construed to modify, enlarge or restrict any provision.

#### **14.16 Right of Setoff.**

In addition to any rights and remedies of the Agent and the Lenders provided by law, if an Event of Default exists or any or all of the Term Loans have been accelerated, the Agent and each Lender is authorized at any time and from time to time, without prior notice to any Loan Party, any such notice being waived by each of the Loan Parties to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, the Agent or such Lender or any Affiliate of the Agent or such Lender to or for the credit or the account of any Loan Party against any and all Obligations owing to the Agent or such Lender, now or hereafter existing, irrespective of whether or not the Agent or such Lender shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 1.6 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower Representative and the Agent after any such set-off and application made by such Lender; provided, however, that the failure to give or the delay in giving such notice shall not affect the validity of such set-off and application. NOTWITHSTANDING THE FOREGOING, PAYMENTS SHALL BE APPLIED IN ACCORDANCE WITH SECTION 3.6 AND NO LENDER SHALL EXERCISE ANY RIGHT OF SET OFF, BANKER'S LIEN OR THE LIKE AGAINST ANY DEPOSIT ACCOUNT OR PROPERTY OF ANY LOAN PARTY HELD OR MAINTAINED BY SUCH LENDER WITHOUT THE PRIOR WRITTEN CONSENT OF THE AGENT.

#### **14.17 Confidentiality.**

Each Lender severally agrees to take normal and reasonable precautions and exercise due care to maintain the confidentiality of all information provided to the Agent or such Lender by or on behalf of the Loan Parties, under this Agreement or any other Loan Document, except to the extent that such information (i) was or becomes generally available to the public other than as a result of disclosure by the Agent or such Lender or (ii) was or becomes available on a nonconfidential basis from a source other than a Loan Party, provided that such source is not bound by a confidentiality agreement or is not acting in a fiduciary or trust position or capacity with a Loan Party known to the Agent or such Lender; provided, however, that the Agent and any Lender may disclose such information (1) at the request or pursuant to any requirement of

any Governmental Authority to which the Agent or such Lender is subject or in connection with an examination of the Agent or such Lender by any such Governmental Authority; (2) pursuant to subpoena or other court process (and the Agent or such Lender, as the case may be, shall endeavour to provide the Borrower Representative with prior notice of such disclosure to the extent practicable and shall, at the sole cost and expense of the Loan Parties, cooperate, to the extent practicable and not in a manner adverse to the Agent or such Lender, with the Borrowers if the Borrowers seek a protective order with respect to the relevant information); (3) when required to do so in accordance with the provisions of any applicable Requirement of Law; (4) to the extent permitted by law and to the extent reasonably required in connection with any litigation or proceeding (including, but not limited to, any bankruptcy proceeding) to which an Agent, any Lender or any of their respective Affiliates may be party (and such Agent or such Lender, as the case may be, shall endeavour to provide the Borrower Representative with prior notice of such disclosure to the extent practicable and shall, at the sole cost and expense of the Loan Parties, cooperate, to the extent practicable and not in a manner adverse to such Agent or such Lender, with the Borrowers if the Borrowers seek a protective order with respect to the relevant information); (5) to the extent reasonably required in connection with the exercise of any remedy hereunder or under any other Loan Document; (6) to such Agent's or such Lender's independent auditors, accountants, attorneys and other professional advisors and such Agent's or such Lender's Affiliates, employees, directors and officers (and such Agent or such Lender, as the case may be, shall advise such auditors, accountants, attorneys, other professional advisors, Affiliates, employees, directors or officers of the confidential nature of such information); (7) to any prospective Participant or Assignee under any Assignment and Acceptance, or any contractual counterparties (or prospective contractual counterparties) to any swap or derivative transaction relating to the Borrowers and their Obligations under the Term Facilities, in each case actual or potential, provided that such prospective Participant or Assignee or swap or derivative counterparty agrees to keep such information confidential to the same extent required of the Lenders hereunder; (8) as expressly permitted under the terms of any other document or agreement regarding confidentiality to which a Loan Party is party or is deemed party with the Agent or such Lender; (9) to its Affiliates who are informed of and who agree to maintain the confidentiality of the information; (10) to the Agent or to any other Lender; (11) on a confidential basis to (i) any rating agency to the extent required in connection with any rating to be assigned to the Borrowers or their respective Subsidiaries or the Term Loans, (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the Term Loans hereunder, (iii) service providers to the Agents and the Lenders in connection with the administration, settlement and management of this Agreement and the Term Loans provided hereunder, (iv) market data collectors, such as league table, or other service providers to the lending industry, information regarding the closing date, size, type, purpose of, and parties to, the Term Loans provided hereunder or (v) the extent required by a potential or actual insurer or reinsurer in connection with providing insurance, reinsurance or credit risk mitigation coverage under which payments are to be made or may be made by reference to this Agreement; (12) for purposes of establishing a "due diligence" defense; and (13) to the extent such information (x) becomes publicly available other than as a result of a breach by any Person of this Section 14.17 or any other confidentiality provision in favor of any Loan Party, (y) becomes available to any Agent, any Arranger, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than any Borrower or any Subsidiary thereof, and which source is not known by such Agent, such Lender or the applicable Affiliate to be subject to a confidentiality restriction in respect thereof in favor of any Borrower or any Affiliate thereof or (z) is independently developed by the Agent, the Lenders, the Arrangers or their respective Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 14.17; and (14) to any direct or indirect contractual counterparty in Hedge Agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 14.17).

**14.18 Conflicts with Other Loan Documents.**

Other than as to the Intercreditor Agreement, unless otherwise expressly provided in this Agreement (or in another Loan Document by specific reference to the applicable provision contained in this Agreement), if any provision contained in this Agreement conflicts with any provision of any other Loan Document, the provision contained in this Agreement shall govern and control.

**14.19 Judgment Currency.**

If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the “**Original Currency**”) into another currency (the “**Second Currency**”), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the relevant Agent or the relevant Lender, as the case may be, could purchase in the New York foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. Each Loan Party agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date the relevant Agent or relevant Lender, as the case may be, receives payment of any sum so adjudged to be due hereunder in the Second Currency, such Agent or such Lender may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, each Loan Party agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify such Agent or such Lender, as the case may be, against such loss. The term “rate of exchange” in this Section 14.19 means the spot rate at which the relevant Agent or relevant Lender, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any premium and costs of exchange payable in connection with such purchase.

**14.20 Appointment of Borrower Representative; Reliance Upon Authority; Joint and Several Liability of the Borrowers.**

(a) **Borrower Representative; Reliance Upon Authority.** Each Borrower and each other Loan Party hereby designates the Canadian Borrower as its representative and agent on its behalf (the “**Borrower Representative**”) for the purposes of giving and receiving on such Borrower’s or such other Loan Party’s behalf all other notices, directions, instructions, requests, other communications and consents hereunder or under any of the other Loan Documents and taking all other actions (including in respect of compliance with covenants and consenting or agreeing to any amendment or waiver of compliance with any provision of any Loan Document) on behalf of such Borrower or such other Loan Party under the Loan Documents. The Borrower Representative hereby accepts such appointment. The Agent and each Lender may regard any notice, direction, instruction, request or other communication pursuant to any Loan Document from the Borrower Representative as a notice, direction, instruction, request or communication, as the case may be, from the applicable Borrower or applicable other Loan Party or Loan Parties, and may give any notice or other communication required or permitted to be given to any Borrower or any other Loan Party or Loan Parties hereunder to the Borrower Representative on behalf of such Borrower or such other Loan Party or Loan Parties. Each Borrower and each other Loan Party agrees that each notice, election, direction, instruction, request, other communication, representation and warranty, consent, covenant, agreement and undertaking or other action made or taken on its behalf by the Borrower Representative shall be deemed for all purposes to have been made or taken by such Borrower or such other Loan Party and shall be binding upon and enforceable against such Borrower or such other Loan Party to the same extent as if the same had been made or taken directly by such Borrower or such other Loan Party.

(b) **Joint and Several Liability of the Borrowers.** All Loans to a Borrower, upon funding, shall be deemed to be jointly funded to and received by the Borrowers. Each Borrower is jointly and severally liable under this Agreement for all Obligations, regardless of the manner or amount in which proceeds of Loans in respect of such Obligations are used, allocated, shared or disbursed by or among the Borrowers themselves, or the manner in which the Agent and/or any Lender accounts for such Loans or other extensions of credit on its books and records. Each Borrower shall be liable for all amounts due to any Agent and/or any Lender from the Borrowers under this Agreement, regardless of which Borrower actually receives Loans or other extensions of credit hereunder or the amount of such Loans and extensions of credit received or the manner in which the Agent and/or such Lender accounts for such Loans or other extensions of credit on its books and records. Each Borrower's Obligations with respect to Loans and other extensions of credit made to it, and such Borrower's Obligations arising as a result of the joint and several liability of such Borrower hereunder with respect to Loans made to any other Borrower hereunder shall be separate and distinct obligations, but all such Obligations shall be primary obligations of such Borrower. The Borrowers acknowledge and expressly agree with the Agent and each Lender that the joint and several liability of each Borrower is required solely as a condition to, and is given solely as inducement for and in consideration of, credit or accommodations extended or to be extended under the Loan Documents to any or all of the other Borrowers and is not required or given as a condition of extensions of credit to such Borrower. Each Borrower's Obligations under this Agreement shall, to the fullest extent permitted by law, be unconditional irrespective of (i) the validity or enforceability, avoidance, or subordination of the Obligations of any other Borrower or of any promissory note or other document evidencing all or any part of the Obligations of any other Borrower, (ii) the absence of any attempt to collect the Obligations from any other Borrower, or any other security therefor, or the absence of any other action to enforce the same, (iii) the waiver, consent, extension, forbearance, or granting of any indulgence by the Agent and/or any Lender with respect to any provision of any instrument evidencing the Obligations of any other Borrower, or any part thereof, or any other agreement executed as of the Effective Date or thereafter executed by any other Borrower and delivered to the Agent and/or any Lender, (iv) the failure by the Agent and/or any Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations of any other Borrower, (v) the Agent's and/or any Lender's election, in any proceeding instituted under the Bankruptcy Code (of the application of Section 1111(b)(2) of the Bankruptcy Code), or the equivalent provisions under other applicable Bankruptcy Laws, (vi) any borrowing or grant of a security interest by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code or the equivalent provisions under other applicable Bankruptcy Laws, (vii) the disallowance of all or any portion of the Agent's and/or any Lender's claim(s) for the repayment of the Obligations of any other Borrower under Section 502 of the Bankruptcy Code or the equivalent provisions under other applicable Bankruptcy Laws, or (viii) any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor or of any other Borrower. With respect to any Borrower's Obligations arising as a result of the joint and several liability of the Borrowers hereunder with respect to any Loans or other extensions of credit made to any of the other Borrowers hereunder, such Borrower waives, until the Obligations shall have been paid in full in cash (other than unasserted contingent indemnification obligations) and this Agreement shall have been terminated, any right to enforce any right of subrogation or any remedy which the Agent and/or any Lender had as of the Effective Date or may have thereafter against any other Borrower, any endorser or any guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to the Agent and/or any Lender to secure payment of the Obligations or any other liability of any Borrower to the Agent and/or any Lender. Upon an Event of Default, the Agent may proceed directly and at once, without notice, against any Borrower to collect and recover the full amount, or any portion of the Obligations, without first proceeding against any other Borrower or any other Person, or against any security or collateral for the Obligations. Each Borrower consents and agrees that the Agent shall be under no obligation to marshal any assets in favor of any Borrower or against or in payment of any or all of the Obligations.

#### **14.21 USA PATRIOT Act Notice.**

The Agent and the Lenders hereby notify each Borrower and each other Loan Party that pursuant to the requirements of the *USA PATRIOT Act* (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Agent and each Lender that is subject to the *USA PATRIOT Act* (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) are required to obtain, verify and record information that identifies the Borrowers and each other Loan Party, including its legal name, address, tax ID number and other information that will allow the Agent and the Lenders to identify it in accordance with the *USA PATRIOT Act* (Title III of Pub. L. 107-56 (signed into law October 26, 2001)). The Agent and the Lenders may require information regarding the Loan Parties' management and owners, such as legal name, address, social security number and date of birth.

#### **14.22 [Reserved].**

#### **14.23 [Reserved].**

#### **14.24 Accounting Changes.**

In the event that any Accounting Change (as defined below) after the Effective Date shall occur and such change results in a change in the method of calculation of financial ratios, standards or terms in this Agreement or in the Borrowers' method of calculation of the conversion of foreign currencies for financial reporting purposes, then, at the request of the Borrowers or the Required Lenders, the Borrowers and the Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Borrowers' financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrowers, the Agent and the Required Lenders, all financial ratios, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "Accounting Changes" refers to changes in accounting principles required by GAAP and includes any change in the treatment of leases as Capital Leases or operating leases on a Person's balance sheets.

#### **14.25 No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Borrower and each Guarantor acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Agent, the Lenders and the Arrangers are arm's-length commercial transactions between the Borrowers and their Affiliates, on the one hand, and the Agent, the Lenders and the Arrangers, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Agent, the Lenders and the Arrangers 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 any Borrower, any of its Affiliates or any other Person and (B) none of the Agent, the Lenders or the Arrangers have any obligation to any Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agent, the Lenders, the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers and their Affiliates, and none of the Agent, the Lenders or the Arrangers have any obligation to disclose any of such interests to any Borrower or any of its Affiliates. To the fullest extent permitted by law, each Borrower and each Guarantor hereby waives and releases any claims that it may have against the

Agent, the Lenders and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

#### **14.26 Intercreditor Agreement.**

(a) In connection with the incurrence by the Borrowers of the Term Loans and the Guarantors' guarantees in respect thereof, each Secured Party hereby authorizes and directs the Agent to execute, deliver and perform the Intercreditor Agreement or any other Acceptable Intercreditor Agreement on behalf of such Secured Party and agrees that the Agent in its various capacities thereunder may take such actions on such Secured Party's behalf as is contemplated by the terms of the Intercreditor Agreement or such Acceptable Intercreditor Agreement. Each Secured Party further acknowledges that it has received and reviewed the Intercreditor Agreement and agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement, authorizes and instructs the Agent and to execute deliver and perform the Intercreditor Agreement or such Acceptable Intercreditor Agreement as agent and on behalf of such Secured Party and authorizes and agrees that the Agent may take such actions on behalf of such Secured Party as is contemplated by the terms of such Intercreditor Agreement or such Acceptable Intercreditor Agreement.

(b) Each Secured Party understands, acknowledges and agrees that it is the intention of the parties hereto that the Obligations are intended to constitute a distinct and separate class from the "Obligations" (as defined in the Revolving Credit Agreement) (the "**Revolving Credit Facility Obligations**"). Each Secured Party understands, acknowledges and agrees that the provisions setting forth the priorities as between the holders of Revolving Credit Facility Obligations on the one hand, and the holders of Obligations hereunder, on the other hand, are set forth in the Intercreditor Agreement.

(c) The provisions of this Section 14.26 are not intended to summarize all relevant provisions of the Intercreditor Agreement. Reference must be made to the Intercreditor Agreement itself to understand all terms and conditions thereof. Each Secured Party is responsible for making its own analysis and review of the Intercreditor Agreement and the terms and provisions thereof, and neither the Agent nor any of its respective Affiliates makes any representation to any Secured Party as to the sufficiency or advisability of the provisions contained in the Intercreditor Agreement. Each Secured Party is further aware that the Agent is also acting in an agency capacity pursuant to the Revolving Credit Agreement, and Secured Party hereby irrevocably waives any objection thereto or cause of action arising therefrom.

#### **14.27 Acknowledgement Regarding Any Supported QFCs.**

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for hedge agreements or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be

effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 14.27, the following terms have the following meanings:

“**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“**Covered Entity**” means any of the following:

(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

#### **14.28 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.**

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of an applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any applicable Resolution Authority.

#### **14.29 Resignation and Appointment of Administrative Agent and Collateral Agent.**

(a) **Resignation.** Pursuant to Section 12.9 of the Second Restatement Term Loan Credit Agreement, the Resigning Agent hereby resigns as Administrative Agent and Collateral Agent under the Second Restatement Term Loan Credit Agreement and the other Loan Documents, effective as of the Effective Date. Effective as of the Effective Date, the Resigning Agent's powers, rights, privileges and duties (other than such rights and duties otherwise agreed to in writing and other than such rights that survive pursuant to the terms of the Loan Documents) as Administrative Agent and Collateral Agent shall be terminated, without any further act or deed on the part of the Resigning Agent or any of the parties to the Second Restatement Term Loan Credit Agreement or the Lenders. Each of the Borrowers and the Lenders hereby waive the notice requirement set forth in Section 12.9 of the Second Restatement Term Loan Credit Agreement in respect of such resignation as Administrative Agent and Collateral Agent and agrees that the resignation of Royal Bank of Canada as the Administrative Agent and the Collateral Agent under the Loan Documents shall become effective as of the Effective Date.

(b) **Appointment.** Effective as of the Effective Date, (i) the Required Lenders hereby appoint, in accordance with Section 12.9 of the Second Restatement Term Loan Credit Agreement, Bank of Montreal as the Administrative Agent and as the Collateral Agent under this Agreement and the other Loan Documents, (ii) Bank of Montreal hereby accepts its appointment as the Administrative Agent and as the Collateral Agent under this Agreement and any other Loan Documents, (iii) the Borrower Representative and the other Borrowers hereby consent to and approve the appointment of Bank of Montreal as the Administrative Agent and as the Collateral Agent and (iv) Bank of Montreal, as the Administrative Agent and as the Collateral Agent, shall succeed to, and be vested with, all of the powers, rights, privileges and duties of the Administrative Agent and the Collateral Agent under this Agreement and any other Loan Documents. Each of the parties hereto hereby waives the requirement set forth in Section 12.9 of the Second Restatement Term Loan Credit Agreement that the Required Lenders shall appoint a successor administrative agent who shall be an existing Lender.

(c) **Agency Resignation Appointment and Assumption Agreement.** Each of the Lenders hereby authorizes the Loan Parties, the Resigning Agent and Bank of Montreal to enter into an agency transfer agreement (the "**Agency Assignment Agreement**") in form and substance reasonably satisfactory to the Loan Parties, the Resigning Agent and Bank of Montreal to be effective as of the Effective Date. In addition, each of the Lenders hereby authorizes the Loan Parties, the Resigning Agent and Bank of Montreal in its capacity as the successor Administrative Agent and Collateral Agent to make any filings and enter into any documentation or amendments to existing Loan Documents with respect to the Agency Replacement and the transactions contemplated by this Agreement deemed reasonably necessary or desirable by the Loan Parties, Bank of Montreal (in its capacity as the successor Administrative Agent and Collateral Agent) and/or the Resigning Agent without the consent of any Lender. The parties hereto agree that neither Royal Bank of Canada, in its individual capacity or in its capacity as the Resigning Agent, nor any of its Affiliates, shall bear any responsibility or liability for any actions taken or omitted to be taken by Royal Bank of Canada under the Agency Assignment Agreement, this Agreement (with respect to actions taken or omitted to be taken after the Effective Date) or any of the other Loan Documents or the transactions

contemplated any of the foregoing. The parties hereto agree that neither Bank of Montreal, in its individual capacity or in its capacity as the successor Administrative Agent and successor Collateral Agent, nor any of its Affiliates, shall bear any responsibility or liability for any actions taken or omitted to be taken by Royal Bank of Canada in its capacity as the Resigning Agent under the Agency Assignment Agreement, this Agreement and the other Loan Documents or the transactions contemplated thereby.

*[the remainder of this page is intentionally left blank]*

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first above written.

**HIGH LINER FOODS INCORPORATED**, as the  
Canadian Borrower

By: /s/ Paul Jewer  
Name: Paul Jewer  
Title: President and Chief Executive Officer

**HIGH LINER FOODS (USA), INCORPORATED**, as  
the U.S. Borrower

By: /s/ Paul Jewer  
Name: Paul Jewer  
Title: President and Chief Executive Officer

**ISF (USA), LLC**, as a Guarantor

By: /s/ Paul Jewer  
Name: Paul Jewer  
Title: President and Chief Executive Officer

**APS, LLC**, as a Guarantor

By: /s/ Paul Jewer  
Name: Paul Jewer  
Title: President and Chief Executive Officer

**VIKING SEAFOODS LLC**, as a Guarantor

By: /s/ Paul Jewer  
Name: Paul Jewer  
Title: President and Chief Executive Officer

**HLF PEABODY LLC**, as a Guarantor

By: /s/ Paul Jewer  
Name: Paul Jewer  
Title: President and Chief Executive Officer

**RUBICON RESOURCES, LLC, as a Guarantor**

By: /s/ Paul Jewer  
Name: Paul Jewer  
Title: President and Chief Executive Officer

**HLF (USA) 2020 LLC, as a Guarantor**

By: /s/ Paul Jewer  
Name: Paul Jewer  
Title: Chief Executive Officer

**3250114 NOVA SCOTIA LIMITED, as a Guarantor**

By: /s/ Paul Jewer  
Name: Paul Jewer  
Title: President and Chief Executive Officer

**3250115 NOVA SCOTIA COMPANY, as a Guarantor**

By: /s/ Paul Jewer  
Name: Paul Jewer  
Title: President and Chief Executive Officer

**3259093 NOVA SCOTIA COMPANY, as a Guarantor**

By: /s/ Paul Jewer  
Name: Paul Jewer  
Title: President and Chief Executive Officer

**3259094 NOVA SCOTIA COMPANY, as a Guarantor**

By: /s/ Paul Jewer  
Name: Paul Jewer  
Title: President and Chief Executive Officer

**3259095 NOVA SCOTIA LIMITED**, as a Guarantor

By: /s/ Paul Jewer

Name: Paul Jewer

Title: President and Chief Executive Officer

**3275105 NOVA SCOTIA LIMITED**, as a Guarantor

By: /s/ Paul Jewer

Name: Paul Jewer

Title: President and Chief Executive Officer

**3308318 NOVA SCOTIA COMPANY**, as a Guarantor

By: /s/ Paul Jewer

Name: Paul Jewer

Title: President and Chief Executive Officer

**HIGH LINER FOODS 2020 LIMITED  
PARTNERSHIP**, as a Guarantor

By: 3340734 Nova Scotia Company,  
its general partner

By: /s/ Paul Jewer

Name: Paul Jewer

Title: President and Chief Executive Officer

**3340734 NOVA SCOTIA COMPANY**, as a Guarantor

By: /s/ Paul Jewer

Name: Paul Jewer

Title: President and Chief Executive Officer

**3340736 NOVA SCOTIA COMPANY**, as a Guarantor

By: /s/ Paul Jewer

Name: Paul Jewer

Title: President and Chief Executive Officer

**3340737 NOVA SCOTIA COMPANY, as a Guarantor**

By: /s/ Paul Jewer

Name: Paul Jewer

Title: President and Chief Executive Officer

**ATLANTIC TRADING COMPANY, LLC, as a  
Guarantor**

By: /s/ James Bishop

Name: James Bishop

Title: Executive Vice President and Corporate Secretary

**BANK OF MONTREAL,**  
as Agent

By: /s/ Aaron Weigel  
Name: Aaron Weigel  
Title: Managing Director

**BANK OF MONTREAL,**  
as a Lender

By: /s/ Aaron Weigel  
Name: Aaron Weigel  
Title: Managing Director

**ROYAL BANK OF CANADA,**  
as Resigning Agent

By: /S/ Richard Dsouza  
Name: Richard Dsouza  
Title: MANAGER AGENCY SERVICES